Claim No. KB-2025-000497

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

B E T W E E N:

THE CHANCELLOR, MASTERS, AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

Claimant

- and -

PERSONS UNKNOWN

Defendants

-and-

(1) EUROPEAN LEGAL SUPPORT CENTER
(2) NATIONAL COUNCIL FOR CIVIL LIBERTIES ("LIBERTY")

Interveners

SUPPLEMENTAL BUNDLE OF AUTHORITIES

FOR HEARING ON 19 MARCH 2025

Court of Appeal

*Canada Goose UK Retail Ltd and another *v* Persons Unknown and another

[2020] EWCA Civ 303

2020 Feb 4, 5; March 5

Sir Terence Etherton MR, David Richards, Coulson LJJ

Practice — Parties — Unnamed defendant — Claimants applying for injunction against protestors to restrain harassment and other wrongdoing — Without notice interim injunction granted against "persons unknown" — Numerous protestors served with injunction but none served with claim form — Whether service defective — Guidance on proper formulation of interim injunctions — Limitations on grant of final injunction against persons unknown — Whether claimants entitled to summary judgment — CPR rr 6.15, 6.16

The claimants, a retail clothing company and the manager of its London store, brought a claim seeking injunctions against people demonstrating outside the store on the grounds that their actions amounted to harassment, trespass and/or nuisance. A without notice interim injunction was granted against the first defendants, described in the claim form and the injunction as persons unknown who were protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at the store. The terms of the court's order did not impose any requirement on the claimants to serve the claim form on the "persons unknown" but merely 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, alternatively, by e-mail service at two stated e-mail addresses, that of an activist group and that of an animal rights organisation which was subsequently added as second defendant to the claim at its own request. The claimants served 385 copies of the interim injunction, including on 121 identifiable individuals, 37 of whom were identified by name, but the claimants did not attempt to join any of those individuals as parties to the proceedings whether by serving them with the claim form or otherwise. The claim form was served only by e-mail to the two addresses specified for service of the interim injunction and to one other individual who had requested a copy. On the claimants' application for summary judgment on their claim the judge: (i) held that the claim form had not been validly served on any defendant in the proceedings and that it was not appropriate to make an order dispensing with service of the claim form pursuant to CPR r 6.16[1]; (ii) discharged the interim injunction; and (iii) refused to grant a final injunction.

On the claimants' appeal—

Held, dismissing the appeal, (1) that since service was the act by which a defendant was subjected to the court's jurisdiction, the court had to be satisfied that the method used for service either had put the defendant in a position to ascertain the contents of the proceedings or was reasonably likely to enable him to do so within any relevant period of time; that given that sending the claim form by e-mail to the

[1] CPR r 6.15: "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place. (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."

R 6.16: "(1) The court may dispense with service of a claim form in exceptional circumstances. (2) An application for an order to dispense with service may be made at any time and— (a) must be supported by evidence; and (b) may be made without notice."

A activist group could not reasonably be expected to have brought the proceedings to the attention of the "persons unknown" defendants, the judge had been correct to refuse to order pursuant to CPR r 6.15(2) that such steps constituted good service; and that neither speculative estimates of the number of protestors who were likely to have learned of the proceedings without ever having been served with the interim injunction nor the fact that of the 121 persons served with the injunction none had applied to vary or discharge the injunction or be joined as a party, could provide a B warrant for dispensation from service under rule 6.16 (post, paras 45–52).

Cameron v Hussain (Motor Insurers' Bureau intervening) [2019] 1 WLR 1471, SC(E) applied.

(2) That since an interim injunction could be granted in appropriate circumstances against persons unknown who wished to join an ongoing protest, it was in principle open to the court in appropriate circumstances to limit even lawful activity where there was no other proportionate means of protecting the claimant's rights; that, C further, although it was better practice to formulate an injunction without reference to the defendant's intention if the prohibited tortious act could be described in ordinary language without doing so, it was permissible in principle to refer in an injunction to the defendant's intention provided that was done in non-technical language which a defendant was capable of understanding and the intention was capable of proof without undue complexity; that, however, in the present case the claim form was defective and the interim injunction was impermissible since (i) the D description of the "persons unknown" defendants in both was impermissibly wide, being capable of applying to a person who had never been to the store and had no intention of ever going there, (ii) the prohibited acts specified in the interim injunction were not inevitably confined to unlawful acts and (iii) the interim injunction failed to provide a method of alternative service that was likely to bring the order to the attention of persons unknown; and that, accordingly, the judge had been right to discharge the interim injunction (post, paras 78–81, 85–86, 97).

E *Ineos Upstream Ltd v Persons Unknown (Friends of the Earth intervening)* [2019] 4 WLR 100, CA and *Cameron v Hussain (Motor Insurers' Bureau intervening)* [2019] 1 WLR 1471, SC(E) applied.

Hubbard v Pitt [1976] QB 142, CA, *Burris v Azadani* [1995] 1 WLR 1372, CA and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, CA considered.

(3) That it was perfectly legitimate to make a final injunction against "persons unknown" provided they were anonymous defendants who were identifiable as having committed the relevant unlawful acts prior to the date of the final order and F had been served prior to that date; but that a final injunction could not be granted in a protestor case against persons unknown who were not parties at the date of the final order, in other words persons joining an ongoing protest who had not by that time committed the prohibited acts and so did not fall within the description of the persons unknown and who had not been served with the claim form; and that, accordingly, since the final injunction proposed by the claimants in the present case was not so limited and since it suffered from some of the same defects as the interim G injunction, the judge had been right to dismiss the claim for summary judgment (post, paras 89–91, 94, 95, 97).

Birmingham City Council v Afsar [2019] EWHC 3217 (QB) approved.

Vastint Leeds BV v Persons Unknown [2019] 4 WLR 2 distinguished.

Per curiam. (i) It would have been open to the claimants at any time since the commencement of proceedings to obtain an order under CPR r 6.15(1) for alternative service which would have a greater likelihood of bringing notice of the proceedings to H the attention of protestors at the shop premises, such as by posting the order, the claim form and the particulars of claim on social media to reach a wide audience of potential protestors and by attaching and otherwise exhibiting copies of the order and of the claim form at or nearby those premises. The court's power to dispense with service under CPR r 6.16 should not be used to overcome that failure (post, para 50).

(ii) Private law remedies are not well suited to the task of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. What are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Powers conferred by Parliament on local authorities, for example, to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression and to carry out extensive consultation. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it (post, para 93).

Procedural guidelines for interim relief proceedings against "persons unknown" in cases concerning protestors (post, para 82).

Decision of Nicklin J [2019] EWHC 2459 (QB); [2020] 1 WLR 417 affirmed.

The following cases are referred to in the judgment of the court:

Attorney General v Times Newspapers Ltd (No 3) [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)

Birmingham City Council v Afsar [2019] EWHC 3217 (QB)

Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc (No 2) [2001] EWCA Civ 414; [2001] RPC 45, CA

Burris v Azadani [1995] 1 WLR 1372; [1995] 4 All ER 802; [1996] 1 FLR 266, CA

Cameron v Hussain (Motor Insurers' Bureau intervening) [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)

Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA

Dulgheriu v Ealing London Borough Council [2019] EWCA Civ 1490; [2020] 1 WLR 609; [2020] PTSR 79, CA

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 (Friends of the Earth intervening) [2017] EWHC 2945 (Ch); [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA

South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA

Vastint Leeds B V v Persons Unknown [2018] EWHC 2456 (Ch); [2019] 4 WLR 2

Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908

The following additional cases were cited in argument:

Astellas Pharma Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752, CA

Attorney General v Punch Ltd [2001] EWCA Civ 403; [2001] QB 1028; [2001] 2 WLR 1713; [2001] 2 All ER 655, CA

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

Cartier International AG v British Sky Broadcasting Ltd (Open Rights Group intervening) [2016] EWCA Civ 658; [2017] Bus LR 1; [2017] 1 All ER 700, CA

Jockey Club v Buffham [2002] EWHC 1866 (QB); [2003] QB 462; [2003] 2 WLR 178

Novartis AG v Hospira UK Ltd (Practice Note) [2013] EWCA Civ 583; [2014] 1 WLR 1264, CA

A *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] UKSC 11; [2009] 1 WLR 2780; [2009] PTSR 547; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)
Stone v WXY [2012] EWHC 3184 (QB)
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161

B The following additional cases, although not cited, were referred to in the skeleton arguments:

Anderton v Clwyd County Council (No 2) [2002] EWCA Civ 933; [2002] 1 WLR 3174; [2002] 3 All ER 813, CA
Arch Co Properties Ltd v Persons Unknown [2019] EWHC 2298 (QB)
Bloomsbury Publishing Group plc v News Group Newspapers Ltd [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736
C *Epsom and Ewell Borough Council v Persons Unknown* (unreported) 20 May 2019, Leigh-ann Mulcahy QC
Grant v Dawn Meats (UK) [2018] EWCA Civ 2212, CA
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
Huntingdon Life Sciences Group plc v Stop Huntingdon Animal Cruelty [2007] EWHC 522 (QB)
D *Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019] EWHC 1903 (QB)
Secretary of State for Transport v Persons Unknown [2019] EWHC 1437 (Ch)
South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)

E **APPEAL** from Nicklin J

By a claim form issued on 29 November 2017 the claimants, Canada Goose UK Retail Ltd, the United Kingdom trading arm of an international retail clothing company, and James Hayton, the manager of the first claimant's London store acting pursuant to CPR r 19.6 for and on behalf of employees, security personnel and customers and other visitors to the store, sought injunctions against the first defendants, persons unknown who were
F protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at the first claimant's store, on the grounds that their actions amounted to, inter alia, harassment, trespass and/or nuisance. On the same date Teare J granted a without notice interim injunction. On 13 December 2017 Judge Moloney QC sitting as a judge of the Queen's Bench Division [2017] EWHC 3735 (QB) granted an
G application by the People for the Ethical Treatment of Animals (PETA) Foundation, to be added as second defendant to the proceedings in order to represent its "employees and members" under CPR r 19. By order dated 15 December 2017 Judge Moloney QC granted the claimants' application for a continuation of the interim injunction but made limited modifications to its terms and stayed the proceedings, with the stay to continue unless a named party gave notice to re-activate the proceedings, in which event the claimants,
H within 21 days thereafter, were to apply for summary judgment. By an application notice dated 30 November 2018 the claimants sought summary judgment on their claim, pursuant to CPR r 24.2, and a final injunction. By a judgment dated 20 September 2019 Nicklin J [2019] EWHC 2459 (QB); [2002] 1 WLR 417 refused the application for summary judgment and a final

injunction and discharged the interim injunction, staying part of the order for discharge.

By an appellant's notice filed on 18 October 2019 and with permission granted by Nicklin J the claimants appealed on the following grounds. (1) The judge had erred in refusing to amend the order of 29 November 2017, pursuant to CPR r 40.12 or the court's inherent jurisdiction, to provide that service by e-mail was permissible alternative service under CPR r 6.15; alternatively the judge had erred in failing to consider, alternatively in refusing to order, that the steps taken by the claimants in compliance with the undertaking given to Teare J on 29 November 2017 constituted alternative good service under CPR r 6.15(2); alternatively the judge had adopted a procedurally unfair practice in refusing to consider an application to dispense with service of the claim form under CPR r 6.16, alternatively had erred in law in refusing to exercise that power of dispensation. (2) The judge had erred in law in holding that the claimants' proposed reformulation of the description of the first defendants was impermissible. (3) In determining whether summary judgment should be granted for a final prohibitory quia timet injunction against the first defendants (as described in the proposed reformulation of persons unknown) the judge had erred in law in the approach he took. In particular, the judge had erred in concluding that the proper approach was to focus only on the individual evidence of wrongdoing in relation to each identified individual protestor (whether or not that individual was formally joined as a party); and/or had erred in concluding that the claimants were bound to differentiate, for the purposes of the description of the first defendants, between those individuals for whom there was evidence of prior wrongdoing (whether of specific acts or more generally) and those for whom there was not; and/or had erred in concluding that evidence of wrongdoing of some individuals within the potential class of the first defendants could not form the basis for a case for injunctive relief against the class as a whole. (4) The judge had erred in his approach to his assessment of the evidence before him, reaching conclusions which he was not permitted to reach.

The facts are stated in the judgment of the court, post, paras 5–8.

Ranjit Bhose QC and *Michael Buckpitt* (instructed by *Lewis Silkin llp*) for the claimants.

Sarah Wilkinson as advocate to the court.

The defendants did not appear and were not represented.

The court took time for consideration.

5 March 2020. **SIR TERENCE ETHERTON MR, DAVID RICHARDS** and **COULSON LJJ** delivered the following judgment of the court.

1 This appeal concerns the way in which, and the extent to which, civil proceedings for injunctive relief against "persons unknown" can be used to restrict public protests.

2 The first appellant, Canada Goose UK Retail Ltd ("Canada Goose"), is the United Kingdom trading arm of Canada Goose, an international retail clothing company which sells products, mostly coats, which contain animal fur and down. In November 2017 it opened a store at 244 Regent Street in

A London ("the store"). The second appellant is the manager of the store. The appellants are the claimants in these proceedings, in which they seek injunctive relief and damages in respect of what is described in the claim form as "a campaign of harassment and [the commission] of acts of trespass and/or nuisance against [them]".

3 The first respondents ("the Unknown Persons respondents"), who are the first defendants in the proceedings, were described in the claim form as:
B "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 store]." The second respondent, who was added as the second defendant in the course of the proceedings, is People for the Ethical Treatment of Animals (PETA) Foundation ("PETA").

4 This is an appeal from the order of Nicklin J of 20 September 2019 by
C which he dismissed the application of the claimants for summary judgment for injunctive relief against the defendants and he discharged the interim injunctions which had been granted by Teare J on 29 November 2017 and continued, as varied, by Judge Moloney QC (sitting as a judge of the Queen's Bench Division) on 15 December 2017.

Factual background

D

5 From the week before it opened on 9 November 2017, the store has been the site of many protests from animal rights activists, protesting against Canada Goose's use of animal fur and down, and in particular the way that the fur of coyotes is procured. For a detailed description of the evidence about the protests, reference should be made to Nicklin J's judgment at paras 132–134. The following is a brief summary.

E 6 A number of the protestors were members of PETA, which is a charitable company dedicated to establishing and protecting the rights of all animals. PETA organised four demonstrations outside the store. They were small-scale in nature, and PETA gave advance notice of them to the police. In addition, some protestors appear to have been co-ordinated by Surge Activism ("Surge"), an animal rights organisation. Other protestors have
F joined the on-going protest as individuals who were not part of any wider group.

7 The demonstrations have been largely small in scale, with up to 20 people attending and generally peaceful in nature, with protestors holding signs or banners and handing out leaflets to those passing or entering the store. On some occasions more aggressive tactics have been used by the protestors, such as insulting members of the public or Canada Goose's
G employees.

