

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

B E T W E E N:

(1) LONDON SOUTHEND AIRPORT COMPANY LIMITED

(2) LONDON SOUTHEND SOLAR LIMITED

(3) THAMES GATEWAY AIRPORT LIMITED

Claimants

-and-

PERSONS UNKNOWN WHO (IN CONNECTION WITH JUST STOP OIL OR OTHER ENVIRONMENTAL CAMPAIGN) ENTER, OCCUPY OR REMAIN (WITHOUT THE CLAIMANTS' CONSENT) UPON 'LONDON SOUTHEND AIRPORT' AS IS SHOWN EDGED RED ON THE ATTACHED PLAN A TO THE PARTICULARS OF CLAIM

Defendants

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**CLAIMANTS' SKELETON ARGUMENT**

*For the without notice hearing of an application for an injunction*

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*Bundle Refs in the form: {PAGE#}*

***Suggested Pre-Reading (time-estimate 1 hour):***

- *First Witness Statement of Mr Akhil Markanday, of the Claimants' solicitors BCLP ("the BCLP WS") {330-532} (exhibit designation: "AM1")*
- *First Witness Statement of Mr Marc Taylor, the First Claimant's acting CEO {32-44} ("Taylor 1")*
- *The Particulars of Claim {8-16}*
- *The draft Order Sought {22-31}*

**Introduction**

1. The Claimants variously operate and/or have an immediate right to occupy portions of land at London Southend Airport ("**London Southend**" / "the **Airport**").
2. In recent weeks (24 June – 6 August), most other major English airports (London City, East Midlands, Manchester, Stansted, Heathrow, Leeds, Luton, Newcastle, Gatwick, Birmingham, Bristol and Liverpool) have obtained from this Court without notice

injunctions restraining unlawful acts of ‘direct action’ protest of the sort that have been threatened, and in several cases carried out, by Just Stop Oil.

3. London Southend Airport faces the same threat to that which justified relief in those cases. Indeed it now likely faces a greater threat as one of very few significant English airports (and the only London airport) without the benefit of injunctive relief. It now therefore urgently seeks similar injunctive relief, in the form of the draft Order {22-31} provided with the application {17-21}.

### **The threat to the Airport**

4. The BCLP WS gives evidence of threatened activities against airports by environmental activists, including “Just Stop Oil” (“JSO”): §§25-37 BCLP WS {336-340}. It also provides evidence of recent unlawful activities at UK and international airports as part of a coordinated campaign against airports: §§38-50 BCLP WS {340-344}. For example:
  - 4.1. On 22 July 2024 JSO released a statement indicating that “*Just Stop Oil supporters will be taking action at airports this summer*”: [pp. 62-64 AM1] {414-416}. JSO’s fundraising page “*Fund Radical Climate Action — Just Stop Oil*” reads: “*We’re escalating our campaign this summer to take action at airports*”. It calls for donations, with additional funding allowing JSO to “*hit harder, with more mobilisers, more people taking action*”: [pp.67-70 AM1] {419-422}.
  - 4.2. According to The Mail (in an article dated 9 March 2024), JSO co-founder Indigo Rumbelow (at a ‘strategy meeting’ of environmental activists the previous week) advocated that they cause disruption at Airports by: (i) cutting through fences; (ii) gluing themselves onto runway tarmacs; (iii) cycling in circles on runways; (iv) climbing onto planes; (v) staging multi-day sit ins at terminals to prevent passengers from getting inside airports [pp. 87–95 AM1]{439-447}.
  - 4.3. As recently as 5 August 2024, four JSO activists were arrested near Manchester Airport on suspicion of conspiring to cause a public nuisance. They are reported to have been equipped with items which would have been used to cause “*damage and significant disruption*” to airport operations [pp. 20-21 AM1]{372-373}.

