

IN THE HIGH COURT OF JUSTICE

Claim No: KB-2025-CDF-000046

KING'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

B E T W E E N : -

CARDIFF UNIVERSITY

Claimant

- and -

**(1) PERSONS UNKNOWN OCCUPYING LAND (AS SHOWN FOR
IDENTIFICATION EDGED RED ON THE ATTACHED PLAN 1)
WITHOUT THE CONSENT OF THE CLAIMANT**

**(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTEST (i) ENTER,
OCCUPY OR REMAIN UPON; (ii) BLOCK, OBSTRUCT OR INTERFERE
WITH ACCESS TO; OR (iii) ERECT ANY STRUCTURE (INCLUDING TENTS,
GAZEBOS OR SLEEPING EQUIPMENT), ON THE SITES (AS SHOWN FOR
IDENTIFICATION EDGED BLUE ON THE ATTACHED PLAN 2)
WITHOUT THE CONSENT OF THE CLAIMANT**

Defendants

- and -

EUROPEAN LEGAL SUPPORT CENTRE

Intervener

**BUNDLE OF AUTHORITIES
ON BEHALF OF THE CLAIMANT**

Review Hearing: 10.30am on 21 July 2026

NO.	AUTHORITY	PAGE
1	<i>Wolverhampton City Council v London Gypsies and Travellers</i> [2024] AC 983	2 – 81
2	<i>High Speed Two (HS2) Ltd v Persons Unknown</i> [2024] EWHC 1277	81 – 110
3	<i>Arla Foods Ltd v Persons Unknown</i> [2024] EWHC 1952	111 – 141
4	<i>Transport for London v Persons Unknown</i> [2025] EWHC 55	142 – 172
5	<i>Rochdale MBC v Persons Unknown</i> [2025] EWHC 1314	173 – 187
6	<i>Valero Energy Ltd v Persons Unknown</i> [2026] EWHC 397	188 – 195

A

Supreme Court

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

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

B

[2023] UKSC 47

2023 Feb 8, 9;
Nov 29

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

C

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

D

With the intention of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981¹ prohibiting “persons unknown” from setting up such camps in the future. Injunctions of varying length were granted to some 38 local authorities, or groups of local authorities, on varying terms by way of both interim and permanent injunctions. After the hearing of an application to extend one of the injunctions which was coming to an end, a judge ordered a review of all such injunctions as remained in force and which the local authority in question wished to maintain. The judge discharged the injunctions which were final and directed at unknown persons, holding that final injunctions could only be made against parties who had been identified and had had an opportunity to contest the order sought. The Court of Appeal allowed appeals by some of the local authorities and restored those final injunctions which were the subject of appeal, holding that final injunctions against persons unknown were valid since any person who breached one would as a consequence become a party to it and so be entitled to contest it.

E

F

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

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

H

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

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

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

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

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

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

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

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

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

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

- A in direct action. Such activity may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers (post, para 235).
Decision of the Court of Appeal sub nom *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13; [2023] QB 295; [2022] 2 WLR 946; [2022] 4 All ER 51 affirmed on different grounds.
- B The following cases are referred to in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchen:
A (A Protected Party) v Persons Unknown [2016] EWHC 3295 (Ch); [2017] EMLR 11
Abela v Baadarani [2013] UKSC 44; [2013] 1 WLR 2043; [2013] 4 All ER 119, SC(E)
Adair v The New River Co (1805) 11 Ves 429
- C *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55; [1976] 2 WLR 162; [1976] 1 All ER 779, CA
Ashworth Hospital Authority v MGN Ltd [2002] UKHL 29; [2002] 1 WLR 2033; [2002] 4 All ER 193, HL(E)
Attorney General v Chaudry [1971] 1 WLR 1614; [1971] 3 All ER 938, CA
Attorney General v Crosland [2021] UKSC 15; [2021] 4 WLR 103; [2021] UKSC 58; [2022] 1 WLR 367; [2022] 2 All ER 401, SC(E)
- D *Attorney General v Harris* [1961] 1 QB 74; [1960] 3 WLR 532; [1960] 3 All ER 207, CA
Attorney General v Leveller Magazine Ltd [1979] AC 440; [1979] 2 WLR 247; [1979] 1 All ER 745; 68 Cr App R 342, HL(E)
Attorney General v Newspaper Publishing plc [1988] Ch 333; [1987] 3 WLR 942; [1987] 3 All ER 276, CA
Attorney General v Punch Ltd [2002] UKHL 50; [2003] 1 AC 1046; [2003] 2 WLR 49; [2003] 1 All ER 289, HL(E)
- E *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)
Baden's Deed Trusts, In re [1971] AC 424; [1970] 2 WLR 1110; [1970] 2 All ER 228, HL(E)
Bankers Trust Co v Shapira [1980] 1 WLR 1274; [1980] 3 All ER 353, CA
Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER 487, SC(E)
- F *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB)
Blain (Tony) Pty Ltd v Splain [1993] 3 NZLR 185
Bloomsbury Publishing Group plc v News Group Newspapers Ltd [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736
Brett Wilson LLP v Persons Unknown [2015] EWHC 2628 (QB); [2016] 4 WLR 69; [2016] 1 All ER 1006
- G *British Airways Board v Laker Airways Ltd* [1985] AC 58; [1984] 3 WLR 413; [1984] 3 All ER 39, HL(E)
Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727, CA
Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA
Burris v Azadani [1995] 1 WLR 1372; [1995] 4 All ER 802, CA
- H *CMOC Sales and Marketing Ltd v Person Unknown* [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep FC 62
Cameron v Hussain [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
Canada Goose UK Retail Ltd v Persons Unknown [2019] EWHC 2459 (QB); [2020] 1 WLR 417; [2020] EWCA Civ 303; [2020] 1 WLR 2802; [2020] 4 All ER 575, CA

- Cardile v LED Builders Pty Ltd* [1999] HCA 18; 198 CLR 380 A
- Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB)
- Cartier International AG v British Sky Broadcasting Ltd* [2014] EWHC 3354 (Ch);
[2015] Bus LR 298; [2015] 1 All ER 949; [2016] EWCA Civ 658; [2017] Bus LR
1; [2017] 1 All ER 700, CA; [2018] UKSC 28; [2018] 1 WLR 3259; [2018]
Bus LR 1417; [2018] 4 All ER 373, SC(E)
- Castanho v Brown & Root (UK) Ltd* [1981] AC 557; [1980] 3 WLR 991; [1981]
1 All ER 143, HL(E) B
- Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334;
[1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
- Chapman v United Kingdom* (Application No 27238/95) (2001) 33 EHRR 18,
ECtHR (GC)
- Commerce Commission v Unknown Defendants* [2019] NZHC 2609
- Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24; [2023] AC
389; [2022] 2 WLR 703; [2022] 1 All ER 289; [2022] 1 All ER (Comm) 633, PC C
- Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29,
CA
- D v Persons Unknown* [2021] EWHC 157 (QB)
- Dresser UK Ltd v Falcongate Freight Management Ltd (The Duke of Yare)* [1992]
QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA
- EMI Records Ltd v Kudhail* [1985] FSR 36, CA
- ESPN Software India Pvt Ltd v Tudu Enterprise* (unreported) 18 February 2011, D
High Ct of Delhi
- Earthquake Commission v Unknown Defendants* [2013] NZHC 708
- Ernst & Young Ltd v Department of Immigration* 2015 (1) CILR 151
- F (or se A) (A Minor) (Publication of Information), In re* [1977] Fam 58; [1976]
3 WLR 813; [1977] 1 All ER 114, CA
- Financial Services Authority v Sinaloa Gold plc* [2013] UKSC 11; [2013] 2 AC 28;
[2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E) E
- Fourie v Le Roux* [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007]
1 All ER 1087, HL(E)
- Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25, CA
- Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536, CA
- Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator
Site* [2003] EWHC 1738 (Ch); [2004] Env LR 9
- Harlow District Council v Stokes* [2015] EWHC 953 (QB) F
- Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB)
- Hubbard v Pitt* [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER
1, CA
- Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515; [2019] 4 WLR 100;
[2019] 4 All ER 699, CA
- Iveson v Harris* (1802) 7 Ves 251
- Joel v Various John Does* (1980) 499 F Supp 791 G
- Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019]
EWHC 1903 (QB)
- M and N (Minors) (Wardship: Publication of Information), In re* [1990] Fam 211;
[1989] 3 WLR 1136; [1990] 1 All ER 205, CA
- MacMillan Bloedel Ltd v Simpson* [1996] 2 SCR 1048
- McPhail v Persons, Names Unknown* [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All
ER 393, CA H
- Manchester Corpn v Connolly* [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER
961, CA
- Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, HL(E)
- Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509,
CA

- A *Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd* [1998] 4 VR 143
Mercedes Benz AG v Leiduck [1996] AC 284; [1995] 3 WLR 718; [1995] 3 All ER 929, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew [1983] Lexis Citation 198; The Times, 25 June 1983, CA
- B *Murphy v Murphy* [1999] 1 WLR 282; [1998] 3 All ER 1
News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2) [1987] ICR 181
North London Railway Co v Great Northern Railway Co (1883) 11 QBD 30, CA
Norwich Pharmacal Co v Customs and Excise Comrs [1974] AC 133; [1973] 3 WLR 164; [1973] 2 All ER 943, HL(E)
OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23
- C *Parkin v Thorold* (1852) 16 Beav 59
R v Lincolnshire County Council, Ex p Atkinson (1995) 8 Admin LR 529, DC
R (Wardship: Restrictions on Publication), In re [1994] Fam 254; [1994] 3 WLR 36; [1994] 3 All ER 658, CA
RWE Npower plc v Carrol [2007] EWHC 947 (QB)
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR 635, DC
- D *Revenue and Customs Comrs v Egleton* [2006] EWHC 2313 (Ch); [2007] Bus LR 44; [2007] 1 All ER 606
Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11; [2009] 1 WLR 2780; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)
Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA (The Siskina) [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803, HL(E)
Smith v Secretary of State for Housing, Communities and Local Government [2022] EWCA Civ 1391; [2023] PTSR 312, CA
- E *South Bucks District Council v Porter* [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA
South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
- F *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provinciën" NV* [1987] AC 24; [1986] 3 WLR 398; [1986] 3 All ER 487, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)
TSB Private Bank International SA v Chabra [1992] 1 WLR 231; [1992] 2 All ER 245
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
- G *United Kingdom Nirex Ltd v Barton* [1986] Lexis Citation 644; The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Winch, Persons formerly known as, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
- H *Wykeham Terrace, Brighton, Sussex, In re, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204; [1970] 3 WLR 649
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37
Z Ltd v A-Z and AA-LL [1982] QB 558; [1982] 2 WLR 288; [1982] 1 All ER 556, CA

The following additional cases were cited in argument:

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

APPEAL from the Court of Appeal

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

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

- A Test Valley Borough Council; Thurrock Council; Hillingdon London Borough Council; Richmond upon Thames London Borough Council; Walsall Metropolitan Borough Council and Wolverhampton City Council. The following bodies were granted permission to intervene in the appeal: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd and Basildon Borough Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR, B Lewison and Elisabeth Laing LJ) [2022] EWCA Civ 13; [2023] QB 295 allowed the appeals.

- C With permission granted by the Supreme Court on 25 October 2022 (Lord Hodge DPSC, Lord Hamblen and Lord Stephens JJSC) London Gypsies and Travellers, Friends, Families and Travellers and Derbyshire Gypsy Liaison Group appealed against the Court of Appeal's orders. The following local authorities participated in the appeal as respondents: (i) Wolverhampton City Council; (ii) Walsall Metropolitan Borough Council; (iii) Barking and Dagenham London Borough Council; (iv) Basingstoke and Deane Borough Council and Hampshire County Council; (v) Redbridge London Borough Council; (vi) Havering London Borough Council; (vii) Nuneaton and Bedworth Borough Council and Warwickshire County Council; (viii) D Rochdale Metropolitan Borough Council; (ix) Test Valley Borough Council and Hampshire County Council and (x) Thurrock Council. The following bodies were granted permission to intervene in the appeal: Friends of the Earth; Liberty, High Speed Two (HS2) Ltd and the Secretary of State for Transport.

- E The facts and the agreed issues for the court are stated in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchin, post, paras 6–13.

Richard Drabble KC, Marc Willers KC, Tessa Buchanan and Owen Greenhall (instructed by *Community Law Partnership, Birmingham*) for the appellants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drabble KC replied.

The court took time for consideration.

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

1. Introduction

(1) The problem

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

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

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

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

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

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

F (2) *The factual and procedural background*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F 2. *The legal background*

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

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

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

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

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

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

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

(1) *The jurisdiction to grant injunctions* C

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

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

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

B 19 Like any judicial power, the power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court. Accordingly, as Lord Mustill observed in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361:

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

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

D 20 The point is illustrated by the development in recent times of several new kinds of injunction in response to the emergence of particular problems: for example, the *Mareva* or freezing injunction, named after one of the early cases in which such an order was made (*Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd’s Rep 509); the search order or *Anton Piller* order, again named after one of the early cases in which such an order was made (*Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55); the *Norwich Pharmacal* order, also known as the third party disclosure order, which takes its name from the case in which the basis for such an order was authoritatively established (*Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133); the *Bankers Trust* order, which is an injunction of the kind granted in *Bankers Trust Co v Shapira* [1980] 1 WLR 1274; the internet blocking order, upheld in *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 (para 17 above), and approved by this court in the same case, on an appeal on the question of costs: *Cartier International AG v British Telecommunications plc* [2018] 1 WLR 3259, para 15; the anti-suit injunction (and its offspring, the anti-anti-suit injunction), which has become an important remedy as globalisation has resulted in parties seeking tactical advantages in different jurisdictions; and the related injunction to restrain the presentation or advertisement of a winding-up petition.

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

“I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power

is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available.”

In *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 (para 19 above), Lord Browne-Wilkinson, with whose speech Lord Keith of Kinkel and Lord Goff agreed, expressed his agreement at p 343 with Lord Goff’s observations in the *South Carolina* case. In *Mercedes Benz AG v Leiduck* [1996] AC 284, 308, Lord Nicholls of Birkenhead referred to these dicta in the course of his illuminating albeit dissenting judgment, and stated:

“As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice. Injustice is to be viewed and decided in the light of today’s conditions and standards, not those of yester-year.”

22 These dicta are borne out by the recent developments in the law of injunctions which we have briefly described. They illustrate the continuing ability of equity to innovate both in respect of orders designed to protect and enhance the administration of justice, such as freezing injunctions, *Anton Piller* orders, *Norwich Pharmacal* orders and *Bankers Trust* orders, and also, more significantly for present purposes, in respect of orders designed to protect substantive rights, such as internet blocking orders. That is not to undermine the importance of precedent, or to suggest that established categories of injunction are unimportant. But the developments which have taken place over the past half-century demonstrate the continuing flexibility of equitable powers, and are a reminder that injunctions may be issued in new circumstances when the principles underlying the existing law so require.

(2) *Injunctions against non-parties*

23 It is common ground in this appeal that newcomers are not parties to the proceedings at the time when the injunctions are granted, and the judgments below proceeded on that basis. However, it is worth taking a moment to consider the question.

24 Where the defendants are described in a claim form, or an injunction describes the persons enjoined, simply as persons unknown, the entire world falls within the description. But the entire human race cannot be regarded as being parties to the proceedings: they are not before the court, so that they are subject to its powers. It is only when individuals are served with the claim form that they ordinarily become parties in that sense, although it is also possible for persons to apply to become parties in the absence of service. As will appear, service can be problematical where the identities of the intended defendants are unknown. Furthermore, as a general rule, for any injunction to be enforceable, the persons whom it enjoins, if unnamed, must be described with sufficient clarity to identify those included and those excluded.

25 Where, as in most newcomer injunctions, the persons enjoined are described by reference to the conduct prohibited, particular individuals do not fall within that description until they behave in that way. The result is

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

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

(i) Representative proceedings

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

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

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

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

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

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

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

(ii) Wardship proceedings

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

- A *Publication of Information* [1990] Fam 211 and *In re R (Wardship: Restrictions on Publication)* [1994] Fam 254.

(iii) Injunctions to protect human rights

- B 32 It has been clear since the case of *Venables v News Group Newspapers Ltd* [2001] Fam 430 (“*Venables*”) that the court can grant an injunction contra mundum in order to enforce rights protected by the Human Rights Act 1998. The case concerned the protection of the new identities of individuals who had committed notorious crimes as children, and whose safety would be jeopardised if their new identities became publicly known. An injunction preventing the publication of information about the claimants had been granted at the time of their trial, when they remained children. The matter returned to the court after they attained the age of majority and applied for the ban on publication to be continued, on the basis that the information in question was confidential. The injunction was granted against named newspaper publishers and, expressly, against all the world. It was therefore an injunction granted, as against all potential targets other than the named newspaper publishers, on a without notice application.
- D 33 Dame Elizabeth Butler-Sloss P held that the jurisdiction to grant an injunction in the circumstances of the case lay in equity, in order to restrain a breach of confidence. She recognised that by granting an injunction against all the world she would be departing from the general principle, referred to at para 26 above, that “you cannot have an injunction except against a party to the suit” (para 98). But she relied (at para 29) upon the passage in *Spry* (in an earlier edition) which we cited at para 17 above as the source of the necessary equitable jurisdiction, and she felt compelled to make the order against all the world because of the extreme danger that disclosure of confidential information would risk infringing the human rights of the claimants, particularly the right to life, which the court as a public authority was duty-bound to protect from the criminal acts of others: see
- E paras 98–100. Furthermore, an order against only a few named newspaper publishers which left the rest of the media free to report the prohibited information would be positively unfair to them, having regard to their own
- F Convention rights to freedom of speech.

(iv) Reporting restrictions

- G 34 Reporting restrictions are prohibitions on the publication of information about court proceedings, directed at the world at large. They are not injunctions in the same sense as the orders which are our primary concern, but they are relevant as further examples of orders granted by courts restraining conduct by the world at large. Such orders may be made under common law powers or may have a statutory basis. They generally prohibit the publication of information about the proceedings in which they are made (eg as to the identity of a witness). A person will commit a contempt of court if, knowing of the order, he frustrates its purpose by publishing the information in question: see, for example, *In re F (or se A) (A Minor) (Publication of Information)* [1977] Fam 58 and *Attorney General v Leveller Magazine Ltd* [1979] AC 440.
- H

(v) Embargoes on draft judgments

A

35 It is the practice of some courts to circulate copies of their draft judgments to the parties' legal representatives, subject to a prohibition on further, unauthorised, disclosure. The order therefore applies directly to non-parties to the proceedings: see, for example, *Attorney General v Crosland* [2021] 4 WLR 103 and [2022] 1 WLR 367. Like reporting restrictions, such orders are not equitable injunctions, but they are relevant as further examples of orders directed against non-parties.

B

(vi) The effect of injunctions on non-parties

36 We have focused thus far on the question whether an injunction can be granted against a non-party. As we shall explain, it is also relevant to consider the effect which injunctions against parties can have upon non-parties.

C

37 If non-parties are not enjoined by the order, it follows that they are not bound to obey it. They can nevertheless be held in contempt of court if they knowingly act in the manner prohibited by the injunction, even if they have not aided or abetted any breach by the defendant. As it was put by Lord Oliver of Aylmerton in *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 223, there is contempt where a non-party "frustrates, thwarts, or subverts the purpose of the court's order and thereby interferes with the due administration of justice in the particular action" (emphasis in original).

D

38 One of the arguments advanced before the House of Lords in *Attorney General v Times Newspapers Ltd* was that to invoke the jurisdiction in contempt against a person who was neither a party nor an aider or abettor of a breach of the order by the defendant, but who had done what the defendant in the action was forbidden by the order to do was, in effect, to make the order operate in rem or contra mundum. That, it was argued, was a purpose which the court could not legitimately achieve, since its orders were only properly made inter partes.

E

39 The argument was rejected. Lord Oliver acknowledged at p 224 that "Equity, in general, acts in personam and there are respectable authorities for the proposition that injunctions, whether mandatory or prohibitory, operate inter partes and should be so expressed (see *Iveson v Harris*; *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406)". Nevertheless, the appellants' argument confused two different things: the scope of an order inter partes, and the proper administration of justice (pp 224–225):

F

"Once it is accepted, as it seems to me the authorities compel, that contempt (to use Lord Russell of Killowen's words [in *Attorney General v Leveller Magazine Ltd* at p 468]) 'need not involve disobedience to an order binding upon the alleged contemnor' the potential effect of the order contra mundum is an inevitable consequence."

G

40 In answer to the objection that the non-party who learns of the order has not been heard by the court and has therefore not had the opportunity to put forward any arguments which he may have, Lord Oliver responded at p 224 that he was at liberty to apply to the court:

H

"The Sunday Times' in the instant case was perfectly at liberty, before publishing, either to inform the respondent and so give him the

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

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

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

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

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

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

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

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

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

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

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

B 47 Another exception is the *Norwich Pharmacal* order, which is available where a third party gets mixed up in the wrongful acts of others, even innocently, and may be ordered to provide relevant information in its possession which the applicant needs in order to seek redress. The order is not based on the existence of any substantive cause of action against the defendant. Indeed, it is not a precondition of the exercise of the jurisdiction that the applicant should have brought, or be intending to bring, legal proceedings against the alleged wrongdoer. It is sufficient that the applicant intends to seek some form of lawful redress for which the information is needed: see *Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033.

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

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

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

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

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

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

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

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

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

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

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

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

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

F (1) *Bloomsbury*

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

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

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

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

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

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

(2) *Hampshire Waste Services*

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

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

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

(3) *Gammell*

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

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

- E 64 The material aspects of the two cases are substantially similar, and it will suffice for present purposes to focus on the *South Cambridgeshire* case. The Court of Appeal (Brooke and Clarke LJ) had earlier granted an injunction under section 187B of the Town and Country Planning Act 1990 against persons described as “persons unknown . . . causing or permitting hardcore to be deposited . . . caravans, mobile homes or other forms of residential accommodation to be stationed . . . or existing caravans, mobile homes or other forms of residential accommodation . . . to be occupied” on land adjacent to a Gypsy encampment in rural Cambridgeshire: *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 (“*South Cambs*”). The order restrained the persons so described from behaving in the manner set out in that description. Service of the claim form and the injunction was effected by placing them in clear plastic envelopes in a prominent position on the relevant land.