8 A minority of protestors have committed unlawful acts. Prior to the opening of the store, around 4 and 5 November 2017, the front doors of the store were vandalised with "Don't shop here" and "We sell cruelty" painted on the windows and red paint was splashed over the front door. On three occasions, 11, 18 and 24 November 2017, the number of protestors (400, 300, and 100, respectively) had a serious impact on the operation of the
H store. The police were present on each of those occasions. On one occasion five arrests were made. On 18 November 2017 the police closed one lane of the carriageway on Regent Street. There is also evidence of criminal offences by certain individual protestors, including an offence of violence reported to the police during the large protest on 18 November 2017.

The proceedings

9 Canada Goose commenced these proceedings against the Unknown Persons respondents by a claim form issued on 29 November 2017. As mentioned above, they were described in the heading of the claim form and the particulars of claim 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 Canada Goose, 244 Regent Street, London W1B 3BR."

10 They are described in paragraph 6 of the particulars of claim as including "all persons who have since 5 November 2017 protested at the store in furtherance of the Campaign and/or who intend to further the Campaign". The "Campaign" was described in the particulars of claim as a campaign against the sale of animal products by Canada Goose, and included seeking to persuade members of the public to boycott the store until Canada Goose ceased the lawful activity of selling animal products.

11 The particulars of claim stated that an injunction was claimed pursuant to the common law torts of trespass, watching and besetting, public and private nuisance and conspiracy to injure by unlawful means. The injunction was to restrain the Unknown Persons respondents from:

(1) Assaulting, molesting, or threatening the protected persons (defined in the particulars of claim as including Canada Goose's employees, security personnel working at the store and customers);

(2) Behaving in a threatening and/or intimidating and/or abusive and/or insulting manner towards protected persons;

(3) Doing acts which they know or ought to know cause harassment, fear, alarm, distress and/or intimidation to the protected persons;

(4) Intentionally photographing or filming the protected persons with the purpose of identifying them and/or targeting them;

(5) Making in any way whatsoever any abusive or threatening communication to the protected persons;

(6) Making or attempting to make repeated communications not in the ordinary course of the first claimant's retail business to or with employees by telephone, e-mail or letter;

(7) Entering the Store;

(8) Blocking or otherwise obstructing the entrances to the Store;

(9) Demonstrating at the Stores within the inner exclusion zone;

(10) Demonstrating at the Stores within the outer exclusion zone save that no more than three protestors may at any one time demonstrate and hand out leaflets therein;

(11) Using at any time a loudhailer within the inner exclusion zone and outer exclusion zone or otherwise within 50 metres of the building line of the Store.

12 On the same day as the claim form was issued Canada Goose applied to Teare J, without notice, for an interim injunction. He granted an interim injunction restraining the Unknown Persons respondents from doing the following:

> "(1) Assaulting, molesting, or threatening the protected persons [defined as including Canada Goose's employees, security personnel working at the store, customers and any other person visiting or seeking to visit the store];

A "(2) Behaving in a threatening and/or intimidating and/or abusive and/or insulting manner directly at any individual or group of individuals within the definition of 'protected persons';

"(3) Intentionally photographing or filming the protected persons with the purpose of identifying them and/or targeting them in connection with protests against the manufacture and/or sale or supply of animal
B products;

"(4) Making in any way whatsoever any abusive or threatening electronic communication to the protected persons;

"(5) Entering the Store;

"(6) Blocking or otherwise obstructing the entrance to the Store;

"(7) Banging on the windows of the Store;

"(8) Painting, spraying and/or affixing things to the outside of the
C Store;

"(9) Projecting images on the outside of the Store;

"(10) Demonstrating at the Store within the inner exclusion zone;

"(11) Demonstrating at the Store within the outer exclusion zone A, save that no more than three protestors may at any one time demonstrate and hand out leaflets within the outer exclusion zone A (but not within
D the inner exclusion zone) provided that no obstruction occurs other than that which is implicit in handing out leaflets;

"(12) Demonstrating at the Store within the outer exclusion zone B [as defined in the order] save that no more than five protestors may at any one time demonstrate and hand out leaflets within outer exclusion zone B (but not within the inner exclusion zone) provided that no obstruction occurs
E other than that which is implicit in handing out leaflets;

"(13) Using at any time a loudhailer [as defined] within the inner exclusion zone and outer exclusion zones or otherwise within ten metres of the building line of the Store;

"(14) Using a loudhailer anywhere within the vicinity of the Store otherwise than for amplification of voice."

F **13** A plan attached to the order showed the inner and outer exclusion zones. Essentially those zones (with a combined width of 7·5 metres) covered roughly a 180-degree radius around the entrance to the store. The inner exclusion zone extended out from the store front for 2·5 metres. The outer exclusion zone extended a further five metres outwards. The outer exclusion zone was divided into zone A (a section of pavement on Regent
G Street) and zone B (a section of pavement in front of the store entrance and part of the carriageway on Regent Street extending to the pavement and the entire carriageway in Little Argyle Street). For all practical purposes, the combined exclusion zones covered the entire pavement outside the store on Regent Street and the pavement and entire carriageway of Little Argyle Street outside the entrance to the store.

H **14** The order permitted the claimant to serve the order on

"any person demonstrating at or in the vicinity of the store by handing or attempting to hand a copy of the same to such person and the order shall be deemed served whether or not such person has accepted a copy of this order."

It provided for alternative service of the order, stating that "the claimants shall serve this order by the following alternative method namely by serving the same by e-mail to 'contact@surgeactivism.com' and 'info@peta.org.uk' ".

15 The order was expressed to continue in force unless varied or discharged by further order of the court but it also provided for a further hearing on 13 December 2017.

16 The order was sent on 29 November 2017 to the two e-mail addresses mentioned in the order, "contact@surgeactivism.com" and "info@peta.org.uk". The claim form and the particulars of claim were also sent to those e-mail addresses.

17 On 30 November 2017 Canada Goose issued an application notice for the continuation of Teare J's order.

18 On 12 December 2017 PETA applied to be joined to the proceedings. It also sought a variation of the interim injunction. On 13 December 2017 Judge Moloney sitting as a judge of the Queen's Bench Division added PETA to the proceedings as a defendant for and on behalf of its employees and members. He adjourned the hearing in relation to all other matters to 15 December 2017, when the issue of the continuation of the interim injunction came before him again.

19 At that hearing PETA challenged paragraphs (10) to (14) of the interim injunction concerning the exclusion zones and use of a loud-hailer on the basis that those prohibitions were a disproportionate interference with the right of the protestors to freedom of expression under article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the ECHR") and to freedom of assembly under article 12 of the ECHR.

20 Judge Moloney continued the interim injunction but varied it by amalgamating zones A and B in the outer exclusion zone and increasing the number of protestors permitted within the outer exclusion zone to 12 people. He also varied paragraph (14) of Teare J's order, substituting a prohibition on:

> "using at any time a loudhailer within the inner exclusion zone and outer exclusion zone . . . [and] using a loudhailer anywhere else in the vicinity of the Store (including Regent Street and Little Argyll Street) save that between the hours of 2 p m and 8 p m a single loudhailer may be used for the amplification of the human voice only for up to 15 minutes at a time with intervals of 15 minutes between each such use."

21 Judge Moloney's order stated that the order was to continue in force unless varied or discharged by further order of the court, and also provided that all further procedural directions in the claim be stayed, subject to a written notice by any of the parties to the others raising the stay. That was subject to a long-stop requirement that no later than 1 December 2018 Canada Goose was to apply for a case management conference or summary judgment. The order provided that, if neither application was made by that date, the proceedings would stand dismissed and the injunction discharged without further order.

The summary judgment application

22 Regular protests at the store have continued after the grant of the interim injunctions, although none has been on the large scale that occurred

A before the original injunction was granted. Canada Goose alleges that there have been breaches of those orders.

23 On 29 November 2018 Canada Goose applied for summary judgment against the respondents for a final injunction pursuant to CPR Pt 24. The application came before Nicklin J on 29 January 2018. The injunction attached to the application differed in some respects from the interim injunctions. The prohibitions in paragraphs (1) to (9) were the same but the B restrictions applicable to the zones were different. Only Canada Goose was represented at the hearing. At the invitation of Nicklin J, Mr Michael Buckpitt, junior counsel for Canada Goose, delivered further written submissions after the hearing, including a new description of the Unknown Persons respondents, as follows:

C > "Persons who are present at and in the vicinity of 244 Regent Street, London W1B 3BR and are protesting against the manufacture and/or supply and/or sale of clothing made of or containing animal products by Canada Goose UK Retail Ltd and are involved in any of the acts prohibited by the terms of this order ('Protestors')."

24 Canada Goose says that the further written submissions made clear that it no longer pursued summary judgment against PETA.

D **25** Nicklin J handed down his judgment on 30 September 2019, the delay being principally due to the sensible decision to wait for the decisions in *Cameron v Hussain (Motor Insurers' Bureau intervening)* [2019] 1 WLR 1471, and *Ineos Upstream Ltd v Persons Unknown (Friends of the Earth intervening)* [2019] 4 WLR 100, which we consider in the Discussion section below, and no doubt also due to the need to consider the successive further E sets of written submissions on behalf of Canada Goose.

26 Bearing in mind that only one party was represented before him, Nicklin J's judgment is an impressive document. With no disrespect, we shall only give a very brief summary of the judgment, sufficient to understand the context for this appeal.

27 The judgment addressed two main issues: a procedural issue of whether there had been proper service of the proceedings, and a merits issue F as to the substance of the application for summary judgment.

28 Nicklin J held that the claim form had not been validly served on the respondents. There had been no service of the claim form by any method permitted by CPR r 6.5, and there had been no order permitting alternative service under CPR r 6.15. Teare J's order only permitted alternative service of his order. Nicklin J declined to amend Teare J's order under the "slip rule" G in CPR r 40.12 and he refused to dispense with service of the claim form on the Unknown Persons respondents under CPR r 6.16 without a proper application before him.

29 Nicklin J also considered that the description of the Unknown Persons respondents was too broad as, in its original form, it was capable of including protestors who might never even intend to visit the store. Moreover, both in the interim injunctions and in its proposed final form, the H injunction was capable of affecting persons who might not carry out any unlawful activity as some of the prohibited acts would not be or might not be unlawful.

30 He was critical of the failure of Canada Goose to join any individual protestors, bearing in mind that Canada Goose could have named 37

protestors and had identified up to 121 individuals. He regarded as a fundamental difficulty that, as the Unknown Persons respondents were not a homogeneous unit, the court had no idea who in the broad class of Unknown Persons, as defined, had committed or threatened any civil wrong and, if they had, what it was.

31 Nicklin J also considered that the form of the proposed final injunction was defective in that it would capture new future protestors, who would not have been parties to the proceedings at the time of summary judgment and the grant of the injunction.

32 Nicklin J said the following (at para 163) in conclusion on the form of the proposed final injunction:

> "For the reasons I have addressed above, it is not impossible to name the persons against whom relief is sought and, more importantly, the terms of the injunction would impose restrictions on otherwise lawful conduct. Further, the interim injunction (and in particular the size and location of the exclusion zones) practically limits the number of people who can demonstrate outside the Store to 12. This figure is arbitrary; not justified by any evidence; disproportionate (in the sense there is no evidence that permitting a larger group would not achieve the same object); assumes that all demonstrators share the same objectives and so could be 'represented' by 12 people; and wrong in principle . . . Who is to decide who should be one of the permitted 12 demonstrators? Is it 'first-come-first-served'? What if other protestors do not agree with the message being advanced by the 12 'authorised' protestors?"

33 His conclusions on whether the respondents had a real prospect of defending the claim were stated as follows:

> "164. The second defendant (in its non-representative capacity) does have a real prospect of defending the claim. As I have set out above, the present evidence does not show that the second defendant has committed any civil wrong. As such, I am satisfied that it has a real prospect of defending the claim.
>
> "165. In relation to the first defendants, and those for whom the second defendant acts in a representative capacity, it is impossible to answer the question whether they have a real prospect of defending the claim because it is impossible to identify who they are, what they are alleged to have done (or threaten to do) and what defence they might advance. Whether any individual defendant in these classes was guilty of (or threatening) any civil wrong would require an analysis of the evidence of what s/he had done (or threatened) and whether s/he had any defence to resist any civil liability. On the evidence, therefore, I am not satisfied that the claimants have demonstrated that the defendants in each of these classes has no real prospect of defending the claim. On the contrary, on the evidence as it stands, it is clear that there are a large number of people caught by the definition of 'persons unknown' who have not even arguably committed (or threatened) any civil wrong. As there is no way of discriminating between the various defendants in these categories, it is impossible to identify those against whom summary judgment could be granted (even assuming that the evidence justified such a course) and those against whom summary judgment should be refused."

A 34 For those reasons, Nicklin J refused the application for summary judgment. He also held that, in view of the failure of the interim injunction to comply with the relevant principles, and also in view of fundamental issues concerning the validity of the claim form and its service, the interim injunction then in force could not continue. He said (at para 167):

"I am also satisfied that, applying the principles from *Cameron* [2019] B 1 WLR 1471 and *Ineos* [2019] 4 WLR 100, the interim injunction that is currently in place cannot continue in its current form, if at all. There are fundamental issues that the claimants need to address regarding the validity of the claim form and its service on any defendant. Presently, no defendant has been validly served. Subject to further submissions, my present view is that if the proceedings are to continue, whether or not C a claim can be properly maintained against 'persons unknown' for particular civil wrongs (e g trespass), other civil claims will require individual defendants to be joined to the proceedings whether by name or description and the nature of the claims made against them identified. Any interim relief must be tailored to and justified by the threatened or actual wrongdoing identified in the particulars of claim and any interim injunction granted against 'persons unknown' must comply with the D requirements suggested in *Ineos*."

The grounds of appeal

35 The grounds of appeal are as follows.

"Ground 1 (Service of the Claim Form): In relation to the service of the E claim form, the judge:

"Erred in refusing to amend the order of 29 November 2017, pursuant to CPR r 40.12 or the court's inherent jurisdiction, to provide that service by e-mail was permissible alternative service under CPR r 6.15; alternatively

"Erred in failing to consider, alternatively in refusing to order, that the steps taken by the claimants in compliance with the undertaking given to F Teare J on 29 November 2017 constituted alternative good service under CPR r 6.15(2); alternatively

"Adopted a procedurally unfair practice in refusing to consider an application to dispense with service of the claim form under CPR r 6.16, alternatively erred in law in refusing to exercise that power of dispensation.

"Ground 2 (Description of First Respondents): The judge erred in law G in holding that the claimants' proposed reformulation of the description of the first respondents was an impermissible one.