5. JSO has targeted London Southend Airport, in particular, in the past. On 23 November 2021 twelve JSO activists entered the Terminal with three large oil drums. The JSO activists “*verbally challenged passengers and distressed minors, disrupting the Airport at large*”. This incident necessitated police intervention: **§28(f) Taylor 1 {38}**.
6. London Southend Airport has also been targeted by Extinction Rebellion, which is understood to share a founder with JSO (Roger Hallam): **[pp. 26–28 AM1]{378-380}**. That organisation has on several previous occasions taken direct action at London Southend Airport. Examples of past incidents are detailed at **§28 of Taylor 1 {37-38}**.
7. As already noted, London Southend is now the only London airport not to have an injunction against “Persons Unknown” connected to JSO **§55 BCLP WS {347}**. This is unlikely to have escaped the attention of JSO activists, and therefore exacerbates the risk faced by this airport. In addition, the Claimant believed that London Southend Airport is an attractive target for direct action particularly due to its strategic status, and features of the layout at the site (particularly easy access from the terminal building to operational areas of the airport) which make it vulnerable **§33 Taylor 1 {40}**.
8. On 7 August 2024 JSO claimed that it would “*pause*” its actions due to recent nationwide civil unrest, but not “*for more than is immediately necessary*”: **[pp.113-116 AM1]{465-468}**. The use of the term “*pause*” indicates a clear intention to resume direct action activities. When JSO will consider the pause no longer to be necessary is unclear; but in view of the fact that civil unrest has not been repeated in recent days it is reasonable to infer that the pause is likely to expire imminently.

### **Risk of Harm**

9. London Southend is a significant and busy international airport. Over the remainder of the summer it expects to serve approximately 33,000–37,000 passengers per month: **§11 Taylor 1 {34}**.
10. The evidence of Mr Taylor is that acts of process, in summary, “*will cause significant damage and expose the Airport, its staff, its passengers and any interconnected enterprises to severe risks of physical and/or financial harm*”: **§25 Taylor 1 {36}**.
11. The health and safety risks are largely self-evident given the threatened activities involve activists trespassing onto runways and climbing onto planes. There are substantial risks

involved for members of the public, staff and the activists themselves by such actions: **§58 BCLP WS {348}; §30 Taylor 1 {39}**.

12. Some of the less apparent risks are summarised at **§32 of Taylor 1 {39}**. The risks are exacerbated by factors particular to London Southend, such as that passengers walk directly from the Terminal to board their flights (rather than using jet-bridges or being bussed to remote stands), thereby giving more direct access to operational areas of the Airport: **§33 Taylor 1 {40}**.
13. Beyond health and safety concerns, if activists carry out their threatened activities there are likely to be knock-on consequences including:
  - 13.1. Significant disruption to the travel plans of passengers, compounded by reduced availability to book passengers on replacement flights in the busy summer period: **§35(a) Taylor 1 {41}**; see also **§59 BCLP Statement {348}**.
  - 13.2. Direct financial losses to the Claimants estimated to be £125,000 per day (excluding reputational costs) for each day the Airport is closed: **§37 Taylor 1 {42}**.
  - 13.3. Consequential losses to the Claimants arising from disrupted passengers (e.g., in providing meal vouchers): **§37 Taylor 1**.
  - 13.4. Significant disruption to businesses and the wider economy, and the distribution of goods and (potentially perishable) cargo: **§35(b) Taylor 1 {40}**; **§§59-60 BCLP Statement {348}**.
  - 13.5. Diversion of police resources to restore order: **§35(c) Taylor 1 {41}**.

### **The Airport Site & Causes of Action**

14. The principal cause of action relied upon by the Claimants is trespass. In short, whilst lawful visitors to London Southend have an implied right to enter upon the Airport site, the Defendants do not. Their access to the Airport for the purposes of carrying out direct action protest activities will therefore amount to trespass, which tortious wrong can and should be restrained by an injunction.

15. The Claimants therefore must show a better right to possession of the Airport than the Defendants. The evidence that they do so is set out in the BCLP WS {332-333}. In summary:

15.1. The site is a complex one; with the various leasehold and freehold interests held by the three Claimants shown in the schedule appended to the Particulars of Claim.