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

proportionality exercise had been undertaken to balance her particular human rights against the grant of an injunction against her, in accordance with *South Bucks District Council v Porter* [2003] 2 AC 558.

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick LJ agreed, stated that each of the appellants became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Ms Gammell had therefore already become a defendant when she stationed her caravan on the site. Her proper course (and that of any newcomer in the same situation) was to make a prompt application to vary or discharge the injunction as against her (which she had not done) and, in the meantime, to comply with the injunction. The individualised proportionality exercise could then be carried out with regard to her particular circumstances on the hearing of the application to vary or discharge, and might in any event be relevant to sanction. This reasoning, and in particular the notion that a newcomer becomes a defendant by committing a breach of the injunction, has been subject to detailed and sustained criticism by the appellants in the course of this appeal, and this is a matter to which we will return.

(4) *Meier*

67 We should also mention a decision of this court from about the same time concerning Travellers who had set up an unauthorised encampment in wooded areas managed by the Forestry Commission and owned by the Secretary of State for the Environment, Food and Rural Affairs: *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 (“*Meier*”). This was in one sense a conventional case: the Secretary of State issued proceedings alleging trespass by the occupying Travellers and sought an order for possession of the occupied sites. More unusual (and ultimately unsuccessful) was the application for an order for possession against the Travellers in respect of other land which was wholly detached from the land they were occupying. This was wrong in principle for it was simply not possible (even on a precautionary basis) to make an order requiring persons to give immediate possession of woodland of which they were *not* in occupation, and which was wholly detached from the woodland of which they *were* in occupation (as Lord Neuberger of Abbotsbury MR explained at para 75). But that did not mean the courts were powerless to frame a remedy. The court upheld an injunction granted by the Court of Appeal against the defendants, including “persons names unknown”, restraining them from entering the woodland which they had not yet occupied. Since it was not argued that the injunction was defective, we do not attach great significance to Lord Neuberger MR’s conclusion at para 84 that it had not been established that there was an error of principle which led to its grant. Nevertheless, it is notable that Lord Rodger of Earlsferry JSC expressed the view that the injunction had been rightly granted, and cited the decisions of Sir Andrew Morritt V-C in *Bloomsbury* and *Hampshire Waste Services*, and the grant of the injunction in the *South Cambs* case, without disapproval (at paras 2–3).

A (5) *Later cases concerning Traveller injunctions*

68 Injunctions in the Traveller and Gypsy context were targeted first at actual trespass on land. Typically, the local authorities would name as actual or intended defendants the particular individuals they had been able to identify, and then would seek additional relief against “persons unknown”, these being persons who were alleged to be unlawfully occupying the land but who could not at that stage be identified by name, although often they could be identified by some form of description. But before long, many local authorities began to take a bolder line and claims were brought simply against “persons unknown”.

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D 69 A further important development was the grant of Traveller injunctions, not just against those who were in unauthorised occupation of the land, whether they could be identified or not, but against persons on the basis only of their potential rather than actual occupation. Typically, these injunctions were granted for three years, sometimes more. In this way Traveller injunctions were transformed from injunctions against wrongdoers and those who at the date of the injunction were threatening to commit a wrong, to injunctions primarily or at least significantly directed against newcomers, that is to say persons who were not parties to the claim when the injunction was granted, who were not at that time doing anything unlawful in relation to the land of that authority, or even intending or overtly threatening to do so, but who might in the future form that intention.

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G 70 One of the first of these injunctions was granted by Patterson J in *Harlow District Council v Stokes* [2015] EWHC 953 (QB). The claimants sought and were granted an interim injunction under section 222 of the Local Government Act 1972 and section 187B of the Town and Country Planning Act 1990 in existing proceedings against over thirty known defendants and, importantly, other “persons unknown” in respect of encampments on a mix of public and private land. The pattern had been for these persons to establish themselves in one encampment, for the local authority and the police to take action against them and move them on, and for the encampment then to disperse but later reappear in another part of the district, and so the process would start all over again, just as Lord Rodger JSC had anticipated in *Meier*. Over the months preceding the application numerous attempts had been made using other powers (such as the Criminal Justice and Public Order Act 1994 (“CJPOA”)) to move the families on, but all attempts had failed. None of the encampments had planning permission and none had been the subject of any application for planning permission.

H 71 It is to be noted, however, that appropriate steps had been taken to draw the proceedings to the attention of all those in occupation (see para 15). None had attended court. Further, the relevant authorities and councils accepted that they were required to make provision for Gypsy and Traveller accommodation and gave evidence of how they were working to provide additional and appropriate sites for the Gypsy and Traveller communities. They also gave evidence of the extensive damage and pollution caused by the unlawful encampments, and the local tensions they generated, and the judge summarised the effects of this in graphic detail (at paras 10 and 11).

72 Following the decision in *Harlow District Council v Stokes* and an assessment of the efficacy of the orders made, a large number of other local authorities applied for and were granted similar injunctions over the period from 2017–2019, with the result that by 2020 there were in excess of 35 such injunctions in existence. By way of example, in *Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019] EWHC 1903 (QB), the injunction did not identify any named defendants.

73 All of these injunctions had features of relevance to the issues raised by this appeal. Sometimes the order identified the persons to whom it was directed by reference to a particular activity, such as “persons unknown occupying land” or “persons unknown depositing waste”. In many of the cases, injunctions were granted against persons identified only as those who might in future commit the acts which the injunction prohibited (eg *UK Oil and Gas Investments plc v Persons Unknown* [2019] JPL 161). In other cases, the defendants were referred to only as “persons unknown”. The injunctions remained in place for a considerable period of time and, on occasion, for years. Further, the geographical reach of the injunctions was extensive, indeed often borough-wide. They were usually granted without the court hearing any adversarial argument, and without provision for an early return date.

74 It is important also to have in mind that these injunctions undoubtedly had a significant impact on the communities of Travellers and Gypsies to whom they were directed, for they had the effect of forcing many members of these communities out of the boroughs which had obtained and enforced them. They also imposed a greater strain on the resources of the boroughs and councils which had not yet obtained an order. This combination of features highlighted another important consideration, and it was one of which the judges faced with these applications have been acutely conscious: a nomadic lifestyle has for very many years been a part of the tradition and culture of many Traveller and Gypsy communities, and the importance of this lifestyle to the Gypsy and Traveller identity has been recognised by the European Court of Human Rights in a series of decisions including *Chapman v United Kingdom* (2001) 33 EHRR 18.

75 As the Master of the Rolls explained in the present case, at paras 105 and 106, any individual Traveller who is affected by a newcomer injunction can rely on a private and family life claim to pursue a nomadic lifestyle. This right must be respected, but the right to that respect must be balanced against the public interest. The court will also take into account any other relevant legal considerations such as the duties imposed by the Equality Act 2010.

76 These considerations are all the more significant given what from these relatively early days was acknowledged by many to be a central and recurring set of problems in these cases (and it is one to which we must return in considering appropriate guidelines in cases of this kind): the Gypsies and Travellers to whom they were primarily directed had a lifestyle which made it difficult for them to access conventional sources of housing provision; their attempts to obtain planning permission almost always met with failure; and at least historically, the capacity of sites authorised for their occupation had fallen well short of that needed to accommodate those seeking space on which to station their caravans. The sobering statistics

A were referred to by Lord Bingham of Cornhill in *South Bucks District Council v Porter* [2003] 2 AC 558 (para 65 above), para 13.

77 The conflict to which these issues gave rise was recognised at the highest level as early as 2000 and emphasised in a housing research summary, *Local Authority Powers for Managing Unauthorised Camping* (Office of the Deputy Prime Minister, No 90, 1998, updated 4 December 2000):

B “The basic conflict underlying the ‘problem’ of unauthorised camping is between [Gypsies]/Travellers who want to stay in an area for a period but have nowhere they can legally camp, and the settled community who, by and large, do not want [Gypsies]/Travellers camped in their midst. The local authority is stuck between the two parties, trying to balance the conflicting needs and often satisfying no one.”

C 78 For many years there has also been a good deal of publicly available guidance on the issue of unauthorised encampments, much of which embodies obvious good sense and has been considered by the judges dealing with these applications. So, for example, materials considered in the authorities to which we will come have included a Department for the Environment Circular 18/94, *Gypsy Sites Policy and Unauthorised Camping* (November 1994), which stated that “it is a matter for local discretion whether it is appropriate to evict an unauthorised [Gypsy] encampment”. Matters to be taken into account were said to include whether there were authorised sites; and, if not, whether the unauthorised encampment was causing a nuisance and whether services could be provided to it. Authorities were also urged to try to identify possible emergency stopping places as close as possible to the transit routes so that Travellers could rest there for short periods; and were advised that where Gypsies were unlawfully encamped, it was for the local authority to take necessary steps to ensure that any such encampment did not constitute a threat to public health. Local authorities were also urged not to use their powers to evict Gypsies needlessly, and to use those powers in a humane and compassionate way. In 2004 the Office of the Deputy Prime Minister issued *Guidance on Managing Unauthorised Camping*, which recommended that local authorities and other public bodies distinguish between unauthorised encampment locations which were unacceptable, for instance because they involved traffic hazards or public health risks, and those which were acceptable, and stated that each encampment location must be considered on its merits. It also indicated that specified welfare inquiries should be undertaken in relation to the Travellers and their families before any decision was made as to whether to bring proceedings to evict them. Similar guidance was to be found in the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, in which it was emphasised that local authorities have an obligation to carry out welfare assessments on unauthorised campers to identify any issue that needs to be addressed before enforcement action is taken against them. It also urged authorities to consider whether enforcement was absolutely necessary.

H 79 The fact that Travellers and Gypsies have almost invariably chosen not to appear in these proceedings (and have not been represented) has left judges with the challenging task of carrying out a proportionality assessment

which has inevitably involved weighing all of these considerations, including the relevance of the breadth of the injunctions sought and the fact that the injunctions were directed against “persons unknown”, in deciding whether they should be granted and, if so, for how long; and whether they should be made subject to particular conditions and safeguards and, if so, what those conditions and safeguards should be.

(6) Cameron

80 The decision of the Supreme Court in *Cameron* [2019] 1 WLR 1471 (para 51 above) highlighted further and more fundamental considerations for this developing jurisprudence, and it is a decision to which we must return for it forms an important element of the case developed before us on behalf of the appellants. At this stage it is sufficient to explain that the claimant suffered personal injuries and damage to her car in a collision with another vehicle. The driver of that vehicle failed to stop and fled the scene. The claimant then brought an action for damages against the registered keeper, but it transpired that that person had not been driving the vehicle at the time of the accident. In addition, although there was an insurance policy in force in respect of the vehicle, the insured person was fictitious. The claimant could not sue the insurers, as the relevant legislation required that the driver was a person insured under the policy. The claimant could have sought compensation from the Motor Insurers’ Bureau, which compensates the victims of uninsured motorists, but for reasons which were unclear she applied instead to amend her claim to substitute for the registered keeper the person unknown who was driving the car at the time of the collision, so as to obtain a judgment on which the insurer would be liable under section 151 of the Road Traffic Act 1988 (“the 1988 Act”). The judge refused the application.

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

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

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

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

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

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

E (7) *Ineos*

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

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

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

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

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

(8) *Bromley*

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

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

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

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

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

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

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

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

(9) *Cuadrilla*

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

(10) *Canada Goose*

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

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

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

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

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

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

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

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

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

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

(11) *The present case*

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

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

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

107 Among the points made by the Master of the Rolls, the following should be highlighted. No meaningful distinction could be drawn between interim and final injunctions in this context (para 77). No such distinction had been drawn in the earlier case law concerned with newcomer injunctions.

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

4. A new type of injunction?

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

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

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

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

III The next in time is the *Bloomsbury* case [2003] 1 WLR 1633, the facts and reasoning in which were summarised in paras 58–59 above. The case was analysed by Lord Sumption in *Cameron* [2019] 1 WLR 1471 by reference to the distinction which he drew at para 13, as explained earlier, between cases concerned with anonymous defendants who were identifiable but whose names were unknown, such as squatters occupying a property, and cases concerned with defendants, such as most hit and run drivers, who were not only anonymous but could not be identified. The distinction was of critical importance, in Lord Sumption's view, because a defendant in the first category of case could be served with the claim form or other originating process, whereas a defendant in the second category could not, and consequently could not be given such notice of the proceedings as would enable him to be heard, as justice required.

III2 Lord Sumption added at para 15 that where an interim injunction was granted and could be specifically enforced against some property or by notice to third parties who would necessarily be involved in any contempt, the process of enforcing it would sometimes be enough to bring the proceedings to the defendant's attention. He cited *Bloomsbury* as an example, stating:

“the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction.”

III3 Lord Sumption categorised *Cameron* itself as a case in the second category, stating at para 16:

“One does not, however, identify an unknown person simply by referring to something that he has done in the past. ‘The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KGo3 ZJZ on 26 May 2013’, does not identify anyone. It does not enable one to know whether any particular person is the one referred to.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 Faced with the development by the lower courts of what really is in substance a new type of injunction, and with disagreement among them

A about whether there is any jurisdiction or principled basis for granting it, it behoves this court to go back to first principles about the means by which the court navigates such uncharted water. Much emphasis was placed in this context upon the wide generality of the words of section 37 of the 1981 Act. This was cited in para 17 above, but it is convenient to recall its terms:

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

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

C This or a very similar formulation has provided the statutory basis for the grant of injunctions since 1873. But in our view a submission that section 37 tells you all you need to know proves both too much and too little. Too much because, as we have already observed, it is certainly not the case that judges can grant or withhold injunctions purely on their own subjective perception of the justice and convenience of doing so in a particular case. Too little because the statutory formula tells you nothing about the principles which the courts have developed over many years, even centuries, to inform the judge and the parties as to what is likely to be just or convenient.

D **146** Prior to 1873 both the jurisdiction to grant injunctions and the principles regulating their grant lay in the common law, and specifically in that part of it called equity. It was an equitable remedy. From 1873 onwards the jurisdiction to grant injunctions has been confirmed and restated by statute, but the principles upon which they are granted (or withheld) have remained equitable: see *Fourie v Le Roux* [2007] 1 WLR 320 (paras 16 and 17 above) per Lord Scott of Foscote at para 25. Those principles continue to tell the judge what is just and convenient in any particular case. Furthermore, equitable principles generally provide the answer to the question whether settled principles or practice about the general limits or conditions within which injunctions are granted may properly be adjusted over time. The equitable origin of these principles is beyond doubt, and their continuing vitality as an analytical tool may be seen at work from time to time when changes or developments in the scope of injunctive relief are reviewed: see e.g. *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (para 21 above).

F **147** The expression of the readiness of equity to change and adapt its principles for the grant of equitable relief which has best stood the test of time lies in the following well-known passage from *Spry* (para 17 above) at p 333:

H “The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. Unfortunately there have sometimes been made observations by judges that tend to confuse questions of jurisdiction or of powers with questions of discretions or of practice. The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the

categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate.”

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

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

150 Of greater relevance is the deep-rooted trigger for the intervention of equity, where it perceives that available common law remedies are inadequate to protect or enforce the claimant’s rights. The equitable remedy of specific performance of a contractual obligation is in substance a form of injunction, and its availability critically depends upon damages being an inadequate remedy for the breach. Closer to home, the inadequacy of the common law remedy of a possession order against squatters under CPR Pt 55 as a remedy for trespass by a fluctuating body of frequently unidentifiable Travellers on different parts of the claimant’s land was treated in *Meier* [2009] 1 WLR 2780 (para 67 above) as a good reason for the grant of an injunction in relation to nearby land which, because it was not yet in the occupation of the defendant Travellers, could not be made the subject of an order for possession. Although the case was not about injunctions against newcomers, and although she was thinking primarily of the better tailoring of the common law remedy, the following observation of Baroness Hale JSC at para 25 is resonant:

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

To the same effect is the dictum of Anderson J (in New Zealand) in *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 (para 130 above) at p 187, cited by Sir Andrew Morritt V-C in *Bloomsbury* [2003] 1 WLR 1633 at para 14.

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

“Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it find, that by

- A insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance.”

That principle assists in the present context for two reasons. The first (discussed above) is that it illuminates the debate about the type of injunction with which the court is concerned, here enabling an escape from the twin silos of final and interim and recognising that injunctions against newcomers are all in substance without notice injunctions. The second is that it enables the court to assess the most suitable means of ensuring that a newcomer has a proper opportunity to be heard without being shackled to any particular procedural means of doing so, such as service of the proceedings.

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- C 152 The third general equitable principle is equity’s essential flexibility, as explained at paras 19–22 above. Not only is an injunction always discretionary, but its precise form, and the terms and conditions which may be attached to an injunction (recognised by section 37(2) of the 1981 Act), are highly flexible. This may be illustrated by the lengthy and painstaking development of the search order, from its original form in *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55 to the much more sophisticated current form annexed to Practice Direction 25A supplementing CPR Pt 25 and which may be modified as necessary. To a lesser extent a similar process of careful, incremental design accompanied the development of the freezing injunction. The standard form now sanctioned by the CPR is a much more sophisticated version than the original used in *Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd’s Rep 509. Of course, this flexibility enables not merely incremental development of a new type of injunction over time in the light of experience, but also the detailed moulding of any standard form to suit the justice and convenience of any particular case.
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- E

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

- H 154 It should not be supposed that all relevant general equitable principles favour the granting of injunctions against newcomers. Of those that might not, much the most important is the well-known principle that equity acts in personam rather than either in rem or (which may be much the same thing in substance) contra mundum. A main plank in the appellants’

submissions is that injunctions against newcomers are by their nature a form of prohibition aimed, potentially at least, at anyone tempted to trespass or camp (depending upon the drafting of the order) on the relevant land, so that they operate as a form of local law regulating how that land may be used by anyone other than its owner. Furthermore, such an injunction is said in substance to criminalise conduct by anyone in relation to that land which would otherwise only attract civil remedies, because of the essentially penal nature of the sanctions for contempt of court. Not only is it submitted that this offends against the in personam principle, but it also amounts in substance to the imposition of a regime which ought to be the preserve of legislation or at least of byelaws.

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

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

157 Courts quietly make orders affecting third parties almost daily, in the form of the embargo upon publication or other disclosure of draft judgments, pending hand-down in public: see para 35 above. It cannot be doubted that if a draft judgment with an embargo in this form came into the hands of someone (such as a journalist) other than the parties or their legal advisors it would be a contempt for that person to publish or disclose it further. Such persons would plainly be newcomers, in the sense in which that term is here being used.

158 It may be said, correctly, that orders of this kind are usually made so as to protect the integrity of the court's process from abuse. Nonetheless they have the effect of attaching to a species of intangible property a legal regime giving rise to a liability, if infringed, which sounds in contempt, regardless of the identity of the infringer. In conceptual terms, and shorn of

- A the purpose of preventing abuse, they work in rem or contra mundum in much the same way as an anti-trespass injunction directed at newcomers pinned to a post on the relevant land. The only difference is that the property protected by the former is intangible, whereas in the latter it is land. In relation to any such newcomer (such as the journalist) the embargo is made without notice.
- B 159 It is fair comment that a major difference between those types of order and the anti-trespass order is that the latter is expressly made against newcomers as “persons unknown” whereas the former (apart from the exceptional *Venables* type) are not. But if the consequences of breach are the same, and equity looks to the substance rather than to the form, that distinction may be of limited weight.
- C 160 Protection of the court’s process from abuse, or preservation of the utility of its future orders, may fairly be said to be the bedrock of many of equity’s forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying relevant documents in advance of the formal process of disclosure.
- D *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.
- E 161 But internet blocking orders (para 49 above) stand in a different category. The applicant intellectual property owner does not seek assistance from internet service providers (“ISPs”) to enable it to identify and then sue the wrongdoers. It seeks an injunction against the ISP because it is a much more efficient way of protecting its intellectual property rights than suing the numerous wrongdoers, even though it is no part of its case against the ISP that it is, or has even threatened to be, itself a wrongdoer. The injunction is
- F based upon the application of “ordinary principles of equity”: see *Cartier* [2018] 1 WLR 3259 (para 20 above) per Lord Sumption JSC at para 15. Specifically, the principle is that, once notified of the selling of infringing goods through its network, the ISP comes under a duty, but only if so requested by the court, to prevent the use of its facilities to facilitate a wrong by the sellers. The proceedings against the ISP may be the only proceedings
- G which the intellectual property owner intends to take. Proceedings directly against the wrongdoers are usually impracticable, because of difficulty in identifying the operators of the infringing websites, their number and their location, typically in places outside the jurisdiction of the court: see per Arnold J at first instance in *Cartier* [2015] Bus LR 298, para 198.
- H 162 The effect of an internet blocking order, or the cumulative effect of such orders against ISPs which share most of the relevant market, is therefore to hinder the wrongdoers from pursuing their infringing sales on the internet, without them ever being named or joined as defendants in the proceedings or otherwise given a procedural opportunity to advance any defence, other than by way of liberty to apply to vary or discharge the order: see again per Arnold J at para 262.

163 Although therefore internet blocking orders are not in form A
injunctions against persons unknown, they do in substance share many of
the supposedly objectionable features of newcomer injunctions, if viewed
from the perspective of those (the infringers) whose wrongdoings are in
substance sought to be restrained. They are, quoad the wrongdoers, made
without notice. They are not granted to hold the ring pending joinder of the
wrongdoers and a subsequent interim hearing on notice, still less a trial. The
proceedings in which they are made are, albeit in a sense indirectly, a form of
enforcement of rights which are not seriously in dispute, rather than a means
of dispute resolution. They have the effect, when made against the ISPs who
control almost the whole market, of preventing the infringers carrying on
their business from any location in the world on the primary digital platform
through which they seek to market their infringing goods. The infringers
whose activities are impeded by the injunctions are usually beyond the
territorial jurisdiction of the English court. Indeed that is a principal
justification for the grant of an injunction against the ISPs.