"Ground 3 (Approach to Summary Judgment): In determining whether summary judgment should be granted for a final prohibitory quia timet injunction against the first respondents (as described in accordance with the proposed reformulation) the judge erred in law in the approach he took. In particular, and without derogating from the generality of this, H the judge:

"Erred in concluding that the proper approach was to focus (and focus alone) on the individual evidence of wrongdoing in relation to each identified individual protestor (whether or not that individual was formally joined as a party); and/or

"Erred in concluding that the claimants were bound to differentiate, for the purposes of the description of the first respondents, between those individuals for whom there was evidence of prior wrongdoing (whether of specific acts or more generally) and those for whom there was not; and/or

"Erred in concluding that evidence of wrongdoing of some individuals within the potential class of the first respondents could not form the basis for a case for injunctive relief against the class as a whole.

"Ground 4 (Approach to and assessment of the evidence): The judge erred in his approach to alternatively his assessment of the evidence before him, reaching conclusions which he was not permitted to reach."

36 In a "supplemental note" Canada Goose asks that, if the appeal is allowed, the summary judgment application be remitted.

Discussion

Appeal ground 1: service

37 The order of Teare J dated 29 November 2017 directed pursuant to CPR r 6.15 that his order for an interim injunction be served by the alternative method of service by e-mail to two e-mail addresses, one for Surge (contact@surgeactivism.com) and one for PETA (info@peta.org.uk). There was no provision for alternative service of the claim form and the particulars of claim or of any other document, other than the order itself. In fact, the claim form and the particulars of claim were sent to the same e-mail addresses as were specified in Teare J's order for alternative service of the order itself.

38 Canada Goose submits that it is clear that there was an accidental oversight in the limitation of the provision for alternative service in Teare J's order to the service of the order itself. That is said to be clear from the fact that the order of Teare J records that Canada Goose, through its counsel, had undertaken to the court, on behalf of all the claimants, "to effect e-mail service as provided below of the order, the claim form and particulars of claim and application notice and evidence in support".

39 Canada Goose submits that in the circumstances Nicklin J was wrong not to order, pursuant to CPR r 40.12 or the inherent jurisdiction of the court, that Teare J's order should be corrected so as to provide for the same alternative service for the claim form and the particulars of claim as was specified for the order.

40 Canada Goose submits, alternatively, that Nicklin J should have ordered, pursuant to CPR r 6.15(2) that the steps already taken to bring the claim form to the attention of the defendants was good service.

41 In the further alternative, Canada Goose submits that Nicklin J should have dispensed with service of the claim form pursuant to CPR r 6.16.

42 We do not accept those submissions. Canada Goose can only succeed if Nicklin J, in refusing to exercise his discretionary management powers, made an error of principle or otherwise acted outside the bounds of a proper exercise of judicial discretion. We consider it is plain that he made no error of that kind.

43 CPR r 40.12 provides that the court may at any time correct an accidental slip or omission in a judgment or order. It is well established that

A this slip rule enables an order to be amended to give effect to the intention of the court by correcting an accidental slip, but it does not enable a court to have second or additional thoughts: see, for example, *Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc (No 2)* [2001] RPC 45.

44 We do not have a transcript of the hearing before Teare J. From what we were told by Mr Bhose QC, for Canada Goose, it is clear that the order
B was in the form of the draft presented to Teare J by those acting for Canada Goose and it would appear that the issue of service was not addressed orally at all before him. In the circumstances, it is impossible to say that Teare J ever brought his mind to bear upon the point of alternative service of the claim form and the particulars of claim. The most that can be said is that he intended to make an order in the terms of the draft presented to him. That is what he did. In those circumstances, Nicklin J was fully justified in refusing
C to exercise his powers under the slip rule. The grounds of appeal refer to the inherent jurisdiction of the court but no argument was addressed to us on behalf of Canada Goose that any inherent jurisdiction of the court differed in any material respect from the principles applicable to CPR r 40.12.

45 Nicklin J was not merely acting within the scope of a proper exercise of discretion in refusing to order pursuant to CPR r 6.15(2) that the steps
D taken by Canada Goose in compliance with the undertaking of counsel constituted good alternative service; he was, at least so far as the Unknown Persons respondents are concerned, plainly correct in his refusal. The legal context for considering this point is the importance of service of proceedings in the delivery of justice. As Lord Sumption, with whom the other justices of the Supreme Court agreed, said in *Cameron* [2019] 1 WLR 1471, para 14, the general rule is that service of the originating process is the act by which
E the defendant is subjected to the court's jurisdiction; and (at para 17): "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."

46 Lord Sumption, having observed (at para 20) that CPR r 6.3 considerably broadens the permissible methods of service, said that the
F object of all of them was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain the contents of the proceedings or was reasonably likely to enable him to do so within any relevant period of time. He went on to say (at para 21) with reference to the provision for alternative service in CPR r 6.15, that:

> "subject to any statutory provision to the contrary, it is an essential
G requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant."

47 Sending the claim form to Surge's e-mail address could not reasonably be expected to have brought the proceedings to the attention of the Unknown Persons respondents, whether as they were originally described
H in Teare J's order or as they were described in the latest form of the proposed injunction placed before Nicklin J. Counsel were not even able to tell us whether Surge is a legal entity. There was no requirement in Teare J's order that Surge give wider notice of the proceedings to anyone.

48 The same acute problem for Canada Goose applies to its complaint that Nicklin J wrongly failed to exercise his power under CPR r 6.16 to

dispense with service of the claim form. It is not necessary to focus on whether Nicklin J was right to raise the absence of a formal application as an obstacle. Looking at the substance of the matter, there was no proper basis for an order under CPR r 6.16.

49 Nicklin J referred in his judgment to the evidence that 385 copies of the interim injunction had been served between 29 November 2017 and 19 January 2019, and that they had been served on a total of 121 separate individuals who could be identified (for example, by body-camera footage). The claimants have been able to identify 37 of those by name, although Canada Goose believes that a number of the names are pseudonyms. None of those who can be individually identified or named have been joined to the action (whether by serving them with the claim form or otherwise) even though there was no obstacle to serving them with the claim form at the same time as the order. Moreover, Canada Goose is not just asking for dispensation from service on the 121 individuals who can be identified. It is asking for dispensation from service on any of the Persons Unknown respondents to the proceedings, even if they have never been served with the order and whether or not they know of the proceedings. There is simply no warrant for subjecting all those persons to the jurisdiction of the court.

50 Furthermore, it would have been open to Canada Goose at any time since the commencement of the proceedings to obtain an order for alternative service which would have a greater likelihood of bringing notice of the proceedings to the attention of protestors at the shop premises, such as by posting the order, the claim form and the particulars of claim on social media coverage to reach a wide audience of potential protestors and by attaching or otherwise exhibiting copies of the order and of the claim form at or nearby those premises. There is no reason why the court's power to dispense with service of the claim in exceptional circumstances should be used to overcome that failure.

51 Canada Goose says that, in view of the number of orders that have been served on individuals, it is reasonable to conclude that their existence, and likely their terms, will be well known to a far larger class of protestor than those served with the order. It also relies on the fact that no person served with the order has made any contact with Canada Goose's solicitors or made any application to the court to vary or discharge the order for to apply to be joined as a party.

52 We have already mentioned, by reference to Lord Sumption's comments in *Cameron* [2019] 1 WLR 1471, the importance of service in order to ensure justice is done. We do not consider that speculative estimates of the number of protestors who are likely to know of the proceedings, even though they have never been served with the interim injunction, or the fact that, of the 121 persons served with the order, none has applied to vary or discharge the order or to be joined as a party, can justify using the power under CPR r 6.16 in effect to exonerate Canada Goose from failing to obtain an order for alternative service that would have been likely to draw the attention of protestors to the proceedings and their content. Those are not the kind of "exceptional circumstances" that would justify an order under CPR r 6.16.

53 In its skeleton argument for this appeal Canada Goose seeks to make a distinction, as regards service, between the Unknown Persons respondents and PETA. Canada Goose points out that Nicklin J recognised, as was

A plainly the case, that service of the claim form by sending it to PETA's e-mail address had drawn the proceedings to PETA's attention. Canada Goose submits that, in those circumstances, Nicklin J was bound to make an order pursuant to CPR r 6.15(2) that there had been good service on PETA or, alternatively, he ought to have made an order under CPR r 6.16 dispensing with service on PETA.

B **54** Bearing in mind that (1) PETA was joined as a party to the proceedings on its own application, (2) Canada Goose says that it informed Nicklin J before he handed down his judgment that judgment was no longer pursued against PETA (which was not mentioned in the proposed final injunction), and (3) Nicklin J reached the conclusion, which is not challenged on this appeal, that there was no evidence that PETA had committed any civil wrong, there would appear to be an air of unreality
C about that submission. The reason why it has assumed any importance now is because, should the appeal fail as regards Nicklin J's decision on service on the Unknown Persons respondents and PETA, Canada Goose is concerned about the consequences of the requirement in CPR r 7.5 that the claim form must be served within four months of its issue. We were not shown anything indicating that the significance of this point was flagged up before Nicklin J
D as regards PETA. It certainly is not made in the further written submissions dated 28 February 2019 sent on behalf of Canada Goose to Nicklin J on the issue of service. Those submissions concentrated on the question of service on the Unknown Persons respondents. It is not possible to say that in all the circumstances Nicklin J acted outside the limits of a proper exercise of judicial discretion in failing to order that there had been good service on PETA or that service on PETA should be waived.

E **55** For those reasons we dismiss appeal ground 1.

Appeal ground 2 and appeal ground 3: interim and final injunctions

56 It is convenient to take both these grounds of appeal together. Ground 3 is explicitly related to Nicklin J's dismissal of Canada Goose's application for summary judgment. Appeal ground 2 appears to be directed
F at, or at least is capable of applying to, both the dismissal of the summary judgment application and also Nicklin J's discharge of the interim injunction originally granted on 29 November 2017 and continued by the order of Judge Moloney of 15 December 2017. We shall consider, first, the interim injunction, and then the application for a final injunction.

G Interim relief against "persons unknown"

57 It is established that proceedings may be commenced, and an interim injunction granted, against "persons unknown" in certain circumstances. That was expressly acknowledged by the Supreme Court in *Cameron* [2019] 1 WLR 1471 and put into effect by the Court of Appeal in the context of protestors in *Ineos* [2019] 4 WLR 100 and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29.

H **58** In *Cameron* the claimant was injured and her car was damaged in a collision with another vehicle. She issued proceedings against the owner of the other vehicle and his insurer. The owner had not in fact been driving the other vehicle at the time of the collision. The claimant applied to amend her claim form so as to substitute for the owner: "the person unknown driving

vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013." The Supreme Court, allowing the appeal from the Court of Appeal, held that the district judge had been right to refuse the application to amend and to give judgment for the insurer.

59 Lord Sumption, referred (at para 9) to the general rule that proceedings may not be brought against unnamed parties, and to the express exception under CPR r 55.3(4) for claims for possession against trespassers whose names are unknown, and other specific statutory exceptions. Having observed (at para 10) that English judges had allowed some exceptions to the general rule, he said (at para 11) that the jurisdiction to allow actions and orders against unnamed wrongdoers has been regularly invoked, particularly in the context of abuse of the internet, trespasses and other torts committed by protestors, demonstrators and paparazzi. He then referred to several reported cases, including *Ineos* at first instance [2017] EWHC 2945 (Ch).

60 Lord Sumption identified (at para 13) two categories of case to which different considerations apply. The first ("Category 1") comprises anonymous defendants who are identifiable but whose names are unknown, such as squatters occupying the property. The second ("Category 2") comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The critical distinction, as Lord Sumption explained, is that a Category 1 defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further enquiry whether he is the same as the person described in the form, whereas that is not true of the Category 2 defendant.

61 That distinction is critical to the possibility of service. As we have said earlier, by reference to other statements of Lord Sumption in *Cameron*, it is the service of the claim form which subjects a defendant to the court's jurisdiction. Lord Sumption acknowledged that the court may grant interim relief before the proceedings have been served or even issued but he described that as an emergency jurisdiction which is both provisional and strictly conditional.

62 Lord Sumption said (at para 15) that, in the case of Category 1 defendants, who are anonymous but identifiable, and so can be served with the claim form or other originating process, if necessary by alternative service under CPR r 6.15 (such as, in the case of anonymous trespassers, attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found, and posting them if practical through the letterbox pursuant to CPR Pt 55), the procedures for service are well established and there is no reason to doubt their juridical basis. In the case of the Category 2 defendant, such as in *Cameron*, however, service is conceptually impossible and so, as Lord Sumption said (at para 26) such a person cannot be sued under a pseudonym or description.

63 It will be noted that *Cameron* did not concern, and Lord Sumption did not expressly address, a third category of anonymous defendants, who are particularly relevant in ongoing protests and demonstrations, namely people who will or are highly likely in the future to commit an unlawful civil wrong, against whom a quia timet injunction is sought. He did, however, refer (at para 15) with approval to *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, in which the Court of Appeal held that persons who entered onto land and occupied it in breach of, and subsequent to the

A grant of, an interim injunction became persons to whom the injunction was addressed and defendants to the proceedings. In that case, pursuant to an order permitting alternative service, the claim form and the order were served by placing a copy in prominent positions on the land.

64 Lord Sumption also referred (at para 11) to *Ineos*, in which the validity of an interim injunction against "persons unknown", described in terms capable of including future members of a fluctuating group of B protestors, was centrally in issue. Lord Sumption did not express disapproval of the case (then decided only at first instance).

65 The claimants in *Ineos* [2019] 4 WLR 100 were a group of companies and various individuals connected with the business of shale and gas exploration by hydraulic fracturing, or "fracking". They were concerned to limit the activities of protestors. Each of the first five defendants was a group C of persons described as "Persons unknown" followed by an unlawful activity, such as "Entering or remaining without the consent of the claimant(s) on [specified] land and buildings", or "interfering with the first and second claimants' rights to pass and repass . . . over private access roads", or "interfering with the right of way enjoyed by the claimants . . . over [specified] land". The fifth defendant was described as "Persons unknown combining together to commit the unlawful acts as specified in paragraph 11 D of the [relevant] order with the intention set out in paragraph 11 of the [relevant] order". The first instance judge made interim injunctions, as requested, apart from one relating to harassment.

66 One of the grounds for which permission to appeal was granted in *Ineos* was that the first instance judge was wrong to grant injunctions against persons unknown. Longmore LJ gave the lead and only reasoned judgment, E with which the other two members of the court (David Richards and Leggatt LJJ) agreed. He rejected the submission that Lord Sumption's Category 1 and Category 2 defendants were exhaustive categories of unnamed or unknown defendants. He said (at para 29) 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. He said that Lord Sumption was not considering persons who do not exist at all and will only F come into existence in the future. Longmore LJ concluded (at para 30) that there is no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort (who we call "Newcomers").