15.2. With one exception (the north-eastern runway approach lights, returned to below), those interests are registered.

15.3. The parcels of land covered by those various interests are shaded yellow on the “Plan A” attached to the Particulars of Claim (and the draft Order – “the **Plan**”) {16} (again with a nuance in respect of the north-eastern runway approach lights, returned to below).

15.4. Those interests give the Claimant which holds them a right to immediate possession of that yellow-shaded land. That is subject to the following two exceptions:

(i) First, the main airport terminal building (shaded orange) is subject to a complex set of sub-leasehold interests and licenses (for retail operators etc.), which differ on each floor. Showing all of those interests on a workable plan is not possible. It suffices to say for immediate purposes that the Claimants do not assert an immediate right to possession in respect of the whole of that building.

(ii) Second, other portions of the wider airport site are subject to leases to third-parties, who have the immediate right to possession. Those are hatched in blue on the plan.

15.5. It follows that, as regards the areas simply shaded yellow, the Claimants have an immediate right to possession of those areas by reason of the leasehold and/or freehold interests. The availability of injunctive relief to restrain an anticipated trespass of land to which a landowner is entitled to immediate possession is well established: see, for example, *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780.

16. In respect of the north-eastern airport approach lights (i.e. that cross-shaped area at the top right-hand corner of the plan), the First Claimant has an unregistered leasehold interest in those lights. As the plan to that lease shows, however [p.283 AM1] {635}, the land over which the First Claimant has that leasehold interest is strictly limited to the small green circles (on the lease plan) in which each individual light sits, rather than the cross-shaped yellow shaded area. It is not realistically possible to reproduce the detail of those small circular areas on a plan showing the whole site.
17. The Claimants, however, seek an injunction of the entire area bounded in red on the Plan. That is in, the following limited respects, wider than the areas in respect of which it has an immediate right to possession by reason of a leasehold or freehold title:
  - 17.1. The red-outlined area includes the terminal building (albeit that such building sits entirely within yellow-shaded areas; such that persons would need to cross a “yellow” area to reach it).
  - 17.2. It includes blue-hatched areas (including those which immediately abut the red perimeter line), which are subject to third-party leases. In respect of two of those areas (at the peripheries of the site), the Claimants are *not* the landlord (i.e. it is not also shaded yellow).
  - 17.3. It includes the whole cross-shaped area around the north-eastern airport approach lighting.
18. The justification for an order in respect of the red-outlined area is as follows:
  - 18.1. The First Claimant’s operation of London Southend was confirmed by a certificate from the UK Civil Aviation Authority dated 13 June 2016 [p.3 MT1] {47}. The First Claimant is authorised to operate the airport *inter alia* in accordance with the provisions of the accompanying aerodrome manual (latest revision of which is at [p.36ff MT1] {80ff}).
  - 18.2. The red outline is taken from the London Southend Airport Byelaws 2021 [p.32 MT1] {76} (“the **Byelaws**”). That red-outlined area is what the Byelaws define as “the Airport” (i.e. is the geographical area to which the Byelaws relate).

- 18.3. The Byelaws were made under s.63 of the Airports Act 1986, which authorises operators of designated airports (such as London Southend) to make byelaws for regulating the use and operation of the airport and conduct of all persons while within the airport. Such byelaws may specifically include provisions restricting access to any part of the airport (s.62(2)(f)) and preventing obstruction within the airport (s.62(2)(c)).
- 18.4. They come into effect upon confirmation by the Secretary of State (s.63(5)), which confirmation was given on 18 April 2021 [p.34 MT1]{78}.
- 18.5. The breach of Byelaws is an offence, punishable by a fine (s.64).
- 18.6. The Byelaws contain detailed provisions for the First Claimants' control over the entirety of the red-outlined site. For example:
- (i) The power (by its officials) to require persons to leave where they are causing a disturbance or have committed, or are believed to be about to commit, an offence (including under the Byelaws): Byelaw 4(12).
  - (ii) The power to search any person on the premises, else require them to leave: Byelaw 4(13).
  - (iii) The Byelaws prevent access to any part of the Airport (without reasonable cause or excuse or permission): “*except as a bona fide airline passenger or as a person meeting such a passenger*”: Byelaw 4(15).
  - (iv) The Byelaws prevent obstruction or interference with the proper use of the Airport or its operations, or annoyance to other persons: Byelaw 4(16).
  - (v) The Byelaws expressly prohibit demonstrations “*likely to obstruct or interfere with the proper use of the Airport or obstruct or interfere with the comfort and convenience or safety or security of passengers of persons using the Airport*” (Byelaw 4(22)).
- 18.7. It is well established that an entitlement to exclusive possession, or actual possession itself, is not required where possession, or injunctive relief, is sought against trespassers:

- (i) In Manchester Airport Plc v Dutton & ors [2000] 1 Q.B.133, the Court of Appeal upheld an order for possession granted in favour of Manchester Airport Plc, which held a licence from the National Trust, but did not enjoy any right of exclusive possession - nor had it been in actual possession of the land prior to the trespass. For the majority (Laws L.J. and Kennedy L.J.) the critical consideration appeared to be that a licensee not in occupation could claim possession against a trespasser “*if that is a necessary remedy to vindicate and give effect to such rights of occupation as by contract with the licensor he enjoys*” (Laws L.J. at p.150B, Kennedy L.J. at p.151E) and the fact that the claimant enjoyed a better right to possession than the bare trespasser defendants (Laws L.J. at p.150C, Kennedy L.J. at p.151D). Chadwick L.J, dissenting on the ability to rely on a licence to found an order *in rem*, drew attention at p.144B-C, to Hounslow London Borough Council v Twickenham Garden Developments Ltd [1971] Ch 233 at [17]-[18], and the concept of control being sufficient to found a claim: “*The terms of an occupational licence may give the licensee such a degree of control over access as to entitle him to the protection of the law of trespass against intruders*”. That is, in turn, reflected in Laws L.J.’s judgment at p.147C-G.
- (ii) In High Speed Two (HS2) Limited v Four Categories of Persons Unknown [2022] EWHC 2360 (KB), in granting injunctive relief to restrain protests over the HS2 route and other land, Mr Justice Julian Knowles stated, at [77], that “*In relation to trespass, all that needs to be demonstrated by the claimant is a better right to possession than the occupiers*”, citing Dutton at p.147.
- (iii) In Mayor of London v Hall [2011] 1 WLR 504, the Court of Appeal was satisfied that the Mayor of London, as the person with ‘control’ of Parliament Square Gardens, could properly seek injunctive relief against the defendants founded in trespass, even though title was vested in the Crown [22]-[27]. The Mayor’s control in that case included the power to make Byelaws: [21].

18.8. It is therefore submitted that, in circumstances where the First Claimant (in particular) has been empowered by statute (the Airports Act 1986 and the Byelaws)



to control access to and conduct upon the entirety of the red-outlined Airport site, it has sufficient control of that site to be entitled to injunctive relief against the Defendants (who have no interest or rights in the site at all).

18.9. For completeness under this head, it is noted that:

- (i) This proposed approach mirrors that approved by the Court in the recent Heathrow injunction, by application of the same principles.
- (ii) Even if the First Claimant was seen to lack standing to pursue relief for threatened trespass (in the absence of title), it is very likely that trespass on the blue-hatched sites would substantially interfere with the Airport operations as a whole (and therefore the First to Third Claimants' ordinary use and enjoyment of their land), and therefore amount to an actionable nuisance which could be restrained by injunctive relief: *Clerk & Lindsell on Torts, 24th ed.* at [19-08 to -10] and [19-16].
- (iii) Even if the Defendants' access to the blue-hatched land was lawful (or, by logical extension, not independently capable of being restrained in law at suit of the Claimants), the Court may still enjoin such activity at the Claimants' suit if there is no other proportionate means of protecting the Claimants' rights: *Wolverhampton CC v London Gypsies & Travellers* [2023] UKSC 47; [2024] 2 W.L.R. 45 at [102] That is the case here: any injunction in respect of part of the Airport would be of limited utility if the Airport's operations could still be disrupted by the conduct of activists on other portions of it.