164 Viewed in that way, internet blocking orders are in substance more
of a precedent or jumping-off point for the development of newcomer
injunctions than might at first sight appear. They demonstrate the imaginative
way in which equity has provided an effective remedy for the protection and
enforcement of civil rights, where conventional means of proceeding against
the wrongdoers are impracticable or ineffective, where the objective of
protecting the integrity or effectiveness of related court process is absent,
and where the risk of injustice of a without notice order as against alleged
wrongdoers is regarded as sufficiently met by the preservation of liberty to
them to apply to have the order discharged.

165 We have considered but rejected summary possession orders
against squatters as an informative precedent. This summary procedure
(avoiding any interim order followed by final order after trial) was originally
provided for by RSC Ord 113, and is now to be found in CPR Pt 55. It is
commonly obtained against persons unknown, and has effect against
newcomers in the sense that in executing the order the bailiff will remove not
merely squatters present when the order was made, but also squatters who
arrived on the relevant land thereafter, unless they apply to be joined as
defendants to assert a right of their own to remain.

166 Tempting though the superficial similarities may be as between
possession orders against squatters and injunctions against newcomers, they
afford no relevant precedent for the following reasons. First, they are the
creature of the common law rather than equity, being a modern form of the
old action in ejectment which is at its heart an action in rem rather than in
personam: see *Manchester Corp'n v Connolly* [1970] Ch 420, 428–429 per
Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per
Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780,
paras 33–36 per Baroness Hale JSC. Secondly, possession orders of this kind
are not truly injunctions. They authorise a court official to remove persons
from land, but disobedience to the bailiff does not sound in contempt.
Thirdly, the possession order works once and for all by a form of execution
which puts the owner of the land back in possession, but it has no ongoing
effect in prohibiting entry by newcomers wishing to camp upon it after the
order has been executed. Its shortcomings in the Traveller context are one of

A the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties.

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

C (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.

D (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see 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.

F (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.

G (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.

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

generally be built into the process for the application for, grant and subsequent monitoring of this type of injunction. A

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. B

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, ie 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. C
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171 Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one. This was a matter which received only cursory examination during the hearing of this appeal. Mr Anderson KC for Wolverhampton submitted (on instructions quickly taken by telephone during the short adjournment) that, in summary, byelaws took too long to obtain (requiring two stages of negotiation with central government), would need to be separately made in relation to each site, would be too inflexible to address changes in the use of the relevant sites (particularly if subject to development) and would unduly criminalise the process of enforcing civil rights. The appellants did not engage with the detail of any of these points, their objection being more a matter of principle. E
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172 We have not been able to reach any conclusions about the issue of practicality, either generally or on the particular facts about the cases before the court. In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment. H

A 173 A second main objection in principle was lack of procedural fairness, for which Lord Sumption's observations in *Cameron* were prayed in aid. It may be said that recognition that injunctions against newcomers are in substance without notice injunctions makes this objection all the more stark, because the newcomer does not even know that an injunction is being sought against them when the order is made, so that their inability to attend to oppose is hard-wired into the process regardless of the particular facts.

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

E 175 In the present context notice of the application would not risk defeating its purpose, and there would usually be no such urgency as would justify applying without notice. The absence of notice is simply inherent in an application for this type of injunction because, quoad newcomers, the applicant has no idea who they might turn out to be. A practice requirement to advertise the intended application, by notices on the relevant sites or on suitable websites, might bring notice of the application to intended newcomers before it came to be made, but this would be largely a matter of happenstance. It would for example not necessarily come to the attention of a Traveller who had been camping a hundred miles away and who alighted for the first time on the prohibited site some time after the application had been granted.

G 176 But advertisement in advance might well alert bodies with a mission to protect Travellers' interests, such as the appellants, and enable them to intervene to address the court on the local authority's application with focused submissions as to why no injunction should be granted in the particular case. There is an (imperfect) analogy here with representative proceedings (paras 27–30 above). There may also be a useful analogy with the long-settled rule in insolvency proceedings which requires that a creditors' winding up petition be advertised before it is heard, in order to give advance notice to stakeholders in the company (such as other creditors)

and the opportunity to oppose the petition, without needing to be joined as defendants. We say more about this and how advance notice of an application for a newcomer injunction might be given to newcomers and persons and bodies representing their interests in the next section of this judgment.

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

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

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

180 There is some force in this point, but we are not persuaded that the general disinclination of Travellers to apply to court really flows from the newcomer injunctions having been granted on a without notice application. If for example a local authority waited for a group of Travellers to camp unlawfully before serving them with an application for an injunction, the Travellers might move to another site rather than raise a defence to the prevention of continued camping on the original site. By the time the application came to be heard, the identified group would have moved on, leaving the local authority to clear up, and might well have been replaced by another group, equally unidentifiable in advance of their arrival.

181 There are of course exceptions to this pattern of temporary camping as trespassers, as when Travellers buy a site for camping on, and are then proceeded against for breach of planning control rather than for

- A trespass: see eg the *Gammell* case and the appeal in *Bromley London Borough Council v Maughan* heard at the same time. In such a case the potential procedural injustice of a without notice injunction might well be sufficient to require the local authority to proceed against the owners of the site on notice, in the usual way, not least because there would be known targets capable of being served with the proceedings, and any interim application made on notice. But the issue on this appeal is not whether
- B newcomer injunctions against Travellers are always justified, but rather whether the objections are such that they never are.

- 182 The next logical objection (although little was made of it on this appeal) is that an injunction of this type made on the application of a local authority doing its duty in the public interest is not generally accompanied by a cross-undertaking in damages. There is of course a principled reason
- C why public bodies doing their public duty are relieved of this burden (see *Financial Services Authority v Sinaloa Gold plc* [2013] 2 AC 28), and that reasoning has generally been applied in newcomer injunction cases against Travellers where the applicant is a local authority. We address this issue further in the next section of this judgment (at para 234) and it would be wrong for us to express more definite views on it, in the absence of any
- D submissions about it. In any event, if this were otherwise a decisive reason why an injunction of this type should never be granted, it may be assumed that local authorities, or some of them, would prefer to offer a cross undertaking rather than be deprived of the injunction.

- 183 The appellants' final main point was that it would always be impossible when considering the grant of an injunction against newcomers to conduct an individualised proportionality analysis, because each potential
- E target Traveller would have their own particular circumstances relevant to a balancing of their article 8 rights against the applicant's claim for an injunction. If no injunction could ever be granted in the absence of an individualised proportionality analysis of the circumstances of every potential target, then it may well be that no newcomer injunction could ever be granted against Travellers. But we reject that premise. To the extent that a
- F particular Traveller who became the subject of a newcomer injunction wished to raise particular circumstances applicable to them and relevant to the proportionality analysis, this would better be done under the liberty to apply if, contrary to the general disinclination or inability of Travellers to go to court, they had the determination to do so.

- 184 We have already briefly mentioned Mr Drabble KC's point about the inappropriateness of an injunction against one group of Travellers based only upon the disorderly conduct of an earlier group. This is in our view just an
- G evidential point. A local authority that sought a borough-wide injunction based solely upon evidence of disorderly conduct by a single group of campers at a single site would probably fail the test in any event. It will no doubt be necessary to adduce evidence which justifies a real fear of widespread repetition. Beyond that, the point goes nowhere towards constituting a
- H reason why such injunctions should never be granted.

185 The point was made by Stephanie Harrison KC for Friends of the Earth (intervening because of the implications of this appeal for protesters) that the potential for a newcomer injunction to cause procedural injustice was not regulated by any procedure rules or practice statements under the

CPR. Save in relation to certain statutory applications referred to in para 51 above this is true at present, but it is not a good reason to inhibit equity's development of a new type of injunction. A review of the emergence of freezing injunctions and search orders shows how the necessary procedural checks and balances were first worked out over a period of development by judges in particular cases, then addressed by textbook writers and academics and then, at a late stage in the developmental process, reduced to rules and practice directions. This is as it should be. Rules and practice statements are appropriate once experience has taught judges and practitioners what are the risks of injustice that need to be taken care of by standard procedures, but their reduction to settled (and often hard to amend) standard form too early in the process of what is in essence judge-made law would be likely to inhibit rather than promote sound development. In the meantime, the courts have been actively reviewing what these procedural protections should be, as for example in the *Ineos* and *Bromley* cases (paras 86–95 above). We elaborate important aspects of the appropriate protections in the next section of this judgment.

186 Drawing all these threads together, we are satisfied that there is jurisdiction (in the sense of power) in the court to grant newcomer injunctions against Travellers, and that there are principled reasons why the exercise of that power may be an appropriate exercise of the court's equitable discretion, where the general conditions set out in para 167 above are satisfied. While some of the objections relied upon by the appellants may amount to good reasons why an injunction should not be granted in particular cases, those objections do not, separately or in the aggregate, amount to good reason why such an injunction should never be granted. That is the question raised by this appeal.

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

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

(1) Compelling justification for the remedy

188 Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that

A there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i)).

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

D (i) An obligation or duty to provide sites for Gypsies and Travellers

190 The extent of any obligation on local authorities in England to provide sufficient sites for Gypsies and Travellers in the areas for which they are responsible has changed over time.

E 191 The starting point is section 23 of the Caravan Sites and Control of Development Act 1960 (“CSCDA 1960”) which gave local authorities the power to close common land to Gypsies and Travellers. As Sedley J observed in *R v Lincolnshire County Council, Ex p Atkinson* (1995) 8 Admin LR 529, local authorities used this power with great energy. But they made little or no corresponding use of the related powers conferred on them by section 24 of the CSCDA 1960 to provide sites where caravans might be brought, whether for temporary purposes or for use as permanent residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

G 192 In the light of the problems caused by the CSCDA 1960, section 6 of the Caravan Sites Act 1968 (“CSA 1968”) imposed on local authorities a duty to exercise their powers under section 24 of the CSCDA 1960 to provide adequate accommodation for Gypsies and Travellers residing in or resorting to their areas. The appellants accept that in the years that followed many sites for Gypsies and Travellers were established, but they contend with some justification that these sites were not and have never been enough to meet all the needs of these communities.

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

194 The position in Wales is rather different. Any local authority applying for a newcomer injunction affecting Wales must consider the

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

(ii) General “needs” assessments

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

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

(iii) Planning policy

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

198 Indeed, in 1994, the government published planning advice on the provision of sites for Gypsies and Travellers in the form of Department of the Environment Circular 1/94 entitled *Gypsy Sites and Planning*. This explained that the repeal of the statutory duty to provide sites was expected to lead to more applications for planning permission for sites. Local planning authorities (“LPAs”) were advised to assess the needs of Gypsies and Travellers within their areas and to produce a plan which identified suitable *locations* for sites (location-based policies) and if this could not be done, to explain the *criteria* for the selection of appropriate locations (criteria-based policies). Unfortunately, despite this advice, most attempts to secure permission for Gypsy and Traveller sites were refused and so the capacity of the relatively few sites authorised for occupation by these nomadic communities continued to fall well short of that needed, as Lord Bingham explained in *South Bucks District Council v Porter* [2003] 2 AC 558, at para 13.

199 The system for local development planning in England is now established by the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) and the regulations made under it. Part 2 of the PCPA 2004 deals with local development and stipulates that the LPA is to prepare a development scheme and plan; that this must set out the authority’s policies; that in preparing the local development plan, the authority must have regard to national policy; that each plan must be sent to the Secretary of State for

A independent examination and that the purpose of this examination is, among other things, to assess its soundness and that will itself involve an assessment whether it is consistent with national policy.

200 Meantime, the advice in Circular 1/94 having failed to achieve its purpose, the government has from time to time issued new planning advice on the provision of sites for Gypsies and Travellers in England, and that advice may be taken to reflect national policy.

B 201 More specifically, in 2006 advice was issued in the form of the Office of the Deputy Prime Minister Circular 1/06 *Planning for Gypsy and Traveller Caravan Sites*. The 2006 guidance was replaced in March 2012 by *Planning Policy for Traveller Sites* (“PPTS 2012”). In August 2015, a revised version of PPTS 2012 was issued (“PPTS 2015”) and this is to be read with the National Planning Policy Framework. There has recently been a challenge to a decision refusing planning permission on the basis that one aspect of PPTS 2015 amounts to indirect discrimination and has no proper justification: *Smith v Secretary of State for Housing, Communities and Local Government* [2023] PTSR 312. But for present purposes it is sufficient to say (and it remains the case) that there is in these policy documents clear advice that LPAs should, when producing their local plans, identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of sites against their locally set targets to address the needs of Gypsies and Travellers for permanent and transit sites. They should also identify a supply of specific, developable sites or broad locations for growth for years 6–10 and even, where possible, years 11–15. The advice is extensive and includes matters to which LPAs must have regard including, among other things, the presumption in favour of sustainable development; the possibility of cross-authority co-operation; the surrounding population’s size and density; the protection of local amenities and the environment; the need for appropriate land supply allocations and to respect the interests of the settled communities; the need to ensure that Traveller sites are sustainable and promote peaceful and integrated co-existence with the local communities; and the need to promote access to appropriate health services and schools. The LPAs are also advised to consider the need to avoid placing undue pressure on local infrastructure and services, and to provide a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampments.

F 202 The availability of transit sites (and information as to where they may be found) is also important in providing short-term or temporary accommodation for Gypsies and Travellers moving through a local authority area, and an absence of sufficient transit sites in an area (or information as to where available sites may be found) may itself be a sufficient reason for refusing a newcomer injunction.

(iv) Consultation and co-operation

H 203 This is another matter of considerable importance, and it is one with which all local authorities should willingly engage. We have no doubt that local authorities, other responsible bodies and representatives of the Gypsy and Traveller communities would benefit from a dialogue and co-operation to understand their respective needs; the concerns of the local authorities, local charities, business and community groups and members

of the public; and the resources available to the local authorities for deployment to meet the needs of these nomadic communities having regard to the wider obligations which the authorities must also discharge. In this way a deeper level of trust may be established and so facilitate and encourage a constructive approach to the implementation of proportionate solutions to the problems the nomadic communities continue to present, without immediate and expensive recourse to applications for injunctive relief or enforcement action.

(v) Public spaces protection orders

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

(vi) Criminal Justice and Public Order Act 1994

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

206 Section 61 of the CJPOA confers powers on the police to deal with two or more persons who they reasonably believe are trespassing on land with the purpose of residing there. The police can direct these trespassers to leave (and to remove any vehicles) if the occupier has taken reasonable steps to ask them to leave and they have caused damage, disruption or distress as those concepts are elucidated in section 61(10). Failure to leave within a reasonable time or, if they do leave, a return within three months is an offence punishable by imprisonment or a fine. A defence of reasonable excuse may be available in particular cases.

207 Following amendment in 2003, section 62A of the CJPOA confers on the police a power to direct trespassers with vehicles to leave land at the occupier’s request, and that is so even if the trespassers have not caused damage or used threatening behaviour. Where trespassers have at least one vehicle between them and are there with the common purpose of residing there, the police, (if so requested by the occupier) have the power to direct a trespasser to leave and to remove any vehicle or property, subject to this proviso: if they have caravans that (after consultation with the relevant local

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

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

(vii) Byelaws

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

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

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

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

213 Appropriate authorities are also given powers to make byelaws in relation to nature reserves by the National Parks and Access to the Countryside Act 1949 (12, 13 & 14 Geo 6, c 97) (as amended by the Natural Environment and Rural Communities Act 2006); in relation to National Parks and areas of outstanding natural beauty under sections 90 and 91 of the 1949 Act (as amended); concerning the protection of country parks under section 41 of the Countryside Act 1968; and for the protection and

preservation of other open country under section 17 of the Countryside and Rights of Way Act 2000. A

214 We recognise that byelaws are sometimes subjected to detailed and appropriate scrutiny by the courts in assessing whether they are reasonable, certain in their terms and consistent with the general law, and whether the local authority had the power to make them. It is an aspect of the third of these four elements that generally byelaws may only be made if provision for the same purpose is not made under any other enactment. Similarly, a byelaw may be invalidated if repugnant to some basic principle of the common law. Further, as we have seen, the usual method of enforcement of byelaws is a fine although powers to seize and retain property may also be included (see, for example, section 237ZA of the LGA 1972), as may powers to direct removal. B

215 The opportunity to make and enforce appropriate elements of this battery of potential byelaws, depending on the nature of the land in issue and the form of the intrusion, may seem at first sight to provide an important and focused way of dealing with unauthorised encampments, and it is a rather striking feature of these proceedings that byelaws have received very little attention from local authorities. Indeed, Wolverhampton City Council has accepted, through counsel, that byelaws were not considered as a means of addressing unauthorised encampments in the areas for which it is responsible. It maintains they are unlikely to be sufficient and effective in the light of (a) the existence of legislation which may render the byelaws inappropriate; (b) the potential effect of criminalising behaviour; (c) the issue of identification of newcomers; and (d) the modest size of any penalty for breach which is unlikely to be an effective deterrent. C

216 We readily appreciate that the nature of travelling communities and the respondents to newcomer injunctions may not lend themselves to control by or yield readily to enforcement of these various powers and measures, including byelaws, alone, but we are not persuaded that the use of byelaws or other enforcement action of the kinds we have described can be summarily dismissed. Plainly, we cannot decide in this appeal whether the reaction of Wolverhampton City Council to the use of all of these powers and measures including byelaws is sound or not. We have no doubt, however, that this is a matter that ought to be the subject of careful consideration on the next review of the injunctions in these cases or on the next application for an injunction against persons unknown, including newcomers. D

(viii) A need for review E

217 Various aspects of this discussion merit emphasis at this stage. Local authorities have a range of measures and powers available to them to deal with unlawful encampments. Some but not all involve the enactment and enforcement of byelaws. Many of the offences are punishable with fixed or limited penalties, and some are the subject of specified defences. It may be said that these form part of a comprehensive suite of measures and powers and associated penalties and safeguards which the legislature has considered appropriate to deal with the threat of unauthorised encampments by Gypsies and Travellers. We rather doubt that is so, particularly when dealing with communities of unidentified trespassers including newcomers. F

- A But these are undoubtedly matters that must be explored upon the review of these orders.

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

- B 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.

- C 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.

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

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

- G 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

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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.

B

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.

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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.

D

(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.

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(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

A 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.

B 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.

C 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.

D 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

F 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).

G 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

H 232 As we have mentioned, we consider that an order of this kind ought always to include generous liberty to any person affected by its terms to

apply to vary or discharge the whole or any part of the order (again, see para 167(ii) above). This is so whether the order is interim or final in form, so that a respondent can challenge the grant of the injunction on any grounds which might have been available at the time of its grant.

(9) Costs protection

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

(10) Cross-undertaking

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

(11) Protest cases

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

236 Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected;

- A the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.

(12) *Conclusion*

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

6. *Outcome*

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

(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.

- E (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.

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

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

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

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

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

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

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

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

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

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

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

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

Appeal dismissed.

COLIN BERESFORD, Barrister



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

Case No: QB-2022-BHM-000044

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

Date: 24th May 2024

Before :

MR JUSTICE RITCHIE

Between :

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

Claimant

- and -

(1) NOT USED

Defendants

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

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

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

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

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

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

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

Michael Fry & Jonathan Welch of Counsel (instructed by **DLA Piper Solicitors**) for the
Claimant

Stephen Simblet KC (instructed by **Robert Lizar Solicitors**) for the **6th Defendant**

Hearing dates: 15th May 2024

Approved Judgment

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

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Mr Justice Ritchie:

The Parties

1. The first Claimant is constructing the high speed railway from London to Crewe and was then planning to construct onwards to Manchester and Leeds. The second Claimant is the Secretary of State for Transport.
2. There are two types of Defendant. Persons Unknown (PUs) and named Defendants. The 6th Defendant (D6) attended the hearing. Many of the other named Defendants have been removed as parties to the proceedings as the claim has progressed. Most have been removed because they provided undertakings in similar format to the prohibitory interim injunctions granted to the Claimants. Some have been found in contempt of the CPL (Cotter J.) injunction and imprisoned.

Bundles

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

The hearing

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



Dark blue = P1

Purple = P2A

Orange=P2B

The chronology

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

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

6. On 19 February 2018 Baring J. (PT 2018 000098) made an interim injunction protecting the Claimants' HS2 Harvil Road site from unlawful actions by PUs and named Defendants. Those included D28, 33, 36, and 39 in the action before me. I do not know how the claim progressed. This was renewed on 18 September 2020 by David Holland QC sitting as a Deputy High Court Judge.
7. On 23 March 2022 (QB 2022 BHM 000016) Linden J. made an interim injunction protecting the Claimants' HS2's contractor's land leased at Swynnerton, which was being used by Balfour Beatty (the contractor), which is very near to Cash's Pit Land (CPL) which the protesters called Bluebell Woods Camp. The interim injunction was to remain in force until further order and expired after 12 months. D6 in the action before me was a Defendant and appeared at that hearing. Directions were given for the claim to be pleaded out and for evidence to be filed and protection was given to PUs by the right to vary or set aside the order. I do not know how that claim progressed.
8. On 10 February 2021 (CO/361/2021) Steyn J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London." On 28.3.2022 (QB 2021 004465) Linden J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London. This was against Larch Maxey; Daniel Hooper (one of the Defendants in the case before me); Isla Sandford; J Stephenson-Clarke and B Croarkin. I do not know how that claim progressed.
9. The claim before me started by the issuing of the Claim Form on 28.3.2022. The Claimants sought possession of land at CPL and sought an injunction prohibiting PUs and named Defendants from trespassing and interfering with the construction of the project. They sought delivery up of possession of CPL, declaratory relief relating to possession of CPL, an injunction and costs.
10. The Claimants issued an application for urgent interim injunctions relating to CPL and routewide at the same time. D6 was represented at the hearing. Cotter J. made: (1) an order for possession of CPL against D6 and all the other Defendants, and (2) an interim injunction order against PUs and certain named Defendants who were believed to be occupying CPL (D5-20, 22, 31 and 63). The numbers and remaining Defendants' names (many have since been released from the claim) are set out in the Annex to this judgment. The original interim injunction was to last until trial or further order and expired on 24.10.2022 in any event.