67 Longmore LJ said (at para 31) that a court should be inherently cautious about granting injunctions against unknown persons since the G reach of such an injunction is necessarily difficult to assess in advance. He also referred (para 33) to section 12(3) of the Human Rights Act 1998 ("the HRA") which provides, in the context of the grant of relief which might affect the exercise of the right to freedom of expression under article 10 of the ECHR, that no relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed. He said that there was considerable H force in the submission that the first instance judge had failed properly to apply section 12(3) in that the injunctions against the fifth defendants were neither framed to catch only those who were committing the tort of conspiring to cause damage to the claimant by unlawful means nor clear and precise in their scope. Having regard to those matters, Longmore LJ said (at

para 34) that he would "tentatively frame [the] requirements" necessary for the grant of the injunction against unknown persons, as follows:

> "(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."

68 Applying those requirements to the order of the first instance judge, Longmore LJ said that there was no difficulty with the first three requirements. He considered, however, against the background of the right to freedom of peaceful assembly guaranteed by both the common law and article 11 of the ECHR, that the order was both too wide and insufficiently clear in, for example, restraining the fifth defendants from combining together to commit the act or offence of obstructing free passage along the public highway (or to access to or from a public highway) by slow walking in front of the vehicles with the object of slowing them down and with the intention of causing inconvenience and delay or otherwise unreasonably and/or without lawful authority or excuse obstructing the highway with the intention of causing inconvenience and delay, all with the intention of damaging the claimants.

69 Longmore LJ said (at para 40) that the subjective intention of a defendant, which is not necessarily known to the outside world (and in particular the claimants) and is susceptible of change, should not be incorporated into the order. He also criticised the concept of slow walking as too wide and insufficiently defined and said that the concept of "unreasonably" obstructing the highway was not susceptible to advance definition. He further held that it is wrong to build the concept of "without lawful authority or excuse" into an injunction since an ordinary person exercising legitimate right to protest is most unlikely to have any clear idea of what would constitute lawful authority or excuse: if he is not clear about what he can and cannot do, that may well have a chilling effect also. He said (at para 40) that it was unsatisfactory that the injunctions contained no temporal limit.

70 The result of the appeal was that the injunctions made against the third and fifth defendants were discharged and the claims against them dismissed but the injunctions against the first and second defendants were maintained pending remission to the first instance judge to reconsider whether interim relief should be granted in the light of section 12(3) of the HRA and, if so, what temporal limit was appropriate.

71 *Cuadrilla* [2020] 4 WLR 29 was another case concerning injunctions restraining the unlawful actions of fracking protestors. The matter came before the Court of Appeal on appeal from an order committing the three appellants to prison for contempt of court in disobeying an earlier injunction aimed at preventing trespass on the claimants' land, unlawful interference with the claimants' rights of passage to and from their land and unlawful

A interference with the supply chain of the first claimant. One of the grounds of appeal was that the relevant terms of the injunction were insufficiently clear and certain to be enforced by committal because those terms made the question of whether conduct was prohibited depend on the intention of the person concerned.

72 The Court of Appeal dismissed the appeal. The significance of the case, for present purposes, is not simply that it followed *Ineos* in recognising B the jurisdiction to grant a quia timet interim injunction against Newcomers but also that it both qualified and amplified two of the requirements for such an injunction suggested by Longmore LJ ("the *Ineos* requirements"). Although both David Richards LJ and Leggatt LJ had been members of the Court of Appeal panel in *Ineos* and had given unqualified approval to the judgment of Longmore LJ, they agreed in *Cuadrilla* that the fourth and fifth C *Ineos* requirements required some qualification.

73 Leggatt LJ, who gave the lead judgment, with which David Richards LJ and Underhill LJ agreed, said with regard to the fourth requirement that it cannot be regarded as an absolute rule that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct. He referred to *Hubbard v Pitt* [1976] QB D 142 and *Burris v Azadani* [1995] 1 WLR 1372, which had not been cited in *Ineos*, as demonstrating that, although the court must be careful not to impose an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case.

74 Although the point did not arise for decision in *Cuadrilla*, the point E is relevant in the present case in relation to injunctions against persons unknown who are Newcomers because the injunction granted by Teare J and continued by Judge Moloney prohibited demonstrating within the inner exclusion zone and limited the number of protestors at any one time and their actions within the outer exclusion zone.

75 In *Hubbard v Pitt* [1976] QB 142 the issue was whether the first F instance judge had been right to grant an interim injunction restraining named defendants from, in effect, protesting outside the premises of an estate agency about changes in the character of the locality attributed to the assistance given by the plaintiff estate agents. The defendants had behaved in an orderly and peaceful manner throughout. The claim was for nuisance. The appeal was dismissed (Lord Denning MR dissenting). Stamp LJ said (at pp 187–188) that the injunction was not wider than was necessary for the G purpose of giving the plaintiffs the protection they ought to have. Orr LJ said (at p 190):

> "Mr Turner-Samuels, however, also advanced an alternative argument that, even if he was wrong in his submission that no interlocutory relief should have been granted, the terms of the injunction were too wide in that it would prevent the defendants from doing that which, as he claimed H and as I am for the present purposes prepared to accept, it was not unlawful for them to do, namely, to assemble outside the plaintiffs' premises for the sole purpose of imparting or receiving information. I accept that the court must be careful not to impose an injunction in wider terms than are necessary to do justice in the particular case; but

I reject the argument that the court is not entitled, when satisfied that justice requires it, to impose an injunction which may for a limited time prevent the defendant from doing that which he would otherwise be at liberty to do."

76 In *Burris* [1995] 1 WLR 1372 the defendant had persistently threatened and harassed the plaintiff. The plaintiff obtained an interim injunction preventing the defendant from assaulting, harassing or threatening the claimant as well as remaining within 250 yards of her home. Committal proceedings were subsequently brought against the defendant. On the issue of the validity of the exclusion zone, Sir Thomas Bingham MR, with whom the other two members of the court agreed, said (at pp 1377 and 1380–1381):

"It would not seem to me to be a valid objection to the making of an 'exclusion zone' order that the conduct to be restrained is not in itself tortious or otherwise unlawful if such an order is reasonably regarded as necessary for protection of a plaintiff's legitimate interest.

"Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed, whether trespass to the person or to land, interference with goods, harassment, intimidation or as the case may be. But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff; or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and disturbing to a plaintiff. In such a situation the court may properly judge that in the plaintiff's interest—and also, but indirectly, the defendant's—a wider measure of restraint is called for."

77 Nicklin J, who was bound by *Ineos*, did not have the benefit of the views of the Court of Appeal in *Cuadrilla* and so, unsurprisingly, did not refer to *Hubbard v Pitt*. He distinguished *Burris* on the grounds that the defendant in that case had already been found to have committed acts of harassment against the plaintiff; an order imposing an exclusion zone around the plaintiff's home did not engage the defendant's rights of freedom of expression or freedom of assembly; it was a case of an order being made against an identified defendant, not "persons unknown", to protect the interests of an identified "victim", not a generic class. He said that the case was, therefore, very different from *Ineos* and the present case.

78 It is open to us, as suggested by the Court of Appeal in *Cuadrilla* [2020] 4 WLR 29, to qualify the fourth *Ineos* requirement in the light of *Hubbard* [1976] QB 142 and *Burris* [1995] 1 WLR 1372, as neither of those cases was cited in *Ineos* [2019] 4 WLR 100. Although neither of those cases concerned a claim against "persons unknown", or section 12(3) of the HRA or articles 10 and 11 of the ECHR, *Hubbard* did concern competing considerations of the right of the defendants to peaceful assembly and protest, on the one hand, and the private property rights of the plaintiffs, on the other hand. We consider that, since an interim injunction can be granted in appropriate circumstances against "persons unknown" who are Newcomers and wish to join an ongoing protest, it is in principle open to the court in appropriate circumstances to limit even lawful activity. We have had the benefit of submissions from Ms Wilkinson on this issue. She submits that a

A potential gloss to the fourth *Ineos* requirement might be that the court may prohibit lawful conduct where there is no other proportionate means of protecting the claimant's rights. We agree with that submission, and hold that the fourth *Ineos* requirement should be qualified in that way.

79 The other *Ineos* requirement which received further consideration and qualification in *Cuadrilla* [2020] 4 WLR 29 was the fifth requirement—
B that the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. As mentioned above, Longmore LJ expressed the view in *Ineos* that it was wrong to include in the order any reference to the subjective intention of the defendant. In *Cuadrilla* Leggatt LJ held that the references to intention in the terms of the injunction he was considering did not have any special legal meaning or were difficult for a member of the public to understand. Such
C references included, for example, the provision in paragraph 4 of the injunction prohibiting "blocking any part of the bell-mouth at the Site Entrance . . . with a view to slowing down or stopping the traffic" "with the intention of causing inconvenience or delay to the claimants".

80 Leggatt LJ said (at para 65) that he could not accept that there is anything objectionable in principle about including a requirement of intention in an injunction. He acknowledged (at para 67) that in *Ineos*
D Longmore LJ had commented that an injunction should not contain any reference to the defendants' intention as subjective intention is not necessarily known to the outside world and is susceptible to change, and (at para 68) that he had agreed with the judgment of Longmore LJ and shared responsibility for those observations. He pointed out, however, correctly in our view, that those observations were not an essential part of the court's
E reasoning in *Ineos*. He said that he now considered the concern expressed about the reference to the defendants' intention to have been misplaced and (at para 74) that there was no reason in principle why references to intention should not be incorporated into an order or that the inclusion of such references in terms of the injunction in *Cuadrilla* provided a reason not to enforce it by committal.

81 We accept what Leggatt LJ has said about the permissibility in
F principle of referring to the defendant's intention when that is done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so. As Ms Wilkinson helpfully submitted, this can often be done by
G reference to the effect of an action of the defendant rather than the intention with which it was done. So, in the case of paragraph 4 of the injunction in *Cuadrilla*, it would have been possible to describe the prohibited acts as blocking or obstructing which caused or had the effect (rather than, with the intention) of slowing down traffic and causing inconvenience and delay to the claimants and their contractors.

82 Building on *Cameron* [2019] 1 WLR 1471 and the *Ineos*
H requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protestor cases like the present one:

(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the

proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".

(2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.

83 Applying those principles to the present proceedings, it is clear that the claim form is defective and that the injunctions granted by Teare J on 29 November 2017 and continued, as varied, by Judge Moloney on 15 December 2017, were impermissible.

84 As we have said above, the claim form issued on 29 November 2017 described the "persons unknown" defendants 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 Canada Goose, 244 Regent Street, London W1B 3BR."

85 This description is impermissibly wide. As Nicklin J said (at paras 23(iii) and 146) it is capable of applying to a person who has never been at the store and has no intention of ever going there. It would, as the judge pointedly observed, include a peaceful protestor in Penzance.

86 The interim injunction granted by Teare J and that granted by Judge Moloney suffered from the same overly wide description of those bound by

A the order. Furthermore, the specified prohibited acts were not confined, or not inevitably confined, to unlawful acts: for example, behaving in a threatening and/or intimidating and/or abusive and/or insulting manner at any of the protected persons, intentionally photographing or filming the protected persons, making in any way whatsoever any abusive or threatening electronic communication to the protected persons, projecting images on the outside of the store, demonstrating in the inner zone or the outer zone, using a
B loud-hailer anywhere within the vicinity of the store otherwise than for the amplification of voice. Both injunctions were also defective in failing to provide a method of alternative service that was likely to bring the attention of the order to the "persons unknown" as that was unlikely to be achieved (as explained in relation to ground 1 above) by the specified method of e-mailing the order to the respective e-mail addresses of Surge and PETA. The order of
C Teare J was also defective in that it was not time limited but rather was expressed to continue in force unless varied or discharged by further order of the court.

87 Although Judge Moloney's order was stated to continue unless varied or discharged by further order of the court, it was time limited to the extent that, unless Canada Goose made an application for a case management conference or for summary judgment by 1 December 2018, the
D claim would stand dismissed and the injunction discharged without further order.

88 Nicklin J was bound to dismiss Canada Goose's application for summary judgment, both because of non-service of the proceedings and for the further reasons we set out below. For the reasons we have given above, he was correct at the same time to discharge the interim injunctions granted
E by Teare J and Judge Moloney.

Final order against "persons unknown"

89 A final injunction cannot be granted in a protestor case against "persons unknown" who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the "persons unknown" and who
F have not been served with the claim form. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the
G proceedings: *Attorney General v Times Newspapers Ltd (No 3)* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471, para 17 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.

90 In Canada Goose's written skeleton argument for the appeal, it was submitted that *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2
H (Marcus Smith J) is authority to the contrary. Leaving aside that *Vastint* is a first instance decision, in which only the claimant was represented and which is not binding on us, that case was decided before, and so took no account of, the Court of Appeal's decision in *Ineos* [2019] 4 WLR 100 and the decision of the Supreme Court in *Cameron*. Furthermore, there was no

reference in *Vastint* to the confirmation in *Attorney General v Times Newspapers (No 3)* of the usual principle that a final injunction operates only between the parties to the proceedings.

91 That does not mean to say that there is no scope for making "persons unknown" subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's Category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at para 159) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB) at [132].

92 In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.

93 As Nicklin J correctly identified, Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what is sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, *Dulgheriu v Ealing London Borough Council* [2020] 1 WLR 609. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.

A **94** In addition to those matters, the order sought by Canada Goose on the summary judgment application before Nicklin J (the terms and form of which were not finalised until after the conclusion of the hearing before Nicklin J), suffered from some of the same defects as the interim injunction: in particular, as Nicklin J observed, the proposed order still defined the Unknown Persons respondents by reference to conduct which is or might be lawful.

B **95** In all those circumstances, Nicklin J having concluded (at paras 145 and 164) that, on the evidence before him, PETA had not committed any civil wrong (and, in any event, Canada Goose having abandoned its application for summary judgment against PETA, as mentioned above) he was correct to refuse the application for summary judgment.

C *Appeal Ground 4: Evidence*

96 This ground of appeal was not developed by Mr Bhose in his oral submissions. In any event, in the light of our conclusions on the other grounds of appeal, it is not necessary for us to address it.

Conclusion

D **97** For all those reasons, we dismiss this appeal.

Appeal dismissed.
No order as to costs.

