Claim No: KB-2024-002596

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

B E T W E E N:

(1) LONDON SOUTHEND AIRPORT 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 AMENDED PARTICULARS OF CLAIM

Defendants

INDEX OF AUTHORITIES

For the 2 July 2026 Review Hearing of the 14 August 2024 Injunction

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Case-law

1. *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2023] UKSC 47.
2. *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB).
3. *Basingstoke and Deane BC v Loveridge* [2025] EWHC 738 (KB).
4. *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB).
5. *Esso Petroleum Co Ltd v Persons Unknown* [2025] EWHC 1768 (KB).
6. *London City Airport Ltd v Persons Unknown* [2025] EWHC 2223 (KB).
7. *Gatwick Airport Ltd v Persons Unknown* [2025] EWHC 2228 (KB).

8. *Heathrow Airport Ltd v Persons Unknown* [2025] EWHC 2489 (KB).

9. Note of HHJ Freedman's *ex tempore* judgment in the first review hearing on 22 October 2025.

10. *Birmingham City Council v Persons Unknown* [2026] EWCC 33.

A

Supreme Court

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

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

B

[2023] UKSC 47

2023 Feb 8, 9; Nov 29

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

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

With the intention of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued D proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981[1] prohibiting "persons unknown" from setting up such camps in the future. Injunctions of varying length were granted to some 38 local authorities, or groups of local authorities, on varying terms by way of both interim and permanent injunctions. After the hearing of an application to extend one of the injunctions which was coming to an end, a judge ordered a review of all such injunctions as remained in force and which the local authority in question wished to maintain. E 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.

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

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

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

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

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

Dicta of Lord Mustill in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361, HL(E) and of Lord 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 immoveable obstacle of jurisdiction or principle in the way of granting injunctions prohibiting unauthorised encampments by Gypsies or Travellers who were "newcomers" on an essentially without notice basis, regardless of whether in form interim or final; that, however, such an injunction was only likely to be justified as a novel exercise of the court's equitable discretionary power if the applicant (i) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies), (ii) built into the application and the injunction sought procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it, (iii) complied in full with the disclosure duty which attached to the making of a without notice application and (iv) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made; that, if so justified, any injunction made by the court had to (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct, (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted, (iii) be subject to strict temporal and territorial limits, (iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court's power to grant the impugned injunctions at all failed (post, paras 142–146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

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

(i) To the extent that a particular person who 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

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A in direct action. Such activity may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers (post, para 235).

Decision of the Court of Appeal sub nom *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13; [2023] QB 295; [2022] 2 WLR 946; [2022] 4 All ER 51 affirmed on different grounds.

B The following cases are referred to in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchin:

A (A Protected Party) v Persons Unknown [2016] EWHC 3295 (Ch); [2017] EMLR 11

Abela v Baadarani [2013] UKSC 44; [2013] 1 WLR 2043; [2013] 4 All ER 119, SC(E)

Adair v 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

E 49; [2003] 1 All ER 289, HL(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

F 487, SC(E)

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

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Cardile v LED Builders Pty Ltd [1999] HCA 18; 198 CLR 380
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)
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
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, High Ct of Delhi
Earthquake Commission v Unknown Defendants [2013] NZHC 708
Ernst & Young Ltd v Department of Immigration 2015 (1) CILR 151
F (orse A) (A Minor) (Publication of Information), In re [1977] Fam 58; [1976] 3 WLR 813; [1977] 1 All ER 114, CA
Financial Services Authority v Sinaloa Gold plc [2013] UKSC 11; [2013] 2 AC 28; [2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
Friern Barnet Urban District Council v Adams [1927] 2 Ch 25, CA
Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536, CA
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
Harlow District Council v Stokes [2015] EWHC 953 (QB)
Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB)
Hubbard v Pitt [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA
Ineos Upstream Ltd v Persons Unknown [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Iveson v Harris (1802) 7 Ves 251
Joel v Various John Does (1980) 499 F Supp 791
Kingston upon Thames Royal London Borough Council v Persons Unknown [2019] EWHC 1903 (QB)
M and N (Minors) (Wardship: Publication of Information), In re [1990] Fam 211; [1989] 3 WLR 1136; [1990] 1 All ER 205, CA
MacMillan Bloedel Ltd v Simpson [1996] 2 SCR 1048
McPhail v Persons, Names Unknown [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All ER 393, CA
Manchester Corpn v Connolly [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER 961, CA
Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406, HL(E)
Mareva Cia Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Rep 509, CA

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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]
E EWCA Civ 1391; [2023] PTSR 312, CA
South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA
South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
F *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" 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);
G [2019] JPL 161
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

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The following additional cases were cited in argument:

A v British Broadcasting Corpn [2014] UKSC 25; [2015] AC 588; [2014] 2 WLR 1243; [2014] 2 All ER 1037, SC(Sc)
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;

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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, Lewison and Elisabeth Laing LJJ) [2022] EWCA Civ 13; [2023] QB 295 allowed the appeals.

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

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

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

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.

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" (i e 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.

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

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

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.

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.

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.

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 (e g '. . . 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.

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

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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*").

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.

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. 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.

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.

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

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

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.

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.

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.

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.

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.

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*

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Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752 and *RWE Npower plc v Carrol* [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.

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.

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.

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.

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

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

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.

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.

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.

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.

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.

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

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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*
D *Ltd v Persons Unknown* [2019] 4 WLR 100.

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 Corpn* [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.]

The operation of newcomer injunctions is not intrinsically incompatible with Convention principles of proportionality. It is accepted that, depending
H 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

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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.

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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.

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

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 C out in *Cameron v Hussain* [2019] 1 WLR 1471, para 9 that proceedings may not be brought against unnamed parties.

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 D 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 E 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 F specified land]" in *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88).

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 G 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].]

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

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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

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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. The availability of injunctions against newcomers has become an B 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 to restrain an actual or apprehended breach of planning control, and in some H 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

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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

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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.

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

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

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

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

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

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

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

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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

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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.

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:

B

> "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.

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: D 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 E 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 F 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 H effect, in *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24, Lord Goff of Chieveley, with whom Lord Mackay of Clashfern agreed, stated at p 44:

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

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

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

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

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

(2) Injunctions against non-parties

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

24 Where the defendants are described in a claim form, or an injunction describes the persons enjoined, simply as persons unknown, the entire world falls within the description. But the entire human race cannot be regarded as being parties to the proceedings: they are not before the court, so that they are subject to its powers. It is only when individuals are served with the claim form that they ordinarily become parties in that sense, although is also possible for persons to apply to become parties in the absence of service. As 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

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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. Others may obey the injunction and go elsewhere. At what point, if any, do
C 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
G defendants to proceedings must be named, and that even a description of them would not suffice: *Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25; *In re Wykeham Terrace, Brighton, Sussex, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204. The only exception in the Rules of the Supreme Court ("RSC") concerned summary proceedings for the possession of land: RSC Ord 113.

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

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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:*

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

(iii) Injunctions to protect human rights

32 It has been clear since the case of *Venables v News Group Newspapers Ltd* [2001] Fam 430 ("*Venables*") that the court can grant an injunction contra mundum in order to enforce rights protected by the Human Rights Act 1998. The case concerned the protection of the new identities of individuals who had committed notorious crimes as children, and whose safety would be jeopardised if their new identities became publicly known. An injunction preventing the publication of information about the claimants had been granted at the time of their trial, when they remained children. The matter returned to the court after they attained the age of majority and applied for the ban on publication to be continued, on the basis that the information in question was confidential. The injunction was granted against named newspaper publishers and, expressly, against all the world. It was therefore an injunction granted, as against all potential targets other than the named newspaper publishers, on a without notice application.

33 Dame Elizabeth Butler-Sloss P held that the jurisdiction to grant an injunction in the circumstances of the case lay in equity, in order to restrain a breach of confidence. She recognised that by granting an injunction against all the world she would be departing from the general principle, referred to at para 26 above, that "you cannot have an injunction except against a party to the suit" (para 98). But she relied (at para 29) upon the passage in *Spry* (in an earlier edition) which we cited at para 17 above as the source of the necessary equitable jurisdiction, and she felt compelled to make the order against all the world because of the extreme danger that disclosure of confidential information would risk infringing the human rights of the claimants, particularly the right to life, which the court as a public authority was duty-bound to protect from the criminal acts of others: see paras 98–100. Furthermore, an order against only a few named newspaper publishers which left the rest of the media free to report the prohibited information would be positively unfair to them, having regard to their own Convention rights to freedom of speech.

(iv) Reporting restrictions

34 Reporting restrictions are prohibitions on the publication of information about court proceedings, directed at the world at large. They are not injunctions in the same sense as the orders which are our primary concern, but they are relevant as further examples of orders granted by courts restraining conduct by the world at large. Such orders may be made under common law powers or may have a statutory basis. They generally prohibit the publication of information about the proceedings in which they are made (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 (orse A) (A Minor) (Publication of Information)* [1977] Fam 58 and *Attorney General v Leveller Magazine Ltd* [1979] AC 440.

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(v) Embargoes on draft judgments

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.

(vi) The effect of injunctions on non-parties

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

37 If non-parties are not enjoined by the order, it follows that they are 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).

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.

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):

> "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."

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:

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

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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."

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

41 There is accordingly a distinction in legal principle between being bound by an injunction as a party to the action and therefore being in
C 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
D analysis can be of limited practical significance. Indeed, since non-parties can be found in contempt of court for acting contrary to an injunction, it has been recognised that it can be appropriate to refer to non-parties in an injunction in order to indicate the breadth of its binding effect: see, for example, *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, 407; *Attorney General v Newspaper Publishing plc* [1988] Ch 333,
E 387–388.

42 Prior to the developments discussed below, it can therefore be seen that while the courts had generally affirmed the position that only parties to an action were bound by an injunction, a number of exceptions to that principle had been recognised. Some of the examples given also demonstrate that the court can, in appropriate circumstances, make orders which prohibit the world at large from behaving in a specified manner. It is also
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

43 An injunction against newcomers purports to restrain the conduct of
G 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
H *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 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

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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

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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).

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

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

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

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

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

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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

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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
B 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

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
E 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

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
G 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
H persons who had offered a copy of the book to the three named newspapers and the person or persons in physical possession of the book without the consent of the claimants.

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

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

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

He regarded the problem as essentially procedural, and as having been cured 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."

(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.

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

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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 C information by hacking, blackmail and theft of funds. But it is upon cases and newcomer injunctions in the second context that we must now focus, for they include cases involving protesters, such as *Hampshire Waste Services*, and also those involving Gypsies and Travellers, and therefore have a particular bearing on these appeals and the issues to which they give rise.

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

64 The material aspects of the two cases are substantially similar, and it will suffice for present purposes to focus on the *South Cambridgeshire* case. The Court of Appeal (Brooke and Clarke LJJ) had earlier granted an E 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* F *Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 ("*South Cambs*"). The order restrained the persons so described from behaving in the manner set out in that description. Service of the claim form and the injunction was effected by placing them in clear plastic envelopes in a prominent position on the relevant land.

65 Several months later, Ms Gammell, without securing or applying for G 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 H 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

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

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick LJJ agreed, stated that each of the appellants became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. 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).

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(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".

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

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

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

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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 (e g *UK Oil and Gas Investments plc v Persons Unknown* [2019] JPL 161). In other cases, the defendants were referred to only as "persons unknown". The injunctions remained in place for a considerable period of time and, on occasion, for years. Further, the geographical reach of the injunctions was extensive, indeed often borough-wide. They were usually granted without the court hearing any adversarial argument, and without provision for an early return date.

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

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

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

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

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

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

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

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

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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

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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
B that it was not possible to issue or amend a claim form so as to sue an unnamed defendant if it was conceptually impossible to bring the claim to his attention.

84 In the *Cameron* case there was no basis for inferring that the offending driver was aware of the proceedings. Service on the insurer did not and would not without more constitute service on that offending driver (nor was the insurer directly liable); alternative service on the insurer could
C 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.

D 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
F 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

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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

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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,
B 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.
C Conversely, there is nothing in *Bromley* to suggest that final injunctions against unidentified newcomers cannot or should never be granted.

93 As it was, the Court of Appeal dismissed the appeal. Coulson LJ, with whom Ryder and Haddon-Cave LJJ agreed, endorsed what he described as 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
D 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
E 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;
F (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
G 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.

H **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

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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

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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 B 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); C 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 D 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 E 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.

F **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 G (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 H 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

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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

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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;

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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.

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

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

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

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

> "One does not, however, identify an unknown person simply by referring to something that he has done in the past. 'The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013', does not identify anyone. It does not enable one to know whether any particular person is the one referred to."

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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 B 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 D impossible (even alternative service being tantamount to no service at all), the judge had accordingly been right to refuse permission to amend.

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 E 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 F 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 G exercise of classifying cases as falling into either the first or the second of Lord Sumption's categories.

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 H 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

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

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

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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 (e g at paras 8 and 18–19). Proceedings in which injunctive relief is sought raise different considerations, partly because an injunction has to be brought to the notice of the defendant before it can be enforced against him or her. In some cases, furthermore, the real target of the injunctive relief is not the unidentified 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

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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

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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
B 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
C pursued on this appeal as a reason why newcomer injunctions should never be granted against Travellers, and we address it later in this judgment.

127 The concept of a newcomer automatically becoming (or self-identifying as) a defendant by disobeying the injunction might therefore be described, in 2005, as a solution looking for a problem. But it became a supposed solution to the problem addressed in this appeal when prayed in aid, first briefly and perhaps tentatively by Lord Sumption in *Cameron* at
D 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*.

128 This court is not of course bound to consider the matter, as was the
E 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
F by a newcomer with an injunction, the propriety of which is not itself under challenge (as it was not in *Gammell*), we are not persuaded that self-identification as a defendant solves the basic problems inherent in granting injunctions against newcomers in the first place.

129 The *Gammell* solution, as we have called it, suffers from a number of problems. The most fundamental is that the effect of an injunction against newcomers should be addressed by reference to the paradigm
G 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
H 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."

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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

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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.

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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*
C *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.

136 The court buttressed its adoption of the "usual principle" with the
D 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
F 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
H 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

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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. A

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. B C D E F

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 G H

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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 C 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, D invade the claimant's rights, or the rights (including the planning regime) of those for whose protection the claimant local authority seeks the injunction. That is the essence of the justification for such an injunction.

142 Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, 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 E 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.

143 The distinguishing features of an injunction against newcomers are F 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 G 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 H 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

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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

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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:

> "(1) The High Court may by order (whether interlocutory or final)
B grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
> "(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just."

This or a very similar formulation has provided the statutory basis for the grant of injunctions since 1873. But in our view a submission that section 37
C 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,
D to inform the judge and the parties as to what is likely to be just or convenient.

146 Prior to 1873 both the jurisdiction to grant injunctions and the principles regulating their grant lay in the common law, and specifically in that part of it called equity. It was an equitable remedy. From 1873 onwards the jurisdiction to grant injunctions has been confirmed and restated by statute, but the principles upon which they are granted (or
E 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
F 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).

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
G time lies in the following well-known passage from *Spry* (para 17 above) at p 333:

> "The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines
H 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

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> 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.

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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.

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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:

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> "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."

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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:

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> "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

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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 B 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.

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 D 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 E 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.

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 F 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 G 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.

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'

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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 we hope be doubted that if a draft judgment with an embargo in this form came into the hands of someone (such as a journalist) other than the parties or their legal advisors it would be a contempt for that person to publish or disclose it further. Such persons would plainly be newcomers, in the sense in which that term is here being used.

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

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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.

160 Protection of the court's process from abuse, or preservation of
C 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
D relevant documents in advance of the formal process of disclosure. *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.

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.

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
H 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.

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

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

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

166 Tempting though the superficial similarities may be as between possession orders against squatters and injunctions against newcomers, they afford no relevant precedent for the following reasons. First, they are the creature of the common law rather than equity, being a modern form of the old action in ejectment which is at its heart an action in rem rather than in personam: see *Manchester Corpn v Connolly* [1970] Ch 420, 428–429 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

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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 immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. B 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 C 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 (i e E permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both F 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 G injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.

168 The issues in this appeal have been formulated in such a way that the appellants have the burden of showing that the balancing exercise H 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

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

169 We have already mentioned the objection that an injunction of this type looks more like a species of local law than an in personam remedy between civil litigants. It is said that the courts have neither the skills, the capacity for consultation nor the democratic credentials for making what is in substance legislation binding everyone. In other words, the courts are acting outside their proper constitutional role and are making what are, in effect, local laws. The more appropriate response, it is argued, is for local authorities to use their powers to make byelaws or to exercise their other statutory powers to intervene.

170 We do not accept that the granting of injunctions of this kind is constitutionally improper. In so far as the local authorities are seeking to prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law. In particular, they are entitled to invoke the equitable jurisdiction of the court so as to obtain an injunction against potential trespassers. For the reasons we have explained, courts have jurisdiction to make such orders against persons who are not parties to the action, i e newcomers. In so far as the local authorities are seeking to prevent breaches of public law, including planning law and the law relating to highways, they are empowered to seek injunctions by statutory provisions such as those mentioned in para 45 above. They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction.

171 Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one. This was a matter which received only cursory examination during the hearing of this appeal. Mr Anderson KC for Wolverhampton submitted (on 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.

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.

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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 C 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, D 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 E 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.

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 F 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 G a Traveller who had been camping a hundred miles away and who alighted for the first time on the prohibited site some time after the application had been granted.

176 But advertisement in advance might well alert bodies with a mission to protect Travellers' interests, such as the appellants, and enable them to intervene to address the court on the local authority's application with focused submissions as to why no injunction should be granted in the H 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)

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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

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A trespass: see e g 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 B application made on notice. But the issue on this appeal is not whether newcomer injunctions against Travellers are always justified, but rather whether the objections are such that they never are.

182 The next logical objection (although little was made of it on this appeal) is that an injunction of this type made on the application of a local authority doing its duty in the public interest is not generally accompanied by a cross-undertaking in damages. There is of course a principled reason 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 G inappropriateness of an injunction against one group of Travellers based only upon the disorderly conduct of an earlier group. This is in our view just an evidential point. A local authority that sought a borough-wide injunction based solely upon evidence of disorderly conduct by a single group of campers at a single site would probably fail the test in any event. It will no doubt be necessary to adduce evidence which justifies a real fear of widespread repetition. Beyond that, the point goes nowhere towards constituting a 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

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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

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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)).