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

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

12. D6 appealed the judgment of Knowles J. but permission was refused on 9.12.2022 by Coulson LJ.
13. The routewide interim injunction made by Julian Knowles J. in September 2022 was extended by me in May 2023 for another year. In para. 16 of that order and Schedule D to that order I made provision for any Defendant to apply to bring the proceedings to a final trial. This provided PUs and all named Defendants with the right to end being a party to the proceedings by that route. It provided each with the right to force the Claimants to prove their allegations on the balance of probabilities at trial, under cross-examination and after disclosure of relevant evidence and documentation. No Defendant has done so. Provisions were made for review of the interim injunction by May this year.
14. The Cotter J. version of the CPL interim injunction was breached by various Defendants back in 2022, who stayed at CPL despite the prohibitions therein. Committal proceedings were commenced and heard by me in July and September 2022. Two protestors who had been occupying CPL in treehouses gave undertakings and walked free: D62, (Leanne Swateridge, aka Flowery Zebra) and D31, (Rory Hooper). Five Defendants who had occupied tunnels were sentenced to imprisonment for contempt of Court, two of the sentences were suspended: D18, (William Harewood, aka Satchel/Satchel Baggins); D33 (Elliot Cuciurean, aka Jellytot); D61 (David Buchan, aka David Holliday); D64 (Stefan Wright); D65 (Liam Walters). One of these (Wright) never attended and is still at large.

The applications

15. Pursuant to the order I made in May 2023 the Claimants have faithfully applied for review of the interim injunction. By a notice of application dated 1.3.2024 they seek a 12 month extension of the routewide interim injunction, redefinition of the HS2 land plans; permission to update the definition of HS2 land and an extension of the prohibited acts to cover drone flying over their works on HS2 land.
16. The evidence in support of the application is set out in the following witness statements: James Dobson dated 28.2.2024; John Groves dated 28.2.2024; Julie Dilcock dated 28.2.2024 and Robert Shaw dated 27.2.2024.
17. The opposition to the application comes only from D6. Interestingly, now he submits that the Claimants should be required to progress the claim to a final hearing against all other Defendants, having submitted to Knowles J. that a final injunction should not be granted at that hearing. He wishes to be released from the claim himself. His counsel informed me at the hearing that he is crowd funded, that explains why he attends so

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

The Issues

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

The lay witness evidence

19. I have read the evidence from the Claimants' witnesses and from D6.
20. **James Dobson** is a security consultant and advisor to HS2. He reviewed the internal computer and documentary sources. He set out the Claimants' evidence. He asserted that the Claimants no longer considered 13 of the named Defendants to be a sufficient risk to the HS2 project for them to remain parties to the claim. These were D5, 6, 7, 22, 27, 28, 33, 36, 39, 48, 57, 58 and 59. After the removal of these Defendants, only 5 named Defendants would remain.
21. Mr Dobson informed the Court that since 17th March 2023 there had been no major direct action activist events or incidents targeting the HS2 project that had resulted in a delay of works by more than an hour. He considered there was direct evidence from activists that the reason the disruption to the HS2 project had stopped was the deterrent effect of the injunction and gave evidence by way of a few examples. However, he set out what he described as "minor incidences" of random trespasses to land which had not impacted on the works of the project. He asserted there were *increasing* incidences of unlawful occupation of phase 2 property and set these out. There were 24 events set out in a five column table. I summarise them below. Unfortunately he did not specify which was on phase 1 land and which was on phase 2 land. I have done my best to identify which is which in brackets below. In March 2023 urban explorers broke into the Grimstock Hotel in Birmingham (phase 1). The same month 10 caravans trespassed upon a business park in Saltley in Birmingham (phase 1) and, when challenged, left after about 10 hours. In May and June 2023 a group called Universal Law Community Trust occupied a building at Whitmore Heath, which is part of the phase 2A land. The description of the group paints them as debt buyers who control the debtors' behaviour after taking over their debt, for anarchic purposes. In May 2023 in Old Oak Common Road, London (phase 1), a man, who had previously trespassed on HS2 land, assaulted a security officer on a closed road. In July 2023 graffiti and some criminal damage had been done in Westbury Viaduct near Brackley (phase 1 land). In August 2023 three children set up a small campsite on HS2 land in Buckinghamshire (phase 1 land) and, when their parents were asked to remove them, they left. In the same month two people trespassed on land in Greatworth, Oxfordshire (phase 1) and interfered with some

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

22. In his evidence Mr Dobson set out records of what he described as the displacement of activists to other causes and unlawful direct actions by them for other causes. He asserts that direct action protesters have transferred their interest to other causes including Palestine Action and Just Stop Oil. Mr Dobson asserts that activists will look for loopholes in injunction orders, relying on evidence that D6 made such a pronouncement in relation to Balfour Beatty and the injunction they obtained, which I have set out above, asserting that protesters would attack Balfour Beatty elsewhere, outside the scope of the injunction. Mr Dobson also sought to raise his concern that the group: Universal Law Community Trust had ties with protesters wishing to Stop HS2 because their occupation of a property owned by HS2 was mentioned on some anti HS2 websites. Mr Dobson also raised his concern about urban explorers.
23. Mr Dobson summarised an announcement by the Prime Minister on the 4th of October 2023 that phase two of the HS2 project had been abandoned but he did not set out the Prime Minister's words. Mr Dobson summarised various pronouncements about hit and run tactics published by Lousy Badger, social media threats to re-enter CPL and vague threats to "be back". Overall, Mr Dobson asserted that the Claimants reasonably fear a

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

24. John Groves is the chief security officer for HS2 and gave evidence that the costs of the unlawful direct action to date to the taxpayer, through HS2, have totalled £121,000,000. He asserted that the September 2022 interim routewide injunction had had a dramatic effect by reducing direct action, which diminished the quarterly security expenditure from over half a million down to just £100,000. He produced a forecast of the costs of future unlawful direct action of £7 million for phase two, ending in 2024, due to increased security. He said that activists had started campaigning for other causes but they may believe they can cancel the whole of the HS2 scheme. He asserted that unhappy land owners, whose land was taken away in phase 2, may get involved. He asserted that the Claimants need the deterrence of the injunction or the Claimants might need to spend another £12 million on protection. He was concerned about attacks on bridges over motorways as a potential weak spot in the project. He asserted that activity was still continuing despite the injunction but relied solely on the evidence of Mr Dobson.
25. Julie Dilcock, the in house lawyer for HS2, set out a history of the claims and then the rationale for the various alterations needed to the draft order. Robert Shaw gave evidence which assisted in various tidying up operations that are going to be needed.
26. I take into account what D6 set out in his written reasons. He was content to take no further part in the claim and agreed that the Claimants could no longer maintain an injunction against him. He asserted that, according to the Civil Procedure Rules, the Claimants had to issue notice of discontinuance, obtain the Court's permission and, by implication, pay his costs under CPR part 38, if they wished to discontinue against him. However, in my judgment, this was wanting his cake and to eat it. He asserted that, because he would still be bound by the injunction under the umbrella of the term "PU", he could still make submissions at the hearing and I permitted him to do so. His submissions were that the terms of the injunction should be modified so that it no longer covers the land relating to phase 2A of the project because the Prime Minister has announced that the project is not going ahead on phase 2 and therefore the protesters have achieved what they wanted. He suggested that the geographic scope of the injunction should be reduced so that it does not cover the purple land set out in the 2021 Act. He also raised the point that this is an interim injunction binding the world and that the Claimants were under a continuing, onerous, responsibility to disclose relevant matters to the Court as they arose. He asserted that the Claimants had failed, in a timely way, to inform the Court of the Prime Minister's announcement in October 2023 that phase 2 was being abandoned and therefore had failed in their responsibilities and that the sanction for this should be the discharge of the whole interim injunction.

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

The Law

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

“40. The test which the judge should have applied in determining whether to grant summary judgment for a final anticipatory injunction was the standard test under CPR Part 24.2, namely whether the defendants had no real prospect of successfully defending the claim. In applying that test, the fact that (apart from the three named defendants to whom we have referred) none of the defendants served a defence or any evidence or otherwise engaged with the proceedings, despite being given ample opportunity to do so, was not, as the judge thought, irrelevant, but of considerable relevance, since it supported NHL's case that the defendants had no real prospect of successfully defending the claim for an injunction at trial.

41. It is no answer to the failure to serve a defence or any evidence that, as the judge seems to have thought (see [35(5)] of the judgment), the defendants' general attitude was of disinterest in Court proceedings. Whatever the motive for the silence before the judge, it was indicative of the absence of any arguable defence to the claim for a final injunction. Certainly it was not for the judge to speculate as to what defence might be available. That is an example of impermissible “Micawberism” which is deprecated in the authorities, most recently in *King v Stiefel*. If the judge had applied the right test under CPR 24.2 and had had proper regard

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

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

“20. ... The real issue before me, therefore, is whether the evidence of events that have taken place since 31 October 2022 provides grounds for declining to extend the injunction on materially identical terms.

21. The answer is that there are no such grounds. The activities of JSO have continued, albeit with a change of tactics, and in my judgment the justification for interim injunctive relief to restrain unlawful activities on the JSO roads is as great as it has ever been.”

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

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

58. (A) Substantive Requirements

Cause of action

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

Full and frank disclosure by the Claimant

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

Sufficient evidence to prove the claim

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

No realistic defence

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

Balance of convenience - compelling justification

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

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

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

Damages not an adequate remedy

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

(B) Procedural Requirements - Identifying PUs

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

The terms of the injunction

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

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

The prohibitions must match the claim

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

Geographic boundaries

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

Temporal limits - duration

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

Service

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

The right to set aside or vary

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

Review

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

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

31. Before me is a quia timet interim injunction. The Claimants had to and still have to prove a real and imminent risk of serious harm caused by tortious or criminal activity on their land, see *Canada Goose v PUs* [2020] EWCA Civ. 303, per Sir Terence Etherton MR at para. 82(3) (approved in *Wolverhampton*).
32. Drawing these authorities together, on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.
34. In relation to the issue of whether final quia timet injunctions can be granted against PUs, the Court of Appeal in *Canda Goose* ruled that they could not be granted (para. 89) in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated only between the parties to the proceedings. The Supreme Court in *Wolverhampton* overruled this decision. At para. 134 they together stated:

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

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

At para 143 they ruled as follows:

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

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

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

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

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

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

(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant’s rights (or the rights of the neighbouring public which the

local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.

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

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

144. Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. It is in some respects just as novel as were the new types of injunction listed in sub-paragraph (viii) above, and it does not even share their family likeness of being developed to protect the integrity and effectiveness of some related process of the courts.” (My emboldening).

Furthermore at para. 167 they ruled that:

“167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle.”

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

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

Changes in the law

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

“6. Obstruction etc of major transport works

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The following persons are within this subsection—

(a) the undertaker;

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

(c) a statutory undertaker;

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

- (6) In this section “major transport works” means—
- (a) works in England and Wales—
 - (i) relating to transport infrastructure, and
 - (ii) the construction of which is authorised directly by an Act of Parliament, or
 - (b) works the construction of which comprises development within subsection (7) that has been granted development consent by an order under section 114 of the Planning Act 2008.
- (7) Development is within this subsection if—
- (a) it is or forms part of a nationally significant infrastructure project within any of paragraphs (h) to (l) of section 14(1) of the Planning Act 2008,
 - (b) it is or forms part of a project (or proposed project) in the field of transport in relation to which a direction has been given under section 35(1) of that Act (directions in relation to projects of national significance) by the Secretary of State, or
 - (c) it is associated development in relation to development within paragraph (a) or (b).”

...

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

- (1) A person commits an offence if—
- (a) they do an act which interferes with the use or operation of any key national infrastructure in England and Wales, and
 - (b) they intend that act to interfere with the use or operation of such infrastructure or are reckless as to whether it will do so.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that—
- (a) they had a reasonable excuse for the act mentioned in paragraph (a) of that subsection, or
 - (b) the act mentioned in paragraph (a) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute.
- (3) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, to a fine or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, to a fine or to both.
- (4) For the purposes of subsection (1) a person’s act interferes with the use or operation of key national infrastructure if it prevents the infrastructure from being used or operated to any extent for any of its intended purposes.

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

Section 8 makes further provision about these kinds of infrastructure.”

Submissions

37. The Claimants submitted that the Act of 2021 (phase 2A) remains in force, despite the Government announcement on the 4th of October 2023 that construction would not go ahead on phase 2. In addition, the high speed rail link between Crewe and Manchester was covered by a bill that was still in the Parliamentary process. The second Claimant had acquired 60% of the phase 2A land and had not announced what it was going to do with it. The Claimants relied on the evidence from Mr Groves and Mr Dobson and asserted that the routewide injunction had reduced unlawful protests and reduced the wasted costs paid by the taxpayer from spending of around £100 million to spending of around £100,000. The Claimants accepted there had been no major direct action since the 17th of March 2023, there had only been isolated incidents, but they submitted this showed that the injunction was working not that it should be terminated. There were individual protests by urban explorers, drone flyers and some “freeman of the land” groups. It was submitted that the Claimants should not lose the protection of the injunction on the purple land just because the injunction had been effective, that would be self defeating.
38. In response, D6 submitted that circumstances had changed since the granting and renewal of the routewide injunction. Firstly, the Government announcement took away the very sub strata for the injunction covering the purple land of phase 2A. It was submitted that the campaigners had “won”, that they had no continued interest in phase 2A and therefore the injunction should no longer cover it. No written evidence or submission was made that the injunction should not be renewed for the blue part of the track, phase 1, which is currently under construction, although an en-passant verbal attempt was so made in the hearing. Furthermore, D6 submitted that new criminal offences had been created in the *Public Order Act*, in sections 7 and 6, which meant

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

Changes to material matters

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

Applying the law to the facts

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

(A) Substantive Requirements -

Cause of action

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

Full and frank disclosure by the Claimants

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

No realistic defence

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

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

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

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

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

Damages not an adequate remedy

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

(B) Procedural Requirements - Identifying PUs

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

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

The terms of the injunction

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

The prohibitions must match the claim

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

Geographic boundaries

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

Temporal limits - duration

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

Service

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

The right to set aside or vary

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

Review

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

Conclusion on the extension application and balance of convenience

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

Removing various Defendants as parties.

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

Removing D6 as a party

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

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

Should the claim be brought to a final hearing?

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

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

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

Variations to the terms of the injunction

60. Certain variations were requested to the terms of the injunction for the extension. I give permission for those which were not in dispute and are necessary.
61. The potential Defendant, D69, had been identified and there was a request to add him to the claim but he signed an undertaking so I do not have to consider that application.
62. There was a typing error in the May 2023 injunction relating to service of the review papers, which should be corrected.

Conclusion

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

ANNEX A

SCHEDULE OF DEFENDANTS 7-65

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

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

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

END



Neutral Citation Number: [2024] EWHC 1952 (Ch)

Claim No.BL-2022-001396

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

26 July 2024

Before :

Jonathan Hilliard KC sitting as Deputy Judge of the High Court

B E T W E E N :

(1) ARLA FOODS LIMITED

(2) ARLA FOODS HATFIELD LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO ARE, WITHOUT THE CONSENT OF THE CLAIMANTS, ENTERING OR REMAINING ON LAND AND IN BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM (“the Sites”), THOSE BEING:

- a. “THE AYLESBURY SITE” MEANING ARLA FOODS LIMITED’S SITE AT AYLESBURY DAIRY, SAMIAN WAY, ASTON CLINTON, AYLESBURY HP22 5EZ, AS MARKED IN RED ON THE PLANS AT ANNEXE 1 TO THE CLAIM FORM;**
- b. “THE OAKTHORPE SITE” MEANING ARLA FOODS LIMITED’S SITE AT OAKTHORPE DAIRY, CHEQUERS WAY, PALMERS GREEN, LONDON N13 6BU, AS MARKED IN RED ON THE PLANS AT ANNEXE 2 TO THE CLAIM FORM;**
- c. “THE HATFIELD SITE” MEANING ARLA FOODS HATFIELD LIMITED’S SITE AT HATFIELD DISTRIBUTION WAREHOUSE, 4000 MOSQUITO WAY, HATFIELD BUSINESS PARK, HATFIELD, HERTFORDSHIRE AL10 9US, AS MARKED IN RED ON THE PLANS AT ANNEXE 3 TO THE CLAIM FORM; AND**

d. “THE STOURTON SITE” MEANING ARLA FOODS LIMITED’S DAIRY AT PONTEFRAC T ROAD, LEEDS LS10 1AX AND NATIONAL DISTRIBUTION CENTRE AT LEODIS WAY, LEEDS LS10 1NN AS MARKED IN RED ON THE PLANS AT ANNEXE 4 TO THE CLAIM FORM

(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING FROM THE HIGHWAY THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(3) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(4) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING, OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF, OR ALONG THE ROADS LISTED AT ANNEXE 1A, 2A, 3A, AND 4A TO THE CLAIM FORM

(5) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO ANY VEHICLE WHICH IS ACCESSING OR EXITING THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(6) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO, ANY VEHICLE WHICH IS TRAVELLING TO OR FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(7) 34 OTHER NAMED DEFENDANTS LISTED AT SCHEDULE 1 OF THE INJUNCTION ORDER

Defendants

**Caroline Bolton and Natalie Pratt (instructed by Walker Morris LLP) for the Claimants
The Defendants did not appear and were not represented
Hearing date: 23 July 2024**

APPROVED JUDGMENT

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

Introduction

1. The First Claimant is the largest farmer-owned dairy co-operative in Europe, owned by approximately 9600 dairy farmers, 2,400 of whom are in the UK. It provides 40% of the milk supplied to supermarkets in the UK and is the largest supplier of milk in the UK. While it operates from several sites in the UK producing a range of dairy products, the present proceedings concern four of those sites that produce and distribute milk (the “**Sites**”). The four sites are at Aylesbury Dairy, Samian Way, Aston Clinton Aylesbury HP22 5EZ (the “**Aylesbury Site**”), Oakthorpe Dairy, Chequers Way, Palmers Green, London N13 6BU (the “**Oakthorpe Site**”), Hatfield Distribution Warehouse, 4000 Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire AL10 9US (the “**Hatfield Site**”) and finally Pontefract Road, Leeds LS10 1AX and the National Distribution Centre at Leodis Way, Leeds LS10 1NN (the “**Leeds Site**”).
2. The Second Claimant, a wholly owned subsidiary of the First Claimant, holds the leasehold title to the Hatfield Site.
3. By the present Part 8 proceedings, the Claimants seek injunctions against a number of identified defendants and persons unknown to restrain future action at the Sites by animal rights activists associated with the protest group initially known as Animal Rebellion, which rebranded last year to Animal Rising (the “**Claim**”).
4. The Claimants sought and obtained from Bacon J on 31 August 2022 urgent and without notice relief to restrain apprehended unlawful acts of protest. The interim relief was continued by Fancourt J at a return date on 4 October 2022, and the Judge permitted the Claimants to add 31 named defendants. By way of a 25 October 2022 order, three further defendants were added, one of whom was identified only by a photograph rather than by name. Following the Claimants’ 12 January 2023 application, the final disposal of the claim was adjourned pending the expedited appeal to the Supreme Court in *Wolverhampton City Council and Others v London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45, which concerned whether injunctions could be granted against persons unknown and if so what the test for doing so should be. Following the handing down of the Supreme Court decision in *Wolverhampton* on 29 November 2023, the case was brought on for a final hearing before me to deal with the disposal of the claim against the identified Defendants and a continuation of the injunction order against the defendant persons unknown. This is my judgment following that hearing.
5. Therefore, the Defendants fall into two categories: 34 named or identified Defendants and six categories of persons unknown. 33 of the former category of Defendants are named and one- the 40th Defendant- identified by photograph. All 33 of the named Defendants have now agreed to stays of the proceedings through consent orders in return for the giving of undertakings.

6. That leaves the 40th defendant, who is identified by image 1 at Schedule 1A of the re-Amended Claim Form but whose name is not known by the Claimants and therefore who cannot be asked by them to sign an undertaking.
7. A number of the signed draft consent orders supplied to the Claimants at midnight the day before the hearing contained an error in the main body of it, so I agreed not to provide a draft judgment for 24 hours in order that these could be corrected, and I have duly made the consent orders in the terms sought.
8. The Claimants were represented before me by Caroline Bolton and Natalie Pratt. I am grateful for their submissions. The Defendants did not appear, were not represented, and have not acknowledged service or filed any evidence in the proceedings.

Decision

9. For the reasons set out below, I grant the order sought.
10. I shall take first the relevant factual background, before setting out the law and then applying it.

Relevant factual background

11. Animal Rising have two stated objections to the dairy industry: what they see as its contribution to climate change and its use of animals in the production of milk. For convenience, I shall refer to the individuals involved as animal rights protestors in this judgment.
12. The Claimants have adduced witness evidence from a number of sources:
 - (1) Four individuals to explain, among other things, the operation of the sites and the past actions on them: Joanne Taylor (Aylesbury), Melanie Savage (Hatfield); David Dons (Oakthorpe) and Anne-Frances Ball (Leeds);
 - (2) Nicholas McQueen (partner) and James Damarell (senior associate) of Walker Morris LLP, their solicitors;
 - (3) one of their directors; Afshin Amirahmadi; and
 - (4) Samantha Sage, the Quality, Environmental, Health and Safety Manager at the Aylesbury Site.
13. I have not had the benefit of having the evidence tested by arguments from the defendants. However, having considered it carefully, I have no reason to doubt its veracity or accuracy, and I accept it. I set out the key points from its below.
14. To understand the actions that have occurred and the causes of action relied on, it is first necessary to understand in outline the layout of the Sites and their operation.

The layout and operation of the Sites

15. The First Claimant holds the freehold title to the Aylesbury Site. The Aylesbury Site is the largest dairy in the UK, processing around 10% of the milk in the UK. Therefore, it

is a significant contributor to the UK dairy industry. 700 members of staff are employed at the dairy and it is very busy, such that free access to the Site is required at all times to ensure that operations at the dairy can run, and that the surrounding road network remains free-flowing and is not adversely impacted by operations at the dairy. Around 300 trucks enter and leave the dairy each day, consisting of 160 raw milk deliveries and 140 outbound departures.