SUSAN DENNY, Barrister

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Court of Appeal

Cuadrilla Bowland Ltd and others *v* Persons Unknown and others

[2020] EWCA Civ 9

2019 Dec 10, 11; 2020 Jan 23 Underhill, David Richards, Leggatt LJJ

Contempt of court — Committal proceedings — Appeal — Protestors deliberately disobeying injunction found guilty of contempt and sentenced to imprisonment — Whether injunction insufficiently clear and certain to allow committal — Whether suspended orders for imprisonment appropriate sanction

The claimants were a group of companies and various individuals connected with the business of shale and gas exploration by the hydraulic fracturing of rock formations, a procedure colloquially known as "fracking". The claimants had been granted an injunction against the first to third defendants, who were described as groups of "persons unknown" with, in each case, further wording relating to identified locations and potential actions designed to provide a definition of the persons falling within the group, to prevent trespass on the claimants' land, unlawful interference with the claimants' rights of passage to and from their land and unlawful interference with the supply chain of the first claimant. The judge subsequently made an order committing three protestors to prison for contempt of court. Their contempt consisted in deliberately disobeying the injunction and as punishment for two deliberate breaches of the injunction, the judge committed one of the protestors to prison for two months plus four weeks. The other two were both committed to prison for four weeks. In each case execution of the committal order was suspended on condition that each obeyed the injunction for a period of two years. The protestors appealed against the committal orders contending that the judge erred in committing them under two paragraphs of the injunction—paragraph 4 (trespass) and paragraph 7 (unlawful means conspiracy)—as those paragraphs were insufficiently clear and certain because they included references to intention; (2) alternatively, the judge erred by imposing an inappropriate sanction (consisting of suspended orders for imprisonment) which was too harsh.

On the appeal—

Held, dismissing the appeal in part, (1) that the terms of an injunction might be unclear if a term was ambiguous in that the words used had more than one meaning, vague in so far as there were borderline cases to which it was inherently uncertain whether the term applied, or by its language too convoluted, technical or otherwise opaque to be readily understandable by the person(s) to whom the injunction was addressed; that all those kinds of clarity (or lack of it) were relevant at the stage of deciding whether to grant an injunction and, if so, in what terms; that they were also relevant where an application was made to enforce compliance or punish breach of an injunction by seeking an order for committal; that, in principle, people should not be at risk of being penalised for breach of a court order if they acted in a way which the order did not clearly prohibit so that a person should not be held to be in contempt of court if it was unclear whether their conduct was covered by the terms of the order; that that was so whether the term in question was unclear because it was ambiguous, vague or inaccessible and it was important to note that whether a term of an order was unclear in any of those ways was dependent on context; that there was nothing objectionable in principle about including a requirement of intention in an injunction, nor was there was anything in such a requirement which was inherently unclear or which required any legal training or knowledge to comprehend; that it was not in fact correct that the requirement of the tort of conspiracy to show damage could only be incorporated into a quia timet injunction by reference to the defendant's intention, since it was perfectly possible to frame a prohibition which applied only to future conduct that actually caused damage; that it was, however, correct that, in order to make the terms of the injunction correspond to the tort and avoid prohibiting conduct that was lawful, it was necessary to include a requirement that the defendant's conduct was intended to cause damage to the claimant and there was nothing ambiguous, vague or difficult to understand about such a requirement; that limiting the scope of a prohibition by reference to the intention required to make the act wrongful

avoided restraining conduct that was lawful; that in so far as it created difficulty of proof, that was a difficulty for the claimant and not for a person accused of breaching the injunction—for whom the need to prove the specified intention provided an additional protection; and that, accordingly, although the inclusion of multiple references to intention risked introducing an undesirable degree of complexity, there was no reason in principle why references to intention should not be incorporated into an order or that the inclusion of such references in the terms of the injunction in the present case provided a reason not to enforce it by committal (post, paras 57–60, 65, 69, 74, 110, 111, 112).

Dicta of Longmore LJ in *Ineos Upstream Ltd and others v Persons Unknown and others (Friends of the Earth intervening)* [2019] 4 WLR 100, para 40 not followed.

(2) That it was clear from the case law that, even where protest took the form of intentional disruption of the lawful activities of others, as it did here, such protest still fell within the scope of articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms; that any restrictions imposed on such protestors were therefore lawful only if they satisfied the requirements set out in articles 10(2) and 11(2) and that was so even where the protestors' actions involved disobeying a court order; that although the protestors' rights to freedom of expression and assembly had already been taken into account in deciding whether to make the order which they disobeyed, imposing a sanction for such disobedience involved a further and separate restriction of their rights which also required justification in accordance with articles 10(2) and 11(2); that the judge was entitled to conclude that the restrictions which he imposed on the liberty of the protestors by making suspended orders for their committal to prison were in any event justified by the need to protect the rights of the claimants and to maintain the court's authority, which was an aim specifically identified in article 10(2), and to prevent disorder as identified in both articles 10(2) and 11(2); that in deciding what sanctions were appropriate, the judge had approached the decision, correctly, by considering both the culpability of the protestors and the harm caused, intended, or likely to be caused by their breaches of the injunction; that there was no merit in the protestors' argument that, in making that assessment, he had misapplied the Sentencing Council guideline on sentencing for breach of a criminal behaviour order; and that, as to the sanction applied, the court would vary the committal order made in relation to the first protestor by substituting for the period of imprisonment of two months a period of four weeks (post, paras 100–102, 110, 111, 112).

Per curiam. While it is undoubtedly desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this cannot be regarded as an absolute rule (post, para 50, 111, 112).

APPEAL from Judge Pelling QC, sitting as a judge of the High Court

Pursuant to an application by Cuadrilla Bowland Ltd and others for an injunction to prevent trespass on the claimants' land, unlawful interference with the claimants' rights of passage to and from their land and unlawful interference with the supply chain of the first claimant, Judge Pelling QC, sitting as a judge of the High Court granted an injunction on 11 July 2018 to run until 1 June 2020 against persons unknown.

On 3 September 2019 the judge made an order to commit three protestors, Katrina Lawrie, Lee Walsh and Christopher Wilson to prison for contempt of court. As punishment for two deliberate breaches of the injunction, the judge committed the first protestor to prison for two months plus four weeks. The other two protestors were both committed to prison for four weeks. In each case execution of the committal order was suspended on condition that they obeyed the injunction for a period of two years.

By an appellant's notice dated 24 September 2019, the protestors sought permission to appeal against the committal order with appeal to follow. The grounds of appeal were that, in relation to the two incidents on which the order for committal was based: (1) the judge had erred in committing the protestors under paragraphs 4 (nuisance) and 7 (unlawful means conspiracy) of the injunction, as those paragraphs were insufficiently clear and certain because they included references to intention; (2) alternatively, the judge had erred by imposing an inappropriate sanction (consisting of suspended orders for imprisonment) which was too harsh.

The facts are stated in the judgment of Leggatt LJ, post, paras 3–23.

Kirsty Brimelow QC, *Adam Wagner* and *Richard Brigden* (instructed by *Robert Lizar Solicitors, Manchester*) for the protestors.

Tom Roscoe (instructed by *Eversheds Sutherland (International) llp*) for the claimants.

The court took time for consideration.

23 January 2020. The following judgments were handed down.

LEGGATT LJ

Introduction

1 On 3 September 2019 Judge Pelling QC, sitting as a judge of the High Court, made an order committing the three appellants to prison for contempt of court. Their contempt consisted in deliberately disobeying an earlier court order, which I will refer to as "the Injunction", made on 11 July 2018 with the aim of preventing trespass on the claimants' land, unlawful interference with the claimants' rights of passage to and from their land and unlawful interference with the supply chain of the first claimant ("Cuadrilla"). As punishment for two deliberate breaches of the Injunction, the judge committed one of the appellants, Katrina Lawrie, to prison for two months plus four weeks. The other appellants, Lee Walsh and Christopher Wilson, were both committed to prison for four weeks. In each case execution of the committal order was suspended on condition that the appellant obeys the Injunction for a period of two years.

2 The appellants have exercised their rights of appeal against the committal order. They appeal on the grounds (1) that the relevant terms of the Injunction were insufficiently clear and certain to be enforceable by committal because those terms made the question whether conduct was prohibited depend on the intention of the person concerned; and (2) that imposing the sanction of imprisonment (albeit suspended) was inappropriate and unduly harsh in the circumstances of this case. Relevant circumstances include the facts that the Injunction was granted, not against the appellants as named individuals, but against "persons unknown" who committed specified acts, and that the acts done by the appellants in breach of the Injunction were part of a campaign of protest involving "direct action" designed to disrupt Cuadrilla's activities. This context is one in which the appellants' rights to freedom of expression and assembly are engaged.

Background

3 Cuadrilla and the other claimants own an area of land off the Preston New Road (A583), near Blackpool in Lancashire, on which Cuadrilla has engaged in the hydraulic fracturing, or "fracking", of rock deep underground for the purpose of extracting shale gas. It is not in dispute that all Cuadrilla's activities have been carried out in accordance with the law. Equally, there is no dispute that Cuadrilla's activities are controversial and that a significant number of people, including the appellants, have sincere and strongly held views that fracking ought not to take place because of its impact on the environment. It is also common ground that the appellants, like everyone else, have the right to express their views and to protest against an activity to which they object subject only to such restrictions as are prescribed by law and are necessary in a democratic society for (amongst other legitimate aims) the prevention of disorder or crime or the protection of the rights and freedoms of others. The right of protest is protected both by the common law of England and Wales and by articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Human Rights Convention") which is incorporated into UK law by the Human Rights Act 1998.

4 Protests on and near Cuadrilla's site started in 2014, well before any drilling or preparatory work had commenced, when part of the site was occupied by a group of protestors. On 21 August 2014 Cuadrilla issued proceedings to recover possession of the land and for an injunction to prohibit further trespassing. Such an injunction was granted until 6 October 2016.

5 Protests intensified after work in preparation for exploratory drilling at the site started in January 2017. The evidence adduced by the claimants when they applied for a further injunction in May 2018 showed that, since January 2017, Cuadrilla and its employees, contractors and suppliers had been subjected to numerous "direct action" protests, designed to obstruct works on the site. The actions taken by some protestors included "locking on"—that is, chaining oneself to an object or another person—at the entrance to the site in order to prevent vehicles from entering or leaving it; "slow walking"—that is, walking on the highway as slowly as possible in front of vehicles attempting to enter or leave the site; and climbing onto vehicles to prevent them from moving.

6 The overall scale of such protest activity is indicated by the fact that, between January 2017 and May 2018, the police had made over 350 arrests in connection with protests against Cuadrilla's operations, including 160 arrests for obstructing the highway, and substantial police resources had to be deployed in order to deal with the actions of protestors, with around 100 officers directly involved each day and at a total policing cost of some £7m.

7 In July 2017 a group calling themselves "Reclaim the Power" organised a "month of action" targeting Cuadrilla. Of the many actions taken by protestors during that month to attempt to disrupt transport to and from the Preston New Road site, one particularly disruptive incident involved criminal offences and led to sentences which were the subject of an appeal to the Criminal Division of the Court of Appeal: see *R v Roberts (Richard) (Liberty intervening)* [2018] EWCA Crim 2739; [2019] 1 WLR 2577. That incident began on the morning of 25 July 2017, when two protestors managed to climb on top of lorries approaching the site along the Preston New Road, forcing the lorries to stop to avoid putting the safety of the two men at risk. Two more men later climbed on top of the lorries. Each of the protestors stayed there for two or three days and the last one did not come down until 29 July 2017. For all this time the lorries were therefore unable to move, with the result that one carriageway of the road remained blocked. Substantial disruption was caused to local residents and other members of the public.

8 Further particularly serious disruption occurred on 31 July 2017. The events of that day were described in a letter from Assistant Chief Constable Terry Woods put in evidence by Cuadrilla, as follows:

> "The last day of the RTP [Reclaim the Power] rolling resistance month of action saw a final lock-in involving a supposedly one tonne weight concrete barrel lock-on in the rear of a van with a prominent RTP activist attached to it via an arm tube. This action, coupled with an already tense atmosphere amongst the RTP activists, anti-fracking activists and local protestors, resulted in confrontation with police and they arrested two protestors. During the evening the protestors then became aware of a convoy en route to the drill site resulting in four protestors deploying in two pairs with arm tube lock-ons and blocking the A583. Further confrontation and aggression towards police ensued, with one of the locked-on protestors also assaulting a police officer. A security staff van was then mobbed by protestors and damaged, with a further protestor being arrested from that incident. Protestors also blockaded three vans of police protest liaison officers outside the Maple Farm Camp. The vehicle of a drill site staff member's partner dropping them off was then confronted by protestors, with a number of protestors climbing on the roof of the vehicle as it attempted to reverse away. The A583 was finally reopened to traffic at around 21:00 once police had removed all the protestors locked on, resulting in four arrests …"

9 At the hearing of the application for an injunction on 31 May and 1 June 2018, evidence was also adduced that the "Reclaim the Power" protest group was planning and promoting a further campaign of sustained direct action targeting Cuadrilla from 11 June to 1 July 2018. The group had openly stated their intention to organise a mass blockade of the Preston New Road dubbed "Block around the Clock" with the aim of completely preventing access to and egress from Cuadrilla's site for four days from 27 June to 1 July 2018.

The Injunction

10 It was against this background that Judge Pelling QC granted an interim injunction on 1 June 2018 to restrain four named individuals and "persons unknown" from trespassing on the claimants' land, unlawfully interfering with the claimants' rights of passage to and from their land and unlawfully interfering with Cuadrilla's supply chain. This injunction was granted until 11 July 2018. On that date it was replaced by a further order in similar terms, to continue until 1 June 2020 (unless varied or discharged in the meantime). This is the Injunction that was in force when the appellants did the acts which led to their committal for contempt of court.

11 As with the order initially made on 1 June 2018, the Injunction had three limbs, each designed to prevent a different type of wrong (tort) being done to the claimants.

Paragraph 2: trespass

12 The first type of wrong, prohibited by paragraph 2 of the Injunction, was trespassing on the claimants' land situated off the Preston New Road. The land was identified by reference to the title numbers under which it is registered at the Land Registry and was denoted in the order as "the PNR Land".

Paragraph 4: nuisance

13 The second type of wrong which the Injunction sought to prevent was unlawful interference with the claimants' freedom to come and go to and from their land. An owner of land adjoining a public highway has a right of access to the highway and a person who interferes with this right commits the tort of private nuisance. In addition, it is a public nuisance to obstruct

or hinder free passage along a public highway and an owner of land specially affected by such a nuisance can sue in respect of it, if the obstruction of the highway causes them inconvenience, delay or other damage which is substantial and appreciably greater in degree than any suffered by the general public: see *Clerk & Lindsell on Torts*, 22nd ed (2017), para 20–181.

14 These rights protected by the law of nuisance underpinned paragraph 4 of the Injunction, which applied to the second defendant. The second defendant to the proceedings is described as:

> "Persons unknown interfering with the passage by the claimants and their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees with or without vehicles, materials and equipment to, from, over and across the public highway known as Preston New Road."

Paragraph 4 of the Injunction prohibited persons falling within this description from carrying out the following acts on any part of "the PNR Access Route":

> "4.1 blocking any part of the bell-mouth at the Site Entrance with persons or things when done with a view to slowing down or stopping the traffic;
>
> "4.2 blocking or obstructing the highway by slow walking in front of vehicles with the object of slowing them down;
>
> "4.3 climbing onto any part of any vehicle or attaching themselves or anything or any object to any vehicle at any part of the Site Entrance; in each case with the intention of causing inconvenience or delay to the claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees."