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
B 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
C 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.

191 The starting point is section 23 of the Caravan Sites and Control of
E 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
F residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

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

193 Some 25 years later, the CJPOA repealed section 6 of the CSA 1968. But the *power* to provide sites for Travellers and Gypsies remained.
H 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

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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

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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
B advice may be taken to reflect national policy.

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
C 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
D 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;
E 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
F 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.

202 The availability of transit sites (and information as to where they may be found) is also important in providing short-term or temporary
G 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

203 This is another matter of considerable importance, and it is one
H 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

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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

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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
B 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
C 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
D 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
E 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
F 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
G 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
H 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

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

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

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

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

(viii) A need for review

217 Various aspects of this discussion merit emphasis at this stage. Local authorities have a range of measures and powers available to them to 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.

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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

218 We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against
B 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
C are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219 The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and
D 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
E the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

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

F

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

221 The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms)
G 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
H 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.

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(4) The prohibited acts

222 It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction—and therefore the prohibited acts—must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.

223 Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.

224 It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(5) Geographical and temporal limits

225 The need for strict temporal and territorial limits is another important consideration (see para 167(iv)). One of the more controversial aspects of many of the injunctions granted hitherto has been their duration and geographical scope. These have been subjected to serious criticism, at least some of which we consider to be justified. We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year. It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed. Further, we consider that an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre, just as Coulson LJ warned might well be the case (see generally, *Bromley* [2020] PTSR 1043, paras 99–109. Similarly, injunctions of this kind must be reviewed periodically (as Sir Geoffrey Vos MR explained in these appeals at paras 89 and 108) and in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal. This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(6) Advertising the application in advance

226 We recognise that it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on its land. That is the

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basis on which we have proceeded. On the other hand, in the interests of procedural fairness, we consider that any local authority intending to make an application of this kind must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application (see para 167(ii) above). This should be done in sufficient time before the application is heard to allow those persons (or those representing them or their interests) to make focused submissions as to whether it is appropriate for an injunction to be granted and, if it is, as to the terms and conditions of any such relief.

227 Here the following further points may also be relevant. First, local authorities have now developed ways to give effective notice of the grant of such injunctions to those likely to be affected by them, and they do so by the use of notices attached to the land and in other ways as we describe in the next section of this judgment. These same methods, appropriately modified, could be used to give notice of the application itself. As we have also mentioned, local authorities have been urged for some time to establish lines of communication with Traveller and Gypsy communities and those representing them, and all these lines of communication, whether using email, social media, advertisements or some other form, could be used by authorities to give notice to these communities and other interested persons and bodies of any applications they are proposing to make.

228 Secondly, we see merit in requiring any local authority making an application of this kind to explain to the court what steps it has taken to give notice of the application to persons likely to be affected by it or to have a proper interest in it, and of all responses it has received.

229 These are all matters for the judges hearing these applications to consider in light of the particular circumstances of the cases before them, and in this way to allow an appropriate practice to develop.

(7) Effective notice of the order

230 We are not concerned in this part of our judgment with whether respondents become party to the proceedings on service of the order upon them, but rather with the obligation on the local authority to take steps actively to draw the order to the attention of all actual and potential respondents; to give any person potentially affected by it full information as to its terms and scope, and the consequences of failing to comply with it; and how any person affected by its terms may make an application for its variation or discharge (again, see para 167(ii) above).

231 Any applicant for such an order must in our view make full and complete disclosure of all the steps it proposes to take (i) to notify all persons likely to be affected by its terms; and (ii) to ascertain the names and addresses of all such persons who are known only by way of description. This will no doubt include placing notices in and around the relevant sites where this is practicable; placing notices on appropriate websites and in relevant publications; and giving notice to relevant community and charitable and other representative groups.

(8) Liberty to apply to discharge or vary

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

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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;

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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 C early review.

6. Outcome

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

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.

(ii) Such an injunction (a "newcomer injunction") will be effective to bind E 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.

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

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

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

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

Appeal dismissed.

COLIN BERESFORD, Barrister

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Neutral Citation Number: [2024] EWHC 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.

.....

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.

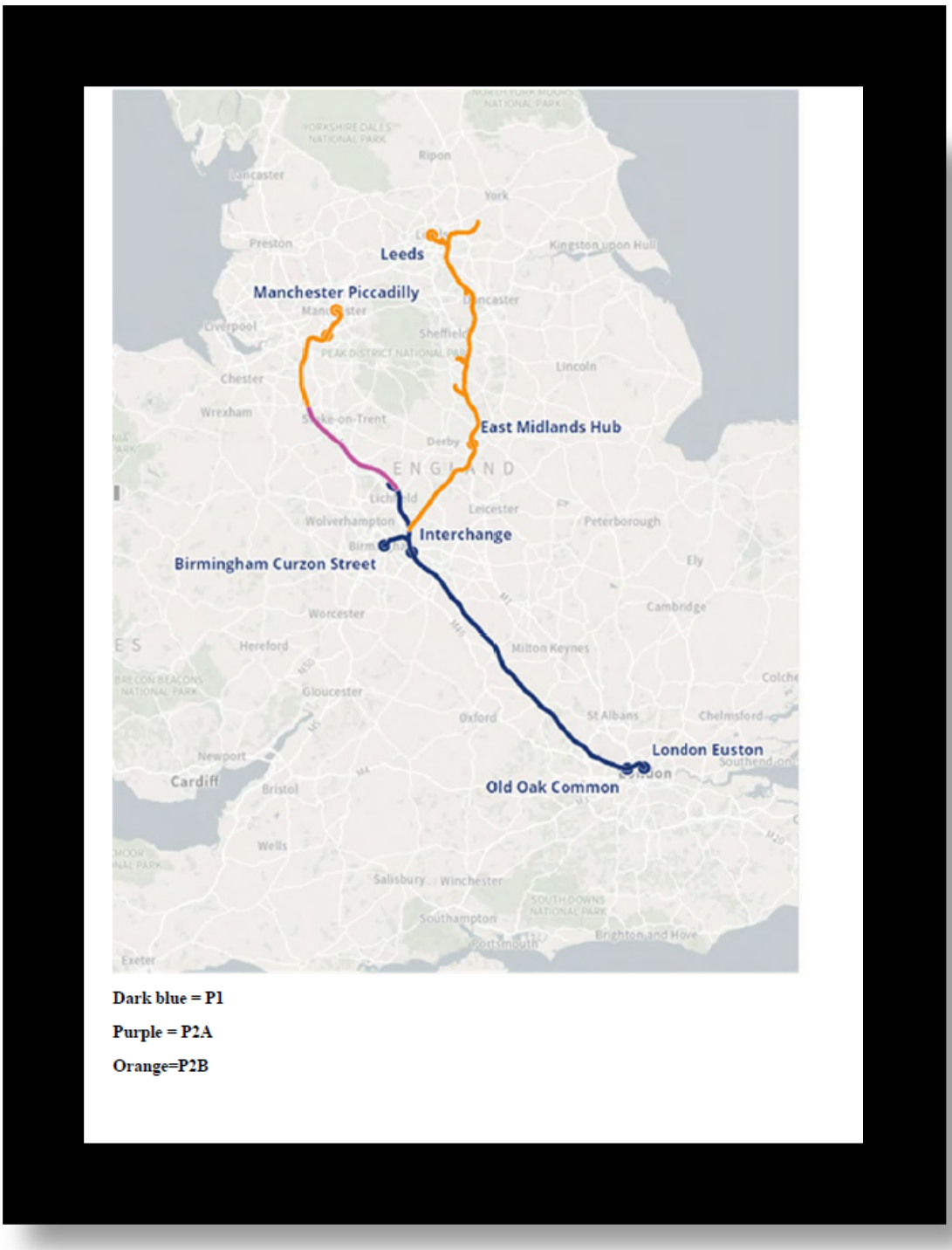
2. There are two types of Defendant. Persons Unknown (PUs) and named Defendants. The 6th Defendant (D6) attended the hearing. Many of the other named Defendants have been removed as parties to the proceedings as the claim has progressed. Most have been removed because they provided undertakings in similar 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.



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 vandalization 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 immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle."

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: [2025] EWHC 738 (KB)

Case No: QB-2018-003748

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2025

Before :

KIRSTY BRIMELOW KC sitting as a Deputy Judge

- -

Between :

(1) BASINGSTOKE & DEANE BOROUGH COUNCIL **(2) HAMPSHIRE COUNTY COUNCIL**	**Claimants**
- and -	
(1) HENRY LOVERIDGE **(2)-(115) OTHER NAMED DEFENDANTS** **(116) PERSONS UNKNOWN WHO ARE FORMING UNAUTHORISED ENCAMPMENTS IN THE BOROUGH OF BASINGSTOKE AND DEANE**	**Defendants**

- -
- -

Natalie Pratt for the **Claimants**
The Defendants did not appear and were not represented

Hearing date: 20 March 2025

- -

JUDGMENT

DHCJ Brimelow KC :

INTRODUCTION

1. This is an application by Basingstoke and Deane Borough Council and Hampshire County Council (the Claimants) for the renewal of an injunction (the Injunction) against the 116th Persons Unknown. The Injunction is due to expire at 00:00 hrs on 4 April 2025 and the Claimants seek a continuation for a further 12 months.

2. There is no longer an Order against any Named Defendant in these proceedings, it having expired on 3 April 2024 and the Claimants not having sought renewal of the same.

3. The Injunction, referred to as a Traveller Injunction (and now as a new Traveller Injunction against newcomer Persons Unknown) prohibits unauthorised encampments and the depositing of waste. The Injunction covers just over 10% of the land comprised in the borough of Basingstoke and Deane, an area of 26 miles square (the Injunction Area).

4. The original injunction was made on 4 April 2019 by HHJ Dight CBE, sitting as a Deputy Judge of the High Court. It was an injunction which was then characterised as a final injunction and was granted against 85 named Defendants and Persons Unknown for a period of five years. That injunction prohibited the forming of unauthorised encampments and the depositing of controlled waste and applied to the same area of just over 10% of the Borough.

5. The injunction was then sought in response to the Borough, and the Injunction Area specifically, experiencing a high volume of unauthorised encampments and resulting harm. According to the evidence of Chris Williams (Mr. Williams), Environmental Health Team Leader (Housing Standards) in the period between April 2016 and 14 June 2018 (up until the granting of the

interim injunction), the Borough experienced 158 encampments, 141 of which were formed within the Injunction Area.

6. These proceedings were then described by the Claimants as having been caught within the *Barking & Dagenham* litigation from October 2020 onwards, and so the Claimants became successful respondents in the appeal to the Supreme Court in *Wolverhampton City Council and others v The London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2WLR 45 *(Wolverhampton).*

7. The original injunction was due to expire on 3 April 2024 and the Claimants sought to continue injunctive relief against Persons Unknown for a further period of one year. That continuation was granted by Freedman J for a further one-year period from its original date of expiration: *Basingstoke and Deane Borough Council and Hampshire County Council v Loveridge and others* **[**2024] EWHC 1828 (KB).

8. Freedman J considered and applied the case of *Wolverhampton.* On the evidence, between April 2019 to January 2024, there had been 35 unauthorised encampments in the Borough, 18 of which were within the injunction area.

9. The current position is that in the period February to December 2024, there have been a total of 17 unauthorised encampments within the Borough, only one of which was formed in the Injunction Area (Chris Williams para 29). That encampment remained for less than a day.

The Claimants

10. The Claimants sought the injunctive relief in the discharge of their 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 First Claimant is the local planning authority for Basingstoke and Deane Borough Council (the Borough of Basingstoke and Deane) such that it has the administrative function

of enforcing planning control within the Borough. The Second Claimant is the local highway authority, in whom the adopted highways are vested.

The Defendants

11. The defendants are the 116th Persons Unknown who are forming unauthorised encampments in the borough of Basingstoke and Deane.

12. There no longer is an application against a named person, the injunction made between 2019 – 2024 having served its purpose. It is a category of application for a Traveller injunction against newcomer Persons Unknown, as considered in *Wolverhampton.* The court is satisfied that procedural service requirements have been fulfilled. Service is considered later in the judgment under procedural protections.

The Injunction Area

13. Mr. Williams identified the land in the Injunction area as needing the specific protection of an injunction for the following reasons: see paragraph 23:

i. *historically, the injunction area has suffered a disproportionate number of encampments as compared to the rest of the Borough. To that end, the injunction area, which covers just over 10% of the Borough, experienced 89% of all encampments in the Borough between April 2016 and 14 June 2018 (pre injunction). Further, in the period April 2019 to January 2024, the injunction area experienced 51% of the of all encampments in the Borough. As such, the inhabitants of the injunction area have suffered disproportionately the negative impacts of the encampments (which impacts I shall discuss further below); relatedly*
ii. *encampments have been concentrated in a very small area, such that the negative impacts of the encampments (which I shall discuss further below) are often magnified and exacerbated;*
iii. *the nature of the land that falls within the injunction area means that greater harm is often suffered when encampments are formed there. For example, the*

urbanised area covered by the Injunction includes sites such as schools, public car parks, local businesses (such as supermarkets and other shops), sports facilities and public parks. When sites of that nature are targeted by encampments, the inhabitants of the area (and the Borough generally) suffer, as they often cannot use or access those sites, which have a high public amenity value. Further the sites on which encampments are formed are sometimes damaged (I shall discuss further below the impact that encampments have on the Borough and the sites on which they are formed), again affecting the use of the sites by the public and their amenity value. As such, the sites within the injunction area are generally not appropriate sites on which an encampment should form.

14. He describes the harm caused by unlawful encampments in the Injunction Area as including risks to public health due to the deposit of untreated human faeces which can result in disease and water contamination, threats and intimidation to the inhabitants of the Borough, various nuisances, including smoke and noise and financial harm to the Claimants in seeking to deter, enforce against and clean up after encampments.

15. Of relevance is that this harm is largely historic. Since the granting of the Injunction by Freedman J there have been no incidents of intimidation or anti-social behaviour, although clean-up and eviction costs have been incurred by private landowners. Eviction costs also have been incurred by the First Claimant outside of the Injunction Area**.** Enforcement has reduced to zero with nuisance such as burning also eliminated.

16. Mr. Williams emphasises that the injunctive relief sought is not trying to prevent the Gypsy and Traveller community encampments in the Brough altogether or generally and they are able to stop and encamp on the remaining 90% of land in the Borough. Rather, he says, it is focussed only on a small area where encampments are especially harmful and inappropriate or where it may be especially harmful. The land is a mix of private, charity and Borough land with the majority belonging to the Borough.

17. He summarises the Claimant's application as being a fear that without the Injunction there will be an increase in unauthorised encampments in the Injunction Area and also that "*the Council reasonably apprehends that, if the Injunction was not continued, and the injunction area were to lose its protection, encampments may migrate from neighbouring administrative areas (especially Reading), and once again start forming with an increased frequency in the injunction area."* This was firmed up in submissions to being a likelihood that such migration will take place.

18. Whilst the harm has been outlined above as detailed in Mr. Williams's evidence, the Borough acknowledges in its Negotiated Stopping Policy and Agreement that the anti-social behaviour is not representative of the Gypsy and Traveller community generally and that to the extent that those individuals who engage in this activity identify as Gypsy or Traveller, they are a small and non-representative minority within those groups.

Relevant Legal Principles

Review or *De Novo*

19. The Claimants argued that the court should approach this case as a review and so the court needs only consider if there has been a material change in circumstances. They relied upon *Wolverhampton* at paragraph 225, which expressed that the temporal limitation and periodic review of newcomer injunctions:

> *give*[s] *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.*

20. They also relied upon *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) and *Transport for London v Persons Unknown & Ors* [2025] EWHC 55 (KB) as applied and approved in *Valero Energy Ltd v Persons Unknown* [2025] EWHC 207.

21. Due to this being an application without notice, the Claimants have complied with full and frank disclosure and raised the competing arguments that in both ***TfL*** and ***Valero,*** the court was dealing with orders that had been made for a period of 5 years, subject to an annual review.

22. In the current application, the order was granted for a year and will expire by effluxion of time at the end of that year, absent application for renewal. The Claimants accepted that it therefore could be argued that, in those circumstances, the court *should* start de novo and perform a full assessment.

23. Further, when granting the Injunction, Freedman J expressly considered the purpose of the review hearing in light of *Wolverhampton* – where he warned of a tick-box exercise- as well as in these specific proceedings ([2024] EWHC 1828 (KB at paragraphs 55-59). He rejected the meaning within "a review" in this case and said that "a more careful evaluation is required in relation to the matter going further." Freedman J also raised the need for the future court to scrutinise "very carefully" that the local authority actions in implementing a formal, negotiated stopping policy. Finally, Freedman J expressly said that it would be better not to refer to a future application for a renewal as a review and that it is a "renewal application rather than some type of review".

24. This is not a case where I would be undertaking a potential undermining of the judgment of Freedman J but rather following his requirement that there is close scrutiny of whether there remained a compelling need for the granting of a further injunction.

25. 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. In addition, the

Claimants had produced a very helpful and detailed skeleton argument addressing law and evidence as for a *de novo* hearing.

Power to Grant Injunction

26. The court's power to grant injunctions is wide-ranging, and 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 or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

27. However, as observed in *Wolverhampton* at paragraph 145, section 37 is of limited assistance as a stand-alone power due to its lack of particularity.

28. The Injunction is sought pursuant to the Local Government Act 1972, s222 and the Town and Country Planning Act 1990, s187B. The Town and Country Planning Act 1990, s187B provides:

(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.

29. The underlying cause of action in a claim brought under s187B is a breach of planning control.

30. The Town and Country Planning Act 1990 at section 55(1) defines development as:

"*…the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

31. Section 55(3) of the Town and Country Planning Act 1990 provides:

"For the avoidance of doubt it is hereby declared that for the purposes of this section—

(b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—

(i) the superficial area of the deposit is extended, or

(ii) the height of the deposit is extended and exceeds the level of the land adjoining the site."