## **Public Nuisance**

19. The risk that threatened direct action will amount to a private nuisance has already been addressed.
20. It can be seen from Plan A {16} that there are roads on the Airport site (i.e. within the Red Land) at the south-eastern corner of the site (in the vicinity of the orange terminal building in particular; with access off the main roundabout (coloured pink), which is just outside the red line). To the extent that these are public highways and/or the public has rights of way over them:

- 20.1. They are still within the Airport site for the purposes of the Byelaws, and therefore within the First Claimants' control (as set out above).
- 20.2. Acts of protest on these roads are likely to obstruct them, and thereby occasion a public nuisance. Being a nuisance which would cause particular substantial harm to the Claimants, it is actionable by them: see the discussion of the authorities in HS2 v Persons Unknown [2022] EWHC 2360 (KB) at [84] to [90].
- 20.3. Any attempt to try to carve-out some limited right to carry out some form of public demonstration on such portions of the public highway as exist within the Airport Site (in a manner which did not serve to obstruct the highway for other legitimate users) would be fraught with complexity and lack of clarity. It is proportionate and workable that the injunction be in the simpler form proposed (see para. 18.9(iii) above).

#### **Availability of Injunction: Principles and Submissions**

21. The availability of an injunction of the sort that the Claimants seek is well established on the authorities (even before the series of recent airport injunctions were granted on similar facts) (e.g. Shell Oil UK Products Limited v Persons Unknown [2022] EWHC 1215 (QB)), but the precise nature of such an injunction has fairly recently been clarified by the Supreme Court in Wolverhampton CC v London Gypsies & Travellers [2023] UKSC 47; [2024] 2 W.L.R. 45.

#### Service/Notice

22. Dealing, first, with the question of **service/notice**:
  - 22.1. The Supreme Court in Wolverhampton clarified that a defining feature of injunctions such as these (which justifies treating them as a separate category to previous sorts of injunctions: [167]) is that they are always in substance a type of without notice injunction, in that they will affect (or potentially affect) a wide class of persons, who are not and may never become defendants to the proceedings: [139] & 143(i).
  - 22.2. The focus is therefore not on *service* per se, but rather on *notification* of both: (i) the proceedings; and (ii) the Order made.

- 22.3. As to notification of the proceedings, the Supreme Court observed that prior notice of the proceedings *may* often be appropriate to minimise the potential for procedural unfairness: [174]. However, as with other forms of urgent injunction, it may be that even *informal* prior notice of the application may serve to defeat its purpose: *ibid*.
- 22.4. This is a case where any prior notice of this application risks undermining its purpose. As explained in the BCLP WS at §64 {348}, in circumstances where London Southend is one of few major airports, and the only London airport, without the benefit of an injunction, it is realistic to fear that it faces an elevated risk of imminent direct action. There is a real risk that prior notice of this application may accelerate any such plan. It is submitted that this is a compelling reason not to have given prior notice, for the purposes of s.12(2) of the Human Rights Act 1998.
- 22.5. It is observed that all the other recent airport injunctions have proceeded on the same basis.
23. Any prejudice to those affected by the proposed injunction as might be caused by the lack of prior notification is proposed to be mitigated (in accordance with the guidance in *Wolverhampton*) by comprehensive provisions in the order for: (i) notification of the Order made (together with the underlying claim documents); and (ii) generous liberty to apply provisions. Wide-spread notification of the Order is also in the Claimants' interests as promoting its utility. The Court is invited to review those provisions at §§7-12 {24-25} of the draft Order (as to notification and service) and §§4-6 (as to the Defendants' liberty to apply to vary or discharge the Order).
24. Although, as aforesaid, the focus in proceedings such as these is on notification of the proceedings/order, rather than formal service as such, the Claimants do seek orders regularising the position in respect of service. One option would be to dispense with service entirely, but the Claimants propose the lesser step whereby the Court directs that the steps it is to take (pursuant to those provisions of the draft Order) to publicise these proceedings and the order should also amount to good service of those documents by an alternative method (under CPR r.6.15, 6.27 and 81.4(c)&(d) – see §11.1 of the draft Order {25}). That application is supported by the evidence at §§69-71 of the BCLP Statement

[531}, which explains why the proposed steps should bring the proceedings and the Order to the attention of those who may be affected by it.