An exception was made in paragraph 5 for a weekly walk or march from Maple Farm on the Preston New Road to the Site Entrance followed by a meeting or assembly for up to 15 minutes at the bell-mouth of the Site Entrance.

15 The "PNR Access Route" was defined in paragraph 3 to mean:

> "The whole of the Preston New Road (A583) between the junction with Peel Hill to the northwest and 50 metres to the east of the vehicular entrance to the PNR Site ("the Site Entrance" —as marked on the plan annexed to this Order as Annex 2) …"

Paragraph 7: unlawful means conspiracy

16 The third type of wrong which the Injunction was designed to prevent was unlawful interference with Cuadrilla's supply chain. This was the subject of paragraph 7 of the Injunction, which prohibited persons unknown from "committing any of the following offences or unlawful acts by or with the agreement or understanding of any other person":

> "7.2 obstructing the free passage along a public highway, or the access to or from a public highway, by: (i) blocking the highway or access thereto with persons or things when done with a view to slowing down or stopping vehicular or pedestrian traffic, and with the intention of causing inconvenience and delay; (ii) slow walking in front of vehicles with the object of slowing them down, and with the intention of causing inconvenience and delay; (iii) climbing onto or attaching themselves to vehicles … in each case with an intention of damaging [Cuadrilla] by obstructing, impeding or interfering with the lawful activities undertaken by it or its group companies, or contractors, sub-contractors, suppliers or service providers engaged by [Cuadrilla], in connection with [Cuadrilla's] searching or boring for or getting any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata at the PNR Site or on the PNR Land."

17 The tort underpinning this limb of the Injunction was that of conspiracy to injure by unlawful means.

18 Conspiracy is one of a group of "economic torts" which are an exception to the general rule that there is no duty in tort to avoid causing economic loss to another person unless the loss is parasitic upon some injury to person or damage to property. As explained by Lord Sumption JSC and Lord Lloyd-Jones JSC in *JSC BTA Bank v Ablyazov (No 14)* [2018] UKSC 19; [2018] 2 WLR 1125, para 7, the modern law of conspiracy developed in the late 19th and early 20th centuries as a basis for imposing civil liability on the organisers of strikes and other industrial action. In the form of the tort relevant for present purposes, the matters which the claimant must

prove to establish liability are: (i) an unlawful act by the defendant, (ii) done with the intention of injuring the claimant, (iii) pursuant to an agreement (whether express or tacit) with one or more other persons, and (iv) which actually does injure the claimant.

The breaches of the Injunction

19 As required by the terms of the Injunction, extensive steps were taken to publicise it and bring it to the notice of protestors. These steps included: (i) fixing sealed copies of the Injunction in transparent envelopes to posts, gates, fences and hedges and positioning signs at no fewer than 20 conspicuous locations around the PNR Land including at the Site Entrance and at either side of the public highway in each direction from the Site Entrance advertising the existence of the Injunction; (ii) leaving a sealed copy of the Injunction at protest camps; (iii) advertising and making copies of the Injunction available online; and (iv) sending a press release and copies of the Injunction to 16 specified news outlets.

20 Despite this publicity, a number of incidents occurred in the period July to September 2018 which led Cuadrilla on 11 October 2018 to issue a committal application.

The incident on 24 July 2018

21 The first main incident occurred on 24 July 2018 and involved all three appellants. The facts alleged, which were not seriously disputed by the appellants, were that at around 7 am on the morning of that day they (and three other individuals) lay down in pairs on the road across the Site Entrance. Each person was attached to the other person in the pair by an "arm tube" device. This was done in such a way as to prevent any vehicle from entering or leaving the site. The protestors remained in place for some six and a half hours until around 1.30 pm, when they were cut out of the arm tube devices and removed by the police.

The incident on 3 August 2018

22 The second main incident occurred on 3 August 2018 and involved Ms Lawrie alone. It took place on the "PNR Access Route" (as defined in paragraph 3 of the Injunction) about 1200 metres to the west of the Site Entrance. At about 12.55 pm Ms Lawrie, along with three other people, attempted to stop a tanker lorry which was on its way to the site in order to collect rainwater. In doing so she stood in the path of the lorry, raising her arms above her head. To avoid hitting her, the lorry had to veer across the centre line of the carriageway into the opposite lane. These facts were proved by video evidence from a camera on the dashboard of the lorry cab.

The other breaches of the Injunction

23 There were three more minor incidents: (1) On 1 August 2018 Ms Lawrie trespassed on the PNR Land for approximately two minutes. (2) Also on 1 August 2018, Mr Walsh sat down on the road in front of the Site Entrance until he was forcibly removed by police officers. (3) On 22 September 2018, as a sewage tanker was attempting to enter the site, Ms Lawrie ran into its path, forcing it to stop. She then lay on the ground in front of the lorry before being helped to her feet by security staff and persuaded to move.

The findings of contempt of court

24 Although two other individuals were also named as respondents, the committal application was pursued only against the three current appellants. The application was heard in two stages. The first stage was a hearing over four days from 25 to 28 June 2019 to decide whether the appellants were guilty of contempt of court.

The legal test for contempt

25 It was common ground at that hearing that a person is guilty of contempt of court by disobeying a court order that prohibits particular conduct only if it is proved to the criminal standard of proof (that is, beyond reasonable doubt) that the person: (i) having received notice of the order did an act prohibited by it; (ii) intended to do the act; and (iii) had knowledge of all the facts which would make doing the act a breach of the order: see *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch) at [20]. It would not necessarily follow from proof of these facts that the person had knowingly disobeyed the order; but the judge took the sensible approach that, unless this further fact was established, it would not be appropriate to impose any penalty for the breach.

26 For reasons given in a judgment delivered on 28 June 2018, the judge found all the relevant factual allegations proved to the requisite criminal standard of proof. There is no appeal against any of his factual findings.

Knowledge of the Injunction

27 The main factual dispute at the hearing concerned the appellants' knowledge of the Injunction at the time when the incidents occurred. Although they gave evidence to the effect

that they did not know of its terms, the judge rejected that evidence as inherently incredible and untruthful.

28 The judge explained in detail his reasons for reaching that conclusion. In the case of Ms Lawrie, the relevant evidence included her own admissions that there was a lot of discussion about the Injunction around the time that it was granted and that she was concerned about its effect on lawful protesting. As the judge observed, that evidence only made sense on the basis that she was aware of its terms. There were also photographs showing Ms Lawrie placing decorations on the fence around the site "in such close proximity to the notices summarising the effect of the [Injunction] as to make it virtually impossible for her not to have read the information in the notice unless she was deliberately choosing not to do so". In the case of Mr Walsh, the relevant evidence included social media posts that he had shared with others that referred to or summarised the main effects of the Injunction. The third appellant, Mr Wilson, accepted that he was aware of the Injunction and that it affected protests at the site entrance. There was also video evidence of Cuadrilla's security guards seeking to draw the Injunction to the attention of the appellants by providing them with copies of it, which they refused to take.

The intentions proved

29 In relation to the first main incident on 24 July 2018, in which each of the appellants lay in the road across the Site Entrance attached to another person by an arm tube device, they all gave evidence that in taking this action they intended to protest. The judge accepted this but thought it obvious from what they did, and was satisfied beyond reasonable doubt, that they also intended to stop vehicles from entering or leaving the site and thereby cause inconvenience and delay to Cuadrilla. Having found on this basis that the appellants were in breach of paragraph 4 of the Injunction, he considered it unnecessary to decide whether they were also in breach of paragraph 7.

30 In relation to the second main incident which occurred on 3 August 2018, Ms Lawrie admitted that she together with others was attempting to stop the lorry. The judge found it proved beyond reasonable doubt that she was acting with the agreement or understanding of others present and with the intention of slowing down or stopping the vehicle, causing inconvenience and delay, and thereby damaging Cuadrilla by interfering with the activities undertaken at the site. He accordingly found that she was in breach of paragraph 7 of the Injunction.

31 The judge also found that the three more minor incidents (referred to at para 23 above) all involved intentional breaches of the Injunction, but he did not consider that it was in the public interest to impose any sanction for those breaches.

The committal order

32 The second stage of the committal application was a hearing held on 2 and 3 September 2019 to decide what sanctions to impose for the two principal breaches of the Injunction found proved at the earlier hearing. The judge had already made it clear that he would not impose immediate terms of imprisonment, so that the available penalties were (a) no order (except in relation to costs), (b) a fine or (c) a suspended term of imprisonment.

33 The judge was satisfied that, in relation to both incidents, the custody threshold was passed such that it was necessary to make orders for committal to prison, although their effect should be suspended. In reaching that conclusion and in fixing the length of the suspended prison terms, the judge had regard to his finding that the breaches were intentional and to the need not only to punish the appellants for their intentional disobedience of the court's order, but also to deter future breaches of the order (whether by them or others).

34 The judge recognised that the breaches were committed as part of a protest but was not persuaded that this should result in lesser penalties. The judge also had regard, by analogy, to the Sentencing Council guideline on sentencing for breach of a criminal behaviour order. This guideline identifies three levels of culpability, where level A represents a very serious or persistent breach, level B a deliberate breach falling between levels A and C, and level C a minor breach or one just short of reasonable excuse. Harm—which includes not only any harm actually caused but any risk of harm posed by the breach—is also divided into three categories. Category 1 applies where the breach causes very serious harm or distress or "demonstrates a continuing risk of serious criminal and/or anti-social behaviour". Category 3 applies where the breach causes little or no harm or distress or "demonstrates a continuing risk of minor criminal and/or anti-social behaviour". Category 2 applies to cases falling between categories 1 and 3.

35 In the case of the first incident involving all three appellants, where the Site Entrance was blocked by a "lock-on" for several hours, the judge assessed the level of culpability as

falling at the lower end of level B and the harm caused together with the continuing risk of breach demonstrated as falling at the lower end of category 2. The guideline indicates that the starting point in sentencing for breach of a criminal behaviour order in category 2B is 12 weeks' custody, with a category range between a medium level community order and one year's custody. A community order is not an available sanction for contempt of court. In the circumstances the judge concluded that the appropriate penalty was a short suspended term of imprisonment, which he fixed at four weeks.

36 In relation to the second main incident, involving Ms Lawrie alone, the judge assessed the level of culpability as at the top end of level B within the guideline and the degree of harm that was at risk of being caused as in the top half of category 2. In making that assessment, he said:

> "The risk I have identified was a serious one, involving the risk of death or injury to Ms Lawrie; to the driver of the vehicle she was attempting to stop by standing in front of it in the highway; and those driving on the other side of the road into which the lorry was forced by reason of the presence of Ms Lawrie in the road. Those risks were worsened by the fact that the incident occurred during a period of heavy rain …"

The judge also found that the breach was aggravated by "the failure of Ms Lawrie to acknowledge the danger posed by her conduct, or to apologise for it, or to offer any assurance that it will not happen again".

37 The sanction imposed for this contempt of court was committal to prison for two months. As with the penalties imposed in relation to the first incident, execution of the order was suspended on condition that the Injunction is obeyed for a period of two years.

Variation of the Injunction

38 In the same judgment given on 3 September 2019 in which he decided what sanctions to impose, Judge Pelling QC also dealt with an application by the appellants to vary the Injunction, in particular by removing paragraphs 4 and 7. In making that application, the appellants relied on the decision of this court in *Ineos Upstream Ltd v Persons Unknown (Friends of the Earth intervening)* [2019] EWCA Civ 515; [2019] 4 WLR 100, which I will discuss shortly. For the moment I note that, while the judge on 3 September 2019 made some variations to the wording of the Injunction, he rejected the appellants' contention that the original wording was impermissibly wide or uncertain. Furthermore, none of the variations made on 3 September 2019 would, had they been incorporated in the original wording of the Injunction, have rendered the appellants' conduct not a breach.

39 The appellants applied for permission to appeal against the decision not to vary the Injunction by removing paragraphs 4 and 7. However, on 2 November 2019 the Government announced a moratorium on fracking with immediate effect. In the light of the moratorium, the claimants themselves applied on 19 November 2019 to remove paragraphs 4 and 7 of the Injunction for the future on the ground that they no longer require this protection, as Cuadrilla has ceased fracking operations on the site and will not be able to resume such operations unless and until the moratorium is lifted. On 25 November 2019 the judge granted the claimants' application. In these circumstances the appellants withdrew their appeal against the judge's previous refusal to vary the Injunction in that way, as the relief which they were seeking had been granted (albeit for different reasons from those which they were advancing).

The right to protest

40 Before I come to the grounds of the appeal against the committal order, I need to say something more about the two contextual features of this case which I mentioned at the start of this judgment. The first is the legal relevance of the fact, properly emphasised by counsel for the appellants, that the appellants' breaches of the Injunction were a form of non-violent protest against activities to which they strongly object.

41 The right to engage in public protest is an important aspect of the fundamental rights to freedom of expression and freedom of peaceful assembly which are protected by articles 10 and 11 of the Human Rights Convention. Those rights, and hence the right to protest, are not absolute; but any restriction on their exercise will be a breach of articles 10 and 11 unless the restriction (a) is prescribed by law, (b) pursues one (or more) of the legitimate aims stated in articles 10(2) and 11(2) of the Convention and (c) is "necessary in a democratic society" for the achievement of that aim. Applying the last part of this test requires the court to assess the proportionality of the interference with the aim pursued.

42 Exercise of the right to protest—for example, holding a demonstration in a public place—often results in some disruption to ordinary life and inconvenience to other citizens. That

by itself does not justify restricting the exercise of the right. As Laws LJ said in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 at [43]: "Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them". Such side-effects of demonstrations and protests are a form of inconvenience which the state and other members of society are required to tolerate.

43 The distinction between protests which cause disruption as an inevitable side-effect and protests which are deliberately intended to cause disruption, for example by impeding activities of which the protestors disapprove, is an important one, and I will come back to it later. But at this stage I note that even forms of protest which are deliberately intended to cause disruption fall within the scope of articles 10 and 11. Restrictions on such protests may much more readily be justified, however, under articles 10(2) and 11(2) as "necessary in a democratic society" for the achievement of legitimate aims.