32. Planning permission is required by the Town and Country Planning Act 1990 s57(1)), for the carrying out of any development of land, as defined as set out above in the Town and Country Planning Act 1990 s55(1) and 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 (Town and country Planning Act 1990 s171A (1)).

33. The breaches of planning control complained of by the Claimants are primarily the material change in the use of the relevant land to a temporary Traveller site, and by the depositing of refuse or waste materials, without the requisite planning permission.

34. The cause of action that underlies a claim brought further to the Town and Country Planning Act 1990 s187B is not one upon which the court can adjudicate; the court is not entitled to reach its own independent view on the planning merits of the case. The House of Lords in *South Buckinghamshire District Council v Porter & Anr* [2003] UKHL 26; [2003] 2 AC 558 ('*Porter*') at paragraphs 11, 20, 29 and 30 confirmed that 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.

35. However, the court's power to grant an injunction under the Town and Country Planning Act 1990 s187B is discretionary, albeit that discretion must be exercised judicially. In *Porter* at paragraph 29 and relevant to this context, Lord Bingham said as follows:

"...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."

36. A local authority also is given powers to step into the shoes of local landowners and bring proceedings, by the Local Government Act 1972 s.222:

> *"(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –*
>
> *a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, 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."

37. This power to enforce obedience with public law does not require the involvement of the Attorney General as established in *Stoke-on-Trent City Council v B&Q (Retail) Ltd* [1984] AC 754.

38. The fundamental principles to be followed by the court in exercising its discretion under the Local Government Act 1972 s222 are set out 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."

39. The court has power to attach a power of arrest to an injunction is granted under the Local Government Act s222, utilising its power under the Police and Justice Act 2006, s27.

The *Wolverhampton* case

40. The *Wolverhampton* case is considered by Freedman J at paragraphs 22 – 26 of *Basingstoke and Deane Borough Council and Hampshire County Council v Loveridge and Ors* [2024] EWHC 1828 (KB).

41. Throughout the judgment, the court examined whether this was a new type of injunction and analysed newcomer injunctions initially outside the context of proceedings against Travellers, with the earliest in time being *Venables* [2001] Fam 430. This was possibly the first *contra mundum/against the world*

equitable injunction granted in recent times; see paragraphs 108 – 125 of *Wolverhampton.*

42. Importantly, the Supreme Court considered so-called Traveller Injunctions against newcomer persons unknown. The Court ruled that final injunctive relief can be granted against newcomer persons unknown, albeit that it held that such an injunction is neither interim nor final in substance and is instead a form of without notice relief; see paragraph 139. In essence, the Court considered the reasoning that since an interim injunction is designed only to hold the ring, pending trial between the served parties, its use against newcomers for any other purpose would fall outside the principles that regulate the granting of interim injunctions. It then considered the *South Cambridgeshire District Council v Gammell* [2005] EWCA Civ 1429 (*Gammell)* solution that a newcomer becomes a defendant by acting in breach of the interim injunction and the tidy solution to both issues as it makes the newcomer a party and at that point justifies the interim injunction against newcomers as- as put by the Supreme Court – a way of smoking them out before trial.

43. In its consideration of this issue, the Supreme Court said that the focus on the duality of interim and final injunctions was unhelpful as a means of providing a remedy to the risk of a right being breached. The Supreme Court considered that the injunction against newcomers is a without notice injunction or –in old language- an *ex parte* injunction.

44. The Supreme Court considered that 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 is a person who "is so regardless of the law" that they will commit a breach of the injunction.

45. From recognition that injunctions against newcomers are always a form of without notice injunction, whether in interim or final form, the starting point is whether they should be made at all and if so by reference to what principles and subject to what safeguards.

46. Firstly, to determine whether the injunction sought falls into an established class of injunction or is "a legitimate extension of the court's practice", the distinguishing features of the sought after injunction require scrutiny (see paragraph 143). The features left the court in no doubt that the injunction against newcomers is a new type of injunction, pithily described as having "*no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn*" (paragraph 144).

47. There is no argument that the Injunction is an injunction against newcomers. The principles of when such relief can and should be granted were then considered by the Supreme Court, particularly at paragraph 167, where the court set out its reservation, its caution and its guiding principles:

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

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

ii. There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong

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

iii. *Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both 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.*

48. The practical application of these principles affecting an application for a newcomer injunction against Gypsies and Travellers and the safeguards were considered by the Supreme Court in its judgment at paragraphs 188 to 237. The court states that these principles and safeguards will evolve as cases come before the courts.

49. I now will turn to the matters that have to be considered in order for the Claimants to justify their application for such an injunction, as referred to in paragraph 167 and in the subsequent paragraphs of the judgment in *Wolverhampton*.

Compelling justification for the remedy

50. The guidance at paragraph 167(i) requires there to be a compelling need, sufficiently demonstrated by the evidence, for the remedy that is sought, which is not adequately met by other measures available to the claimants. The compelling need is described at paragraph188 as the ″overarching principle that must guide the court at all stages of its consideration". At paragraph 218, it was also held that 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". At paragraph 189, there were identified three preliminary questions:

(1) whether the local authority has complied with its obligations to consider and provide lawful stopping places for gypsies and travellers;

(2) whether the local authority has exhausted all reasonable alternatives, including whether it has engaged in dialogue with the gypsy and traveller community to try and find a way to accommodate their way of life by giving them time and assistance to find alternative or transit sites or permanent accommodation;

(3) whether the local authority has taken steps to control or prohibit unauthorised encampments and related activities by using other measures and powers at its disposal.

Evidence of wrongful conduct requiring a remedy

51. The Claimants rely on a number of statements, including Mr. Williams' fourth witness statement, the first witness statement of Inspector Charles Ilderton and

the fourth witness statement of Nicholas Waite, the Gypsy liaison officer of the Second Claimant. The first two witnesses give detailed evidence of wrongful conduct requiring of a remedy. It is summarised above under the consideration of the "Injunction Area".

52. In addition to above, from the Council's internal case management system, Mr. Williams details:
    a. After the injunction: in the period of April 2019 to January 2024, there were a total of 35 unauthorised encampments, 18 of which were within the injunction area and 17 of which were outside. That equates to 51% of encampments being in the injunction area. Of those 18 encampments in the injunction area, 17 were removed with the assistance of the injunction granted by HHJ Dight CBE (sitting as a Judge of the High Court). One encampment left voluntarily on the same day as it arrived (7 June 2021) without the need for intervention.
    b. In the period February to December 2024 there were a total of 17 unauthorised encampments, of which one was within the injunction area.
    c. the number of unauthorised encampments in the Borough generally and the injunction area specifically have reduced significantly;
    d. the duration of stay of an unauthorised encampment in the injunction area has reduced significantly;
    e. the duration of stay of an unauthorised encampment in the injunction area is significantly lower than it is for encampments outside of the injunction area;
    f. there are two encampments which are formed by those travelling through the Borough, there has been an equal division of encampments within in and outside of the injunction area in 2024.
    g. If the injunction is not made there is a likelihood that those forming unauthorised encampments in neighbouring Boroughs will migrate to the Injunction area and the harms suffered prior to the granting of injunctive relief will resume.

53. There also is evidence of Nicolas Waite pointing to the statistically backed downward trend that is not reflected in other boroughs in the County of Hampshire, rather those other borough trends are upwards. The notable exception is Test Valley where, since 2020, there has also been a significant downward trend. However, in 2020, Test Valley also obtained injunctive relief to prohibit encampments in some urban areas, with that relief first being granted in 2020.

54. It is of note that of the 17 unauthorised encampments, there appear to be only two that were not part of one family (the family). Mr. Williams addresses the family in his witness statement and states that they have a good history of complying with the injunction and so the Claimants do not seek an injunction against the family as a named party. Further the family is on the First Claimant's housing list and is seeking permanent accommodation, described as "bricks and mortar".

The three preliminary questions: (1) the obligation to consider and provide lawful stopping places

55. The relevant guidance in *Wolverhampton* is at paragraphs 190-202.

56. Mr Williams addresses the negotiated stopping policy and states that, in compliance with the First Claimant's undertaking, it put a negotiated stopping policy and agreement before its cabinet on 10 September 2024, and it was adopted.

57. The negotiated stopping policy and agreement at paragraph 9 sets out considerations that the Council must take into account when dealing with an application. It is published on the Council's website. If permission is granted, the expected duration of the encampment is 24-72 hours with 14 days maximum duration.

58. I was informed by Ms. Pratt that there had not been any engagement with the negotiated stopping policy by the Gypsy and Traveller community until the week prior to this hearing on 20 March 2025. This engagement is from the

family, and I was informed that they have instructed lawyers. However, this is in the early stages.

59. Further, the First Claimant places much reliance on their practice of toleration of temporary encampments on a case-by-case basis, including checks on welfare of those forming unauthorised encampments. The witnesses urge that one advantage of a specific and individual consideration of each encampment is that the encampment can be closer to facilities or amenities, such as a hospital. I was told that there is no evidence that the case-by-case approach has been the subject of complaints. I pay particular regard to the evidence of Mr. Williams that this informal approach has worked in achieving a balance between the interests of Gypsy and Traveller groups and local inhabitants. In his second witness statement, he gave six examples of this toleration in action. There are no specific examples given for the last year but the Council's flexible approach of assessing need and welfare is said by Mr. Williams to be of greater benefit to the Gypsy and Traveller community than setting up a transit pitch in an inconvenient location relative to sought out facilities. 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 (paragraph 202 *Wolverhampton*).

60. Considerations for the court are beyond transit site provision and the court must look at the local authority's provision for the Gypsy and Traveller community more generally when exercising their operation as a local planning authority.

61. The evidence from Sally Boxall, the principal technical planning officer of the Council sets out that the current Gypsy and Traveller Needs Assessment is for 17 pitches between 2024 and 2029. As of 1 April 2025, 8 pitches are considered deliverable up to 2029. The reason for the increased need is due to the expansion of definition of Gypsies and Travellers, in December 2024, to include all other persons with a cultural tradition of nomadism or of living in a caravan. An updated Gypsy and Traveller and Travelling Show People Accommodation Assessment is being compiled.

62. Currently, therefore the need of Gypsy and Travellers is not being met by the Borough. In addition, no need has been identified by the First Claimant for a transit pitch.

63. The Council is updating its local plan, and this includes a call for sites for Gypsies and Travellers. Historically, these calls have not been successful. At the hearing, the Council were not able to provide the court with any update. However, they pointed to these sites relating to permanent or semi-permanent pitches rather than transit pitches. Further, there was the same assessment at the time of the granting of the Injunction that there was no assessed need for a transit pitch.

64. In his fourth witness statement, Nicolas Waite the Second Claimant's Gypsy liaison officer states that currently there is no statutory duty for Hampshire County Council to provide any form of permanent or transit site for the Gypsy and Traveller community. It was on this basis that Hampshire County Council has been able to dispose of three of its stock of permanent residential sites by transferring them into the ownership of a company belonging to a member of the Travelling community.

65. There is one permanent site under the management of the Second Claimant, with 19 pitches. It is full, with five names on a waiting list.

66. In considering all the evidence of the Claimants actions to properly address where Travellers and Gypsies could stop when passing through the Borough, I take into account Mr. Williams emphasis that there remains 90% of the Borough. Also, I am helped by Mr. Williams' local informed knowledge, and he states:

"Historically, encampments were not forming in the injunction area because there was nowhere else for them to go, or because they would not be tolerated in appropriate circumstances on appropriate sites, but because the

convenience of the injunction area was attractive, and often because it enabled members of the Travelling community to run their commercial enterprises most efficiently. The same is clear from the scale and nature of the fly-tipping that was associated with some encampments (which included commercial and green waste); these people were not simply passing through the Borough and in need of a place of a temporary place of rest."

The three preliminary questions: (2) exhaustion of all reasonable alternatives

67. Mr. Williams has provided detailed evidence as to how the Injunction is managed and he points to constructive dialogue whereby its content is explained to those who may be about to breach the Injunction and there has not been a requirement to move to enforcement. The Council operates a Memorandum of Understanding with the Hampshire Constabulary which includes operational guidance on the management of encampments within the Injunction Area. There will be some circumstances where, as both the Council and Hampshire Constabulary acknowledge, there will be tolerance even within the Injunction Area. In other words, it is emphasised to the court that the Injunction is not blind to compelling welfare needs.

68. In relation to the family, there has been and is ongoing interactions over their housing requirements with the offer of previous properties. These previous offers have been rejected by the family as unsuitable. Mr. Williams' evidence shows that the Injunction has been cost saving in that the one unlawful encampment since the Injunction did not result in costs of clean up as the Injunction was used to move the encampment in a matter of hours.

The three preliminary questions: (3) steps to control or prohibit unauthorised encampments by other measures and powers

69. In particular, the First Claimant has relied on the alternative powers contained within the Criminal Justice and Public Order Act 1994 ('CJPO 1994'), ss77-78. However, they have not been effective, and enforcement is costly. In the

period 2016 to 2018, the First Claimant exercised its s77 powers on 10 occasions (with 7 occasions requiring an order to be sought under s78), at a cost of £4649. Following the grant of injunctive relief, the powers were not exercised at all between April 2019 and January 2024. In the period February to December 2024, the powers were exercised once at a cost of £1053.50. It also was submitted that it can be easy for an encampment to thwart enforcement attempts under s.77 – s.78 by the encampment waiting to be served with a direction to leave the land and then move to another section of land nearby, necessitating the process to restart. It appears a neutral argument that harm is minimised if removal of the encampment is swift, as has been the result of the injunction.

70. Mr. Williams described that public space protection orders (PSPOs) and byelaws are not helpful in addressing unauthorised encampments as they are slow to enact, and the enforcement is ineffective. The PSPOs and breach of a byelaw would result in fixed penalty notices and subsequent summons to court.

71. Mr. Williams states that the Council does not seek to punish Travellers for their way of life but simply restrict the areas of the Borough in which they can exercise their way of life by 10%.

72. I questioned the Claimants about the requirement for a power of arrest and they point to it being needed to give the injunction teeth. Mr. Williams paints the teeth as smiling in practice as the Injunction has been used to educate those in breach by providing advice. He underlines that the power of arrest is a last resort and has never yet been used. As a result, every occasion where the Injunction (and its predecessor Order) has been breached has resulted in the occupants moving on voluntarily once provided with advice by a Council officer.

Procedural protections

73. Following the requirement in *Wolverhampton*, at paragraph 167 (ii) and 226 to 232 for there to be procedural protections for the rights of newcomers to overcome the strong prima facie objection of subjecting them to a without

notice injunction, the Order continuing the Injunction must include a 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. The draft order includes posting selected documents on the land and a notice directing persons unknown to a website on which all evidence in support of this claim has been uploaded.

74. The court was provided with documents evidencing the service of this application, on 17 and 18 February 2025, whereby notices, the application and draft order have been attached to various lampposts, footpath bridges, telegraph poles and signs. Many documents are tightly wrapped around the poles and so are difficult to read. The Order of Freedman J are clearly displayed as it is affixed in a manner that does not require folding. There also is an email address utilised by the London Gypsy and Travellers group. The Application notice was sent to this email. On 20 March 2025, during the hearing, there was an email requesting a link to the evidence.

Territorial and temporal limits

75. The Claimants point to their application being for an injunction with a temporal limit of one year and so it would be a two-year period of a Traveller Injunction against Persons Unknown, including newcomers. The court must consider whether this is a proportionate response to the unlawful activity at which it is directed. In *Wolverhampton* at paragraph 167 (iv) the Supreme Court refers to the requirement of restraint of newcomer injunctions to ensure as far as practicable they neither "outflank nor outlast the compelling circumstances relied upon." This is expanded in paragraph 225 where the Supreme Court emphasises the exceptional nature of this type of injunction.

76. The evidence demonstrates that the Injunction has been effective. This creates the circular question and answer as to whether its requirement is therefore redundant. However, there is evidence that the threat or risk or mischief at which the Injunction is directed have not dissipated. Mr. Williams provided evidence that he contacted the neighbouring local authorities, and they

provided figures of unlawful encampments in public areas, with all being in an urban area, which is the attraction of the Injunction area. By far the largest number of unauthorised encampments is in Reading, numbering 59 according to the witness statement of Acting Inspector Beasley of Thames Valley Police. Reading is an urban area. The cessation of the Injunction, the police and council urge, will likely lead to a movement of some of these encampments to the Injunction area.

77. In relation to the territorial limits of the injunctions, it covers just over ten per cent of the borough and includes the urban areas of Basingstoke Town and outlying areas of Bramley, Sherbourne, St. John and Silchester as well as an area of land at Stratfield Turgis. During the hearing the First Claimant pointed to the rural areas not covered by the Injunction also including towns as well as villages with amenities. However, the unauthorised encampments in these areas do not have the same impact on local inhabitants as they did within the Injunction Area which includes public parks, schools, sports facilities and shops and local businesses. Further detail is addressed in Mr. Williams statement and is summarised above under consideration of the Injunction Area. The First Claimant points to the risk that these unauthorised encampments will move to the Injunction Area.

Is it just and convenient to grant the injunctive relief sought?

78. Paragraph 167 of *Wolverhampton* underlines the novel equitable discretionary power of an injunction against newcomer Travellers and that they are only likely to be justified if a number of factors are satisfied, as set out above, including that the granting of the Injunction is just and convenient on the particular facts.