25. For completeness, it is appropriate to note that some (but not all) of the earlier airport injunctions have required the claimant airport to send a copy of the proceedings and order to Reuters, so that it may receive greater press attention. The Claimants would also be happy to take that step should the Court wish them to (though it is not currently provided for in the draft Order).

Principles applicable to the availability of substantive relief

26. The applicable principles to be applied in deciding whether to grant such an injunction (following *Shell*, as clarified in *Wolverhampton*) are:
  - 26.1. There is a serious issue to be tried.
  - 26.2. Damages would not be an adequate remedy for the claimant, but a cross-undertaking in damages would adequately protect the defendant; or
  - 26.3. The balance of convenience otherwise lies in favour of the grant of the order;
  - 26.4. There is a sufficiently real and imminent risk of damage so as to justify the grant of what is a precautionary injunction.
  - 26.5. The prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting the claimant's right.
  - 26.6. The terms of the injunction are clear and precise.
  - 26.7. The injunction has clear geographical and temporal limits.
  - 26.8. The defendants are identified in the claim form, and injunction, by reference to their conduct.
  - 26.9. Any interference with rights of free assembly and expression are necessary for and proportionate to the need to protect the claimant's rights.
27. Taking the first eight of those in turn:

- 27.1. There is a serious issue to be tried; whether in trespass or public or private nuisance.
- 27.2. Damages would not be an adequate remedy for the Claimant. The potential economic losses could be significant (**Taylor 1 §§36-7**) {42}, and in the absence of any knowledge of the circumstances or means of the potential activists, there is no reason to think that such activists could afford an award of damages in such amounts. That is quite apart from the other, serious, harms which could arise from the apprehended actions which are not readily quantifiable in damages (**Taylor 1 at §39(d)**) {43}.
- 27.3. A cross-undertaking is offered; albeit that it is very difficult to see that the injunction sought could cause any financial or other harm to any person subject to or affected by it. Those with concerns about the aviation industry remain free to articulate those views, in a lawful manner, in myriad other ways.
- 27.4. The balance of convenience test therefore does not strictly arise, but in any case the balance falls strongly in favour of granting the relief sought.
- 27.5. The threats facing London Southend are real, and serious. The potential consequences of such threats materialising, in terms of: (i) financial; (ii) safety; and (iii) wider disruption are also real and serious. The evidence summarised at paras. 4-13 above amply justifies those conclusions.
- 27.6. The terms of the injunction are clear and precise, and are set out in ordinary language.
- 27.7. Relatedly, the geographical area is set out clearly on the Plan by reference to a clear red-line. The temporal limit is also clear: being in place (it is proposed) for five years (§1) (though subject to annual review (§5)).
- 27.8. The Defendants are identified in the claim form by reference to their conduct. That definition has two parts: (i) the physical act of entering onto the relevant land; and (ii) such entry being “*in connection with Just Stop Oil or other environmental, climate or fossil-fuel campaign and/or protest*”.
28. As to interference with rights of free assembly and expression (i.e. under ECHR Articles 10 and/or 11):

28.1. These are qualified rights. They properly carry little weight where (as here) the nature of the (threatened) assembly or expression is deliberately to disrupt the lawful activities of others. *Per* Leggat LJ in Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29 at [94]:

*“... the disruption caused was not a side-effect of protest held in a public place but was an intended aim of the protest...this is an important distinction. ...intentional disruption of activities of others is not “at the core” of the freedom protected by article 11 of the Convention .... one reason for this [is] that the essence of the rights of peaceful assembly and freedom of expression is the opportunity to persuade others... ...persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way you desire.”*

28.2. It is well established that Art. 10 & 11 rights do not justify trespass. See, for example, DPP v Cuciurean [2022] 3 W.L.R. 446 at [40]-[50], in particular [43] where the Divisional Court “conclude[d] that there is no basis in the Strasbourg jurisprudence to support the defendant'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”;

28.3. The same approach applies in respect of other causes of action beyond trespass. For example, in *Shell*, the same principles were applied in deciding that the restraint of unlawful means conspiracy directed at intentional unlawful interference with Shell's business did not unjustifiably infringe the protestors' Art. 10 or 11 rights.