44 The clear and constant jurisprudence of the European Court of Human Rights on this point was reiterated in the judgment of the Grand Chamber in *Kudrevicius v Lithuania* CE:ECHR:2015:1015JUD003755305; 62 EHRR 34; 40 BHRC 114. That case concerned a demonstration by a group of farmers complaining about a fall in prices of agricultural products and seeking increases in state subsidies for the agricultural sector. As part of their protest, some farmers including the applicants used their tractors to block three main roads for approximately 48 hours causing major disruption to traffic. The applicants were convicted in the Lithuanian courts of public order offences and received suspended sentences of 60 days imprisonment. They complained to the European Court that their criminal convictions and sentences violated articles 10 and 11 of the Convention. In examining their complaints, the Grand Chamber first considered whether the case fell within the scope of article 11 and concluded that it did. The court noted (at para 97) that, on the facts of the case, "the disruption of traffic cannot be described as a side-effect of a meeting held in a public place, but rather as the result of intentional action by the farmers, who wished to attract attention to the problems in the agricultural sector and to push the government to accept their demands". The judgment continues:

> "In the court's view, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by article 11 of the Convention."

Despite this, the court did not consider that the applicants' conduct was "of such a nature and degree as to remove their participation in the demonstration from the scope of protection of … article 11" (see para 98).

45 In the present case the claimants accept that the conduct of the appellants which constituted contempt of court likewise fell within the scope of articles 10 and 11 of the Human Rights Convention, even though disruption of Cuadrilla's activities was not merely a side-effect but an intended aim of the appellants' conduct. It follows that both the Injunction prohibiting this conduct and the sanctions imposed for disobeying the Injunction were restrictions on the appellants' exercise of their rights under articles 10(1) and 11(1) which could only be justified if those restrictions satisfied the requirements of articles 10(2) and 11(2) of the Convention.

The Ineos case

46 A second significant feature of this case is that the Injunction was granted not against the current appellants as named individuals but against "persons unknown". Injunctions of this kind were considered in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, which forms an essential part of the backdrop to the issues raised on this appeal.

47 Like the present case, the *Ineos* case concerned an injunction granted on the application of a company engaged or planning to engage in "fracking" to restrain unlawful interference with its activities by protestors whom it was unable to name. In the *Ineos* case, however, the court was not concerned, as it is here, with breaches of such an injunction. The appeal involved a challenge to the making of an injunction against persons unknown before any allegedly unlawful interference with the claimants' activities had yet occurred. This context is important in understanding the decision.

48 The main question raised on the appeal was whether it was appropriate in principle to grant an injunction against "persons unknown". That question was decided in favour of the claimant companies. The court held that there is no conceptual or legal prohibition on suing

persons unknown who are not currently in existence but will come into existence if and when they commit a threatened tort. Nor is there any such prohibition on granting a "quia timet" injunction to restrain such persons from committing a tort which has not yet been committed. None the less, Longmore LJ (with whose judgment David Richards LJ and I agreed) warned that a court should be inherently cautious about granting such injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance (see para 31).

49 Longmore LJ stated the requirements necessary for the grant of an injunction of this nature "tentatively" (at para 34) in the following way:

> "(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."

50 In the light of precedents which were not cited in the *Ineos* case but which have been drawn to our attention on the present appeal, I would enter a caveat in relation to the fourth of these requirements. While it is undoubtedly desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this cannot be regarded as an absolute rule. The decisions of the Court of Appeal in *Hubbard v Pitt* [1976] QB 142 and *Burris v Azadani* [1995] 1 WLR 1372 demonstrate that, although the court must be careful not to impose an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case. In both those cases the injunction was granted against a named person or persons. What, if any, difference it makes in this regard that the injunction is sought against unknown persons is a question which does not need to be decided on the present appeal but which may, as I understand, arise on a pending appeal from the decision of Nicklin J in *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (QB); [2020] 1 WLR 417 and in these circumstances I express no opinion on the point.

51 In the *Ineos* case the judge had proceeded on the basis that the evidence adduced by the claimants of protests against other companies engaged in fracking (including Cuadrilla) would, if accepted at trial, be sufficient to show a real and imminent threat of trespass on the claimants' land, interference with the claimants' rights of passage to and from their land and interference with their supply chain. On that basis he granted an injunction in similar—although in some respects wider and more vaguely worded—terms to the Injunction granted in the present case. The Court of Appeal allowed an appeal brought by two individuals who objected to the order made on the ground that the judge's approach—which simply accepted the claimants' evidence at face value—did not adequately justify granting a quia timet injunction which might affect the exercise of the right to freedom of expression, as it did not satisfy the requirement in section 12(3) of the Human Rights Act 1998 that the applicant is "likely" to establish at trial that such an injunction should be granted. The Court of Appeal also held that the parts of the injunction seeking to restrain future acts which would amount to an actionable nuisance or a conspiracy to cause loss by unlawful means should be discharged in any event, as the relevant terms were too widely drafted and lacked the necessary degree of certainty. I will come back to one aspect of the reasoning on that point when discussing the first ground of appeal.

This appeal

52 I turn now to the issues raised on this appeal. The appellants' notice puts forward three grounds. However, Ms Brimelow QC, who now represents the appellants, did not pursue one of them. This challenged the judge's finding that Ms Lawrie was in contempt of court by trespassing on the "PNR Land" on 1 August 2018 in breach of paragraph 2 of the Injunction. As Ms Brimelow accepted, a challenge to that finding, even if successful, would provide no reason for disturbing the committal order, as the judge considered that there was no public interest in taking any further action in relation to the three minor incidents, of which the trespass incident was one, and made no order in respect of them. The order under appeal was based only on the "lock-on" at the Site Entrance by all three appellants on 24 July 2018 and Ms Lawrie's action in standing

in the path of a lorry on 3 August 2018. Nothing turns, therefore, on whether or not Ms Lawrie trespassed on the "PNR Land" on 1 August 2018.

53 The two grounds of appeal pursued are that, in relation to the two incidents on which the order for committal was based: (1) the judge erred in committing the appellants under paragraphs 4 and 7 of the Injunction, as these paragraphs were insufficiently clear and certain because they included references to intention; (2) alternatively, the judge erred by imposing an inappropriate sanction (consisting of suspended orders for imprisonment) which was too harsh.

(1) Was the Injunction unclear?

54 It is a well-established principle that an injunction must be expressed in terms which are clear and certain so as to make plain what is permitted and what is prohibited: see eg *Attorney General v Punch Ltd* [2002] UKHL 50; [2003] 1 AC 1046, para 35. This is just as, if not even more, essential where the injunction is addressed to "persons unknown" rather than named defendants. As Longmore LJ said in the *Ineos* case, para 34, in stating the fifth of the requirements quoted at para 49 above: "the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do".

55 A similar need for clarity and precision "to a degree that is reasonable in the circumstances" forms part of the requirement in articles 10(2) and 11(2) of the Convention that any interference with the rights to freedom of expression and assembly must be "prescribed by law": see *Sunday Times v United Kingdom* CE:ECHR:1979:0426JUD000653874; 2 EHRR 245, para 49; *Kudrevicius v Lithuania* 62 EHRR 34, para 109.

The references to intention in the Injunction

56 As mentioned, the aspect of paragraphs 4 and 7 of the Injunction which the appellants contend made those terms insufficiently clear and certain to support findings of contempt was the fact that they included references to the defendant's intention. Paragraph 4.1, of which all three appellants were found to be in breach by their "lock on" at the Site Entrance on 24 July 2018, prohibited "blocking any part of the bell mouth at the Site Entrance with persons or things when done with a view to slowing down or stopping the traffic" and "with the intention of causing inconvenience or delay to the claimants". Establishing a breach of this term therefore required proof of two intentions. Paragraph 7.2(1), of which Ms Lawrie was found to have been in breach when she stood in front of a lorry on 3 August 2018, required proof of three intentions: namely, those of "slowing down or stopping vehicular or pedestrian traffic", "causing inconvenience and delay", and "damaging [Cuadrilla] by obstructing, impeding or interfering with the lawful activities undertaken by it or its group companies, or contractors …" It was also necessary to prove that the act was done with the agreement or understanding of another person.

Types of unclarity

57 There are at least three different ways in which the terms of an injunction may be unclear. One is that a term may be ambiguous, in that the words used have more than one meaning. Another is that a term may be vague in so far as there are borderline cases to which it is inherently uncertain whether the term applies. Except where quantitative measurements can be used, some degree of imprecision is inevitable. But the wording of an injunction is unacceptably vague to the extent that there is no way of telling with confidence what will count as falling within its scope and what will not. Evaluative language is often open to this objection. For example, a prohibition against "unreasonably" obstructing the highway is vague because there is room for differences of opinion about what is an unreasonable obstruction and no determinate or incontestable standard by which to decide whether particular conduct constitutes a breach. Language which does not involve a value judgment may also be unduly vague. An example would be an injunction which prohibited particular conduct within a "short" distance of a location (such as the Site Entrance in this case). Without a more precise definition, there is no way of ascertaining what distance does or does not count as "short".

58 A third way in which the terms of an injunction may lack clarity is that the language used may be too convoluted, technical or otherwise opaque to be readily understandable by the person(s) to whom the injunction is addressed. Where legal knowledge is needed to understand the effect of a term, its clarity will depend on whether the addressee of the injunction can be expected to obtain legal advice. Such an expectation may be reasonable where an injunction is granted in the course of litigation in which each party is legally represented. By contrast, in a case of the present kind where an injunction is granted against "persons unknown", it is unreasonable to impose on members of the public the cost of consulting a lawyer in order to find out what the injunction does and does not prohibit them from doing.

59 All these kinds of clarity (or lack of it) are relevant at the stage of deciding whether to grant an injunction and, if so, in what terms. They are also relevant where an application is made to enforce compliance or punish breach of an injunction by seeking an order for committal. In principle, people should not be at risk of being penalised for breach of a court order if they act in a way which the order does not clearly prohibit. Hence a person should not be held to be in contempt of court if it is unclear whether their conduct is covered by the terms of the order. That is so whether the term in question is unclear because it is ambiguous, vague or inaccessible.

60 It is important to note that whether a term of an order is unclear in any of these ways is dependent on context. Words which are clear enough in one factual situation may be unclear in another. This can be illustrated by reference to the ground of appeal which was abandoned. The argument advanced was that paragraph 2 of the Injunction was insufficiently clear to form the basis of a finding of contempt of court because the "PNR Land" was described by reference to a Land Registry map and such maps are, so it was said, only accurate to around one metre. Assuming (which was in issue) that there is this margin of error, the objection that the relevant term of the Injunction was insufficiently clear would have been compelling in the absence of proof that Ms Lawrie crossed the boundary of the land as it was marked on the map by more than a metre. As it was, however, the judge was satisfied from video evidence that Ms Lawrie entered on the land by much more than a metre. The alleged vagueness in the term of the Injunction was therefore immaterial.

The concept of intention

61 Of these three types of unclarity, it is the third that is said to be material in the present case. For the appellants, Ms Brimelow argued that references to intention in an injunction addressed to "persons unknown" made the terms insufficiently clear because intention is a legal concept which is difficult for a member of the public to understand. In the judgment given on 28 June 2019 in which he made findings of contempt of court, the judge referred to the maxim that a person "is presumed to intend the natural and probable consequences of his acts", citing a passage from the speech of Lord Bridge of Harwich in *R v Maloney* [1985] AC 905, 928–929. Ms Brimelow submitted that a person with no legal knowledge or training would not understand that, even if they do not have in mind a particular consequence of their action, they will be held to intend any natural and probable consequence of it. Such a person might reasonably consider that their intention was, for example, to prevent fracking, or to protect the environment, or to protest, rather than, say, to cause inconvenience and delay to Cuadrilla, even if such inconvenience and delay was a natural or probable consequence of what they did.

62 I do not accept that the references in the terms of the Injunction to intention had any special legal meaning or were difficult for a member of the public to understand. In criminal law there has not for more than 50 years been any rule of law that persons are presumed to intend the natural and probable consequences of their acts. That notion was given its quietus by section 8 of the Criminal Justice Act 1967, which provides:

> "A court or jury, in determining whether a person has committed an offence — (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."

63 This was the point that Lord Bridge was making in the *Maloney* case in the passage to which Judge Pelling QC referred. The House of Lords made it clear in that case that juries should no longer, save in rare cases, be given legal directions as to what is meant by intention. Lord Bridge described it (at p 926) as the "golden rule" that, when directing a jury on intent, a judge should avoid any elaboration or paraphrase of what is meant by intent and should leave it to the jury's good sense to decide whether the person accused acted with the intention required to be guilty of a crime. Just as no elaboration of the concept of intention is required for juries, so equally its meaning does not need to be explained to members of the public to whom a court order is addressed. It is not a technical term nor one that, when used in an injunction prohibiting acts done with a specific intention, is to be understood in any special or unusual sense. It is an ordinary English word to be given its ordinary meaning and with which anyone who read the Injunction would be perfectly familiar.

64 That is not to say that proof of an intention is always straightforward. Often it causes no difficulty. A person's immediate intention may be obvious from their actions. Thus, when the appellants and three others lay across the Site Entrance on 24 July 2018 in pairs linked by

arm tube devices, it was obvious that they were intending to stop vehicles from entering or leaving the site. Had that not been their intention, they would not have positioned themselves where they did. Similarly, when in the incident on 3 August 2018 Ms Lawrie stood in the road in front of a lorry, waving her arms, there could be no doubt that her intention was to cause the vehicle to stop. To determine whether less direct consequences or potential consequences of a person's actions are intended may require further knowledge of, or inference as to, their plans or goals. In so far as there is evidential uncertainty, however, a person alleged to be in contempt of court by disobeying an injunction is protected by the requirement that the relevant facts must be proved to the criminal standard of proof. Hence where the injunction prohibits an act done with a particular intention, if there is any reasonable doubt about whether the defendant acted with that intention, contempt of court will not be established.

65 I accordingly cannot accept that there is anything objectionable in principle about including a requirement of intention in an injunction. Nor do I accept that there is anything in such a requirement which is inherently unclear or which requires any legal training or knowledge to comprehend.

Dicta in the Ineos case

66 Nevertheless, I acknowledge that the appellants' argument gains some traction from a statement in the judgment of Longmore LJ in the *Ineos* case. One of the terms of the injunction granted by the judge at first instance in that case, like paragraph 7 of the Injunction in this case, was designed to protect the claimants from financial damage caused by an unlawful means conspiracy. In the *Ineos* case the term in question prohibited persons unknown from "combining together to commit the act or offence of obstructing free passage along a public highway (or access to or from a public highway) by … slow walking in front of the vehicles with the object of slowing them down and with the intention of causing inconvenience and delay or … otherwise unreasonably and/or without lawful authority or excuse obstructing the highway with the intention of causing inconvenience and delay, all with the intention of damaging the claimants." The wording of this prohibition was held to be insufficiently clear, both because it contained language which was too vague ("slow walking" and "unreasonably and/or without lawful authority or excuse obstructing the highway") and because, as Longmore LJ put it, "an ordinary person exercising legitimate rights of protest is most unlikely to have any clear idea of what would constitute lawful authority or excuse": see *Ineos Upstream Ltd v Persons Unknown* at para 40.