79. The Claimants make points relying on paragraphs 188 to 237 of *Wolverhampton:*

i. that the intended respondents to an application must be defined as precisely as possible, identified and enjoined where possible and, if the order is sought

against newcomers, the possibility of defining the class of persons by reference to conduct and/or intention should be explored and adopted if possible; paragraph 221 of *Wolverhampton.* This was addressed by Freedman J and so the 116th Defendant is more precisely defined as "persons unknown who are forming unauthorised encampments in the Borough of Basingstoke and Deane".

ii. the injunction should be clear and precise, and use everyday terms, when setting out the acts that it prohibits. The prohibited acts must correspond as closely as possible to the actual or threatened unlawful conduct and extend no further than the minimum necessary to achieve the purpose for which it was granted; paragraphs 222 to 224 of Wolverhampton. Again, this was considered by Freedman J, and the proposed Order reflects the previous wording.

iii. the order is not an interim order, in the sense that it is holding the ring until the final determination of the merits at trial. However, it is appropriate that there be consideration of whether there should be a cross-undertaking in damages: see paragraph 234 of *Wolverhampton.*

Cross-undertaking as to Damages

80. This was considered by Freedman J at paragraph 48 of his judgment. I don't repeat his analysis save to highlight the potential engagement of the 116th Defendant's rights pursuant to Article 8 ECHR in respect of a right to a private and family life following a nomadic lifestyle. It is a qualified right and must be balanced against competing rights and such engagement would usually occur when an unknown person becomes a known person.

81. In the circumstances of this cases there is no reason to depart from the ordinary position summarised by Freedman J. The Claimants are not required to give an undertaking in damages.

Full and frank disclosure

82. The court has been assisted by the Claimants' full and frank disclosure and detailed skeleton argument and the court is alerted to the fact that the First Claimant can no longer meet its five-year supply need for Gypsy and Traveller pitches.

The *Vastint* multifactorial test

83. The Claimants seek precautionary relief. The principles in respect of precautionary relief are set out by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 ('*Vastint*'), as approved by Vos MR in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13; [2023] QB 295. The extent to which these guidelines and multifactorial test should be considered in light of *Wolverhampton* is unclear. They have not been disapproved. The court had paid careful regard to them, in particular paragraph 31 as set out in the judgment of Freedman J.

Gypsy and Traveller Communities and granting of this Application for an Injunction

84. I find on the evidence and information provided to the Court that the multifactorial test in *Vastint* and the guidelines in *Wolverhampton* are satisfied.

85. The Injunction sought is constrained by temporal and geographical limitations to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

86. In considering whether there is a compelling need for an injunction and it is, on the facts, just and convenient to grant one, I find that it is clearly evidenced that the injunctive relief has been an effective way of dealing with the formation of unauthorised encampments in the Injunction Area and the harm caused by those encampments, whether by preventing the formation of encampments, or in assisting with moving encampments on in a timely and cost-efficient manner once they have been formed. I consider that there is a

strong possibility (applying *Vastint)* that unless restrained by an injunction, Persons Unknown will breach the Claimant's rights. The resulting harm from the breach could be of a type that could not be adequately compensated for by damages.

Concluding Remarks

87. A nomadic lifestyle is part of the tradition and culture of Gypsy and Traveller communities. It is part of their identity and the importance of this lifestyle to Travellers and Gypsies is recognised by the European Court of Human Rights in a number of judgments, including *Chapman v United Kingdom* (2001) 33 ECHR 18.

88. Gypsies and Traveller people have been present in England since at least the 16th century. Historically, they have been persecuted across Europe and the United Kingdom. In the twenty first century, The Equality and Human Rights Commission has published a number of reports showing that Gypsy and Traveller people have unequal and poor outcomes in health, education and economy. They suffer the worst outcomes of any group, across a wide range of social indicators, with their life chances being in decline.

89. Meeting the accommodation needs of Gypsies and Travellers, which includes transit stopping, is important to protecting their way of life. In practical terms, it is necessary to help improve the life chances of their families.

90. The Claimants will be aware of qualitive research in 2022 by the Office of National Statistics into the lived experiences of this community in England and Wales. One finding is that instability and apprehension about being moved on leads to increased anxiety amongst those who wish to maintain a nomadic or partially nomadic lifestyle.

91. In granting this injunction, the court takes into account the conduct of the Claimants that they take a collaborative approach when Gypsies and Travellers require a place to stop, and that enforcement always is a last resort.

92. However, the Claimants are expected to reflect further on their reasons for not pursuing byelaws. This type of injunction must remain as exceptional and it will be in place, in near identical terms, for a second year. It should never be a solution looking for a problem.

93. If there is a further application to renew, it should not be listed as a review and should be considered again with real care and scrutiny. The onus is on the Claimants to ensure that this information is communication to the court. Any application to renew should be considered again, *de novo,* with real care and scrutiny. This type of application must not dilute into a routine, or a "tick box" exercise as described by Freedman J in his judgment at paragraph 55.

94. Currently the Borough is not meeting the needs of the Gypsy and Traveller community. The decision not to create a transit site is justified on a hypothetical basis that it might not be in as convenient a place as would be served by informal and formalised stopping processes. However, a transit site would satisfy anxiety of Gypsies and Travellers that they might be moved from whenever they stop in the Borough. The court expects that a transit site is reconsidered by the Claimants and consultation is carried out with the Traveller and Gypsy community.

95. If the Claimants decide to make a further application to renew this injunction, they need to be prepared to address considerations into reducing the size of the area as well as produce evidence of satisfying the needs of the Gypsy and Traveller community where those needs currently are not being met. In addition, the need for a power of arrest will require review. Although there is a memorandum of understanding with Hampshire police, informal understandings amongst council officers and police can cease to work when personnel change. Intention can be harder to safeguard the longer that there is for time to pass.

96. In any future application, the Claimants must ensure that evidence relied upon is accessible to the persons who may be affected, including the London Gypsy and Travellers group.

Conclusion

97. Subject to my concluding remarks, the Claimants have demonstrated a compelling need for the promotion and protection of the interests of the inhabitants of the Borough. Applying the strictures of *Wolverhampton* as required when considering precautionary relief, the court is satisfied that (a) the Claimants have exhausted all reasonable alternatives before seeking renewal of the injunction, (b) there is no other realistic or proportionate alternative to injunctive relief, (c) the statutory requirements for a power of arrest have been satisfied and (d) the Claimants have taken proportionate steps to control encampments and the depositing of waste. There is a real risk that that the offending acts will continue and will return without the restraint of an injunction. Exceptionally, the injunction is required against newcomer Persons Unknown. The court orders the injunction in the terms of the draft Order.

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

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

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

iii. Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to

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

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

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

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 land 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: [2025] EWHC 1768 (KB)

Case No: QB-2022-001098

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2025

Before:

THE HONOURABLE MR JUSTICE SWEETING

- -

Between:

(1) ESSO Petroleum Company, Limited	**Claimants**
(2) Exxonmobil Chemical Limited	
- and –	
(1) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter or remain (without the Consent of the First Claimant) upon any of the Sites.	**Defendants**
(2) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter or remain (without the Consent of the First Claimant or the Second Claimant) upon The Chemical Plant, Marsh Lane, Southampton S045 1TX.	
(3) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter onto any of the Claimants' property and obstruct any of the vehicular entrances or exits to any of the Sites.	
(4) Paul Barnes	
(5) Diana Hekt	

- -
- -

Timothy Morshead KC and **Yaaser Vanderman** (instructed by **Norton Rose Fulbright LLP**)
for the **Claimants**
The **Defendants** did not appear

Hearing dates: 09/07/2025
- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 11.07.2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

Mr Justice Sweeting:

Introduction

1. This is the second annual review of the injunction granted in this matter to Esso Petroleum Company, Limited and ExxonMobil Chemical Limited ("the Claimants"). They seek the continuation of the existing order with some amendments. The First, Second, and Third Defendants are identified as Persons Unknown who are connected with the 'Extinction Rebellion' ("XR") campaign or the 'Just Stop Oil' ("JSO") campaign. The Fourth Defendant ("D4"), Paul Barnes, and the Fifth Defendant ("D5"), Diana Hekt, are named individuals.

Background to the Case

2. The injunction was originally obtained by the Claimants in 2022 in response to environmental protest campaigns. The injunction protects various sites ("the Sites"), which include an oil refinery, fuel terminals, logistic hubs, and compounds across the United Kingdom. The Sites form a significant element of the national energy infrastructure. The Fawley site, for instance, is the largest oil refinery in the United Kingdom, providing 20% of the nation's refinery capacity.

3. The history of protest action at these Sites and elsewhere is well-documented in the evidence, including in the statements of Mr. Anthony Milne, Mr. Stuart Sherbrooke Wortley, Mr. Nawaaz Allybokus, and Mr. Martin Pullman. These statements describe the significant problems experienced by the Claimants, not as isolated events, but as part of a wider pattern of "direct action" at oil terminals across the country. The Sites are mainly complex industrial units which process or store substantial amounts of volatile and highly flammable material capable of being released in liquid or vapour form. The sites are secure and subject to stringent safety measures and protocols which would not be apparent to a member of the public. They therefore involve managed risk. The consequences of any of the risks involved eventuating present a clear and significant danger to those who work at or visit the Sites, anyone entering unlawfully or protesting at the Sites and, not least, the local population and environment.

4. On 19 July 2023, Linden J granted "final" relief, imposing an injunction effective for a period of five years, subject to annual review ("the Linden Order"). Subsequently, on 29 January 2024, Ellenbogen J reviewed the Linden Order, prior to its first annual review, to consider whether any changes were necessary in the light of the Supreme Court's judgment in *Wolverhampton CC v. London Gypsies & Travellers* [2024] AC 983 ("*Wolverhampton*"). Ellenbogen J concluded that no changes were required, granting similar relief with minor "tidying up" in relation to one area no longer requiring protection and another where previously unregistered land had become registered ("the Ellenbogen Order"). The first annual review hearing took place on 10 July 2024 before Tipples J, who concluded that there had been no material change in circumstances warranting the discharge or amendment of the injunction. She ordered that it continued unchanged. D4 and D5 were, as previously, "carved out" of the injunctions due to assurances they had provided.

Relevant Law

5. The purpose of a review hearing for an injunction, particularly one against Persons Unknown, was clearly articulated by the Supreme Court in *Wolverhampton*. At [225], the Court observed that a 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."

6. As Mr Morshead KC observed, this is an area of evolving jurisprudence so that it is also open to the Court to review the operation of continuing injunctive relief in the light of legal developments. That has already taken place in this case following the decision in *Wolverhampton*. I am satisfied that the Claimants have drawn to my attention all of the recent relevant case law in relation to the granting of similar injunctive relief.

7. In cases where the review is uncontested, the primary focus is not to revisit the merits afresh but rather to determine whether the injunction has outlasted the compelling need which led to its initial imposition, in view of any changed circumstances. This approach is consistent with the views expressed by Hill J in *Valero v Persons Unknown* (2025 review) [2025] EWHC 207 (KB) at [20-30], and by Garnham J in *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (hereafter "*Rochdale*") at [42-52].

8. I agree that this is the practical and proportionate way to approach a review ordered as part of the original grant of relief. Such a review is also an opportunity to make necessary adjustments in the light of experience of the practical operation of the injunction and changing circumstances. The Court should nevertheless be wary of embarking upon fundamental changes to the scope or nature of injunctive relief at a review hearing rather than requiring a further and full application to be made. I also bear in mind that there is no legal presumption of continuance.

Continued Threat of Direct Action

9. The evidence before me, particularly from the fifth and sixth witness statements of Ms Stebbing demonstrates that the threat of direct action at and against the Sites continues to be a real one.

10. First, there is direct evidence from JSO itself acknowledging the effectiveness of injunctions in deterring their actions. A tweet from 13 September 2023 stated, in relation to protests on highways:

> "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…"

11. This strongly suggests that the injunctions covering oil refineries have compelled JSO to target other infrastructure and, conversely, that the removal of the injunction would invite renewed activity of the sort that it was designed to prevent.

12. Secondly, other courts have also recently found there to be a continuing threat in cases similar to the present application (see *Valero* (above) and *Exolum Pipeline Systems Ltd v Persons Unknown* - 25 February 2025, Swift J reviewing the order made in that case in 2024 – see *Exolum Pipeline System Ltd & Ors v Persons Unknown* [2024] EWHC 1015 (KB)).

13. Thirdly, specific incidents indicate ongoing interest in the Sites. For example, in December 2023, an individual trespassed on the Fawley Site to film its layout by drone, subsequently publishing the footage online, which has gathered over 146,000 views to date. Whilst some time ago and not overtly a protest, the filming of the site and the high number of continuing views demonstrates a persistent interest in the Claimants' infrastructure. Broader interest in the Claimants' assets across England by environmental activists is also described in Ms Stebbing's evidence.

14. Fourthly, XR and JSO continue to focus their attention on the oil and gas sector. Recent examples include multiple environmental activist groups, including JSO, targeting airports in Europe in July-August 2024, with JSO stating that "areas of key importance to the fossil fuel economy will be declared sites of civil resistance around the world". In October 2024, XR activists blockaded the United Kingdom Oil & Gas plc production site in Surrey, and in January 2025, XR occupied the Manchester office of an insurance broker, because it was involved, it was said, in insuring fossil fuel projects. Direct action by other related groups, such as Shut the System and Youth Demand, also occurred in 2025.

15. Fifthly, whilst JSO issued a press release on 27 March 2025 stating it would be "hanging up the hi vis" at the end of April 2025, the evidence in Ms Stebbing's sixth witness statement casts significant doubt on the finality of this change in approach. 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 it had not disbanded, prompting JSO to email its mailing list on 21 May 2025 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 protesters:

> "Just Stop Oil was just the beginning. A new campaign is in the works—one that will build on our knowledge and success as Just Stop Oil and will face the grinding injustice of our political and economic system head on. We're just getting started."

16. Similar statements by XR in the past, that it was relinquishing particular forms of protest, have not been honoured. On 19 May 2025, JSO posted a social media photo stating "JUST GETTING STARTED". A Times report in June 2025 indicated JSO activists were recruiting for Youth Demand, with events advertised using the JSO logo, and an organiser quoted as saying,

> "This is an inhale before we breath out and expand into brand new territory, into something even bigger than we've tried before. This is the start of something genuinely thrilling".

17. As Linden J observed in his judgment in this matter [67]:

> "It would have been very easy for Extinction Rebellion or Just Stop Oil to give assurances or evidence to the court that there was no intention to return to their activities of 2021/2022, and no risk of trespass on the Sites or damage to property by protesters in the foreseeable future, but they did not do so."

18. It may of course be that any leadership or governance that exists within these campaigning movements is limited and that a binding assurance from the centre cannot in fact be given. That in itself would make it difficult to rely upon any announcement that there had been a cessation of the activities at which the injunction is aimed. Equally it continues to be the position that no assurances have been given which leads me to conclude that there remains a real risk of direct action from JSO or XR or those connected with their campaigns.

Service and Provision of Documents

19. I am satisfied that the hearing of this review was properly notified in accordance with paragraph 15 of the Ellenbogen Order. Ms Stebbing's seventh witness statement details the steps taken, including uploading documents to the webpage, placing copies in clear plastic containers at the Sites, and sending emails to relevant addresses for the First, Second, and Third Defendants. In relation to D4 and D5, service was by email, and where delivery failures occurred for D4, extra measures were taken to provide the information by first-class post.

20. Mr Morshead submitted that the provisions at paragraph 15.1 of the present Order were becoming unwieldy to operate in practice because of the accumulation of documentation produced as a result of the further hearings following the grant of relief. He suggested that if the order were to continue then it would be sensible and necessary to remove the requirement for full paper copies of documents to be deposited, other than the orders themselves (as provided for at paragraph 12), in favour of the links already given on the Warning Notices (see further below) which point to the relevant documents online by means of a link to a website. I agree that requiring the Claimants to maintain a growing library of material at the Sites, in ever larger plastic boxes, is unsatisfactory and may well prove unworkable in future. The solution suggested will meet the requirement to serve the material concerned in an effective way. Links to a website may indeed prove to be a more satisfactory arrangement.

Warning Notices

21. Photographic evidence of four Notices being displayed at all Sites was provided by 13 June 2024 for the annual review hearing. However, it was discovered that Avonmouth and Alton only had two Notices each, and Purfleet had a damaged Notice. These deficiencies had been promptly rectified by ordering new Notices on 11 June 2024.

22. While there was a period where some Sites may not have had the full complement of four Notices, the Claimants have explained that this confusion arose from changes to the wording of the Notices following court orders, and that at all times at least two Notices were present. Furthermore, other methods of notification, such as website publication and email, were consistently used. I accept the Claimants' submission that this oversight did not cause prejudice to any Persons Unknown, given the other

notification steps undertaken. I also note that the Claimants now conduct monthly checks to ensure Notices and containers are in place.

Fourth and Fifth Defendants

23. D4 and D5 remain carved out of the injunction due to their earlier undertakings and assurances. D5 has provided a signed copy of a further undertaking, effective until 31 July 2026 or the date of the next review hearing. However, D4 has not yet returned a signed copy of his undertaking, despite continued efforts by the Claimants to contact him, including through letters sent on 24 June 2025 and 3 July 2025. The Claimants propose a pragmatic course which is to allow them liberty to apply to make D4 subject to the injunctions in the absence of receiving further assurances of the same sort as were originally obtained from him, a course which has already been taken in earlier orders in these proceedings. I agree with that proposal.

Harm

24. The potential harm arising from direct action at the Sites remains substantial and, potentially, dangerous. The operations at the Sites involve hazardous substances, regulated under the Control of Major Accident Hazards Regulations 2015. Entry by untrained protesters who lack appropriate protective clothing or equipment poses significant risks to personal injury and health and safety. Moreover, such actions clearly risk disrupting the Claimants' operations and, consequently, the United Kingdom's downstream fuel resilience, impacting contractual obligations to customers essential for maintaining critical services, including road, rail, and air travel.

Discussion

25. I have to consider whether any reasons or grounds for the discharge of the injunction have emerged since the last review. The principal factual development has been JSO's announcement in March 2025 in relation to "hanging up the hi vis". However, as I have outlined above, the evidence shows, in my view, that this announcement cannot be taken as an unequivocal and final renunciation of direct action. The amorphous nature of the group, combined with the past experience of similar unfulfilled statements by XR, and JSO's subsequent communications and activities, mean that it would be premature to rely on this announcement as a basis for amending or discharging the injunction. The risk of direct action by those connected with the JSO campaign remains real and imminent.

26. In relation to legal developments, there have been discussions in recent cases concerning two procedural matters: (a) how "Persons Unknown" ought to be described; and (b) whether orders against them should include a requirement for permission before a contempt application may be brought.

27. As to the description of "Persons Unknown," the Supreme Court in *Wolverhampton* stated at paragraph 221:

> "…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."