28.4. The Court in *Shell* also considered whether the order restrained “publication” for the purposes of s.12(3) of the HRA 1998 (such that the claimant would also need to show that the relief was “likely” to be obtained at trial). It was there held that direct action protests do not amount to relevant publications for these purposes.

### **Full and frank disclosure**

29. The above submissions have been prepared with the duty of full and frank disclosure in mind, and attempt to address fairly the counter-arguments that might be made to the relief being sought. In this section, the important points of full and frank disclosure are drawn together.

- 29.1. First, it might be contended that there is insufficient justification for proceeding without any informal notice (particularly given the requirements of s.12(2) HR 1998). As already explained, there is a real risk that such notice could precipitate the acceleration of otherwise threatened action. Any prejudice caused by the lack of notice is substantially mitigated by the generous liberty to apply provisions.
- 29.2. Second (and relatedly) it might be said that the urgency of this application has been overstated in view of JSO's advertised "pause" in activities in view of the wider civil unrest in the past week or so. That point is addressed in **§37 of the BCLP WS {340}**. In short, JSO's statement carries little weight – not least because it is impossible to know when JSO might consider the threat of unrest to have passed.
- 29.3. Third, it might be observed that: (i) the active Police involvement in investigating and arresting those implicated in planning and carrying out direct action protests; and/or (ii) the Byelaws give adequate existing protection, such that an injunction is superfluous or otherwise not justified. The evidence, however, is that injunctions do provide extra protection: and that JSO notes where there are injunctions in place when planning action (**BCLP WS at §55 {347} and {522}**). Further, in circumstances where: (i) the penalties for breach of an injunction are different, and potentially more serious, than for criminal offences; and (ii) the pursuit of committal proceedings is within the control of the Claimants, an injunction has independent utility.
- 29.4. Fourth, it might be contended that the injunctions may not be successful; given that there have been (apparent) breaches of existing injunctions (e.g. **§41 of the BCLP WS {341}**). In response, the point in the previous paragraph is repeated. Further, the Court acts in the expectation that its orders will be complied with.
- 29.5. Fifth, those involved in direct action protests such as these would no doubt wish to emphasise the importance of their cause(s), and therefore the 'necessity' of them taking direct action. It is well established in law that such points cannot justify unlawful direct action. The Court of Appeal has accordingly previously cautioned against the waste of Court time engaging with the merits of such arguments: e.g. *City of London Corpn v Samede* [2012] EWCA Civ 160 at [63]

29.6. Sixth, it may be complained that the terms of the injunction are such as may limit protest activity which may otherwise be lawful / not capable of being restrained by suit of these Claimants. In particular, as regards land to which the Claimants do not have an immediate right to possession as a matter of title, or protest activity on portions of the road at the Airport which (if carried out in a proportionate manner, with limited disruption), may not amount to a public or private nuisance (particularly given Art. 10/11 rights). As above, there are three main answers to that point: (i) the Byelaws give the Claimants sufficient control of the site to allow them to maintain an action for trespass even over areas of land where they do not have title; (ii) the Claimants rely upon public and private nuisance in addition to trespass; and (iii) there is a necessary trade-off between clarity and effectiveness of the injunction on the one hand, and not casting it so wide as to prevent (potentially) lawful activity on the other. It is submitted that this injunction daws the right balance, and that there is no other proportionate means of effectively preventing tortious conduct.

**TOM ROSCOE**

13 August 2024

**Wilberforce Chambers**

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