16. The trucks that enter and leave the site are a mixture of tankers and other HGV lorries, and as the A41 is the only access road to the site, apart from Samian Way, all vehicles travelling to and from the site use this road. There are three access points to the site, Gatehouses 1 to 3, each of which serves a different function: one is used for raw milk intake and outbound exits, another for access to the employee and visitor car park and the third as the outbound access. All of the access points are from Samian Way, which is an adopted highway for which the local highway authority is responsible. Gatehouses 1 and 2 are manned, and Gatehouse 3 is unmanned but visitors enter using a swipe-card at the barrier or by ringing the intercom to make themselves known to the security staff.
17. Significant security measures have been put in place at the site since the anticipation of protests in September 2022.
18. The Second Claimant holds a 15 year lease to the Hatfield Site. Arla operates the Hatfield Site as a distribution centre, employing 500 staff there. The centre handles around 350 million kilograms of palletised food products and around 520 million kilograms of fresh milk, which is delivered direct to the stores of Arla's customers, mostly supermarkets. The centre processes a very significant proportion of the total milk supplied by Arla in the UK. It also stores and processes significant proportions of the UK's cheese and other dairy product supply. The Site is like the Aylesbury Site a busy one, with around 400 vehicular movements a day: around 180 inbound and 220 outbound.
19. Most if not all of these vehicles will use the A1001 and/or A1(M) when travelling to and from the Site. There are two vehicular access points to the Site, both directly off adopted highways maintained by the local highway authority. The first is Gypsy Moth Avenue, from which the HGVs access and exit the site. They travel a short way along a private road into the site before coming to a manned entry barrier. The second is Mosquito Way, where cars access and exit the Site from. That access is controlled by a barrier that is operated by a swipe-card and intercom system. Pedestrian access to the Site is located at the Mosquito Way access, next to the vehicle barrier, through a swipe-card and intercom operated turnstile.
20. The Site is staffed around the clock by a security team so that two people are always on duty, it is fully fenced and it is monitored by CCTV.
21. The First Claimant holds the freehold title to the Oakthorpe Site. It operates a dairy business at the Site, processing 350 million litres of milk every year and employing approximately 200 staff. It produces fresh milk, organic milk and fresh cream products for major retailers. It also produces fresh organic milk under its Yeo Valley brand at the dairy.
22. The Site is busy with vehicular movements, and relies on the same for the operation of its business. There are around 40-50 inbound HGV vehicles a day and around 50-60

outbound HGVs, together with the movement of around 10-20 other vehicles, such as contractors, goods deliveries and waste collections.

23. The Site is surrounded by a perimeter fence, although access is possible from the bank of Pymmes Brooke, which runs along the southern and eastern boundaries of the Site. It could in theory also be possible to access the site from neighbouring properties, but Arla considers that both of these routes would be incredibly challenging.
24. There are 5 vehicular access points to the Site:
 - (1) Chequers Way, which is an adopted highway. There is a swing gate at the access point which is left open to facilitate HGV access. Inside the access point HGVs can turn left to access the dairy's intake or straight on, in which case they encounter a barrier preventing access to the rest of the Site, which is operated by a swipe-card and intercom system.
 - (2) There is a second access point off Chequers Way, which can be used by cars, larger vehicles and small trucks but not for tankers, trailers or larger vehicles. It is accessed through a swing gate, which is left open to facilitate access to the Site, and just inside the gate is a barrier and pedestrian access point which require swipe-card access or use of the intercom to contact the Site's security staff.
 - (3) There are two vehicle access points from Owen Road, which is a public highway: one facilitates inbound traffic and the other outbound traffic. They utilise a barrier requiring swipe-card access or use of an intercom to speak to the Site's security staff. There is also a pedestrian turnstile.
 - (4) There is a vehicular access off Ostcliffe Road, a highway, which utilises a barrier requiring the same measures to enter as set out above. This access is used only as an exit point and almost exclusively as the HGV exit, although temporary use can be made as an exist for all vehicles.
25. Aside the measures set out above, there is a security building on the site, vehicle barriers operate automatic number plate recognition cameras, all entry and exit points are covered by CCTV and monitored by security staff, and one vehicular access pointt is closed between 7pm and 7am to minimise disruption to local residents.
26. The First Claimant holds freehold title to the Leeds Site. The Site actually comprises two sites: the Stourton dairy and Arla's national distribution centre. The two sites are next to each other, linked by an inter-site gate, such that they form one large site. 450 Arla employees work at the dairy, along with 150 embedded contractors for various services, and the distribution centre employs 405 staff. The dairy processes just over 750 million litres of milk each year. It is the third largest dairy in the UK and Arla's second largest dairy, the Aylesbury Site being the largest. The dairy accounts for around 7% of the UK's milk supply output. The dairy produces own label milk for supermarkets, Arla's branded Cravendale filtered milk, fresh creams, fermented creams, cottage cheese, custard, alcohol cream and milkshake and ice-cream sundae products.
27. Like the other Sites, the Leeds Site is busy with vehicular movements and relies on the same for the operation of its business. There are around 300 vehicular movements a day

around the dairy and around 225 around the distribution centre. Most, if not all, of these vehicles will use the A639 and/or the M1 when travelling to or from the Site. There are four vehicular access points:

- (1) The distribution centre can be accessed from two points off Leodis Way, a highway, which are a few metres apart. One is the HGV entry and exit point and the second the entry and exit point to the car park that services the distribution centre, including for pedestrians. Access through the former is by barrier, controlled by a full-time manned security gatehouse. Access to the latter is by keycard- controlled automatic gate, and only be used to access the car park and not the rest of the site.
 - (2) The dairy can be accessed at two points off Pontefract Road, a highway. One is for HGVs and cars to enter, and the other, which is 200 metres away, is for their exit. One security guard is present in the gatehouse at the entrance, and the entrance and exit are controlled by keycard operated gates.
28. Each of the access points is well signed and utilise distinctive green fencing, so their location could be easily identified by protestors. Arla could, if the Pontefract Road access points were blocked, run its operation from the access points on Leodis Way. However, if all access points were blocked, operations would likely have to cease within a matter of hours, with the consequence that a significant volume of milk would be lost, and the distribution centre would have to cease operations within around two hours.
29. In addition to the security measures above, the dairy is surrounded by a security fence, most of its internal doors are keycard controlled, and around 75% of its internal areas are covered by CCTV. The distribution centre is also surrounded by a perimeter fence, has a significant CCTV system both externally and internally, and all staff at the distribution centre are issued with a security access card which must be used at strategic points of the site to allow access and to pass through the Site.

Past animal rights protests at the Sites

30. There have been past animal rights protests at three of the sites: the Oakthorpe, Aylesbury and Hatfield Sites.
31. Animal rights protestors first entered one of the sites in March 2020. Animal Rebellion has claimed on its website that members of its group were responsible for the relevant action. On 3 March, two protestors entered the Oakthorpe Site and climbed on silos in which dairy product was stored. They were arrested and a minor delay in production operations was caused. Four days later, a much larger demonstration occurred, to which the 3 March demonstration appears to have been a precursor. Around 100 Animal Rebellion protestors entered the site and handcuffed themselves to the railings next to the tanker bay at the Site. They were removed by the Police. The protestors also erected a makeshift structure outside the site and attached themselves to it. They were removed and arrested. The protests came at a financial cost to the Claimants' business, both in the additional resources needed to protect the business and the adjustments needed to mitigate the impact.
32. On 31 August 2021, at around 5.30 am, around 50 protestors associated with Animal Rebellion attended the Aylesbury Site. The protest lasted approximately 24 hours. They

- (a) prevented access to the dairy by blocking Samian Way between the roundabout and first gatehouse; (b) erected two bamboo towers on Samian Way and attached themselves to the towers; and (c) parked a Luton-style van lengthways across the road, making the road impassable and locked themselves to the van. Further (d) several protestors sat in the road and erected and occupied tents on the grass verges, which are within Arla's freehold title.
33. Thames Valley Police arrived at the Site at around 6 am and remained there for the majority of the 24 hour period. They removed the protestors that had attached themselves to the bamboo structure, and dismantled the structure itself. Around twelve of the protestors were arrested. The blocking of access to the dairy necessitated the closure of the A41 for most of the day, Samian Way was closed for most of the 24 hour period and there was also significant traffic disruption caused in the neighbouring village of Buckland as a result of the closure of the A41.
34. Animal Rebellion's website, as it stood at 28 August 2022, details a campaign called "Down with Dairy", which includes a description of the campaign, stating, among other things, that:
- "The action is part of a sustained campaign, which saw a march and blockade of the Arla Factory by Animal Rebellion in March the previous year."*
- "Thirteen of the world's largest dairy corporations, including Arla, together emitted more greenhouse gases in 2017 than major polluters BHP and ConocoPhillips, mining and oil giants respectively."*
- "We're not just demanding that Arla go plant-based by 2025, we're demanding that the government supports companies like Arla by funding a just transition for workers in meat and dairy industries to just and sustainable alternatives."*
- "You can read more about some of those involved in our campaign against Arla here."*
35. More generally, the website explained the "Down with Dairy" campaign as follows:
- "Animal Rebellion is calling on the dairy industry to transition to plant-based production by 2025..."*
36. The August 2021 protests caused the following harm: (a) it prevented inbound deliveries of raw milk and other raw materials to the Aylesbury Site, which were all diverted elsewhere, and which in turn meant that around 80 farms could not have their milk collected; (b) outbound deliveries were disrupted, which caused disruption to 76 stores operated by Arla customers in the UK and impacted international cream products; (c) finished product went to waste; (d) other activities at the Aylesbury site were also impacted, customer audits of Arla's facilities were cancelled, tenants on other areas of Arla's land away from its dairies and distribution centres were impacted, and their operations stopped. The main financial loss was the loss of revenue from uncollected milk of around £170,000. There were also additional cleaning and security costs.

37. The following accommodations also needed to be made, which caused a significant disruption to Arla's operations: (a) Arla staff were required to park on Samian Way, walk to work, or use the emergency access; (b) raw milk deliveries were diverted away from the Aylesbury Site; (c) planned deliveries such as fuel, bottle resin and packaging, were rescheduled for the following day; (d) outbound vehicles were stuck at the dairy and unable to leave, and no empty vehicles could enter the Site to load outbound deliveries; (e) the dairy only had 250 milk cages on-site due to the inability to replenish stocks and could not therefore run; and (f) additional security was requested to cover the third gatehouse and patrols.
38. Moving forward to 2022, in or around August 2022 the Claimants became aware from Animal Rebellion's website of a plan to disrupt the dairy supply in the UK in September over a one to two week period. The website included a section entitled "*This Changes Everything- A Plant Based Future*", which stated, among other things, as follows:

"The near term goal is fairly simple, this September we will be disrupting the dairy supply across the UK with 500 people over a 1-2 week period, cutting off the supply of milk to supermarkets and causing unignorable high-level disruption which will be felt by tens of millions of people across the UK and be a sustained no.1 news story. This will result in more than one thousand arrests and put the damage and exploitation of animal agriculture at centre stage. We will then build on that momentum with a large-scale occupation in the centre of London..."

This is the beginning of a long term civil resistance project, where we will be raising the stakes through the actions we take and also continuing our resistance through the court systems...

Strategy

The two key mechanisms / tools to achieve our aims are large-scale material disruption and the drama of interactions with the public by more localised disruptions...

We need to make sure we create a crisis at the start, so going in with maximum intensity to make sure our issue is a number one news story, and after that we can keep the debate going with relatively minimal effort....

A key action design principle is all actions must be "simple, unbeatable and repeatable".

...

Action plan:

Phase 1- warm up actions and mobilisation starting at the beginning of June

...

Phase 2- two weeks high-intensity in September with 500+ people

The objective is simple- we are going to have supermarket shelves empty of milk for two weeks, and will stack all energy and mobilisation towards this goal. We will be asking for people to commit to taking one week off. This phase will have a clear end and a clear ask for people to join us at phase 3...

Phase 3- mobilise to the city

Phase 3 will be an openly-organised mass occupation in London with no barrier to entry. We will mobilise during Phase 2 and we can double down on this by taking out newspaper adverts and by our spokespeople press releases talking about the meeting date and location. This will happen a week or so after Phase 2 and may be part of a broader coalition with XR [Extinction Rebellion] and JSO [Just Stop Oil]."

39. There was also a concern that the Leeds Site may have been surveyed by potential protestors and/or other persons associated with Animal Rebellion, because a dog-walker was seen on 24 August 2022 walking near the Leeds Site and appearing to be recording a video when doing so.
40. This all led to the 31 August 2022 without notice application, and order bearing the same date made by Bacon J against the persons unknown described in the heading to this judgment e.g. "*Persons unknown, who are, without the consent of the Claimants, entering into or remaining on land and in buildings on any of the sites listed in Schedule 2 of the Claim Form*". The order barred the following acts: (a) entering into, entering onto, tunnelling under or remaining on the Sites (paragraph 2.1 of the order); (b) blocking, slowing down, obstructing or otherwise interfering with vehicular access to or from the highway at the Sites (paragraph 2.2); (c) approaching, slowing down, or obstructing any vehicle on or moving along the roads identified in various annexes to the order, for the purpose of (i) disrupting vehicular access to or from the Sites or (ii) protesting (paragraph 2.3); (d) entering, climbing onto, climbing into, or climbing under any vehicle travelling to or from the Sites (paragraph 2.4); (e) affixing themselves ("locking on") to any vehicle on, entering or existing the Sites where the locking on is for the purpose of protesting (paragraph 2.5); (f) affixing themselves or any other items to any of the roads in (c) or any other person or object on, under or over those roads for the purposes of (i) disrupting vehicular access to or from any of the Sites; or (ii) protesting (paragraph 2.6); or (g) erecting any structure on those roads for the purpose of (i) disrupting vehicular access to or from any of the Sites or (i) protesting (paragraph 2.7).
41. Alternative service was allowed by a number of methods, including placing the order and documents leading to it on the First Claimant's websites and Facebook pages, e-mailing a copy of this order to Animal Rebellion, and placing signs and/or notices on the perimeter of each of the Sites. The injunction order was duly placed on the First Claimant's website on 2 September 2022, a relevant entry added to the First Claimant's Facebook page the same day, an e-mail sent to Animal Rebellion the same day, which led to an auto-reply from two Animal Rebellion e-mail addresses, and signs placed on the perimeters of the Sites that day.
42. However, three protest incidents occurred a few days later in September 2022 at the Sites: one on 4th September at the Aylesbury Site, one on 5th September at the Aylesbury Site and one on 8th September at the Hatfield Site.

43. The incident at the Aylesbury Site on 4 September 2022 started at about 5.30 am. Four protestors entered the Site and climbed on top of four milk silos, where they stayed for the next 10 to 12 hours. As a result of this, and the risk of contamination to the milk product contained in the silos, it was necessary to dispose of 640,000 litres of milk. Trespassing on the Aylesbury Site was a breach of paragraph 2.1 of the 31 August 2022 injunction order, so this appears to have breached that order.
44. Six protestors entered the Site and climbed on top of three raw milk tankers. Again, that appears to have been a breach of paragraph 2.1 of the 31 August 2022 injunction order.
45. Several protestors also blocked 'College Road', one of the access routes to the Site, which was protected under the injunction order, and climbed aboard and occupied vehicles on the road. It took until approximately 1.30 pm for all of the protestors to be removed from the road and vehicles in the vicinity of the Site, and for free access to the Site to recommence. These actions appear to have been in breach of paragraphs 2.2 to 2.5 of the injunction order.
46. 23 protestors were arrested in connection with the incident.
47. The next morning, 5 September 2022, at around 2.30 am, approximately 6 protestors entered the Site, and climbed aboard tankers or lay in the loading areas. All protestors were removed by around midday and 4 protestors were arrested.
48. Three days later, on 8 September 2022, at around 10 am, approximately 20 supporters of Animal Rebellion entered the Hatfield Site. A number of them caused physical damage by drilling into tyres and/or cutting the valves off lorry tyres to immobilise the lorries, before climbing onto a lorry in the loading bay and occupying the site. Over 400 tyres were either drilled or had their valves cut and had to be disposed of. The costs of replacement would be over £170,000. 17 people were arrested for aggravated trespass and criminal damage.
49. There were no similar incidents in September 2022 at the other two Sites, namely the Oakthorpe and Leeds Sites.
50. However, there were a number of other actions taken in relation to the dairy campaign between 3 and 8 September 2022. These included protests on 4 September at three sites owned by Muller, entering two Muller facilities on 5 September, disrupting three dairy sites on 6 September (including one of Muller), staging a sit in at four supermarkets and preventing customers at those stores accessing dairy and meat products, staging a protest at Westminster, and again entering a Muller facility on 8 September, blocking entry to the site and gluing themselves to the entry to the site.
51. The period of protest was temporarily paused on 8 September because of the death of Queen Elizabeth II.

Developments since September 2022

52. When the matter came back before Fancourt J on 4 October 2022 for the return date of the injunction, the Claimants applied to add 31 persons as named defendants in light of their involvement in the September 2022 incidents, and an order was made continuing the injunction and adding them.

53. Following the pause for the death of Queen Elizabeth II, Animal Rebellion engaged in a number of pieces of direct action protest in October to December 2022, including attending Fortnum & Mason, Harrods and supermarkets in London, Norwich, Manchester and Edinburgh and pouring milk taken from the shelves of those shops onto the floor. Three of the individuals named in the 25 October 2022 order appear each to have been involved in or linked to one of the acts. Of the remaining named defendants, Rosa Sharkey is stated in an Animal Rebellion website article to be the spokesperson for the 12 supporters of Animal Rebellion who broke into and took 18 beagle puppies from the MBR Acres facility in Wyton, Cambridgeshire on 20 December 2022.
54. As explained above, the final disposal of the claim was adjourned in light of the Supreme Court proceedings in the *Wolverhampton* case.
55. There have not been any further cases of direct action against the dairy industry since the matters set out above. Animal Rising have focused largely, although not exclusively, on animal-related sporting events in 2023, such as high-profile horse racing events, although there was at least one farming-related incident, where three Animal Rising activists entered the Appleton Farm on the Sandringham Estate, from which they removed three lambs without the permission of the owner of the animals.
56. However, the Claimants remain concerned that future acts of direct action and protest will occur. This is largely for a combination of the following reasons:
 - (1) The Animal Rebellion website continues to seek the support of new activists.
 - (2) The August 2022 website entry described the September 2022 intended action as the start of a long-term civil resistance project that stated that it would include large scale disruption.
 - (3) That website specifically, in its reporting of the 2021 incident, named and targeted Arla as a large dairy producer.
 - (4) The campaign against the dairy industry has, from Animal Rising's perspective, not been won.
 - (5) On the contrary, the plan to bring about a transition to a plant-based system by 2025 is now more pressing than ever given how close 2025 is. Given that the Claimants supply 40% of milk to UK supermarkets, and the stated aim of Animal Rising of stopping the supply of dairy to UK supermarkets, achieving their aim is likely in their minds to involve further action against the Claimants' Sites.
 - (6) The Claimants consider that the September 2022 action was not as extensive as Animal Rebellion had hoped, given the statements made on its website in August 2022 about the scale of the action planned.
 - (7) There was further direct action in October to December 2022, including in relation to the dairy industry.
 - (8) The Claimants consider that the absence of action since September 2022 is a product in large part of the injunctions in place. Therefore, were they to fall away, that deterrent would be lost. They accept that the September 2022 action against the Claimants occurred despite the injunction, but contend that other dairy and

distribution sites, particularly those operated by Muller, appeared to be disproportionately targeted, and the Claimants infer this is because Muller has no such injunction.

57. Therefore, the Claimants seek draft orders, with the same substantive restrictions as in the orders sought before and granted by Bacon J and Fancourt J, but for five years with annual review in respect of the element of the order relating to persons unknown.
58. It was explained to me, in response to a question that I asked during the hearing, that the website was changed around 10 days before the hearing, and that as part of this it removed reference to the specific plan to bring about a transition to a plant-based system by 2025. I asked for a witness statement to evidence the points that I was told of orally, and this was duly provided the next day. While I think it would have been desirable for this to be provided before the hearing started, I consider it appropriate to admit this in so that the duty of full and frank disclosure can be satisfied.
59. The website appears to have been revamped. As part of the description of Animal Rising's activities, it states that "*the key solution to these challenges [the challenges caused by the animal farming and fishing industries] is to support farming and fishing communities in the necessary and urgent transition to a sustainable and just plant-based food system*". The "*How We Achieve It*" section contains three routes. The first is "[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns", the second is supporting local people to create change for themselves, and the third is building alliances with key stakeholders. There is a page on previous campaigns, which states under "*2022 PLANT-BASED FUTURE*" that those involved "*successfully stopped the supply of milk to supermarkets across the South of England*".

The evidence relating to the named defendants who have not signed consent orders

60. Finally, I set out a summary of the evidence in relation to the remaining identified defendant who has- necessarily- not signed a consent order, namely the 40th Defendant.
61. The 40th Defendant appears to be female and have blue hair on the basis of a video taken of the 8 September incident at the Hatfield Site. There is video evidence of her trespassing on the Hatfield Site during the 8 September 2022 incident and filming the activities of the Animal Rebellion protestors. Such filming appears to have been carried out for Animal Rebellion, who post footage of their incidents on their website. In the video evidence, she is seen leaving the site by herself before arrests were made.

The legal test

62. The injunction is sought to restrain:
- (1) trespass on the Claimants' Sites;
 - (2) interference with the Claimants' common law rights, and the rights of their assigns and licensees, to access the highway from the Claimants' Sites; and
 - (3) public nuisance caused by obstruction of the highway.

63. I shall start with the requirements of (1), (2) and (3), and then deal with what must be shown in the present case to order (a) an injunction against the 40th Defendant as an identified defendant and (b) against persons unknown.

Trespass to land

64. Starting with trespass to land, that consists of any unjustifiable intrusion by one person upon land in the possession of another. No further elaboration is necessary for present purposes.

65. The Claimants submitted that deciding whether a trespass has occurred (or in the present case would or might occur in the future) does not involve any balancing of the Claimants' rights to possession with the Defendants' rights of expression or freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights ("ECHR"), because:

- (1) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 at [36]-[37] per Longmore LJ;
- (2) trespass is a blatant and significant interference with the Claimants' rights under Article 1 of the First Protocol to the ECHR; and
- (3) the exercising of rights under Articles 10 and 11 cannot normally justify a trespass: *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 359 ("**Cuciurean (2021)**") at [9(1)] to [9(2)] per Warby LJ.

66. I accept that submission.

67. Article 10 provides as follows:

"10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

(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."