28. While Nicklin J in *MBR Acres Ltd v Curtin* [2025] EWHC 331 suggested it was "no longer necessary, nor appropriate" to restrain particular categories of defendants for contra mundum injunctions, and Fordham J adopted a similar approach in *University of Cambridge v Persons Unknown* [2025] EWHC 454, I note that Soole J subsequently doubted this position in *University of Cambridge v Persons Unknown* [2025] EWHC 724, reverting to the orthodox approach. I am told that Bourne J at the review hearing of an injunction relating to London City Airports, on 24 June 2025 preferred a more straightforward reading of *Wolverhampton* paragraph 221 and held that this point was procedural, not justifying re-writing orders on review. I find no compelling reason to amend the description of the Defendants in this case when considering it on review save in one respect (see further below). The current description best adheres to the guidance in *Wolverhampton* by identifying a class by reference to conduct notwithstanding the cogent reasons set out by Nicklin J for taking a different course in *MBR*. I do however consider that the prospect of JSO evolving, deliberately, into a differently named campaign essentially involving the same organisation, supporters and protesters is demonstrated on the evidence and requires an adjustment to the description of the Defendants to add "or other environmental campaign" so as not to, potentially, thwart the purpose of the injunction. This course was taken in the City Airport injunction proceedings. Any concern that this may involve a widening of the injunction is tempered by the fact that the description involves conduct that is on its face unlawful and where Convention rights are qualified so that the balancing exercise is heavily in favour of a restraint.

29. As to a requirement for permission before a contempt application may be brought, this measure was adopted in *MBR* and the *University of Cambridge* cases. It is apparent that Nicklin J in *MBR Acres* was significantly influenced by the particular claimants' conduct in that case, which involved trivial and inappropriate contempt applications. However, I observe that the suggestion of a blanket requirement for all newcomer injunctions in protest cases appears to have been made per incuriam given other relevant authorities, such as *AG v Times Newspapers Ltd* [1974] AC 273, *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch), and *PJSC Vseukrainskyi Aktsionernyi Bank v. Maksimov & Ors* [2014] EWHC 4370 (Comm). These cases suggest that the courts already possess adequate mechanisms to address disproportionate committal applications. In the present case, there is no evident need or justification, in my view, to impose a requirement for the Claimants to seek permission before commencing any committal applications. The Supreme Court in *Wolverhampton*, which carefully balanced the interests of landowners and Persons Unknown, did not impose such a requirement. There is no evidence before me that claimants are generally bringing trivial committal applications in cases of this nature. While the specific factual circumstances may have driven the decisions in *MBR Acres* and the *Cambridge* cases, those particular concerns are not present here. Imposing such a permission filter could lead to disproportionate burdens and complexities, potentially requiring multiple hearings and appeals, which would be more stressful for potential defendants and consume significant court resources. It is generally preferable for all matters to be addressed in one committal hearing unless a specific factual reason necessitates otherwise.

30. I am satisfied that the injunction has been effective to date, as there has been no direct action at the Sites for some years. Indeed, the evidence from JSO itself supports this conclusion, indicating that the existence of injunctions at oil refineries has caused them to target other sites.

31. There remains a proper justification for the continuance of the injunction. A real and imminent risk of direct action at the Sites persists if they were to be left unprotected. This view has been consistently taken by multiple judges in this claim and in other similar claims. The substantial harm, particularly the health and safety risks, to those who are not trained to understand the many hazards at the Sites, underscores the necessity of the injunction. The Defendants have no lawful reason to enter or remain upon these restricted and fenced-off private lands for the purpose of direct action. The evidence has clearly demonstrated that the existence of criminal offences is insufficient to deter the Defendants.

Conclusion

32. I conclude that nothing material has changed since the Ellenbogen Order was made to warrant its discharge or amendment. The evidence demonstrates a continued threat of direct action at the Sites. The injunction has not outlasted its need.

33. It remains necessary for the injunction to continue in its present form subject to the limited amendments referred to above.

END

Case No: KB-2024-001765
Neutral Citation Number: [2025] EWHC 2223 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 26th August 2025

BEFORE:

MR JUSTICE BOURNE

BETWEEN:

LONDON CITY AIRPORT LTD & ORS

Claimants

- and -

PERSONS UNKNOWN

Defendants

MR T MORSHEAD KC, MS E BARDEN (instructed by Eversheds Sutherland International LLP) appeared on behalf of the Claimant
THE DEFENDANTS were not present and not represented

JUDGMENT

(Approved)

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1. MR JUSTICE BOURNE: At this hearing I conducted the first annual review of injunctions granted at the separate hearings of four claims last year, concerning activities by environmental protestors at a total of ten airports at different locations in England. The relevant airports are identified in each order.

2. The claimants were represented by Mr Morshead, King's Counsel and Ms Baden of counsel. There was no appearance by any defendant or by anyone expressing opposition to the continuation of the injunctions.

3. The injunctions were sought because in 2024, airports in England and elsewhere became targets in campaigns of disruptive environmental protest, notably by the campaigning group, "Just Stop Oil" ("JSO"). Individual airports and groups of airports sought injunctive relief against "Persons Unknown", invoking the "newcomer" jurisdiction as explained by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47, [2024] 1 AC 983 ("Wolverhampton").

4. I have read the judgments given when the original injunctions were granted of Julian Knowles J (20 June 2024, KB-2024-176) HHJ Coe KC (5 July, KB-2024-002132) and Ritchie J (19 July 2024, KB-2024-002317). I have also seen a note of what was said by Jacob J in KB-2024-002473 on 6 August 2024.

5. By way of context, I note that orders were also made at hearings in other claims concerning Heathrow (Julian Knowles J, 24 July 2024), Gatwick (Ritchie J, 19 July 2024) and Southend Airports (Farbey J, 14 August 2024). This review does not encompass those three cases.

6. Each judge was satisfied that an injunction was necessary to restrain the threat of tortious conduct and that it was just and convenient to make an order. In particular, because of threats of unlawful action by protest groups, viewed in the light of some previous incidents, and the potential for such action to cause health and safety risks (to the public, airport staff, emergency services and/or the protestors themselves) and delay and disruption to the public. In addition, each judge was satisfied that it was appropriate to grant injunction against "Persons Unknown."

7. I shall note increase the length of this judgment or extend the corpus of judicial discussions of this broad subject by repeating the statements of legal principle and factual considerations, which were set out by the judges when granting the injunctions last year.

8. It is, in particular, unnecessary for me to explore some distinctive characteristics of these cases which were considered by the judges, notably the fact that the claims concern a combination of (1) land owned by the claimants, (2) land not owned by the claimants but on which there is airport infrastructure and (3) public highways in and around the airports. The injunction granted to London City Airport covers land in category (1) only, whereas the injunctions in the other three cases cover all three categories. The claimants are not seeking any geographical expansion of the injunctions granted last year. London City Airport seeks, and I will grant, permission to amend to reflect a change of ownership of one specific area.

9. The nature of a review hearing of this kind was considered in *Wolverhampton* at paragraph 225, where the Supreme Court observed that the hearing:

> "…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 has emerged, whether there is any proper justification for continuance; and whether and on what basis, a further order ought to be made."

10. In *High Speed Two (HS2) Ltd & Anor v Persons Unknown* [2024] EWHC 1277 (KB), Richie J described the court's task at a review hearing:

> "Drawing these authorities together, on a review of an interim injunction against PUs [Persons Unknown] and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the **quia timet**, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of

> unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
>
> 33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply."

11. I have therefore considered whether, since last year's injunction orders were made, there has been any material change affecting, diminishing or removing the need for them to be in place.

12. Each application for review is supported by a witness statement by Stuart Wortley, a partner in Eversheds Sutherland (International) LLP, who represent the claimants. He sets out a chronology of incidents and events, occurring both before and since last year's injunctions.

13. Of the events postdating any or all of the injunctions, Mr Moreshead emphasises several, including the following:-

(a) On 19 July 2024, one of the JSO founders, Roger Hallam, was found guilty with others of conspiring to organised protests to block the N25 motorway in November 2022. He was sentenced to five years in prison, later reduced on appeal to four years.

(b) On 24 July 2024, ten JSO activists were arrested at Heathrow Airport, seemingly equipped to be able to cut through fences and/or affix themselves to parts of the land or aircraft. Of those individuals, nine were later found guilty by a jury of conspiracy to cause a public nuisance. Five were sentenced to terms in prison of up to 15 months, and four were given suspended sentences.

(c) On 27 July 2024 a protest which was due to occur at London City Airport, was relocated to the Department of Transport.

(d) On 29 July 2024, eight JSO activists were arrested at Gatwick Airport on suspicion of interfering with public infrastructure.

(e) On 30 July 2024, two JSO activists were arrested at Heathrow Airport after spraying orange paint around the Terminal 5 entrance hall and on destination boards in the departure lounge. Following a criminal trial, the jury was unable to return a verdict.

(f) On 31 July 2024, a protest by JSO and Fossil Free London, was held at the Docklands Light Railway Station, at London City Airport. That being an area excluded from the red line of the injunction.

(g) On 1 August 2024, six JSO activists were blocked access to the departure gates at Heathrow Terminal 5.

(h) On 5 August 2024, five JSO activists were arrested on their way to Manchester Airport and were in possession of bolt cutters, angle grinders, glue, sand and banners reading "oil kills". Four of these individuals were subsequently found guilty of conspiracy to commit a public nuisance and then sentenced to terms of imprisonment, ranging between 18 and 30 months.

(i) On 21 February 2025, XR held a demonstration at Inverness Airport against climate change.

(j) On 27 May 2025, JSO made an announcement which at least gave the impression that it had now decided to withdraw from mounting disruptive protests of a direct action nature.

(k) However, on 18 May 2025, GB News reported that JSO was considering a "dramatic U-turn" and on 21 May 2025, JSO sent a link to its subscribers with the comment, "GB News was right for once. We are 'plotting a comeback'."

(l) On 21 May 2025, London City Airport received intelligence information from the Metropolitan Police of a protest by environmental protest groups, which had been planned at Heathrow Airport, to be held at the Sofitel Hotel on 20 May 2025, where an annual general meeting for Shell was being held and which was within the redline boundary of the injunction obtained by that airport. The protest was relocated to the

Shell head office, "in order to avoid the risk of associated penalties for breaching the injunction."

(m) Over the weekend of 14 and 15 June 2025, JSO arranged an event described as "Seeds of Rebellion", which seemingly was part of a training programme – a "summer of resistance training" – where attenders would be taught how "to plan actions that cut through" and to "plant the seeds of the coming non-violent revolution."

(n) JSO's fundraising page currently invites donations for –"[A] New campaign [that] is in the works"

14. Mr Wortley's evidence also mentions activities of other protest groups opposed to the use of fossil fuels including Youth Demand, Extinction Rebellion and Fossil Free London. He refers to disruptive protest activity in 2024 and 2025 by Extinction Rebellion, though not at airports. He also exhibited an email sent by the Metropolitan Police to London City Airport's security team on 21 May 2025, which referred to the incident relating to the Shell AGM and said:

> "…The injunction at [Heathrow Airport] had a real impact on the Shell protest yesterday and builds on your experiences. To remove an injunction now, would open up to further protest . And whilst JSO have stepped down, there appear to be a cycle of new groups emerging and this cannot be ruled out, so maintaining it would be very much recommended."

15. I accept Mr Moreshead's submission that that advice from the police is a relevant consideration. Although the announcement by JSO on 21 March 2025 could signal a reduction from the risk of unlawful activity at the airports, there is also clear evidence of a possible U-turn from that announcement. And, as Mr Morshead submits, even if JSO left the scene, it is too early to tell what the effect of that would be, having regard to the possibility of some JSO members continuing to support direct action, and to the continued existence of other protest groups. Nor is it possible to conclude that the risk has been materially reduced or removed by the imprisonment of some JSO activists referred to above.

16. Meanwhile, the substantial, though not total lack of direct action at the airports since the grant of the injunctions is consistent with the injunctions having proved to be an effective deterrent. I accept that removing the injunctions at present would create a real risk of a resumption of activity at airports.

17. When granting the injunctions, the judges last year concluded that enforcement of bylaws and criminal proceedings did not provide an adequate alternative remedy. That, in my view, has not changed.

18. In the circumstances considered as a whole, I conclude that there has been no material change which removes or seriously diminishes the justification or the rationale for the injunctions, and that they should continue in force.

19. Turning to the form of the order, Mr Morshead showed me the decision of Nicklin J in *MBR Acres Limited and Others v John Curtin & Persons Unknown* [2025] EWHC 331 (KB), which took a different approach of directing an injunction in a protest case, "**contra mundum**", rather than by describing categories of defendants by reference to the conduct to be prohibited, which would also make service of the claim unnecessary. Nicklin J noted that the court must consider what other or better solutions may be available, having regard to enhanced police and local authority powers. He also indicated that orders should include a requirement that the court's permission be obtained before any application is made to commit for contempt of court.

20. Mr Morshead submitted that it would be better in this case to retain a description of the intended defendants, by reference to the conduct being enjoined, and that that course was followed in a later decision of Soole J in *Chancellor, Masters and Scholars of the University of Cambridge v Persons Unknown* [2025] EWHC 724 (KB). He also submitted that a requirement for consent for committal proceedings should not be necessary, having regard to the safeguards built into the injunction and to the impact which applications for consent could have on costs and court resources.

21. In the present cases, the judges last year found it appropriate to describe or define the defendants by specific reference to the type of conduct to be enjoined. Although Nicklin J has identified a possible different approach, it seems to me that on a review

hearing, I should not change the approach taken by the previous judges, where the underlying circumstances have not materially changed. I am also mindful of the need, emphasised by the Supreme Court in *Wolverhampton* at paragraph 221, for defendants in injunctions to be defined as precisely as possible. It seems to me that that also favours a continuation of the approach taken last year.

22. Nor am I persuaded to depart from what was ordered last year by adopting a standard wording to define or describe the prohibited acts in the four cases before me. The differences in wording have not created any difficulty for me in conducting this review, and any potential defendant who has already become aware of the injunction in respect of any specific airport may already be aware of the existing wording, and that factor militates against a change.

23. I also accept the submission that it is not necessary to insert a provision requiring consent or permission to be obtained for any contempt application in the event of a breach of the injunction. Although such a provision could provide a helpful safeguard in some "**contra mundum"** cases, as described by Nicklin J in *MVR Acres*, in the present cases, no enforcement issue has arisen so far. That is by contrast with *MBR Acres*, where Nicklin J vigorously criticised the conduct of claimants who pursued a committal application, which he described as frivolous and bordering on vexatious.As Mr Morshead said, claimants who choose to commence committal proceedings for trivial breaches do so at their own risk. The courts have repeatedly said that, in cases which do not appear to have been cited to the court in *MBR Acres*, such as *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch), per Briggs J at paragraph 46. Meanwhile, in the circumstances of the present case, I have no reason to expect that such an issue will arise.

24. It seems to me, by way of confirmation, that the steps taken to publicise the orders last year, remain appropriate and sufficient.

25. I will provide for the next review to take place in one year from now. It will remain open for anyone to apply to vary or discharge the orders before then. The cases will again be listed together upon that occasion, but I see no need to consolidate them.

26. I shall ask counsel to finalise the terms of an order whose effect is that the injunctions granted last year will remain in force. For practical reasons, and in principle, that seems to me preferable to the alternative of granting entirely new injunctions.

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Neutral Citation Number: [2025] EWHC 2228 (KB)
Case No: KB-2024-002336

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 18 July 2025

BEFORE:

MR DUNCAN ATKINSON KC
(Sitting as a Deputy High Court Judge)

BETWEEN:

GATWICK AIRPORT LTD

Claimant

- and -

PERSONS UNKNOWN WHO, IN CONNECTION WITH THE JUST STOP OIL OR OTHER ENVIRONMENTAL CAMPAIGN, ENTER OCCUPY OR REMAIN (WITHOUT THE CLAIMANT'S CONSENT) UPON THAT AREA OF LAND KNOWN AS LONDON GATWICK AIRPORT (AS SHOWN FOR IDENTIFICATION OUTLINED IN YELLOW AND SHADED YELLOW AND BLUE ON THE PLAN 1 ATTACHED TO THE CLAIM FORM

Defendants

TIMOTHY MORSHEAD KC and EVIE BARDEN appeared on behalf of the Claimant.

APPROVED JUDGMENT

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1. MR DUNCAN ATKINSON KC: On 19 July 2024, the Honourable Mr Justice Ritchie granted an injunction order to the Claimant, Gatwick Airport Limited, which prohibited persons unknown from entering, occupying, or remaining on any part of the airport for the purposes of protesting about fossil fuel or environmental concerns. It was directed that this order should be subject to annual review, and that review has taken place before me today.

2. Gatwick Airport is the second largest in the United Kingdom, and the eleventh largest in Europe, with an average 11,000 passengers per day, or 44 million passengers per year, and with a revenue per annum of £1 billion. Gatwick Airport has statutory powers to make bylaws and under these bylaws persons are not entitled to protest or obstruct the airport or display protest banners and they must leave if requested to do so. They have implied consent to attend for travel and concessions have consent to run their businesses there. Peaceful protest is accommodated through prior arrangement. In addition, the airport's statutory obligations, contained within the Airport Act 1986, include a duty to mitigate risks, including risks relating to the movement of vehicles, to objects on the tarmac, and air navigation. If unsafe conditions arise, there is statutory duty for the airport to stop flights.

3. The context for the present application is the order that was made by Ritchie J last year. At that time, in the summer of 2024, a number of environmental protests groups, in particular Just Stop Oil and Extinction Rebellion, planned and undertook a campaign of disruptive protest at the use of fossil fuels and the environmental impact of air travel directed towards airports in the United Kingdom and beyond. Evidence considered by the Court last year referred to actual and planned protests at Farnborough, Stanstead, Gatwick and London City Airports. Just Stop Oil twice wrote to the Prime Minister, making demands and requiring compliance against the threat of their campaign of non-cooperation. The evidence identified the serious consequences of unplanned or uncontrolled protests as including a risk to emergency services by having to climb up structures, the knock-on effect on passengers, the effect in relation to jet engines which are sensitive and potentially hazardous, and implications in relation to fuel which could cause an explosion.