68. Article 11 provides as follows:

"(1) Everyone has the right to freedom of peaceful assembly ...

(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. ...”

69. Article 1 of the First Protocol provides that:

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

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

70. The other provision to mention is section 12 of the Human Rights Act 1998 (“**HRA**”). Section 12(1) provides that section 12 applies if a Court is considering whether to grant any relief which, if granted, might affect the exercise of the ECHR right to freedom of expression, namely that in article 10. Where section 12 applies, then, among other things, the Court must have particular regard to the importance of the ECHR right to freedom of expression: section 12(4).

71. In *DPP v Ziegler* [2021] UKSC 23; [2022] AC 408, the Supreme Court endorsed at [58] the Divisional Court’s identification of the five questions that arise when an Article 10 or 11 right may be engaged, which was expressed in the following terms by the Divisional Court:

“63. That then calls for the usual enquiry which needs to be conducted under the HRA. 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?”

In *Ziegler*, the question arose in the context of a statutory provision, namely section 137(1) of the Highways Act 1980.

72. It is convenient to deal in this section on the legal principles with whether Articles 10 and 11 could justify a trespass in the present case. In my judgment, they could not, for the following reasons:

(1) The exercising of rights under Articles 10 and 11 cannot normally justify a trespass: *Cuciurean (2021)* at [9(1)] to [9(2)]. Here, I see nothing to take this out of the ordinary case.

(2) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd* (above) at [36]-[37]. The reason for that is that Articles 10 and 11 do not contain any right to protest on privately owned land: *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661 (“*Cuciurean (2022)*”) at [31], applying the European Court of Human Rights decision in *Appleby v UK* (2003) 37 EHRR 38. The Court of Appeal endorsed in the latter case the explanation of the Divisional Court at [45] of its judgment, where Lord Burnett CJ and Holgate J explained that:

“there is no basis in the Strasbourg jurisprudence to support the respondent’s proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. Instead, it has consistently said that articles 10 and 11 do not “bestow any freedom of

forum” in the specific context of interference with property rights (see Appleby at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The further that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of destroying the essence of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.”

(3) As the European Court explained in *Appleby* at [43], one must also consider the rights under Article 1 of Protocol 1: “*while freedom of expression is an important right, it is not unlimited. Nor is it the only Convention right at stake. Regard must also be had to the property rights of the owner of the shopping centre under Article 1 of Protocol No.1*”. That underlies the specific points in (1) and (2) above.

(4) It appears that the result of the application of the above principles is that the proportionality exercise does not apply in a case where the protest takes place on private land: *Cuciurean* (2022) at [33].

73. Therefore, as did Ritchie J in *Valero Energy Limited v Persons Unknown* [2024] EWHC 134 (KB), I do not consider that articles 10 and 11 provide any defence to what would otherwise constitute a trespass in the present case.

74. It was accepted by the Claimants that I should consider whether articles 10 and 11 are engaged here, whether as a result of considering whether section 12 of the HRA applies, and if so in having particular regard to the importance of the ECHR right to freedom of expression, or the Court’s duty as a public authority under section 6(1) of the HRA. Therefore, I do not need to consider that question further.

Public nuisance

75. As in *Ineos* (above), the Claimants asked me to proceed on the basis that the same core principles applied to public nuisance and the criminal offence of obstructing the highway under section 137(1) of the Highways Act 1980. I am content to do so, and would expect the two to march hand in hand.

76. As explained at [65] of that judgment, for there to be an offence under section 137(1), it must be shown that:

“(1) *There is an obstruction of the highway which is more than de minimis; occupation of part of a road, thus interfering with people having the use of the whole road, is an obstruction...*

(2) *The obstruction must be wilful, ie. deliberate;*

(3) *The obstruction must be without lawful authority or excuse; ‘without lawful excuse’ may be the same thing as ‘unreasonably’ or it may be that it must in addition be shown that the obstruction is unreasonable.”*

77. The purposes for which a highway may be used are not limited to travelling. As Lord Irvine stated in *DPP v Jones* [1999] 2 AC 240 at 245G-255A:

“The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I have set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway.”

78. A highway may be put to many other uses. It would be surprising if “two friends who meet in the street and stop to talk are committing a trespass; so too a group of children playing on the pavement outside their homes; so too charity workers collecting donations; or political activists handing out leaflets; and so too a group of Salvation Army singing hymns and addressing those who gather to listen”: [1999] AC 240 at 254F-G. Therefore, there is a right to peaceful assembly on the highway.
79. As Lord Reed explained in *The Safe Access Zones Bill Reference* [2022] UKC 32 at [22], the approach in *Jones* was, prior to the coming into force of the HRA, to use *common law* rights of freedom of speech and assembly as an important factor in assessing whether the use of the highway was reasonable. That would apply equally to section 137(1) as it would to the Public Order Act 1986 offence considered in *Jones*.
80. In *Ziegler* the Supreme Court considered the interaction of section 137(1) with Articles 10 and 11 in light of the coming into force of the HRA. The Court held that section 137 has to be read and given effect, in accordance with section 3 of the HRA, 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, as the Divisional Court had considered.
81. Their Lordships in *Ziegler* adopted at [72] the non-exhaustive list of factors to consider when evaluating proportionality that had been set out by Lord Neuberger MR in *City of London Corporation v Samede* [2012] EWCA Civ 160 at [39]-[41]. Paraphrasing that content, those factors are:
 - (1) the extent to which the continuation of the protest would breach domestic law;
 - (2) the importance of the precise location to the protestors;
 - (3) the duration of the protest;
 - (4) the degree to which the protestors occupy the land;
 - (5) the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public;
 - (6) whether the views giving rise to the protest relate to ‘very important issues’ and whether they are ‘views which many would see as being of considerable breadth, depth and relevance’; and
 - (7) whether the protestors ‘believed in the views that they were expressing’.

82. In the *Safe Access Zones Bill Reference* case, Lord Reed, giving the judgment of the Court, considered that the Divisional Court in *Ziegler* should- before resorting to the special interpretative duty imposed by section 3 of the HRA- have considered whether the established interpretation of section 137, as stated for example by Lord Irvine in *Jones*, would result in a breach of Convention rights: [23]. However, given that the question of the need to apply in the context of section 137 the proportionality test set out in *Ziegler* was not before the Court, Lord Reed made no specific comment on it: [26].
83. What he did address was the comment in *Ziegler* at [59] that “[d]etermination of the proportionality of an interference with ECHR rights is a fact-sensitive enquiry which requires the evaluation of the circumstances in the individual case”. He stated that while this might be the useful position in a criminal trial of offences charged under section 137 where Article 9, 10 or 11 rights were engaged, if the section was interpreted as it was in *Ziegler*, that would not universally be the case: [28]-[29]. Questions of proportionality, particularly where they concerned the compatibility of a *rule or policy* with ECHR rights, are often decided as a matter of general principle, rather than on an evaluation of the circumstances of each individual case: [29]. Further, it is possible for a piece of legislation to ensure that its application in individual circumstances will meet the proportionality requirements under the ECHR without any need for evaluation of the circumstances in the individual case: [34].
84. Therefore, when a defendant relies on Article 9, 10 or 11 in the defence of a protest-related defence, the Court should- if those articles are engaged- consider whether the ingredients of the defence themselves strike the proportionality balance: [55]. If it considers that they do not strike such a balance, the Court’s duty under section 6 of the HRA is to consider whether there is a means by which the proportionality of a conviction can be ensured, whether through using the interpretative duty under section 3 in the case of construing the legislation creating a statutory offence or developing the common law where the offence arises at common law: [56]-[61].
85. In the present case, the Claimants accept, as explained above, that the requirements for public nuisance should be the same as those in section 137 of the Highways Act 1980. Therefore, on the face of it, the proportionality requirements set out in *Ziegler* would apply, and I consider that I should apply them given that Lord Reed made clear in *Safe Access Zones Bill Reference* that he was not specifically considering this point in the context of section 137.
86. The Claimants submit in relation to the injunction sought against persons unknown that it is not possible to apply the proportionality requirements under the ECHR to *specific individual* protestors because by definition the identity and circumstances of those individuals is not presently known. Rather at one should apply a proportionality test to the restrictions imposed by the draft order sought with future protests in mind. I accept that I should take the latter course.
87. As explained below, I consider that the order sought satisfies that test.

Right to access the public highway

88. Lord Atkin explained this right with characteristic succinctness in *Marshall v Blackpool Corporation* [1935] AC 16 at 22:

“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 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.”

89. An interference with the right is actionable without proof of loss, and if an interference does cause a loss, then damages can be obtained.
90. Taking the last part of the extract from *Marshall* above, in my judgment the key question here is the qualification of the right of access by the rights of the public. In *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch), Morgan J considered at [107] the interaction of the adjoining landowner’s right of access to the highway with the protestors’ right to a reasonable use of the highway. He assumed in favour of the protestors that if they were carrying on a reasonable use of the highway which impacted on the rights of the claimants in that case to access the highway, that would not be an infringement of the right of access to the highway.
91. While Morgan J did not have to decide the point, because the claimants in that case put their case on the basis of public nuisance rather than the landowner’s right to access the highway, in my judgment that is correct and I should take the same approach here. The rights of the public include the right to reasonable use of the highway. Therefore, applying the principles set out in *Marshall*, a reasonable use of the highway by members of the public will not constitute unlawful interference with the adjoining landowner’s right to access the highway.
92. It was submitted by the Claimants that the decision of Julian Knowles J in *High Speed Two (HS2) Limited v Four Categories of Persons Unknown & Monaghan & Others* [2022] EWHC 2360 (KB) at [196] suggests that no balancing act is to be applied between the right to access the highway and the Article 10 and 11 rights of the defendants, because in a claim under this cause of action much, if not all, of the relevant protest is taking place on private land. I do not take Julian Knowles J to be going so far in [196]. Rather he simply put forward the fact that in the case before him much if not all of the protests had taken place on private land as being the first of three reasons why there was no unlawful interference with Articles 10 and 11 on the facts before him. Further, here, the Claimants rely on the obstruction of the highway, such as by protestors mounting and affixing themselves to vehicles on it, as future acts that would breach their right to access the highway, and that acts are not taking place on private land.
93. However, as set out below, I consider that the apprehended actions would amount to a violation of the Claimants’ right to access the highway whether or not such a balancing act is to be applied. Therefore, I do not consider it necessary to consider further the question of whether such a balancing act needs to be applied.

Test for a precautionary injunction against named defendants

94. The test for a precautionary injunction against named defendants is as set out by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31], as applied in

Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd [2022] EWHC 1703 (Pat) (*Koninklijke*) and approved by the Court of Appeal in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13 at [83]. That requires the following two questions to be asked and answered in the affirmative:

- i) Is there a strong probability that unless restrained by injunction the defendant will act in breach of the claimant's rights?
- ii) If the defendant did an act in contravention of the claimant's rights would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy in damages would be inadequate?

95. If those questions are answered in the affirmative, the Court will consider whether it is just and convenient to make the order as envisaged by section 37(1) of the Senior Courts Act 1981.

Test for an injunction against persons unknown

96. The Claimants submit that the test laid down in *Wolverhampton* has helpfully been summarised by Sir Anthony Mann in his recent decision in *Jockey Club Racecourses Limited v Persons Unknown* [2024] EWHC 1786 at [17]-[19], which also concerned Animal Rising. I agree and set out those paragraphs:

"17. That case [Wolverhampton] involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before an injunction is granted, most of its requirements are equally applicable to other types of cases such as protest cases like the present (of which there now a number):

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

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

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

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

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

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

18. Later in the judgment the court returned to procedural safeguards to give effect to those matters of principle, and set out the following procedural and other matters. I omit some points that are relevant to Traveller cases and which have no counterpart in this case, and adjust others by omitting specific Traveller references and by making the wording applicable to the present (and similar) cases.

i) Any applicant for an injunction against newcomers must satisfy the court by detailed evidence that there is a compelling justification for the order sought. There must be a strong possibility that a tort is to be committed and that that will cause real harm. The threat must be real and imminent. See paragraphs 188 and 218. "Imminent" in this context means "not premature" – Hooper v Rogers [1975] Ch 43 at 49E.

ii) The applicant must show that all reasonable alternatives to an injunction have been exhausted, including negotiation – paragraph 189.

iii) It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of – paragraph 189.

iv) If byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction. However, the court seemed to consider that in an appropriate case it should be recognised that byelaws may not be an adequate means of control. See paragraphs 216 and 217.

v) *There is a vital duty of full disclosure on the applicant, extending to "full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application."* – paragraph 219. Although this is couched in terms of the local authority's obligations, that is because that was the party seeking the injunction in that case. In my view it plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.

vi) *The court made it clear that the evidence must therefore err on the side of caution, and the court, not the applicant should be the judge of relevance* – paragraph 220.

vii) *"The actual or intended respondents to the application must be identified as precisely as possible."* – paragraph 221.

viii) *The injunction must spell out clearly, and in everyday terms, the full extent of the acts it prohibits, and should extend no further than the minimum necessary to achieve its proper purpose* – paragraph 222.

ix) *There must be strict temporal and territorial limits* – paragraph 225. *The court doubted if more than a year would be justified in Traveller cases* – paragraph 125 again. *In my view that particular period does not necessarily apply in all cases, or in the present one, because they do not involve local authorities and Travellers.*

x) *Injunctions of this kind should be reviewed periodically* – paragraph 225. *"This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made."*

xi) *Where possible, the claimant must take reasonable steps to draw the application to the attention of those likely to be affected* – paragraph 226.

xii) *Effective notice of the order must be given, and the court must disclose to the court all steps intended to achieve that* – paragraphs 230ff.

xiii) *The order must contain a generous liberty to apply* – paragraph 232.

xiv) The court will need to consider whether a cross-undertaking in damages is appropriate even though the application is not technically one for an interim injunction where such undertakings are generally required.

19. The court recognised that not all the general requirements laid down will be applicable in protester, as opposed to Traveller, cases. I have borne that in mind, and have, as I have indicated, omitted reference to some of the matters which do not seem to me to be likely to apply in protester cases.”

97. As comes through clearly from the above extracts, an injunction against persons unknown, who I shall refer to as “newcomers” as in *Wolverhampton*, is a novel exercise of an equitable discretionary power and therefore its limits and requirements must be carefully articulated and observed.

Applying the law to the facts

Precautionary injunction against named defendants

98. In my judgment, there is a strong probability that unless restrained by an injunction the 40th Defendant will act in breach of the Claimants’ rights, and it is just and convenient that an injunction be ordered in the terms applied for by the Claimants.
99. I shall:
- (1) start with the question of whether there is a strong probability that the 40th defendant will be involved in action in the future against the Claimants if not restrained by injunction, then
 - (2) consider whether such action would be in breach of the Claimants’ rights, and
 - (3) then consider whether it is just and convenient to grant an injunction.
100. The cumulative reasons why I consider that question (1) should be answered in the affirmative are as follows:
- (a) The 40th Defendant was involved in the action against Arla on 8 September 2022.
 - (b) Further, she was willing to trespass on the Claimant’s land to do so.
 - (c) On the basis of the video evidence before me, I consider that she was filming the incident for Animal Rebellion, including for example the damaging of HGV tyres, and infer that her involvement with their cause therefore did not end immediately at the end of the action on the 8th September 2022.
 - (d) She appears to me to have left the scene before she could be arrested. This is what the video evidence before me suggests and Ms Savage explains that it appears that she is the third protestor that the Hertfordshire Constabulary believe fled the scene. The other two were arrested in the days following the incident. Therefore, at present she has not faced any sanction that I am aware of for her past actions that would deter her from future action.

- (e) The mission statement of Animal Rebellion stated that the acts in September 2022 were “*the beginning of a long term civil resistance project*”. This ties in with their stated desire to bring about a transition from reliance on the dairy industry by 2025, which has not yet from their perspective been achieved.
 - (f) These views are plainly strongly held by those participating, and I have no reason to doubt that this includes the 40th Defendant.
 - (g) Arla, as producer of 40% of the milk in the UK, is an obvious target for Animal Rising.
 - (h) While there have not been direct acts against the Claimants since the September 2022 incidents, in my judgment there is a strong probability that this is because of the injunctions in place. Refusing to order a final injunction would immediately come to the notice of Animal Rising, who the Claimants’ solicitors have been corresponding with over the consent orders, and therefore in my judgment there is a strong probability that this would be regarded as removing an important impediment to taking direct action against Arla. It is true that the September 2022 incidents occurred despite the injunction, but they were considerably smaller than one would have taken from the plan on the website in August 2022, so it appears to me very likely that the injunction had some deterrent effect.
101. I have considered specifically whether the absence of acts against Arla since September 2022 suggests that further incidents of direct action against Arla are unlikely, or at least means that there is not a strong probability of them in the event of me declining to grant the injunction.
 102. However, I consider that the features above, taken in combination, suggest that there is a strong probability.
 103. I do not consider that the change to the website shortly before the hearing affects this. It does not indicate a shift in the views of Animal Rising towards the dairy industry, one would not expect such a shift, and Animal Rising knew of the impending Court date at the time the website was changed so I am reluctant to regard it as indicating a significant shift in their intended plans. Further, the first route stated in the current version of the website for achieving change is “[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns”, which wording seems to me to encompass direct action to disrupt the supply of dairy and food that is reliant on animals.
 104. I have also taken into account in this regard that the Leeds Site has not been the subject of action to date.
 105. I consider that these anticipated actions would be in breach of the Claimants’ rights.
 106. Some of the past action occurred in the Sites themselves, and therefore amounted to trespass, and I would expect that to be repeated in the future.
 107. As far as public nuisance is concerned:
 - (1) The past acts deliberately obstructed the relevant parts of the highway to a significant degree in a way that was designed to, and did, disrupt the Claimants’

business, albeit temporarily, to a significant extent and caused them significant financial loss, together with affecting members of the public who needed or wished to use the highway and other surrounding roads that could be blocked through its obstruction. A good example of this is the blocking of College Road during the incident at the Aylesbury Site on 4 September, when protestors climbed aboard and occupied vehicles on the road. Therefore, Articles 10 and 11 aside, it would constitute a public nuisance and this is the type of action that would likely be repeated absent an injunction because it is part of disrupting the passage of vehicles to and from the Sites.

(2) I have carefully considered the factors set out in *Ziegler* to be taken into account when assessing proportionality, which I summarised at paragraph 81 above. Taking them in turn:

- (a) Future protests of the same type would breach domestic law for the reasons given in relation to trespass, public nuisance and access to the highway set out in this section of my judgment.
- (b) The location of the protests is important to the protestors, because their intended aim is to disrupt the supply of milk from the Sites and therefore the obvious location for their action is at and immediately outside the Sites.
- (c) The protests were significant in duration, lasting in one case for 24 hours. Unlike in *Ziegler*, they were not a one-off one-hour occurrence, and one cannot expect future incidents to be.
- (d) Future protests are likely to involve occupation of and climbing aboard vehicles on the highway.
- (e) Their significant duration together with the other features of the action, caused significant financial harm to the Claimants by disrupting their supply of milk. Unlike in *Ziegler* there is not an alternative route of access: the Sites were and could again be completely blocked. Further, the protests are likely to block entire roads, as was the case at the Aylesbury Site in 2021, when the A41 was blocked for most of the 24 hour period, making the road impassable to all. Moreover, the road outside the Sites give immediate access to major roads, or are in close proximity to them, so the obstructions affect the public at large. The other obvious impact of successful action is that this could restrict the amount of milk on supermarket shelves for a period.
- (f) The views giving rise to the protest do relate to important issues, namely climate change and animal welfare, both of which are prominent features of current public and political debate.
- (g) The protestors plainly believe in their cause and are prepared to risk arrest to take such action.

(3) I also take into account the fact that the past actions, and likely future acts, go beyond attempts to persuade Arla of the correctness of Animal Rising's aims, into seeking to disrupt their business in a way that will assist in bringing about change in the dairy industry. Therefore, the action intends harm to Arla as a necessary

feature of its intended ends, and correspondingly an injunction leaves it open to carry out peaceful protest through acts like standing on the pavement with a placard, making noise or shouting their message loudly through a loud hailer. Rather the order prevents only real and significant harm caused by unlawful acts.

- (4) Taken together, I consider that the factors in (2)(a), (c), (d) and (e) and (3) above mean that the past action and similar future action would constitute a public nuisance, and that this is consistent with the 40th Defendant's Article 10 and 11 rights. This was and would in the future be action intended to significantly disrupt Arla's business and the injunction is tailored to prevent that end while allowing future protests within those parameters.
108. I consider that the past actions and the anticipated future actions would also violate the Claimants' rights as adjoining landowners to access the highway. The Claimants were blocked from accessing the highway for a significant period and this would likely be the intended aim of future action. For the reasons set out in relation to public nuisance, in my judgment the Claimants' actions do not constitute a reasonable use of the highway so as to legitimately qualify on the facts the Claimants' rights to access the highway, and this is consistent with the 40th Defendant's Article 10 and 11 rights.
109. Turning to whether it is just and convenient to grant an injunction, I have taken into account the reasons set out in paragraph 107(4) above.
110. Further, future action would cause financial harm to Arla that it would be difficult to redress, given the difficulty in seeking and enforcing effective recompense from the protestors individually. Moreover, climbing onto structures and lorries or entering the highway to stop lorries poses a risk of physical harm to staff or the protestors. The Claimants have taken a number of steps to seek to mitigate the harm, such as investing in future security, but the serious risk of significant future financial loss and the above risk of physical harm remains.
111. Therefore, it would be difficult for the Claimants to undo after the fact harm suffered through future pieces of direct action.
112. For these reasons taken collectively, I consider it just and convenient to grant an injunction in the terms sought.
113. I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order an injunction. The Claimants properly put this point before me. Section 12 is engaged where the Court is considering whether to grant any relief which might affect the exercise of the ECHR right to freedom of expression. Section 12(2) provides that if the respondent is not present or represented, no such relief should be granted unless the Court is satisfied that the applicant has taken all practicable steps to notify the respondent, or that there are compelling reasons why the respondent should not be notified. Section 12(3) provides that no such relief is to be granted to restrain publication before trial unless the Court is satisfied that the applicant is likely to establish that publication should not be allowed. Taking section 12(2) first, I am satisfied that the applicant has done all practicable to notify the respondent, through trying to ascertain her identity and through the alternative service routes.

114. As for section 12(3), the order does not restrain the 40th Defendant *publishing* her views. Rather restricts *where* she may express her views. Therefore, as in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (QB), where Johnson J considered the limits of the concept of ‘publication’ in some detail at [66]-[76], it does not appear to me that section 12(3) is engaged. Further and in any case, (a) this is a final order against the 40th Defendant, so section 12(3) has no application for that reason too, and (b) in any case, in my judgment any interference with “publication” is proportionate and justified for the reasons set out in paragraph 107(4) above.
115. The order sought against the named Defendants is final, so in my judgment no further cross-undertaking in damages should be required.

Injunction against newcomers

116. I have considered carefully and applied the requirements in [167] of *Wolverhampton*, as expanded upon later in the judgment in the way summarised by Sir Anthony Mann in *Jockey Club*. The relevant newcomers in this case are those persons unknown within the classes set out in the description of the first to sixth defendants.

Compelling justification for the remedy

117. I have set out above the strong probability of the future disruption to their business absent an injunction, coupled with the effects on others set out above, from future unlawful acts of trespass, public nuisance and interference with the Claimants’ right of access to the highway. As Sir Anthony Mann explained in *Jockey Club* at [18], the threat must be real and imminent, and imminent means in this context “*not premature*” rather than immediate. This chimes with the approach of Julian Knowles J in his *HS2* decision at [176]-[177]. As he explained at [176], “[a]s the authorities make clear, the terms ‘real’ and ‘imminent’ are to be judged in context and the court’s overall task is to do justice between the parties and to guard against prematurity”. I am satisfied for the reasons set out above that there is a real and imminent risk if I do not grant an injunction of further direct action occurring.
118. There are a number of reasons why the Claimants have sought an order against persons unknown rather than limit the order to named or otherwise specifically identified defendants, and in my judgment they are compelling ones:
- (1) It has not been possible to identify all protestors who might undertake future action.
 - (2) The evidence before me is that the Animal Rising site continues to recruit new members.
 - (3) It is an organisation whose membership fluctuates.
 - (4) While the Claimants known the identity of the group, they do not know the identity of all individuals involved with it.
 - (5) The Claimants do not have confidence that all those who participated in the earlier acts have been arrested.
119. Similarly, given the difficulty in identifying the membership of Animal Rising, its fluctuating membership and the presence of like-minded protest groups, in my

judgment there is also a compelling reason not to limit the definition of persons unknown to those who are members of Animal Rising.

120. As explained above, the Claimants have put in place significant security measures at their Sites, and sought to improve them after the September 2022 incidents. It is not realistic to suppose these will completely prevent future action, and nor would sensible levels of policing or the use of byelaws.
121. The harm that could be caused by future unlawful acts is serious, consistent with the intended purpose of such action being to significantly disrupt the supply of dairy products.
122. Taking these reasons for relief together with the limits of the restrictions imposed by the injunction explained above, in my judgment there is a compelling justification for the remedy.
123. As in relation to the injunction against identified persons, I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order such an injunction. In my judgment, there are compelling reasons why the persons unknown cannot be notified before the order is made before the alternative service of the previous documents, such as by posting on the Claimants' site or by notices put at the perimeter of the Sites, as their identity is not known. In any event they will be notified insofar as is practicable through the alternative service routes after the order is made. In my judgment, s.12(3) is not violated for similar reasons to those set out in paragraph 111 above. The order does not restrain what can be published, so section 12(3) is not engaged, and even if it is, the acts apprehended are unlawful and interfere significantly with the rights of others, so I am satisfied that the Claimants are likely to obtain the relief sought at a final hearing (if there was one).

Full and frank disclosure

124. The Claimants have complied with this duty, including drawing to my attention a number of points that may be taken against their position. I have dealt above with the update to the Animal Rising website.

Evidence must err on the side of caution

125. Further, the evidence has satisfied this requirement, and as far I can see has been careful not to overstate the position.

Identifying the respondents to the application as precisely as possible

126. In my judgment the order sought does so. The means of identification are in the same form as the orders previously granted by Bacon J and Fancourt J. As summarised at paragraph 40 above, the qualifying conditions for falling into the category of respondents are clear and precise, and focus on carrying out particular acts of interference with the Sites and access to them, such as affixing themselves or any items to any of the relevant roads for the purpose of disrupting vehicle access to the Sites and protesting, to take one example.

Is the injunction clear in its terms and confined to the minimum necessary to achieve its proper purpose?

127. The Claimants seek orders in the same substantive form as granted previously, subject to the temporal limits set out below. Those orders were, and the present order sought is, clearly drafted. The Claimants have not gone further, despite the breaches of the order, and the order sought allows for peaceful protest in the manner set out in paragraph 107(3) above. Rather it focuses on particular acts that would disrupt the Claimants' operations at the Sites. Therefore, I am satisfied that it does not go beyond the minimum necessary to achieve its purpose.

Is there a strict temporal and territorial limit?

128. As in the *Jockey Club* case, I agree that the one year period that the Supreme Court thought prima facie appropriate in Travellers cases is too short to deal with a campaign such as that of the animal rights activists. That can readily be seen from the fact that incidents have already occurred in 2020, 2021 and 2022. However, given those annual events in my judgment an annual review is more appropriate in case the position changes in the interim, as has been sought by the Claimants, and as was ordered in the *Jockey Club* case. The annual review will allow a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate and the five year maximum adds an appropriate end-point. In my judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review.
129. The territorial extent of the order is clearly set out in the maps and plans annexed to it. It is broadly limited to the roads immediately surrounding the sites, and the Claimants have not sought to include the larger roads such as the A41 to which they lead, and some of which were blocked by the earlier actions. Similarly, they have not sought to include their other dairy-related sites beyond the Sites, despite the breaches of the original injunctions order made. Therefore, I am satisfied that there is a strict territorial limit.

Have reasonable steps been taken to bring the application to the attention of those likely affected?

130. In my judgment, it has. The documents in the claim, including notice of this hearing, have been served on the named defendants and persons unknown in accordance with the alternative service orders made. The methods of service have included e-mail, posting on the Claimants' social media pages and notices at the Sites.

Is the proposed notice of the Order likely to be effective?

131. In my judgment it is. There are a number of routes specified in the alternative service provisions of the orders granted to date by Bacon J and Fancourt J, which in my view remain appropriate, including notices at the premises and e-mail.

Have the Claimants provided a generous liberty to apply clause?

132. In my judgment, they have, because the order sought provides for the ability to apply to vary or discharge the Order on 48 hours' notice.

Should a cross-undertaking be required?

133. Given that the order only prohibits acts that are in any event unlawful or highly likely to be unlawful, in my judgment as in *Jockey Club* it is not necessary for the Claimants to provide a cross-undertaking in respect of the injunction against newcomers.

Conclusion

134. I therefore grant the orders sought.



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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

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 previously 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 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:

“However it is very difficult to do any of these things if one party will not engage at all. 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. 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. 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. (emphasis 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 Lunn
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: [2025] EWHC 1314 (KB)

Case No: QB-2017-005202

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th May 2025

Before :

MR JUSTICE GARNHAM

Between :

**ROCHDALE METROPOLITAN BOROUGH
COUNCIL**

Claimant

- and -

**(90) PERSONS UNKNOWN (BEING MEMBERS
OF THE TRAVELLING COMMUNITY WHO
HAVE UNLAWFULLY ENCAMPED WITHIN
THE BOROUGH OF ROCHDALE)**

Defendant

**(93) PERSONS UNKNOWN forming unauthorised
encampments in the Metropolitan Borough of
Rochdale**

Natalie Pratt (instructed by Sharpe Pritchard) for the Claimant

Hearing dates: 16th May 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE GARNHAM :

Introduction

1. The claimant in these proceedings, Rochdale Metropolitan Borough Council (hereafter “Rochdale” or “the Borough”), applies for the renewal for a further 12 months of an injunction against Persons Unknown granted by Butcher J on 11 June 2024.
2. That Injunction binds 56 Named Defendants for a period of five years up to and including 7 June 2029, and the 90th and 93rd Defendants (two categories of Persons Unknown) for 12 months. The order in respect of Persons Unknown is due to expire at 00:00 hrs on 8 June 2025. No Application is made in relation to the Named Defendants.
3. The Injunction is a so-called ‘Traveller injunction’. It prohibits unauthorised encampments and the depositing of waste in the Borough. The Injunction is Borough-wide against the Named Defendants but, in relation to Persons Unknown, applies to 334 identified sites which I am told equates to 9.7% of the land area in the Borough.
4. Subject to one matter I return to below, the Application has been served on the “Persons Unknown” in accordance with paragraphs 5 and 7 of the Order of Butcher J and on three Traveller organisations, namely London Gypsies and Travellers; Friends, Families and Travellers; and the Derbyshire Gypsy Liaison Group who were the Appellants in the Supreme Court case of the Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors [2023] UKSC 47 (hereafter “Wolverhampton”).
5. The Claimants correctly acknowledge that, following the Supreme Court’s decision in Wolverhampton, an injunction against newcomer Persons Unknown is technically always sought and granted on a without notice basis, but there remains an important obligation to take all reasonable steps to draw the Application to the attention of Persons Unknown. In my judgment that obligation has been met in all cases except Site 334, where an error was made which meant the relevant steps were not taken until 14 May.

Procedural Background

6. This matter was last before me on 19 February 2018 when I granted an interim injunction. On 11 June 2024, Butcher J granted the Injunction in the form now before the court against the 56 Named Defendants for a period of five years, and against Persons Unknown for a period of 12 months. Butcher J’s judgment is reported at [2024] EWHC 1653 (KB). A power of arrest was attached to the Injunction.
7. The Injunction (and the interim relief before it) prohibit the forming of unauthorised encampments and the depositing of controlled waste (such as fly-tipping). As against Persons Unknown, the relief was granted on an interim basis over 325 sites in the Borough. In June 2024, nine further sites were added so that the Injunction now applies to 334 sites (the “Injunction Sites”). Members of the Travelling community are not prohibited from entering the Injunction sites or encamping lawfully on those sites, nor are they in breach of the Injunction if they establish an unauthorised encampment elsewhere.

8. It is argued by the Claimants that the 334 sites were “carefully selected by reference to the Claimant’s analysis of the sites that were frequently targeted by unauthorised encampments visiting the Borough”. It is said that those sites include sensitive and vulnerable sites, such as industrial areas, sports and recreation facilities, schools and other public amenities, where it is said greater harm is suffered by the inhabitants of the Borough when unauthorised encampments are formed there.
9. The Claimant seeks the injunctive relief in the discharge of its public functions pursuant to s187B of the Town and Country Planning Act 1990 and s222 of the Local Government Act 1972 to restrain breaches of planning control, and to promote or protect the interests of the inhabitants of their administrative areas (including to restrain acts of trespass). The Claimant is the local planning authority for the Borough, such that it has the administrative function of enforcing planning control within the Borough. It is also the local highway authority, in whom the adopted highways are vested.
10. The Injunction was sought in response to the high volume of unauthorised encampments and the harm it is said resulted from those encampments. The harm caused by the encampments was serious and included risks to public health caused by the depositing of untreated human waste, threats and intimidation to the local inhabitants and financial harm to the Claimant in seeking to deter, enforce against and clean up after encampments.
11. These proceedings became part of the Barking & Dagenham litigation from October 2020 onwards, which culminated in the appeal to the Supreme Court in the Wolverhampton case. The Claimant was a successful respondent in the appeal. The Claim had been listed for final hearing on 22 November 2022, but was adjourned after the Supreme Court granted permission to appeal in Wolverhampton on 25 October 2022.
12. The Claim proceeded to a ‘final’ hearing on 21 May 2024 (although, following Wolverhampton, the relief was only ‘final’ as against the Named Defendants). I am told that throughout the period in which the interim relief was in force, unauthorised encampments continued to form in the Borough (and on Injunction Sites), but had done so less frequently, and were of limited size and duration. Butcher J granted the relief, as described above.

The Evidence

13. The facts relevant to the current application are set out in two lengthy witness statements. The first is the second statement in these proceedings from Mr Stuart Morris; the second is the fourth statement of Mr Anthony Johns. It is not necessary to recite all the detail of those statement here, but the following is of particular significance.
14. Stuart Morris is the Head of Strategic Housing at Rochdale Metropolitan Borough Council and his responsibilities include permanent and temporary stopping provision for Gypsies and Travellers. He explains that the Council is required to make provision for Gypsy and Traveller accommodation within the Borough, and monitors the provision required of it by way of the Greater Manchester Gypsy and Traveller Accommodation Assessment (the ‘GMGTAA’). The GMGTAA was last updated in

December 2024 with a published final report setting out the projected need for caravan pitches to 2040/41.

15. As to permanent provision, he says that the council has its own site at Roch Vale which provides 27 plots and seven council provided chalets. It also leased a site at Heritage Park which was owned and managed by a Traveller family, but that site has recently been closed by the Traveller family. In December 2024, the Greater Manchester Gypsy and Traveller Accommodation Assessment was updated to take into account the new expanded definition of Gypsies and Travellers. During the current year, two further sites have been identified and are being developed. They will provide for six additional permanent pitches which it is anticipated will meet the increased need for pitches.
16. Mr Morris also gives evidence about unauthorised encampments in Rochdale since the grant of the injunction by Butcher J on 11 June 2024. He says these encampments have been almost exclusively on inappropriate and unsafe locations including road verges, industrial and business premises, and car parks serving sports centres and shopping centres. He says that in each case the council has adopted an approach of engagement and negotiation with the occupiers of the sites. That policy has been effective in that, once made aware of the Injunction, Travellers have generally left the relevant site within a few hours or, at most, by the following morning. He says that that approach of engagement and tolerance has meant that it has not been necessary to take legal action to enforce the orders.
17. Mr Morris explains that Rochdale has had contact with neighbouring authorities across Greater Manchester, with whom Rochdale work closely on management of Traveller sites and unlawful encampments, and none of them have raised any issue with the council regarding the displacement of encampments into other areas.
18. Anthony Johns is Rochdale council's service manager for environmental action and enforcement and, amongst other functions, manages officers responsible for attending unauthorised encampments and the enforcement of the injunction. He says in his statement that the council's approach, of taking a "constructive and educational approach by advising those who are forming the encampment about the injunction" has proved effective. He says that the power of arrest is a last resort and has never, in fact, been used. But, he says, it is that power which makes the injunction "so effective".
19. He says that injunctive relief was first sought in response to the high number of unauthorised encampments occurring between January 2015 and September 2017 "many of which caused significant harm to the Borough and had or were associated with... noise nuisances, anti-social behaviour, threats of violence...and fly tipping." Encampment numbers peaked at 69 in 2017, and have since dropped to single figures.
20. Mr. Johns explains that the Injunction sought by the council is not Borough-wide, but is limited to the 334 sites which together cover 15.3 square kilometres. Since the Borough covers an area of 158 square kilometres that is about 9.7% of the total.
21. He explains that sites were identified which required the protection of an injunction. They were chosen because they were sites where encampments would be especially harmful and where either there had been previous encampments or they were of the same nature as sites that were frequently targeted. "Typically those sites include schools, recreational areas and green spaces, business parks and industrial areas".

Encampments were often associated with the depositing of waste, including fly tipping and the depositing of untreated human excrement. There was often a significant clean-up operation required, at great expense to either the council or the landowner, when the encampment was vacated.

22. Mr Johns gives evidence as to the effectiveness of the interim injunction granted in 2018. He says that in 2015 there were 28 encampments, in 2016 there were 40, and in 2017 there were 69. In the remainder of 2018, after the grant of the interim injunction, there were 21 encampments. In 2019, there were 10; in 2020, 13; in 2021, 9; in 2022, 10; in 2023, 12; in 2024, 6. And in the period up until the date of his statement, 25 April 2025, there were 2.
23. The duration of the encampments has also shown a significant decline since the grant of the Injunction. He attributes that to the “council’s ability to move encampments on from protected land swiftly and efficiently with the use of the injunction.” In 2015 the average duration for each encampment was 4.6 days; in 2016, 3.85 days; in 2017, 6.28 days; and in 2018, 1.09 days. In 2023 the average duration was 1.16 days, but for all the other years between 2019 and 2025 it was less than 24 hours.
24. Data collected by the council also shows that the reduction in the frequency and duration of encampments has significantly reduced the harm caused by unauthorised encampments. “In particular, the Borough was experiencing significant fly tipping that was associated with the formation of unauthorised encampments...often on a commercial scale.” I am told that the expression “commercial scale” was used to indicate both the volume of material deposited and also the fact that the fly-tipping was apparently done for profit. Clean up costs were over £25,000 in 2015; £23,000 in 2016; £87,000 in 2017; £944 in 2018 and zero ever since.
25. Mr Johns says that “the Borough’s business parks and industrial areas were often the main target for unauthorised encampments and... these areas suffered a disproportionate number of encampments... Following the grant of the interim injunction the Borough’s business parks and industrial areas were still targeted but there was a significantly reduced number”, down from 126 in 2015-2017 to 16 in 2023-2024. He explains that the Borough’s business and industrial areas are important for the wealth and prosperity of the Borough.
26. According to Mr. Johns, tension often arose between the settled local inhabitants and the Travelling community who were forming unauthorised encampments in the Borough. “The council often received reports of confrontations between members of these two communities...Local residents often became exasperated with the various nuisances associated with encampments.” He says that the council’s experience is that since the grant of the injunctions “reduced frequency and duration of encampments appears to have reduced tensions in the community.” He says that since the grant of the injunction in 2024, he has received no reports from members of the public of any threatening or intimidating behaviour from those forming unauthorised encampments.
27. Mr Johns also notes the disappearance of damage to green spaces or property, previously associated with unauthorised encampments, since the grant of the Injunction.

28. It is acknowledged that there have been some unauthorised encampments since the grant of the Injunction in 2024. There were two in May 2024, one in September 2024, one in October 2024 and two in February 2025. But, as those figures demonstrate, these were much less frequent than had occurred hitherto. In addition, all of them were smaller in size and all were resolved in a matter of hours.

Relevant Legal Principles

29. Against that factual background, I set out what seem to me the relevant legal principles on the following three topics:
- (i) The Court's power to grant injunctive relief and the entitlement of local authorities to seek that relief;
 - (ii) The proper approach to applications against persons unknown; and
 - (iii) The test to be applied to renewed applications for injunctions against persons unknown.

(i) The power to grant and the entitlement to seek

30. The court's power to grant injunctions is derived from the Senior Courts Act 1981, s37, which provides:

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

31. The authority of a local authority to seek injunctive relief in cases like the present stems from s187B of the Town and Country Planning Act 1990, which provides that:

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section "the court" means the High Court or the county court.

32. Pursuant to s57(1) of the Town and Country Planning Act 1990 planning permission is required for the carrying out of any development of land. 'Development' is defined to include the carrying out of any building operation on, over or under land or the making of any material change of use of land (**s55(1)**), and the depositing of refuse or waste materials on land (**s55(3)(b)**). Planning permission may be obtained by way of express grant, or by way of deemed grant through permitted development rights. Carrying out development without the required planning permission constitutes a breach of planning control (**s171A(1)**).

33. The breaches of planning control complained of are primarily the material change in the use of the relevant land to a temporary Traveller site, and the depositing of refuse or waste materials, without the requisite planning permission. The decision as to whether something is or is not a breach of planning control is a matter for the local planning authority, or the Secretary of State on appeal, and not the court (***South Buckinghamshire District Council v Porter & Anr* [2003] UKHL 26; [2003] 2 AC 558** at [11], [20], [29] and [30]).
34. That said, the court's power to grant an injunction under s187B remains a discretionary one, albeit that that discretion is not unfettered. The discretion must be exercised judicially meaning, in this context
- ...that the power must be exercised with due regard to the purpose for which it was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. (Porter at [29] per Lord Bingham).*
35. The Local Government Act 1972, s222 provides that:
1. *Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –*
 - a) *they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and*
 - b) *they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.*
36. Accordingly, s222 does not create a cause of action; instead it confers on local authorities a power to bring proceedings to enforce obedience with public law, without the involvement of the Attorney General (***Stoke-on-Trent City Council v B&Q (Retail) Ltd* [1984] AC 754**).
37. The guiding principles as to the exercise of the court's discretion under s222 are identified in ***City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697** at 714 (per Bingham LJ), and include:
- ...the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will*

be effective to restrain them: see Wychavon DC v Midland Enterprises (Special Events) Ltd (1986) 86 LGR 83 at 89.

38. Where an injunction is granted under s222, a power of arrest may be attached to the injunction pursuant to the Police and Justice Act 2006, s27.

(ii) Applications against persons unknown

39. In **Wolverhampton**, the Supreme Court, (Lords Reed, Briggs and Kitchin with whom Lords Hodge and Lloyd-Jones agreed), considered a number of conjoined cases in which injunctions were sought by local authorities to prevent unauthorised encampments by Gypsies and Travellers. The appeal raised the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date, a class of persons referred to as “newcomers”.
40. At [167] the Supreme Court held that.

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

- i. There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.*
- ii. There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.*
- iii. Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to*

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

- iv. *The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*
- v. *It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.*

41. At [225] the court said

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

(iii) The test to be applied to renewed applications

- 42. An issue has arisen, in some recent cases at first instance level, as to the test that should be applied when applications are made to renew injunctions against persons unknown.
- 43. In ***Basingstoke v Loveridge*, [2024] EWHC 1828 (KB)** Freedman J considered the purpose of the review hearing. He said at [55]:

the continuation of the injunction is something that has to be constrained and checked. It is for that reason that there are the constraints in respect of territorial and temporal limitations. There is a danger in a matter like this that the reaction to the Supreme Court case would be to be involved in tick-boxing so that the case would then be reviewed every year and then continued at the end of the year subject to the tick-boxing.

That would fail to reflect the nature of the guidance given by the Supreme Court, that makes it clear that the remedy is to be carefully scrutinised and only granted in respect of where there is a compelling need for the protection of the rights in the locality.

44. In **High Speed Two (HS2) Ltd v Persons Unknown** [2024] EWHC 1277 (KB) Ritchie J, was considering an application for the continuation of an interim injunction against protesters. In addressing how a review hearing should be approached, he said:

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

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

45. In **Arla Foods v Persons Unknown** [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as “...allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate.”