4. In another judgment of Ritchie J in response to the same issue in the case of *Leeds Bradford Airport v Persons Unknown* [2024] EWCA 2274, he said (at paragraphs 30 to 31):

> "Airports are part of the national infrastructure which is acutely sensitive to terrorist threats and are highly regulated in relation to safety, maintenance and security. They are also complicated organisations involving the [movement] of thousands of members of the public, close to highly combustible materials and within fast-moving and huge pieces of equipment. Such organisations are acutely sensitive to chaotic dysfunction caused by unlawful direct action."

He went on:

> "I also take into account the fear, which I think is justified, of the Chief Executive Officers, that terrorism is facilitated by chaos. I take into account the human rights of the passengers, adults and children, families and individuals, whose business trips and family holiday trips could be potentially catastrophically interrupted, delayed or cancelled by disruption at any of these airports in the summer seasons. Although not pleaded it is not irrelevant to take into account the knock-on effect on employment, union members and the businesses which are run in the airports and which run the airports, financially."

The law relevant to the injunction under review.

5. The injunctions granted by Ritchie J, both in the *Leeds Bradford* case and in the present proceedings, were directed towards persons unknown. That such orders are permissible was made clear by the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47. Persons unknown, in this context, means persons who are not identifiable at the date the proceedings are commenced but who are intended to be bound by the terms of the injunction sought. Proceedings are typically a form of enforcement of undisputed rights rather than a form of dispute resolution.

6. Although the facts of that case focused on orders relating to members of the Traveller community, it was made clear that they were not limited to such cases. Indeed, the Court said (at paragraph 235) that "…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 the motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on the all the circumstances, justify the grant of an injunction against persons unknown including newcomers. "

7. The correct approach, as the Supreme Court identified (at paragraph 236), was that "…each of these cases has called for a full and careful assessment of the justification for the orders sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, insofar as the applicant seeks an injunction against newcomers, the judge must be satisfied that 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 the number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the right to the respondent's 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."

8. The Court further identified that such orders should be made subject to review, the purpose of which they identified (at paragraph 225) as being to "…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".

9. Against that background, as was made clear for example by Sweeting J in the case of *Esso Petroleum Company Ltd & Anor v Persons Unknown & Ors* [2025] EWHC 1768 (KB) (at paragraph 5 – 8) the court's role now is not to revisit the merits of the case as if *de novo* but, rather, to assimilate each matter sufficiently to take an informed view

about whether the injunction has outlasted the compelling need which led to it being made in the first place in view of any change in circumstances. That, he said, was the best and most proportionate way of dealing with these matters, and he added:

> "Such a review is also an opportunity to make necessary adjustments in the light of experience of the practical operation of the injunction and the changing circumstances."

The approach of Ritchie J.

10. In his *ex tempore* ruling, a note of which has helpfully been provided, Ritchie J identified factors necessary to be considered when granting an injunction against persons unknown, as follows:

11. First, "*the substance of the cause of action":* He identified that that included trespass and private and public nuisance, ownership of the roads, bylaws prohibiting protest and consent to enter only for travel purposes. He considered in this case the substance for the cause of action to be valid.

12. Second, "*full and frank disclosure*": He was satisfied the Claimant, through counsel , had provided such full and frank disclosure.

13. Third, "*whether there was sufficient evidence to prove the claim*": He considered the evidence that had been put before him to be more than sufficient to prove that there was a risk of tort being committed at Gatwick Airport, as had been committed elsewhere.

14. Fourth, "*whether there were realistic defences*": The learned Judge's approach last year was to observe in relation to private land that there was no real defence under the Human Rights Act 1998 based on protest because such protest could take place on public land. In relation to third-party land, he considered on balance that the scope of the injunction should cover small parcels of third-party land within the airport in order to provide proportionate necessary protection for the Claimant, protection of the land and for the businesses run within the areas of their own possession. He added that an impingement of the unknown persons' right to freedom of speech was relatively small

compared to the huge damage that might occur if a person unknown decided to run into Gatwick Airport and hide in a third-party store so that they were not to be covered by the terms of the injunction.

15. I pause in my review of the approach of Ritchie J in relation to that consideration of human rights to take notes of the decision in *Hallam & Ors v R* [2025] EWCA Crim 199. There the Lady Chief Justice (at paragraph 36) made clear that trespass does not remove the trespasser from the scope of articles 10 or 11 of the European Convention on Human Rights. However, she went on to make clear that such protest does significantly weaken the protection those rights afford. I am satisfied that decision does not undermine or alter the approach identified by Ritchie J to the question whether there were realistic defences here. In any event, as he found, the impingement of those rights in relation to an unknown person is relatively small compared to the damage that might be caused by such persons. The rights of the Claimant in this regard, and the rights of those legitimately using the airport, far outweigh any such impingement of the rights of the persons who may be affected by this injunction.

16. Returning to Ritchie J analysis, he then considered "*whether there was compelling justification for granting the ex parte and against persons unknown"*. He considered that this was made out, given the very high level of threat that he identified and to which I have already referred.

17. Next, he considered "*whether alternative remedies would be sufficient"*. He took account of the bylaws to which I have made reference, and the penalties that have been imposed under the criminal law in relation to persons who had protested at airports in the past. He was satisfied that damages were not an adequate remedy, and that the alternative remedy under the bylaws was insufficient.

Notice of this application

18. I turn to consider, then, the present application against that background. But before considering it in turn, I consider whether sufficient notice has been given of this application.

19. By reference to section 12, Human Rights Act 1998, where the court is considering whether to grant relief which might affect the exercise of the convention rights to freedom of expression and where persons who may be affected are not represented, I must be satisfied (i) that the applicant has taken all practical steps to notify the respondents, or (ii) that there are compelling reasons why the respondents should not have been notified.

20. In that regard, I have helpfully been provided with two statements from Graeme Robertson, a senior associate of the firm representing the Claimant. He explains in detail what steps have been taken to give notice of this hearing, including the uploading of the application for the continuance of the injunction and notice of the hearing to Gatwick's website, sending emails to a number of addresses that had been identified at the time of Ritchie J's order, together with further email addresses identified since, and the affixing of notices at relevant locations. He further confirms in his second statement the steps that have in fact been taken. Against that background, I am satisfied that proper notice has been given of this application, and that should anyone falling within its scope have wished to make representations, they have had the opportunity to do so. I should add that, in any event, Mr Morshead KC has properly directed my attention to matters that any such person would have been able to raise had they been here.

Events since the order was made.

21. The central question for the purpose of this review is whether this Court can be satisfied that the circumstances which justified the making of the order remain unchanged so that there remains a compelling need for the order to continue.

22. I have been provided with the chronology of events, the details of which are addressed in Mr Robertson's statements. There is, as is properly conceded, evidence in both directions as to changes of circumstance since the order was made. On the one hand, since the order was made there have been protests, or attempts at protests, leading to arrests at Heathrow, London City and Gatwick airports in July of 2024, and at Heathrow and Manchester airports in August. There was a demonstration at Inverness Airport in February 2025.

23. On the other hand, on 27 March 2025, Just Stop Oil made an announcement to the press to indicate that the group was withdrawing from organised protest. I have considered both whether this should have been drawn to the Court's attention earlier, as indicating at an earlier stage that this order was no longer required, and whether that this announcement means that the order is no longer required now. It is right to observe, first, that the terms of Just Stop Oil's announcement are ambiguous. It includes, beyond saying that they are withdrawing from organised protest, references to continued resistance, adding that this is "not the end of civil resistance". The note to editors at the bottom of their release says, in terms, that Just Stop Oil is "committed to non-violent direct action".

24. There is rather more to the position than that announcement might have suggested beyond its terms.

25. GB News reported on 18 May 2025 that this announcement was not Just Stop Oil's settled position. It predicted a dramatic U-turn. On 21 May, far from denying this, Just Stop Oil commented in an email to its members "GB News was right for once. We are plotting a very big comeback". Their email also contains an invitation to donate for continued action.

26. On the same day, a police assessment as to the threat level was emailed to a number of police forces. It considered the level of risk of environmental protests at airports, considering that situation overall. It described the threat in the UK as having returned to dormant, but not withstanding that overall assessment, it did address a number of active groups. Importantly, that national police assessment was provided by the Metropolitan Police to, amongst others, London City Airport. It did so in the context of providing intelligence that a number of environmental protest groups planned to target the Shell Oil meeting within the area covered by the injunction at Heathrow that had relocated. That email from the Metropolitan Police observed that "…the injunction at Heathrow Airport had a real impact on the Shell protest […], to remove an injunction now would open up to further protests, and whilst Just Stop Oil have stepped down, there appear to be a cycle of new groups emerging and this cannot be ruled out, so maintaining it would be very much recommended."

27. Further, over the weekend of 14 and 15 June 2025, Just Stop Oil and Youth Demand, another protest organisation, arranged an event described as "Seeds of Rebellion" which, seemingly, was part of a training programme where attendees would be taught "all the theory and practice for pulling off the non-violent democratic revolution that is coming". In keeping with that, Just Stop Oil's fundraising page continues to invite donations for a "new campaign that is in the works".

28. The ambiguous nature of Just Stop Oil's announcement, and the strong reasons to approach it with circumspection, in my judgment, justified the delay in it having been brought to this Court's attention. It has been brought to this Court's attention now, and it has been considered by me.

29. I agree with the analysis of Sweeting J in the *Esso Petroleum* case (at paragraph 25) that "the principle factual development has been Just Stop Oil's announcement in March 2025 in relation to "hanging up the high-vis". However, as I have outlined above, the evidence shows, in my view, this announcement cannot be taken as an unequivocal and final renunciation of direct action. The amorphous nature of the group, combined with the part experience of similar unfulfilled statements by Extinction Rebellion and Just Stop Oil's subsequent communications and activities, mean that it would be premature to rely on this announcement as a basis for amending or discharging the injunction. The risk of direct action by those connected with Just Stop Oil's campaign remains real and imminent."

30. In my judgment, not only does there remain a clear and present risk from Just Stop Oil, not least given the clear difference between its message to the press and its communication to its members, but there remains such a risk from other similar protest organisations. Four other activist groups remain and continue to protest fossil fuels by the use of direct action. No single protest organisation speaks for all such activists. I have been shown and taken note of posts this year from organisations Shut System and Extinction Rebellion, in April and June of this year more particularly, which each refer to continued activism in this regard. Even a complete repudiation of disruptive protests by all such organisations would not exclude the risk of actions by individuals or other splinter groups.

31. Whilst, as has been properly identified to me, a number of the relevant groups have indicated a change of focus, for example to protests in relation to the prohibition of Palestine Action, that does not mean that such organisations, or members of such organisations, given the opportunity, would not continue their environmental activism. There has been no indication from any of these organisations, including Just Stop Oil, that they have abandoned the convictions that has underpinned their actions thus far.

32. I have, in this context, also been referred to the acquittal of a number of protestors in relation to action at Gatwick Airport. They were prosecuted for public order offences and acquitted for reasons set out in the article to which I was taken. In my judgment, that material does not undermine the need for the injunction that is sought here. Indeed, if anything, the fact that other aspects of the criminal law were not able to address trespassing behaviour perhaps underlines the importance of there being an injunction to prevent such activism.

The effectiveness of the order.

33. It is important in this review to consider whether the injunction has been effective in meeting the risk identified in 2024, the continued presence of which risk I have just addressed.

34. It is clear, on the evidence I have seen, that the injunction has been proved to have acted as an effective deterrent. By way of example, (i) two protests due to have occurred at London City Airport were relocated, social media indicating that that was because the protesters involved were aware of the injunction. (ii) It was a Metropolitan Police assessment, to which I have already referred, in relation to Heathrow Airport, that the injunction continued to have an important positive role. (iii) There has been a dramatic reduction in the number of actual or attempted protests since the injunction was made. That, on the evidence I have seen, is not because the threat has gone but because the injunction is managing that threat.

35. That leads me to a further important consideration, alluded to by the Metropolitan Police email in relation to Heathrow Airport. That is that the removal of the injunction would risk making airports such as Gatwick a greater target in the future. That risk

would be all the greater because a number of injunctions have already been granted in relation to a number of other airports. Were Gatwick Airport not to receive the protection of such an injunction, it would be exposed as a greater target. As Linden J put it in the *Esso Petroleum Company Ltd v Person Unknown & Ors* [2023] EWHC 1837 (at paragraph 67), in the context of disruption of oil infrastructure in 2021/2022:

> "It appears that the effect of the various injunctions which have been granted… has been to prevent or deter them from taking the steps prohibited by the order of the court, although of course not invariably so. If, therefore, an injunction is refused in the present case, the overwhelming likelihood is that protests of the sort which were seen in 2021 and 2022 will resume."

36. That remains, in my judgment, an astute observation. As Mr Morshead KC submitted, the protest organisations that are of concern are not unsophisticated in their operation. They will recognise the opportunity to protest where an injunction does not prevent them from doing so.

Conclusions.

37. I am satisfied that there remains a compelling need for the injunction made in July 2024, one year on. I reach that conclusion having undertaken the full and careful assessment required. Whilst it is not my task to consider the merits of the order as originally made, in considering whether the order remains necessary I have taken full account of the careful analysis of Ritchie J to which I have referred. That analysis holds good now as it did then.

38. There has not, in my view, been any change of circumstances that means that the order has outlasted the compelling need. On the contrary, I am satisfied that it is the continuation of the order that has addressed, and must continue to address, the risks that have been identified. The order can in the future be reviewed if that picture changes, and will in any event be reviewed in 12 months' time. I am fortified in the view that I have reached, although I stress I have reached my own conclusions, by the fact that

similar injunctions have recently been reviewed and continued by Bourne J in relation to 10 other airports on 24 June of this year.

39. As was recognised by Sweeting J in *Esso Petroleum* Case, it is permissible to make adjustment to the terms of an order in the light of experience of its practical operation. I should, in that regard, address two matters to which my attention has been drawn. That is to the approach of Nicklin J in the decision of *MBR Acres Ltd & Ors v Curtin* [2025] EWHC 331 (KB). First, he identified that "persons unknown" was a sufficient description for defendants in relation to an injunction such as this. In my judgment, by reference to the observations of the Supreme Court in the *Wolverhampton* case (at paragraph 221), it is important that persons unknown are identified, insofar as is possible, so that it is clear whether a person is or is not affected by the injunction. A more detailed description here, is, in my judgment, appropriate, and I take note both of the approach, and the reasons for it, of Sweeting J in the *Esso Petroleum* case in this regard, at paragraph 28 of that judgment.

40. Secondly, Nicklin J required that the claimant should be required to obtain the court's permission before applying to commit any person in protest cases. That approach may well have been appropriate on the facts of the case with which Nicklin J was dealing. Such an approach here, in my judgment, would fail to give proper effect to what was described in the *Wolverhampton* case (at paragraph 152) as equity's essential flexibility.

41. On the facts of this matter, in my judgment, it would be disproportionate to require the Claimant to refer any person to this court effectively twice for permission, first, before committing them, and then when they were committing them. Such double referral is not necessary, in my judgment, to safeguard the rights of any such defendant. In any event, there is no evidence that I have seen of a disproportionate application of this order by this claimant hitherto. Indeed, if anything, their approach hitherto has been a cautious one. Accordingly, therefore, subject to any amendment that is now sought as to the precise terms of this order, I direct that it should continue for a further period of 12 months.

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Case No: KB-2024-002210

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 23 July 2025

[2025] EWHC 2489 (KB)

BEFORE:

MR JUSTICE TURNER

BETWEEN:

HEATHROW AIRPORT LTD

Claimant

- and -

PERSONS UNKNOWN

Defendant

MR T ROSCOE appeared on behalf of the Claimant
The Defendant did not appear and was not represented

JUDGMENT
(Approved)

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(Please note that due to the poor standard of audio recording it has not been possible to produce a high quality transcript in this case)

1. MR JUSTICE TURNER: On 9 July 2024 the claimant, Heathrow Airport Limited, was granted an injunction by Knowles J restraining certain persons unknown, identified as the first defendant, from entering or remaining on Heathrow Airport without consent in connection with Just Stop Oil or other environmental campaigns. The injunction was to continue for a period of five years but was made subject to successive annual review hearings, each of which was listed as close as conveniently possible to the anniversary of the original judgment. This is the first review hearing. I note in passing that I am satisfied that adequate notice has been given of the hearing and electronic access to the materials relied upon provided to all who may have an interest in the outcome.

2. The injunction was granted in circumstances in which persons, particularly those affiliated to the Just Stop Oil cause, were pursuing a campaign of direct action targeting UK airports in the summer of 2024. That campaign involved serious acts of trespass and disruptive actions at UK airports, including Heathrow. It was thought that without injunctive relief the disruption would be likely to continue.

3. Other major UK airports sought and successfully obtained similar injunctions at around the same time. There were some differences in the precise content but each was in the form of what is known as a newcomer injunction against persons unknown and each was also granted for a period of five years with annual reviews. Ten of those airports London City, Manchester, Stanstead, East Midlands, Leeds/Bradford, Luton, Newcastle, Birmingham, Bristol and Liverpool applied successfully for the review hearing of their respective injunctions to be heard jointly. The hearing took place before Bourne J on 24 June 2025. In all relevant respects the injunctions were ordered to continue and the reasons are set out with helpful and succinct clarity in the judgment to be found at *London City Airport Limited and Docklands Aviation Group Limited v Persons Unknown* [2025] 6 WLUK 499.

4. Of course, each such application must be approached on its own facts but the principles to be applied are the same. In particular, a renewal hearing such as this one is not rehearing of the original injunction application. It does, however, allow for the

claimant and all interested parties to make full disclosure to the court supported by appropriate evidence as to

1. How effective the order has been;
2. Whether there are any grounds for discharge;
3. Whether there is any proper justification for continuance; and
4. Whether a further order should be made.