46. Morris J took a similar approach in **Transport for London v Persons Unknown & Ors** [2025] EWHC 55 (KB). At [54]-[55] he said:

In the present cases, TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue. (For example, as in the HS2 case where Phase 2 of the HS project had subsequently been abandoned: see paragraph 40 above).

47. This approach was approved and applied by Hill J in **Valero Energy Ltd v Persons Unknown** [2025] EWHC 207 (KB) (*‘Valero’*) and in **Multiplex Construction Europe Ltd v Persons Unknown** [2025] 2 WLUK 578.

48. When **Basingstoke v Loveridge** came back before the court on a review hearing in March 2025, a somewhat different approach was adopted by the judge. Ms Kirsty Brimelow KC, sitting as a deputy judge of this court, considered the observation of Freedman J at [56] – [57] to the effect that “*As this matter goes forward, there needs*

to be considered the absence of a formally-negotiated stopping policy. As indicated above, at the moment there is an informal policy of limited toleration of encampments. There is only the very beginning of a negotiated stopping policy. It is very difficult to supervise an informal policy of limited toleration of encampments... The court going forward needs to scrutinise very carefully that the local authority is taking steps to procure a formal, negotiated stopping policy.”

49. Perhaps unsurprisingly, in those circumstances, Ms Brimelow held at [25]-[26] in her judgment that she should follow Freedman J’s requirement that there be “*close scrutiny of whether there remained a compelling need for the granting of a further injunction*” and “*in these circumstances, I consider the case should be heard de novo and so invited submissions in line with it being a de novo hearing.*”
50. In ***Test Valley Borough Council & Anr v Persons Unknown*** (unreported), HHJ Sarah Richardson (sitting as a deputy), considered the point at length and gave a detailed ex tempore judgment of which I was provided with a note (no transcript being presently available). She held that the correct test to apply on an annual review is that identified in the authorities of ***HS2***, ***TfL*** and ***Valero***, namely, the Court should ask whether there has been a material change of circumstances. If there has not, and all procedural and legal rigour has been followed, the Order should be continued. If there has, only then should a full ***Wolverhampton*** assessment be conducted to determine whether the relief should be continued, and on what terms. The Judge took the view that the ***HS2*** approach, as adopted in ***TfL*** and ***Valero*** was principled and in keeping with the ***Wolverhampton*** guidance, and was the correct approach to review hearings of this nature. The court should not perform a full ***Wolverhampton*** assessment on review unless there is a material change of circumstances that necessitates the same.
51. In my judgment the correct approach is dictated by the Supreme Court’s judgment in ***Wolverhampton*** and in particular in [225]. This is not a “tick box” exercise, but the matters on which evidence should be adduced and argument focused are (i) how effective the order has been; (ii) whether any reasons or grounds for its discharge have emerged; (iii) whether there is any proper justification for its continuance; and (iv) whether and on what basis a further order ought to be made. The parties should give full disclosure, supported by appropriate evidence, directed towards those questions.
52. There will be cases, such as ***Basingstoke***, where an issue has emerged, whether at the original hearing or in preparation for the renewed hearing, which needs to be addressed expressly at that renewal hearing. Whether that necessitates an expanded renewal hearing or what Ms Brimalow calls a *de novo* hearing will depend on the facts. The position may also be different where the application for further injunctive relief is not made during the currency of the previous order, but after it has expired. But the guiding light will always be the Supreme Court’s judgment in ***Wolverhampton***.

Discussion

53. I address in turn what seem to me the appropriate elements of the analysis, namely:
- i) The existence of any material change of circumstances;
 - ii) The efficacy of the order to date;

- iii) The justification for its continuance;
- iv) Whether any grounds for discharge have emerged;
- v) The basis on which any further order ought to be made; and
- vi) The other Wolverhampton requirements.

(i) Any material change in circumstances?

- 54. In the run of first instance cases discussed above, there is frequent reference to the need for there to be no material change in circumstances if an injunction against persons unknown to is to be continued. It may well be that that expression is used to encompass the points made in [225] of the Wolverhampton case.
- 55. In my judgment, there is indeed value in identifying whether there has been any material change of circumstances but there must then be focus on the requirements set out in the Wolverhampton case.
- 56. Two potential changes of circumstances are mooted.
- 57. First, there has been some significant reduction in the occurrence of unauthorised encampments. But I entirely agree with the submission of Ms Pratt that the reduction in the threat is not evidence that the threat has dissipated, but evidence that the Injunction is having its intended effect.
- 58. Second, there is one change of circumstance from June 2024 to which, very properly, the Claimant drew expressly to the Court's attention, although it is submitted it is not material to the continuation of the Injunction. That change concerns the availability of pitches in the Borough.
- 59. As noted above, in December 2024, the GMGTAA was updated to take into account the new expanded definition of Gypsies and Travellers. Following that update, the Claimant requires a further five permanent pitches to meet the assessed need. In consequence, there is currently a five-pitch shortfall. However, in 2025, the Council has identified and "lined up" two sites that can provide six pitches to meet the shortfall. I accept that in those circumstances the shortfall in supply of permanent pitches was only temporary, and steps have been and are being taken to meet the shortfall.
- 60. In any event, this assessed need relates to pitches for permanent (or seasonal/semi-permanent) residence by members of the Travelling community (ie. those who are settled, or wish to settle, in the Borough). The Injunction being sought, on the other hand, is intended to apply to those persons who are transiting through the Borough, forming temporary encampments in inappropriate and harmful places, and/or undertaking harmful activities such as fly-tipping. There is no evidence that the Borough is experiencing unauthorised encampments because it has a shortfall of permanent pitches.
- 61. In my judgment there has been no material change of circumstance that requires change to, or discharge of, the Injunction. The risk of the formation of unauthorised encampments and resulting harm persists.

(ii) The efficacy of the Order

62. In my judgment it is perfectly clear on the evidence that the Injunction has been highly effective. Whilst there are still unauthorised encampments that occur in the Borough, and occur on Injunction Sites specifically, the frequency and duration of those encampments, and the resulting harm, is greatly reduced.
63. As Mr Johns explains, there has been a significant reduction in the number of unauthorised encampments forming in the Borough. The reduced frequency, duration and size of unauthorised encampments has caused a significant reduction in the harm suffered by reason of those encampments. There have been no deposits of untreated human waste associated with unauthorised encampments since the grant of injunctive relief; the frequency and duration of encampments in industrial areas has reduced; there have been reduced instances of threats to and intimidation of the inhabitants of the Borough, reduced instances of community tension, and reduced instances of property damage (with no instances at all since the grant of the Injunction in June 2024).
64. Incidents of fly-tipping associated with unauthorised encampments, and the cost incurred by the Claimant in clearing the same, have been greatly reduced. Clean-up costs incurred by the Claimant peaked at £87,895.63 in 2017, and have fallen to nil since 2019.
65. All this evidence serves to establish that the Injunction has achieved its objectives.

(iii) Justification for the continuation of the Order

66. In my judgment, it is well established on the evidence that the potential harm which prompted the application for the injunction persists. The fact that, on occasions, unauthorised encampments appear in the Borough (albeit with reduced frequency) demonstrates that continued risk.
67. Furthermore, unauthorised encampments continue to occur in areas geographically close to Rochdale. The fear of the Claimant's officers that should the Injunction be discharged, those encampments will "migrate" into the Borough, and to the 334 protected sites specifically is, in my view, entirely realistic given the history. That is particularly so given that those sites appear, historically, to be especially attractive to those forming unauthorised encampments. On the evidence, it is clear that it is the existence of the Injunction, and the threat of enforcement by arrest, which discourages the establishment of unauthorised encampments, and limits their size and duration of such encampments as do occur.
68. The experience of neighbouring local authorities in the Greater Manchester area supports that conclusion. Of the five local authorities that responded to enquiries from the Claimant, all but one reported a higher number of unauthorised encampments in the last 12 months than in Rochdale. By way of example, Wigan Council reported 64 encampments, which caused £124,000 in removal costs and associated expenses, and £17,248 of council officer time.

(iv) Grounds for Discharge

69. I have been able to detect no possible grounds for the discharge of the order.

(v) *Basis for a further order*

70. The basis for a continuation of the order, both legally and factually is the same as that which justified the grant of the order in 2024. The terms of the order will be similar.

(vi) *The Wolverhampton requirements*

71. For the reasons set out above, in my judgment a full Wolverhampton assessment is not necessary on the facts of this case. I see no ground for going behind the findings of Butcher J.
72. For the sake of completion I can indicate, however, that I have no doubt that there has been clear and comprehensive evidence of wrongful conduct requiring a remedy; there remains a compelling justification for the Injunction; the Claimant has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers; the Claimant has considered all reasonable alternative means of controlling or prohibiting unauthorised encampments; and has properly attempted to engage with Gypsy and Traveller communities in an attempt to encourage dialogue and co-operation, and better understand the needs of the respective parties.
73. The order I propose making includes generous liberty to apply provisions, and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. It makes provision for (alternative) service (or, more accurately after the Wolverhampton ‘notification’) of the Order and any subsequent continuation application.
74. The order is constrained by territorial and temporal limitations so as to ensure, as far as it practicable, that they neither ‘outflank nor outlast the compelling circumstances relied upon’. It is not borough-wide against Persons Unknown, (nor has it or the interim relief ever been). The Injunction is appropriately limited; the 334 protected sites equate to less than 10% of the Borough and have been carefully selected. They include sensitive sites such as schools, recreational areas, green spaces and business parks, on which the formation of unauthorised encampments is especially harmful. The selected sites are sites that were either targeted frequently prior to the grant of injunctive relief, or are of the same nature as those sites that were frequently targeted.
75. The order’s operation is limited to one-year, with the possibility of continuation upon review. If no further application is made, the Order will expire by the effluxion of time.
76. The proposed respondents are defined as precisely as possible, identified and enjoined where possible. The injunction sought by the Claimant is, in my judgment, clear and precise, it uses everyday terms, when setting out the acts that it prohibits. The prohibited acts correspond closely to the actual or threatened unlawful conduct, and extend no further than the minimum necessary to achieve the purpose for which it was granted.
77. In my judgment there is no reason to depart from the usual position that no undertaking as to damages is required.
78. In my judgment, the test articulated by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 and approved by Sir Geoffrey Vos MR in *Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13 has been subsumed into the

Wolverhampton framework. The Vastint test, however, provides a useful double check. In my judgment, for the reasons set out above, this case satisfies that check. There is a strong possibility that, unless restrained by an injunction, persons unknown will act in breach of the rights which the Claimant is seeking to protect and if that happens the resulting harm would be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.

79. Finally, so far as I can judge, the Claimant has complied with the duty of full and frank disclosure throughout its evidence and submissions.

Conclusion

80. In those circumstances, in my judgment, it is just and convenient to grant the injunctive relief sought.
81. The error in the notification in respect of Site 334, referred to at [5] above, needs to be addressed. In my judgment, the appropriate and proportionate response to that issue is to suspend the operation of the injunction as it affects that site for 28 days. That will give any person affected sufficient time to make an application to the Court under the liberty to apply clause of the Order.
82. The claimant will be granted a one-year continuation of the Injunction as against the 90th and 93rd Defendants, Persons Unknown.



Neutral Citation Number: [2026] EWHC 397 (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: 23 February 2026

Before :

MRS JUSTICE LAMBERT DBE

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

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
- (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

Defendants

Approved Judgment

Ms K Holland KC (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the
Claimants

The **Defendants** did not attend and were not represented

Hearing date: 16 February 2026

Approved Judgment

Mrs Justice Lambert DBE

Introduction:

1. The Claimants are part of a large petrochemical group, known as Valero Energy Group, which covers 8 sites in the UK, comprising an oil refinery and various oil terminals). On 26 January 2024, Mr Justice Ritchie granted a final injunction (“the Injunction Order”) against the Defendants, (*Valero v Persons Unknown* [2024] EWHC 134 KB). The Defendants were Persons Unknown connected with Just Stop Oil, Extinction Rebellion, Insulate Britain and Youth Climate Swarm who were trespassing on the 8 sites, blocking access to the 8 sites and/or who had been involved in suspected tortious behaviour. The Injunction Order was to last 5 years but made provision for an annual review. The First Review took place on 24 January 2025 before Hill J (*Valero v Persons Unknown* [2025] EWHC 207 (KB)) when it was ordered that the Injunction Order remain in full force and effect (“the First Review Order”).
2. On 16 February 2026, the matter came before me for the purpose of the Second Review hearing. The Claimants were represented by Ms Katherine Holland KC. The Defendants did not attend, nor were they represented. At the conclusion of the hearing I ordered that the Injunction Order should remain in full force and effect pending further review with reasons to be provided. These are those reasons.

Factual Background

3. The factual background is set out in detail in the Ritchie judgment. I do not rehearse it here. All that needs to be recorded for present purposes is that between 1 and 7 April 2022 a number of environmental activists undertook direct action at the Kingsbury Terminal (one of the 8 sites) 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 a number of arrests. The Claimants brought the claim to avoid potentially serious health and safety and environmental consequences of the Defendants’ threatened actions, as well as other serious consequences for the public. 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. In consequence, injunctions were granted to a number of other entities involved in the energy industry.

Service of Documents

4. The service of documents in these proceedings is permitted by alternative means in the case of the First and Second and Third Defendants (where no postal address is known). In summary, service on the First and Second Defendants is permitted by a combination of uploading documents to the Valero Service Website, placing copies at a total of 55 locations across the 8 sites and emailing the website addresses set out in Schedule 1 of the order of Master Cook dated 8 June 2023. In the case of the Third Defendants where a postal address is known, service may be effected in the usual way. The subsequent order of Master Eastman of 1 December 2023 provides that exhibits to witness statements need not be physically served and that the Defendants can be informed by way of a covering letter confirming that the exhibit will be available on the Valero

Service Website. The steps taken by the Claimants to serve the relevant court documents are set out in the tenth witness statement of Anthea Adair. I am satisfied that service of court documents has been effected. Ms Adair's eleventh statement sets out how the hearing bundle was served in accordance with the order of Master Eastman of 1 December 2023. Again, I am satisfied on the basis of the evidence before me that the hearing bundle was served in accordance with that order.

The Test to be applied at a Review Hearing

5. In *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45 the Supreme Court gave the following guidance in relation to review hearings and indicated that such hearings:

“... 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. In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB) Mr Justice Ritchie considered how a Court should go about this task. He stated:

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

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

7. In *Arla Foods v Persons Unknown* [2024] EWHC 1952, where the injunction was not interlocutory, a 5-year injunction was granted against animal rights protestors. In relation to the provision made for annual reviews, Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) stated:

“128. The annual review will allow a continued assessment of whether circumstances have changed so as to make the continuation of the injunction appropriate and the five year maximum an appropriate end-point. In my

judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review.”

8. In *Transport for London v Persons Unknown and Others* [2025] EWHC 55 (KB) 16 January 2025, Mr Justice Morris took a similar approach at [54] to [57]. He referred to the guidance in the *Wolverhampton* case set out above and stated:

“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 ...”

9. In the local authority context, in *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB), Garnham J said;

“51. In my judgment, the correct approach is dictated by the Supreme Court’s judgment in *Wolverhampton* and in particular in [225]. This is not a “tick box” exercise, but the matters on which evidence should be adduced and argument focused are (i) how effective the order has been; (ii) whether any reasons or grounds for its discharge have emerged; (iii) whether there is any proper justification for its continuance; and (iv) whether and on what basis a further order ought to be made. The parties should give full disclosure, supported by appropriate evidence, directed towards those questions.

52. There will be cases, such as *Basingstoke*, where an issue has emerged whether at the original hearing or in preparation for the renewed hearing, which needs to be addressed expressly at the renewal hearing. Whether that necessitates an expanded renewal hearing or what Ms Brimelow calls a *de novo* hearing will depend on the facts. The position may also be different where the application for injunctive relief is not made during the currency of the previous order, but after it has expired. But the guiding light will always be the Supreme Court’s judgment in *Wolverhampton*.”

10. Since the date of the First Review of the injunction (on 24 January 2025) Just Stop Oil issued a press release (on 27 March 2025) stating that it would be “*hanging up the hi vis*” at the end of April 2025 (“the March Press Release”). A number of judges have therefore had to consider whether the level of risk remains sufficient to continue various injunctions following the March Press Release. The most relevant initial decision following the March Press Release was that of Sweeting in *J Esso Petroleum Company, Limited v Persons Unknown* [2025] EWHC 1768. The injunction in that case protected various sites including an oil refinery, fuel terminals, logistic hubs and compounds. Sweeting J considered whether there was a continued threat of tortious activity holding that the threat of direct action continued to be a real one. He referred to direct evidence from Just Stop Oil itself acknowledging the effectiveness of injunctions in deterring

their actions, namely a tweet from 13 September 2023 stating in relation to protests on highways that:

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

Mr Justice Sweeting noted that this suggested:

“the removal of the injunction would invite renewed activity of the sort that it was designed to prevent”.

11. At [14] Mr Justice Sweeting noted that Extinction Rebellion and Just Stop Oil continued to focus their attention on the oil and gas sector. In relation to the March Press Release, at [15] he said:

“The press release itself contained a “Note to Editors” that is hard to reconcile with an unequivocal renunciation of direct action. More significantly, undercover reporting on 16 May 2025 referred to an alleged recording of JSO indicating that it had not disbanded, prompting JSO to email its mailing list on 21 May 20205 stating: “GB News was right for once. We are plotting “a very big comeback””. The email further suggested that this renewed campaign might operate under a new title albeit with the same aims and conducted by the same protestors: “Just Stop Oil was just the beginning. A new campaign is in the works – one that will build on our knowledge and success at Just Stop Oil and will face the grinding injustice of our political and economic system head on. We’re just getting started”.”

12. Mr Justice Sweeting referred to similar statements by Extinction Rebellion in the past (to the effect that it was relinquishing forms of protest) which had not been honoured. He also referred to a Just Stop Oil social media photo stating “*JUST GETTING STARTED*” and a report in June 2025 inviting recruitment for Youth Swarm, with events advertised using the Just Stop Oil logo and an organiser quoted as saying: “*This is an inhale before we breathe out and expand into brand new territory, into something even bigger than we’ve tried before. This is the start of something genuinely thrilling.*”
13. Since this decision of Sweeting J (in July 2025), there have been review hearings in other cases when the Courts have decided that the injunctions should be continued. For example, on 18 July 2025 there was a review of an injunction granted in *Gatwick Airport v Persons Unknown* [2025] EWHC 2228 by Mr Duncan Atkinson KC (sitting as a Deputy Judge) and on 26 August 2025 there was a review of an injunction in the case of *London City Airport v Persons Unknown* [2025] EWHC 2223 (KB) by Mr Justice Bourne. In the latter case, Bourne J stated at [16]: “*I accept that removing the injunctions at present would create a real risk of a resumption of activity at airports.*” The review hearing of most factual significance to the instant case is *North Warwickshire Borough Council v Baldwin & others* [2025] EWHC 2403 in which HH Judge Emma Kelly continued an injunction on the basis of the evidence of the continued level of risk at the wider Kingsbury site, as referred to at [14] to [23] of her judgment.

The Evidence

14. Ritchie J made the following finding as to the level of risk on the basis of the evidence which was 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 the UPs will commit the pleaded torts of trespass and nuisance at the 8 sites in connection with the 4 organisations.”

15. 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. He was also satisfied that the various procedural requirements set out in the case law were satisfied by the injunction proposed. Like Hill J, in her 2024 review, I take these findings as my starting point in accordance with the legal framework outlined above.

16. There has been no material change in the case law since the Ritchie judgment and First Review Order. There has been no new legislation which is material to the issues which I must consider. As to the updating factual evidence, Ms Holland referred me to the relevant statements in the hearing bundle, comprising the 7th witness statement of Emma Pinkerton dated 11 December 2025 and the 7th witness statement of David Blackhouse dated 15 December 2025. These statements, which I accept, address the questions posed by the *Wolverhampton* case. In this context therefore:

- a. I am satisfied that the Injunction Order has been effective. Mr Blackhouse sets out that the protest activity has diminished as a direct result of the Injunction Order combined with the protective “blanket” of injunctions that have been obtained throughout the UK by the Claimants and other operators as well as the wider injunction obtained by Warwickshire Borough Council on 6 September 2024 in relation to the Kingsbury site. Ms Pinkerton explains that the presence of the Injunction Order has had a significant deterrent effect, pointing out that this view is reinforced by comments from Just Stop Oil on its Twitter feed where, in response to a comment from member of the public suggesting that protests ought to be carried out at oil refineries, Just Stop Oil tweeted on 9 June 2023 at 10am: *“Do you know what happens if you protest outside oil refineries now? Oil companies have brought injunctions to ban people from taking action at refineries, distribution hubs, even petrol stations. Punishments for breaking injunctions range from unlimited fines to imprisonments.”*
- b. There is no evidence before me justifying discharge of the Injunction Order. Notwithstanding the March Press Release, the risk justifying the grant of the Injunction Order remains. Ms Pinkerton refers to the press release from Just Stop Oil on 25 April 2025 announcing that *“we-re just getting started”* and to various newspaper articles about, and statements of intent from, protest groups. These include a statement of the website of Just Stop Oil that *“A new revolutionary direct action campaign is coming. Help us to build what is best”*

and a statement on the website of Extinction Rebellion that: “*Yes, its 2025, no we are not backing down.....*” and “*This year, XR will act with greater determination, grit and focus*”. Further, as she points out, the risk from other protest groups remains. Mr Blackhouse sets out that he continues to meet regularly with the Police and the Local Resilience Forum in the areas where there are assets and that the verbal briefings provided indicate that the threat remains the same. Ms Pinkerton identifies a long list of recent protest activities, thereby demonstrating the ongoing nature of these incidents.

Conclusion

17. I have reviewed the evidence and recent legal developments. I am satisfied that nothing material has changed and that the risk which justified the making of the Injunction Order still remains. Procedural and legal rigour has been “observed and fulfilled” (*HS2* at [32]).
18. I approve the draft Order and Ritchie J’s order will remain in effect pending further review by this Court in no more than 12 months’ time.