5. The court must therefore consider whether anything material has changed, or if the risks still exists, before the extension is likely to be granted. However, if material matters have changed the court must analyse those changes and determine whether the injunction should continue, be discharged or its terms amended. Where some further and similar injunctive relief is appropriate, it will often be the case that the court will not depart without the reason from the original wording and the original injunction because any potential defendants might already be aware of the wording of the original and confusion may otherwise arise if it is changed.

6. The detail of the factual background to the granting of the original injunction is set out in the judgment Julian Knowles J, which is recorded at [2024] EWHC 2599 KB. No purpose would be served by rehearsing that material here. However, I ought to point out by way of important background that Heathrow is the UK's busiest and most significant airport. An aircraft would be arriving or departing the airport about every 45 seconds. When assessing the potential egregious consequences of direct action, regard must be had to the significant issues of safety and security against the background of operations of considerable complexity. Acts of disruption which in other public environments might be expected to give rise to gross inconvenience and disturbance are liable to pose threats at a far greater magnitude at a major airport.

7. It will not always be possible to distinguish immediately between what is intended to be a solely peaceful direct action and threats of a more serious nature. An obvious example involves any incursion onto a runway, which is likely to be treated as a threat of the utmost serious risk from both security and safety perspectives. Furthermore, the complexity of the collective nature of Heathrow's operations mean that even small incidents can have significant knock on consequences, involving significant disruption to the travel plans of members of the public and consequent economic harm, stress and

the inconvenience that it entails. Part of the attraction of direct action in this context might well be the perceived benefits of gaining the attention of as many people as possible for the cause of the activists by achieving the maximum of high profile chaos from the minimum of effort and expense.

8. I now turn to the relevant developments over the past twelve months. The original injunction was breached by 26 individuals shortly after it was granted, in incidents which took place between 24 July 2024 and 1 August 2024. 25 of those 26 individuals have very properly now been joined as defendants to these proceedings. The first of these incidents was the most serious; certain individuals were arrested at the parameter fence to thee runways, equipped with tools to breach it. The later incidents were lower in grade but still amounted to clear breaches of the terms of the injunction. None of the named defendants now joined has today sought to suggest that there has been any material change of circumstance which would militate against the continuation of the injunction against any of them or indeed more widely.

9. The forecast for the future presents a mixed and unsettled picture. A Just Stop Oil press release on 27 March 2025 was to the effect that it was ceasing its campaign of direct action. From the perspective of the airport that is all well and good. However, there have been subsequent statements to the effect that it may return to its earlier activities. Other direct action groups have emerged, bringing with them the potential threats of more violent or damaging forms of action.

10. Of course, it may be argued that the fact of the breaches illustrate that the initial injunction was ineffective or, in the alternative, that the absence of later infringements might suggest that it is no longer needed. It will never be possible to achieve a conclusive answer to the question as to what the consequences would have been if the original injunction had not been granted. But I am satisfied that all the indications in this case are that the injunction worked and is likely to continue to work. The earlier breaches can most readily be explained by the fact they were carried out at a time when the perpetrators had yet to appreciate the existence or significance of the injunction, or that they remained so enthusiastic to further their campaign against UK airports that they did not, at that early stage, pause to reflect on the potentially serious consequences of their actions to them personally. I will also take into account that disruptive action

outside the geographical boundaries of the injunctions, or directly cause other airports and airfields, has persisted over the last 12 months which supports the proposition they are likely to continue to be popular targets for protestors.

11. Such incidents include: 25 June 2024, four Just Stop Oil activists were arrested at Gatwick Airport. 27 July 2024, a Just Stop Oil action which was planned for London City Airport was relocated to the Department of Transport on Horseferry Road. July 2024, eight Just Stop Oil activists were arrested at Gatwick Airport on suspicion of interfering with public infrastructure. 31 July 2024, Just Stop Oil and Fossil Free London took action at the Docklands Light Railway station at City Airport. 5 August 2024, five Just Stop Oil activists were arrested on their way to Manchester Airport equipped with bolt cutters, angle grinders, glue, sand and banners carrying slogans including "Oil Kills". 5 February 2025, Extinction Rebellion held a demonstration at Farnborough Airport following a consultation period in relation to Farnborough Airport's expansion plans which ended in October 2024. 27 February 2025, Extinction Rebellion held a demonstration at Inverness Airport waving banners to ban private jets and "We're in a climate emergency, we need to step up and take action". 27 June 2025, four people in connection with a pro-Palestinian group broke into an RAF base at Brize Norton and vandalised military aircraft.

12. On a different point, the claimants have brought to my attention the decision of Ritchie J in *Tendring District Council v Persons Unknown* [2024] EWHC 2237 KB, concerning the repeated failure by the applicant council in that case to enforce breaches of a person unknown injunction. That was a case in which two councils sought, for the seventh year in row, an injunction preventing parking or camping around the site of an airshow. The judge expressed concern that:

> "These councils have never sought to enforce the injunctions that have been drafted for them."

And warned:

> "Next year if a further injunction is applied for on the evidence that is put before this court on full and frank disclosure shows that, say, 10

caravans turned up and trespassed and no content proceedings are brought, it is likely that I at least would not grant a further injunction. These similar injunctions for nuclear weapons of civil law are not handed down willy nilly to be ignored. They are to be obtained seriously and enforced properly. If they are granted and they are not enforced, whether because the council does not consider a breach is seriously left to enforce or because of costs constraints, then they should not be granted in the first place and criminal law protection is the right protection".

13. In this case, committal proceedings were not, in the event, commenced against the alleged contemnors by the airport. However, the facts of this case are very different from those in *Tendring*. In that case, apparently informal and indulgent enforcement amnesty had gone on for far longer than here, and the judge entertained perfectly reasonable doubts as to whether the councils were serious about taking advantage of enforcing the injunctions for which they had repeatedly applied. His analogy with nuclear weapons was an instructive one. Just because you have them does not mean to say you should automatically detonate them at the slightest provocation. The alleged contents in this case took place quite soon after the injunction was granted, and had no reason to doubt that in inventive future infringements the airport would pursue committal proceedings in appropriate cases.

14. I am thus satisfied, on all the evidence before me, that there has been no material change in the threat of unlaw direct action at the airport such as would justify the injunction not being continued. It follows that, so for the fact of the joinder of the named defendants, I consider the proper order made should be in the same terms as the original, subject to more detailed submissions which I have been told I can expect.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge

IN THE HIGH COURT OF JUSTICE **Claim No. KB-2024-002596**
KINGS 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 AMENDED PARTICULARS OF CLAIM

Defendants

NOTE OF REVIEW HEARING BEFORE
& *EX TEMPORE* JUDGMENT OF MR JUSTICE FREEDMAN
ON 22 OCTOBER 2025

The hearing commenced at 10:30 before Mr Justice Freedman **("J")**. Tom Roscoe ("**TR**") appeared for the Claimants. No one attended for the Defendants.

Opening

1. TR confirmed his appearance on behalf of the Claimants. It was noted that there was no attendance from the Defendant.

2. J asked whether the Claimants were proposing an application to renew the injunction. TR clarified the Claimants were not proposing an application to renew or present a new application, but rather were attending in accordance with the previous order made.

3. J confirmed the hearing is not a de novo hearing. J confirmed he had the opportunity to review the evidence and exhibits for this hearing, including the previous witness evidence and exhibits.

4. J noted that these review hearings are the subject of a dozen other cases for judicial consideration.

5. J pointed out that he had not received the skeleton argument of the Claimants ("**Skeleton Argument**"). A paper version of this was handed up to J. J expressed the view that nothing in the skeleton argument was likely to take him by surprise.

Background

6. J noted that this is a review hearing and referenced Bourne J on procedural matters. J expressed the view that he would expect the court to focus on the threat Just Stop Oil (JSO) and other environmental groups pose to the infrastructure in this country, particularly in this instance.

7. TR commented that J will not be particularly disadvantaged by not having read the skeleton argument of the Claimants.

8. TR said they were buoyed by the JSO announcement that "*"GB News was right for once".* J confirmed that he had this reference in mind.

9. TR said he did not know what oral development would be of assistance to J.

10. J stated that at the previous hearing, TR took Farbey J into detail throughout the without notice procedure. J understood that there ere a large number of matters to satisfy the court on.

11. J expressed the view that he could rely on the facts Farbey J was satisfied with in that hearing. Fareby J had considered the *American Cyanamid* principles and noted amongst other things that it was just and convenient to make the order, that other remedies were insufficient, that trespass had been considered and that the plans put forward were of satisfactory detail. J stated that since those matters were considered satisfied by Farbey J, J did not need to go through them again.

12. J noted that the only question he had to consider was whether there had been material change that would make the judgement no longer warranted. J clarified that material change would involve significant reductions in the threat of activity at LSA.

13. J noted that there does not seem to be any evidence to suggest that those who insist on causing trouble will hault from doing so. TR agreed with J on this point.

14. J stated that in so far as a reduction in direct activity has occurred for LSA and others, it is J's view that this would be because the injunction has been in place

15. TR agreed with Turner J in London Heathrow case, which is recorded at [2025] EWHC 2489 KB, which was complicated by breaches and named Defendants. Turner J was satisfied, and J noted that this complication was not here.

16. J considered that each airport is different and to be looked at individually, but also took the view to look at this matter in the round.

17. J stated that if Bourne J in [2025] 6 WLUK 499 considered there were significant threats to 10 UK airports, it would be illogical or irrational to render the injunction unjustified here. Even putting aside the decision of Bourne J, it seemed to J that there was ample material in this case to be confident that no material change has occurred as to render the injunction unjustified.

18. TR was grateful for this statement from J and did not trouble J further on the facts.

19. TR stated that for the sake of good order and completeness, he wished to raise a number of points:

    19.1.1. In paragraph 15 of the Skeleton Argument, it was noted that YL needs to be satisfied. J stated they had read PS1, and could see that the order was made in accordance with the guidance set out in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 W.L.R. 45 (the "***Wolverhampton* Guidance**"). J noted that the request for the review hearing had been circulated as per The *Wolverhampton* Guidance, and as was the application notice and notice of the hearing through the usual gateways. TR stated he was satisfied that proper hearing of the notice had been given.

    19.1.2. In paragraphs 23, 24.2 and 26 of the Skeleton Argument, TR made reference to full and frank disclosure with his point on two MBI rights cases. TR noted it was a subject of debate raised by *Nicklin J in MBR Acres Limited v John Curtain & Persons Unknown* [2025] [2025] EWHC 331

(KB). TR expressed the view that it was ultimately a case management matter and that no other airport judges followed this. J thanked TR for raising this, and noted that Bourne J being considered, J adopted the same approach here.

19.1.3. TR's final point was in relation to the application notice. TR noted that the way it was drafted referred to the need for an 'application'. TR proposed tweaking 'application' in the ordinance draft order tab 1 bundle to 'request'. TR confirmed that the Claimants had requested this hearing, but wanted it to be as close to the anniversary as possible. J stated it was astonishing the date of the hearing had not taken place before today, but noted the long vacation gets in the way. J stated that the Claimants had requested this hearing to be in March, and that this review hearing was not as urgent. TR said that the only change was that courts have ordered against 'tinkering' with the previous order. J stated that it looked like the terms of the order were fairly standard and mirrored other airports. He noted that there was a lot to be said here for uniformity.

20. J told TR he was very helpful. J said TR could address him further if needed, but otherwise would proceed with a short ex tempore judgement.

Judgement of Freedman J

(1) On 14th August 2024, Farbey J granted an injunction to the operators of London Southend Airport (LSA) in Essex, and to 2 subsidiary operators of the airport (London Southend Solar Limited and Thames Gateway Airport Limited).

(2) The effect of the injunction was to prohibit persons unknown but linked to Just Stop Oil (JSO) and other environmental campaigns from committing acts of trespass and nuisance at LSA.

(3) The injunction was obtained pursuant to a without notice application because of the urgency of the situation, but Farbey J and in accordance with the *Wolverhampton* Guidance, made provision for the order to be notified to the

Defendants by uploading a copy to the airport's website, affixing it at specified locations, and sending it to known email addresses.

(4) On the evidence before me, I am satisfied that the *Wolverhampton* Guidance followed has been followed to the letter.

(5) Although the order made by Farbey J was for period of 5 years until 14th August 2029, paragraph 3 of that order provided that the injunction should be reviewed annually. That is the purpose of the hearing today.

(6) The order provided that the injunction would lapse on the anniversary of the injunction unless an application for a review to take place commenced before then. The Claimants have complied with that provision by filing an application notice 1 day before the anniversary.

(7) The Claimants have complied with this provision by filing application notice 13/8, although it is right to confirm in fact that the Claimants requested a review as far back as March 2025.

(8) The application notice and refence to the date of this hearing have again been circulated in accordance with the *Wolverhampton* Guidance.

(9) Perhaps unsurprisingly, notwithstanding notice being given to the Defendants, there is no attendance today by any Defendant, nor are they legally represented at this hearing.

(10) The Senior Associate of the Claimants firm of solicitors, Mr Phil Spencer, confirms his firm has not received any communications from anyone in relation to the injunction itself or the notice of the hearing or the review hearing today.

(11) Farbey J was assisted by TR of Counsel in August 2024 when she granted the order. I am similarly assisted by him today.

(12) I can confirm I have received the skeleton argument from TR.

(13) I have the advantage of a full note of the ex temp judgement given by Farbey J. Because this is a review hearing, it is not necessary to rehearse any part of that judgement other than to summarise in outline her findings:

(a) First, JSO and other EG had targeted LSA on numerous occasions.

(b) Second, there was good evidence of threatened unlawful activities by environmental campaigners (including JSO) during the summer 2024.

(c) Third, the action threatened by JSO and others posed a significant threat to the health and safety of all users of the airport, including passengers, airport staff, those operating businesses at the airport and emergency services. The disruption caused by threated action by campaigners such as JSO were also cause for serious economic loss due to disturbance to travel plans.

(d) Fourth, in terms of cause of action, Farbey J was satisfied that the Defendant's activities can give rise to claims in nuisance and trespass.

(e) Fifth, Farbey J was provided with a map of the Claimant's land delineating the area of land the Claimant wished to protect by the injunction. Farbey J was satisfied that this land would be under the control of one or more of the Claimants.

(f) Sixth, obviously by virtue of the order being made at London Stanstead Airport, along with other airports in the UK requiring protection of the injunction, Farbey J was satisfied that the evidence before the court strongly supported that the balance of convenience fell in favour of granting the relief sought.

(g) Out of an abundance of caution, Farbey J expressed a view that it was no less than a necessary and proportionate qualification on the Defendant's Article 10 and Article 11 rights.

(h) The added rider was that, in so far as there are bylaws in place, and indeed the possibility of criminal proceedings, in the view of the court that did not provide an adequate alternative route of remedy.

(14) So now I turn to the review hearing today. The nature of a review hearing was considered by Bourne J when he had to hold a review earing in relation to orders made for 10 airports. MJB cited *Wolverhampton* Guidance para 2.2.5 where the Supreme Court observed at the hearing that all parties have the opportunity to give full and complete disclosure to the court, etc. [quote]….'ought to be made' whether there is further evidence to be made.

(15) In BJ High Speed HS2 case 2024 ewhc 1277kb, Ritchard J described the court's task in a review hearing as

a. ["drawing these authorities together, in the view of an interim injunction agains the Defendant's, this judge is not starting over. It is to understand the suubstrater, the reason for the fear, unlawful action. If nothing material has changed, the D remains rightfully and justifiably fearreful, they can continue. rigour observed+fulfilled'….para 33 OTOH, etc.]

b. Para 33 "If material matters have changed, the court can be required to analyse the circumastances, where the scope details of thei interim injjunction can be altered. IF so, the original thresehold apply"

(16) It follows that my task is to consider since last year any material change in circumstances affecting, diminishing or removing the need for the injunction to remain in place.

(17) Before I embark on this task, it is useful to give some context. 12 other airports in the UK obtained similar injunctions in the summer 2024. As I've said, MJ B already conducted a review hearing for 12 airports heard on a joint basis. He concluded that each injunction should continue without change save for minor alteration to the geographical extent to London City Airport.

(18) It is also right to note that 2 other major city airports, London Heathrow Airport and London Gatwick Airport, were also granted an injunction and at the review hearings of those injunctions, no changes were made.

(19) The question therefore remains in relation to LSA as to whether a significant risk of direct action by JSO or other environmental organisations.

(20) In relation to all other 12 airports I have alluded to, the court found that the risk had not abated since the injunction was granted.

(21) As I observed to TR when he was addressing me, it is of course right that each injunction is considered separately and individually. But on the other hand, if there has been good evidence of on-going threats to the 12 main airports in this country, it would be somewhat irrational for a court to conclude that no such threat continues to exist to LSA. But it is necessary nevertheless that each airport is given separate consideration and individual review.

(22) Before turning to evidence for considering the risk here, it is worthy of note that operations have grown substantially at LSA in preceding year.

(23) I have a witness statement from Mark Taylor (MT), who is the Managing Director for Operations at LSA. In his statement, he tells me that passenger numbers have risen to around 700,000, up from 300,000 in 2024. Since April 2025, LSA has served 73-89K passengers per month, which is up from 33,000-37,000 for the same period in 2024.

(24) It is also the case that this airport has enjoyed an increased presence in the media. MT attributes that to the fact that private jet centre located at airport has handled a number of high-profile people including celebrities, and hosts various activities covered by the press including RAF Red Arrow memorials and other jet fighter typhoon displays by RAF.

(25) It is his view, and it is an entirely justified view, that the developments at LSA, along with its growth and larger scale, makes it a potential target for disruptive activities.

(26) Before I leave his evidence, he informs me that whilst all other major UK airports have dedicated high profile armed police on site, that is not the position at LSA. LSA must instead rely on the response of local policing teams. To some extent, this point renders LSA a little more vulnerable.

(27) In relation to the ongoing risk of unlawful activity, TR relies on Mr Phillip Spencer. In his statement, he summarises activities of protestors at various airports in 2024 and early 2025.

(28) Those seem to me to strongly suggest that there remains a persistent risk of direct activity at this airport and others. But, in the interest of frank disclosure, it has been pointed out that on March 27 2025, JSO made an announcement which purported to give the impression that it had decided to withdraw from disruptive protests, including direct action. JSO released an announcement on its website headed 'We Are Hanging Up The High Viz'. It went on to explain that they would no longer engage in disruptive activity they had done so in the past.

(29) If JSO had stood by what they had posted on the website, it might have given some calls for optimism that they would not engage in direct action at airports in future. However, on 18 May 2025, broadcaster Ben Leo reported on GB News reported as follows *"I can exclusively reveal that Just Stop Oil is plotting a very big comeback".*

(30) JSO were then able to clarify matters on 24 June 2025, as they emailed solicitors acting on behalf of London City Airport in response to article confirming a great comeback by saying *"GB News was right for once",* and that they were *"plotting a very big comeback".*

(31) That statement, and the implications of it, are clearly very relevant when considering whether there is an ongoing risk posed by JSO. Moreover, and regardless of the intentions of JSO, it is plain that there are a number of other organisations engaging in campaigning on behalf of environment acting in a disruptive manner.

(32) Mr Spencer makes refence to 4 such organisations:

a. Youth Demands, which is said to be 'a youth resistance organisation'. This group takes pride in the fact that they managed to blockade central London in the summer of 2024;

b. Fossil Free London, a climate activist group founded in 2019. Their website states "Fossil Free London is a climate justice organisation dedicated to disrupting the fossil fuel industry here in our city";

c. Extinction Rebellion, which remains a very well-known climate activist group that I understand publicised its intention to take further action; and

d. SHUT THE SYSTEM, a new group with their plan and aim to shut down the fossil fuel economy.

(33) And so in my judgment there is a large amount of material which justifies the need for an order to protect this airport.

(34) Insofar as it is to be argued that there's been some reduction of direct action at airports during 2025, and therefore in some way risk has somehow diminished, I agree with MJB that it is much more likely to be the case that it is the grant of the injunction that is more likely to be the more effective deterrent. I accept that removing the injunction at this time would create a real risk of resumption of disruptive activity at LSA.

(35) To conclude, looking at totality of the evidence, I'm satisfied that there has been no material change that removes or significant diminish the need of the injunction granted in 2024, and it shall remain in force.

(36) The appropriate steps must be taken to publicise the order following this review. It will of course need to be a revied in 1 years' time.

(37) TR rightly raises a point regarding the mechanisms of this. There does not need to be an application notice, rather it can be requested simply by an email to the court listing at the Royal Courts of Justice asking for it to be listed.

(38) In meantime, it is of course open to anyone to apply to vary or discharge the order. As with any interim relief such as this, there must be an undertaking for damages given at the time since making the last order.

Comments Following Judgement

(39) J asked TR to confirm if the judgement had covered all matters

(40) TR noted that it had, and asked whether J had seen the order in draft form.

(41) J stated he was satisfied that the order in draft form reflected what needs to be stated and circulated to the Defendants in accordance the *Wolverhampton* Guidance. TR thanked J.

The hearing concluded at 11:00.

Neutral Citation Number: **[2026] EWCC 33**

Case No: **KB-2026-BHM-000043**

BIRMINGHAM CIVIL AND FAMILY JUSTICE CENTRE
CIVIL LIST (KBD)

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: **18 May 2026**

Before:

Mr Justic Choudhury

- -

Between:

Birmingham City Council	**Claimant**
- and -	
Persons Unknown	**Defendant**

- -
- -

Bruce Carr KC and Anna Greenley (instructed by **DLA Piper**) for the **Claimant**

Hearing dates: **18th May 2026**

- -

JUDGMENT

Monday, 18 May 2026

MR JUSTICE CHOUDHURY

1. This is the claimant's application to extend the injunction granted by Mr Justice Pepperall on 20 February 2026 ("the February 2026 injunction") restraining the scope of protest activity by the defendants to prevent disruption to city-wide waste collection services.

2. The February 2026 injunction was granted until 20 May 2026. The underlying industrial dispute involving the claimant's waste collection employees has not been resolved, and it is the claimant's case that, unless restrained by the court beyond 20 May 2026, the defendants will simply resume their protesting activities.

3. The review application was due to be heard on 30 April 2026 but was postponed to today's date.

4. There is also an application before me to convert these Part 7 proceedings to Part 8.

5. I begin with the issue of service of these proceedings and notice of the hearing. There is evidence before me from Ms Deborah Carter-Hughes, Assistant Director of Legal Services - Corporate Law & Deputy Monitoring Officer at Birmingham City Council. In her fourth statement Ms Carter-Hughes sets out the detailed steps taken by the council to notify parties of the application to extend.

6. These steps essentially mirror the steps taken to notify the parties of the February 2026 injunction and subsequent developments. These steps included sending emails to Thompsons Solicitors, notifying Unite of the application and including relevant documentation; sending emails to Strike Map, Socialist Workers Party, Reel News and the Birmingham Socialist Party, again containing relevant documentation. Documentation was also uploaded to the council's website, to a page dedicated to the waste collection dispute,

and a supporting video was uploaded to YouTube. In addition, notices were placed at each of the four depots servicing the council's waste collection area: Lifford Lane, Smithfield, Perry Barr and Atlas. Monitoring has continued at each of these sites to ensure the notices remained in place, as they have.

7. Leaflets were also handed out at each of the depots, with notices being put up in the presence of some defendants. Messages were also posted by the council on various social media sites that an application to extend had been made.

8. I am satisfied that all reasonable and practical steps have been taken to bring these proceedings to the attention of the defendants who are the subject of these proceedings, referred to here as Persons Unknown.

9. Although at the last hearing before Pepperall J at least one person identifying themselves as a defendant and two members of the public attended, there has been no attendance this morning or this afternoon by any defendant or by any party other than the claimant and its legal team. However, given the steps taken to effect notice, I am satisfied that it is appropriate to continue with the hearing of this matter, despite such non-attendance.

Update on the underlying industrial dispute

10. The dispute continues. Unite the Union (Unite) balloted its members and has obtained a mandate for strike action to continue without any further ballot until August 2026. Unite is subject to an injunction granted in May 2025 ("the May 2025 injunction"), limiting the scope of its protesting activity. The May 2025 injunction against Unite continues.

11. The trial window in respect of those proceedings has been fixed for early 2027 with, I am told, February 2027 being the likely trial window. The likelihood, therefore, is that the

terms of the May 2025 injunction will continue to operate until after the judgment at trial, currently early next year.

> The February 2026 injunction was obtained to prevent the defendants from undertaking the sort of protest activity the May 2025 injunction against Unite sought to prevent. As Pepperall J found at the last hearing, the evidence established that other protesters had picked up where the union had left off. He held, at paragraph 75, that:
>
> "... (a) there is strong evidence that the protesters have breached domestic law, both private and public nuisance; (b) the right to protest outside the depots may be important to the protesters, but not the right to block the gates or obstruct the bin lorries on their rounds; (c) the duration of the protest should not simply be measured in hours on a single date, rather this direct action should be assessed in its proper context of an escalating pattern of direct action that has been conducted across no fewer than nine different working days across multiple depots just in the month of January; (d) the protesters have on each occasion occupied land immediately outside the depot gates, and on 29 January occupied part of the highway to prevent bin lorries from either proceeding on their way or turning around; (e) these protests have by design caused enormous disruption to the council's ability to provide a waste collection service to the residents of Birmingham with the consequence that uncollected rubbish has built up on the streets leading to an obvious loss of amenity, increased fly tipping and environmental risk; (f) these protests are in support of the legitimate political view that the council has not treated the bin workers fairly; and (g) there is no reason to think that such view is anything other than sincerely held."

12. At paragraph 76, the judge continued:

> "... I consider that the city council has established that it is more likely than not that the court at trial would find that the proportionality assessment clearly favours injunctive relief to restrain the excesses of direct action and to limit the protesters to peaceable protest that does not obstruct the delivery of its waste management service. Further, I conclude that the council has established a compelling need for relief in order to protect its enjoyment of its land and its ability to deliver an effective waste collection service, and that such need cannot be adequately met by any other measures including either negotiation with the protesters or further engagement with the police."

13. As Ms Carter-Hughes in her third statement, on the day of the previous hearing there was disruption at the Perry Barr and Smithfield depots involving some 30 to 40 protesters at the former site, 70 to 80 protesters at the latter. I have been shown video footage of the activities

on that day, which clearly show blockading activity preventing waste collection vehicles from departing depots in a timely manner.

14. There is one particular incident of note, described by Ms Carter-Hughes as follows:

> "One of the Defendants in the video (a gentleman wearing a grey buff and an orange Veolia hi-vis jacket, who I recognise from previous videos of the Defendants and I will refer to here as 'Mr Greybuff') is shown speaking with the driver of a vehicle which is being prevented from departing the depot. In his discussion with the driver he states: 'this may very well be the last time that you see us as there is a High Court hearing today and we expect the court will probably take a dim view of what we have been doing and tell us to stop'. In my view, this demonstrates the Defendant's knowledge that their actions throughout their blockades of the Council's vehicles have been unlawful and were likely to result in an injunction being granted at the hearing on 13 February 2026. The actions of the protesters appear to be a 'last hurrah' before the injunction was granted by Mr Justice Pepperall."

15. On 13 March 2026 there was further disruption, this time at the Ryton Depot of Tom White Contractors of Coventry. Tom White is the waste collection provider for Coventry and has been providing cover for Birmingham since last year using their own staff and vehicles. This protest activity again involved preventing or slowing waste collection vehicles from leaving the depot in a timely manner. Ms Carter-Hughes describes a particular incident which can be seen in the video, at paragraph 21 of her statement:

> "The video also suggests that the action being taken against Tom Whites as they are 'scabbing on the bin strike'. In a discussion with a driver, a protester (who I believe is Mr Greybuff from the Reel News video on 13 February 2025) makes it clear that the protest is due to the Birmingham bin strike and wording on the video then states 'the council got an injunction on Persons Unknown to stop all protests in Birmingham, but Coventry wasn't included'."

16. At paragraph 22, Ms Carter-Hughes goes on to say:

> "These comments make it clear that it is the same group of Defendants who are responsible for the blockade at the Ryton depot. Their actions here demonstrate that, if the Order against them were to be lifted, they would immediately return to similar blockading of the Council's waste vehicles and depots in Birmingham,

purportedly in order to exert leverage over the Council to reach a resolution in the industrial dispute with Unite."

17. It's important to note that the activity in Coventry was not in breach of the terms of the February 2026 injunction, which only extended to the Birmingham area.

18. There was also protest activity outside Coventry City Council's offices on 24 March 2026 which appears to have been led by the union, and on 1 April 2026, further disruption at the Tom White site.

19. As for the Birmingham area itself, which is covered by the February 2026 injunction, there is no evidence before me of any protest activity in breach of its terms, which tends to suggest that it has been effective in achieving the aim of preventing the disruption of waste collection services in the area.

20. The relief granted by Mr Justice Pepperall on 20 February 2026 was for a period of three months. That was because the claim form issued at the time had sought relief for a period of six months and the judge was conscious that relief ought not to be granted at the interim stage that effectively amounted to satisfaction of the entirety of the claim.

21. The claimant has since amended its claim form to seek injunctive relief until January 2028. On that basis the application before me is to extend relief not for the full duration until January 2028 but for a period of six months from the expiry of the February 2026 injunction, ie until 20 November 2026.

The Legal Principles on review

22. The legal principles to be applied upon review of injunctive relief against Persons Unknown, was fully considered by the court in the course of its February 2026 judgment.

On this application to renew, it is not the task of the court to review the earlier decision unless there has been a material change of circumstances warranting such a course. As stated by Mr Justice Ritchie in *HS2 v Persons Unknown* [2024] EWHC 1277, at paragraph 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."

23. The correct approach to be taken on a renewal hearing was summarised by Mr Justice Garnham in *Rochdale Metropolitan Borough Council v Persons Unknown* [2025] EWHC 1314. Having reviewed the relevant authorities, at paragraphs 42 to 50, Garnham J said as follows, at paragraph 51:

> "In my judgment the correct approach is dictated by the Supreme Court's judgment in *Wolverhampton* [*Wolverhampton City Council v London Gypsies and Travellers & Ors* [2023] UKSC 47] and in particular [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."

24. I should note that one of the authorities considered by Mr Justice Garnham was the decision in *Basingstoke v Loveridge* [2024] EWHC 1828 (KB) in which it was suggested that a different approach be taken, effectively amounting to a de novo hearing. However, as stated by Garnham J, that approach is more likely to be appropriate where an issue has emerged

which needs to be addressed expressly at the renewal hearing, and whether that necessitates an expanded renewal hearing or a *de novo* hearing will depend on the facts.

25. In other words, a *de novo* hearing is not a matter of course. In my judgment, the correct approach in this case is a normal renewal hearing approach, not a de novo hearing, there being nothing material in the background since the February 2026 injunction hearing to warrant a *de novo* approach.

Submissions

26. Mr Carr KC appears with Ms Greenley for the council and submits that there has been no change in circumstances here that would justify lifting the injunction. There remains the same compelling need for relief, and the actions of the defendants, both on the date of the hearing and since, demonstrate, he says, the need for relief to continue. The underlying dispute remains resolved and no grounds for discharge have emerged.

Analysis

27. I agree with Mr Carr's submissions. Dealing with the questions identified by Mr Justice Garnham at [51] of the *Rochdale* case, my views are as follows:

    a. Has there been a change in circumstances that would warrant a different approach being taken at this renewal hearing? Based on the evidence before me, the answer to that is ‘no’. The dispute continues, with no imminent prospect of resolution. The defendants have continued to disrupt activity where they can without breaching the order, suggesting that if the order were to be lifted, they would resume their protest activity on a larger scale within the council's area with a view to disrupting or stopping waste collection activity altogether.

b. How effective has the order been? As the evidence considered above demonstrates, the order has been very effective. Indeed, the only protest activity that has emerged has been that carried out in other areas outside the scope of the February 2026 injunction. That is a factor in favour of the order continuing.

c. Have any reasons or grounds for discharge emerged? In my judgment, none have emerged. The threat of disruptive activity remains acute. This is not a case where the council is relying on an assumption that such activity would resume. It is self-evident from the activities at sites outside the area, and things said on those occasions, that the resumption of wide-scale protest activity would be almost inevitable should the injunction not be continued. If that were to transpire, then the council would once again be in the position where there would be a compelling need for relief in order that it can protect the enjoyment of its land and, more importantly, maintain its ability to deliver an effective waste collection service in its area.

d. Is there a proper justification for the continuance of the order? In my judgment, the answer to that is 'yes'. Not only is there the threat of protest activity designed to disrupt services, with Persons Unknown filling the shoes of those prevented by the May 2025 injunction from taking direct actions themselves, there is little prospect of a resolution in the immediate short term. I note that on 27 April 2026 the then Labour leader of the council, Councillor John Cotton, made a public statement in his capacity as leader of the Labour Group, not as leader of the council, that a deal was in sight. Whatever the position might have been at that stage, the local government elections have since taken place, and these have changed the face of the council such that no party has overall control. In these circumstances, it would take some time for the council to be in a position to move forward with a deal, even

assuming that the positions reached before the elections will be supported or maintained by the new leadership. Given that there is a strike mandate until August 2026 and given the limited prospects of a resolution in the short term, there is, in my judgment, ample justification for continuing the relief granted in February.

28. As to the terms of the continuing relief, I am satisfied in the circumstances of the present case that the order ought to continue in the same terms. Mr Carr does not seek any variation in its scope, save for one small matter to which I will return. Given its effectiveness to date, it must be right that there should be no expansion of its terms, which are the minimum, in my view, necessary to achieve the protection that the council requires.

29. As to its duration, I note that the claim form as it is now drafted seeks relief until January 2028. I also note that any court-based resolution after trial will not emerge until February or March 2027 at the earliest. In these circumstances, a period of six months from the expiry of the previous order seems reasonable. That also allows for a reasonable period within which a resolution between the union and the council might be reached. Of course, if the matter is resolved before the expiry of the six-month period, the council will return to the court to seek a discharge of the injunction.

30. Mr Carr has offered an undertaking that the council will take those steps in that eventuality. It seems appropriate to me to incorporate that undertaking as part of the order so that there is no delay between resolution and the discharge of the injunction.

Part 7 / Part 8

31. The final matter to be dealt with is the council's application to convert these proceedings to Part 8.

32. Concerns were raised at the last hearing about the commencement of proceedings under Part 7, which were considered not entirely appropriate for various reasons, including the fact that default judgment could be obtained in the absence of a defence being lodged.

33. Mr Carr has helpfully taken me through provisions in the CPR, and in particular CPR 8.1(4), which confers on the Court a power to convert Part 8 proceedings to Part 7. However, there is no similar provision going the other way from Part 7 to Part 8.

34. Applying usual principles of statutory interpretation, inclusion of an express provision for conversion in one direction might suggest that the absence of a provision going the other way means that there is no power, at least on the face of the CPR, to convert Part 7 proceedings to Part 8 in this way. However, notwithstanding the absence of such express provision, the likelihood is that the Court has the power pursuant to its inherent jurisdiction in respect of such procedural matters to convert the proceedings if it were considered appropriate and expedient to do so.

35. I have been referred to one authority, a judgment of Kelyn Bacon KC, sitting as a deputy judge of the High Court, as she then was, in [2019] EWHC 2471 (Ch), in which a Part 7 claim was ordered to commence as if it had been commenced under Part 8. However, there appears in that case to have been a statutory provision under the Solicitors Act 1974 that is to be construed in such a way that contested fees under a conditional fee agreement could not be sought under Part 7. The transfer to part 8 would appear to be an instance of the exercise of the Court's powers under its inherent jurisdiction.

36. Of course, the present case is quite different from that: there is no underlying statutory provision which rendered commencement under Part 7 inappropriate. Furthermore, it seems to me that some of the concerns that caused the previous court to raise the issue as to

the suitability of Part 7 have somewhat fallen away or appear to be without substance. For example, any attempt to enter default judgment in these circumstances would, as Mr Carr accepted, be given short shrift.

37. In these circumstances and given Mr Carr's position that the council was somewhat agnostic about whether or not proceedings continue as Part 7 or Part 8, there appears to be no real need to transfer the proceedings. Accordingly, I shall leave the proceedings as they are, namely under Part 7.

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