67 In addition to making these points, however, Longmore LJ also agreed with a submission that one of the "problems with a quia timet order in this form" was that "it is of the essence of the tort [of conspiracy] that it must cause damage". He commented, at para 40:

> "While that cannot of itself be an objection to the grant of quia timet relief, the requirement that it cause damage can only be incorporated into the order by reference to the defendants' intention which, as Sir Andrew Morritt said in *Hampshire Waste*, depends on the subjective intention of the individual which is not necessarily known to the outside world (and in particular to the claimants) and is susceptible to change and, for that reason, should not be incorporated into the order."

68 Although this was not an essential part of the court's reasoning, I agreed with the judgment of Longmore LJ in the *Ineos* case and therefore share responsibility for these observations. However, while I continue to agree with the other reasons given for finding the form of order made by the judge in the *Ineos* case unclear as well as too widely drawn, with the benefit of the further scrutiny that the point has received on this appeal I now consider the concern expressed about the reference to the defendants' intention to have been misplaced.

69 It is not in fact correct, as suggested in the passage quoted above, that the requirement of the tort of conspiracy to show damage can only be incorporated into a quia timet injunction by reference to the defendants' intention. It is perfectly possible to frame a prohibition which applies only to future conduct that actually causes damage. It is, however, correct that, in order to make the terms of the injunction correspond to the tort and avoid prohibiting conduct that is lawful, it is necessary to include a requirement that the defendants' conduct was intended to cause damage to the claimant. As already discussed, there is nothing ambiguous, vague or difficult to understand about such a requirement. The only potential difficulty created by its inclusion is one of proof.

The Hampshire Waste case

70 The case of *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2003] EWHC 1738 (Ch); [2004] Env LR 9, to which Longmore LJ referred, involved an application by companies which owned and operated waste incineration sites for an injunction to restrain persons from trespassing on their sites in connection with a planned day of protest by environmental protestors described as "Global Day of Action Against Incinerators". On similar occasions in the past protestors had invaded sites owned by the claimants and caused substantial irrecoverable costs.

71 The injunction was sought against defendants described in the draft order as "Persons intending to trespass and/or trespassing" on six specified sites "in connection with the 'Global Day of Action Against Incinerators' (or similarly described event) on or around 14 July 2003". Sir Andrew Morritt V-C considered that the case for granting an injunction to prevent the threatened trespass to the claimants' property was clearly made out and that, in circumstances where the claimants were unable to name any of the protestors who might be involved, it was appropriate to grant the injunction against persons unknown. He raised two points, however, about the proposed description of the defendants (see para 9). The two points were that:

> "it seems to me to be wrong that the description of the defendant should involve a legal conclusion such as is implicit in the use of the word 'trespass'. Similarly, it seems to me to be undesirable to use a description such as 'intending to trespass' because that depends on the subjective intention of the individual which is not necessarily known to the outside world and in particular the claimants, and is susceptible of change."

To address these points, the Vice-Chancellor amended the opening words of the proposed description of the defendants to refer to: "Persons entering or remaining without the consent of the claimants" on the specified sites.

72 I take the Vice-Chancellor's objection to the use of the word "trespass" to have been that trespass is a legal concept and that the class of persons affected by the injunction ought to be identified in language which does not use a legal term of art. His objection to the reference to intention was different. It was not that intention is a legal concept which might not be clear to persons notified of the injunction. It was that "the outside world and in particular the claimants" would not necessarily know whether a person did or did not have the relevant intention and also that this state of affairs was susceptible of change.

73 Although the Vice-Chancellor did not spell this out, what was particularly unsatisfactory, as it seems to me, about the proposed description was that it would have made the question whether a person was a defendant to the proceedings dependent not on anything which that person had done (with or without a specific intention) but *solely* on their state of mind at any given time (which might change). Thus, a person who had formed an intention of joining a protest which would involve entering on the claimants' land would fall within the scope of the injunction even if he or she had done nothing which interfered with the claimants' legal rights or which was even preparatory or gave rise to a risk of such interference. It is easy to see why the Vice-Chancellor regarded this as undesirable.

74 I do not consider that the same objection applies to a term of an injunction which prohibits doing specified acts with a specified intention. Limiting the scope of a prohibition by reference to the intention required to make the act wrongful avoids restraining conduct that is lawful. In so far as it creates difficulty of proof, that is a difficulty for the claimant and not for a person accused of breaching the injunction—for whom the need to prove the specified intention provides an additional protection. Accordingly, although the inclusion of multiple references to intention —as in paragraph 7 of the Injunction in this case—risks introducing an undesirable degree of complexity, I would reject the suggestion that there is any reason in principle why references to intention should not be incorporated into an order or that the inclusion of such references in the terms of the Injunction in the present case provided a reason not to enforce it by committal.

The width of the Injunction

75 I mentioned earlier that the appellants withdrew their appeal against the judge's decision on 3 September 2019 to refuse their application to vary the injunction, when the relief which they were seeking was granted for different reasons following the Government's moratorium on fracking. The arguments which the appellants would have made on that appeal, however, did not disappear from the picture.

76 It is no defence to an application for the committal of a defendant who has disobeyed a court order for the defendant to say that the order is not one that ought to have been made.

As a matter of principle, a court order takes effect when it is made and remains binding unless and until it is revoked by the court that made it or on an appeal; and for as long as the order is in effect, it is a contempt of court to disobey the order whether or not the court was right to make it in the first place: see eg *M v Home Office* [1992] QB 270, 298–299, *Burris v Azadani* [1995] 1 WLR 1372, 1381. In the present case, therefore, it is not open to the appellants to argue that they were not guilty of contempt of court because the Injunction should not have been granted or should not have been granted in terms which prohibited the acts which they chose to commit in defiance of the court's order.

77 If it were shown that the court was wrong to grant an injunction which prohibited the appellants' conduct, that would none the less be relevant to the question whether it was appropriate to punish the appellants' contempt of court by ordering their committal to prison. Although no such argument was raised in the appellants' grounds of appeal against the committal order, in the course of her oral submissions Ms Brimelow suggested that this was the case. She did so, as I understood it, by reference to the grounds on which the appellants had sought permission to appeal against the judge's refusal to remove paragraphs 4 and 7 of the Injunction (before that appeal was withdrawn). Although there was no formal application to rely on those grounds for the purpose of the appeal against the committal order, it would be unreasonable not to permit this.

78 The grounds on which the appellants argued that paragraphs 4 and 7 should not have been included in the Injunction were essentially the same, however, as the grounds on which they argued that those terms could not properly form the basis of findings of contempt of court —namely, that the terms were insufficiently clear and certain because of their references to intention. For the reasons already given, I do not consider this to be a valid objection.

79 I would add that it has not been argued—and I see no reason to think—that on the facts of this case paragraph 4 of the Injunction, as it stood when the breaches occurred, was too widely drawn. Although a similarly worded term was criticised by this court in the *Ineos* case, there was in that case, as I have emphasised, no previous history of interference with the claimants' rights. The injunction sought was therefore what might be called a "pure" quia timet injunction, in that it was not aimed at preventing repetition of wrongful acts which had caused harm to the claimants but at preventing such acts in circumstances where none had yet taken place. The significance which the court attached to this can be seen from para 42 of the judgment of Longmore LJ, where he said:

> "[Counsel] for the claimants submitted that the court should grant advance relief of this kind in appropriate cases in order to save time and much energy later devoted to legal proceedings after the events have happened. But it is only when events have happened which can in retrospect be seen to have been illegal that, in my view, wide ranging injunctions of the kind granted against the third and fifth defendants should be granted. The citizen's right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example."

80 In the present case, by contrast, there was a well documented history of obstruction and attempts to obstruct access to and egress from Cuadrilla's site by blocking the Site Entrance and by obstructing the highway or otherwise interfering with traffic on the part of the Preston New Road defined in paragraph 3 of the Injunction as the "PNR Access Route". That history of conduct which clearly infringed the claimants' rights of free passage provided a solid basis for the prohibition in paragraph 4.

81 Paragraph 7 is a different matter. The only breach of paragraph 7 in issue on this appeal, however, is Ms Lawrie's conduct on 3 August 2018 in standing in the road in an attempt to stop a lorry which was approaching the Site Entrance and with the intention of causing inconvenience and delay to Cuadrilla. Cuadrilla had no need to rely on the tort of unlawful means conspiracy in seeking to restrain such conduct. It clearly amounted to an actionable public nuisance. As such, the prohibition in paragraph 4 could have been framed so as to prohibit such conduct. Indeed, one of the variations made to the Injunction on 3 September 2019 was an amendment to paragraph 4 to prohibit:

> "Standing, sitting, walking or lying in front of any vehicle on the carriageway with the effect of interfering with the vehicular passage along the PNR Access Route by the claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees;"

This squarely covered conduct of the kind which occurred on 3 August 2018.

82 The word "effect" was included in the variations made on 3 September 2019 to avoid referring to intention. In my view, reference to intention should not have been removed because there is nothing unclear in such a requirement and I see no sufficient justification for framing the prohibition more widely so as to catch unintended effects. But what matters for present purposes is that the terms of the Injunction were not criticised—and it seems to me could not reasonably be criticised—as too wide in so far as they prohibited the conduct of Ms Lawrie on 3 August 2018, as they did both before and after the variations were made.

83 I am therefore satisfied that, when considering the sanctions imposed on the appellants, it cannot be said in mitigation that the acts which formed the basis of the committal order were not acts which ought to have been prohibited by the Injunction.

(2) Were the sanctions too harsh?

84 The second ground of appeal pursued by the appellants is that—on the footing that the relevant restrictions placed on their conduct by the Injunction were legally justified—the judge was nevertheless wrong to punish their breaches of the Injunction by ordering their committal to prison (albeit that execution of the order was suspended).

The standard of review on appeal

85 In deciding what sanction to impose for a contempt of court, a judge has to assess and weigh a number of different factors. The law recognises that a decision of this nature involves an exercise of judgment which is best made by the judge who deals with the case at first instance and with which an appeal court should be slow to interfere. It will generally do so only if the judge: (i) made an error of principle; (ii) took into account immaterial factors or failed to take into account material factors; or (iii) reached a decision which was outside the range of decisions reasonably open to the judge. It follows that there is limited scope for challenging on an appeal a sanction imposed for contempt of court as being excessive (or unduly lenient). If, however, the appeal court is satisfied that the decision of the lower court was wrong on one of the above grounds, it will reverse the decision and either substitute its own decision or remit the case to the judge for further consideration of sanction. See *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA 392; [2019] 1 WLR 3833, paras 44–46 and *Financial Conduct Authority v McKendrick* [2019] EWCA Civ 524; [2019] 4 WLR 65, paras 37–38.

86 The appellants' case that the judge's decision was wrong is put in two ways. First, it is argued that the judge made an error of principle and/or failed to take into account a material factor in treating as irrelevant the fact that, when they disobeyed the Injunction, the appellants were exercising rights of protest which are protected by the common law and by articles 10 and 11 of the Convention. Secondly, it is argued that, in having regard (as the judge did) to the guideline issued by the Sentencing Council which applies to sentencing in criminal cases for breach of a criminal behaviour order, the judge misapplied that guideline and, in consequence, reached a decision that was unduly harsh.

Sentencing protestors

87 The fact that acts of deliberate disobedience to the law were committed as part of a peaceful protest will seldom provide a defence to a criminal charge. But it is well established that it is a relevant factor in assessing culpability for the purpose of sentencing in a criminal case. On behalf of the appellants, Ms Brimelow QC emphasised the following observations of Lord Hoffmann in *R v Jones (Margaret)* [2006] UKHL 16; [2007] 1 AC 136, para 89:

> "My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account."

88 This passage was quoted with approval by Lord Burnett of Maldon CJ, giving the judgment of the Court of Appeal (Criminal Division) in *R v Roberts* [2019] 1 WLR 2577, the case

mentioned earlier that arose from "direct action" protests at Cuadrilla's site in July 2017 by four men who climbed on top of lorries. Three of the protestors were sentenced to immediate terms of imprisonment, but on appeal those sentences were replaced by orders for their conditional discharge, having regard to the fact that they had already spent three weeks in prison before their appeals were heard. The Court of Appeal indicated that the appropriate sentence would otherwise have been a community sentence with a punitive element involving work (or perhaps a curfew). The Lord Chief Justice (at para 34) summarised the proper approach to sentencing in cases of this kind as being that:

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

89 Ms Brimelow submitted that this approach to sentencing should have been, but was not, followed in the present case when deciding what sanction to impose for the breaches of the Injunction committed by the appellants.

Were custodial sentences wrong in principle?

90 At one point in her oral submissions Ms Brimelow sought to argue that, where a deliberate breach of a court order is committed in the course of a peaceful protest, it is wrong in principle to punish the breach by imprisonment, even if the sanction is suspended on condition that there is no further breach within a specified period. This mirrored a submission which she made when representing the protestors in the *Roberts* case. The submission was rejected in the *Roberts* case (at para 43) and I would likewise reject it as contrary to both principle and authority.

91 There is no principle which justifies treating the conscientious motives of a protestor as a licence to flout court orders with impunity from imprisonment, whatever the nature or extent of the harm intended or caused provided only that no violence is used. Court orders would become toothless if such an approach were adopted—particularly in relation to those for whom a financial penalty holds no deterrent because it cannot be enforced as they do not have funds from which to pay it. Unsurprisingly, no case law was cited in which such an approach has been endorsed. Not only, as mentioned, was it rejected in the *Roberts* case in the context of sentencing for criminal offences, but it is also inconsistent with the jurisprudence of the European Court of Human Rights.

92 Thus, in *Kudrevicius v Lithuania* 62 EHRR 34 mentioned earlier, the Grand Chamber of the European Court saw nothing disproportionate in the decision to impose on the applicants a 60-day custodial sentence suspended for one year (along with some restrictions on their freedom of movement)—a sentence which the court described as "lenient" (see para 178). The Grand Chamber also referred with approval to earlier cases in which sentences of imprisonment imposed on demonstrators who intentionally caused disruption had been held not to violate articles 10 and 11 of the Convention. For example, in *Barraco v France* CE:ECHR:2009:0305JUD003168405; (Application No 31684/05) 5 March 2009, the applicant had taken part in a protest which involved blocking traffic on a motorway for several hours. The European Court held that his conviction and sentence to a suspended term of three months' imprisonment (together with a fine of €1,500) did not violate article 11.

93 Another case cited by the Grand Chamber in *Kudrevicius* that is particularly in point because it involved defiance of court orders is *Steel v United Kingdom* CE:ECHR:1998:0923JUD002483894; 28 EHRR 603; 5 BHRC 339. In that case the first applicant took part in a protest against a grouse shoot in which she intentionally obstructed a member of the shoot by walking in front of him as he lifted his shotgun to take aim, thus preventing him from firing. She was convicted of a public order offence, fined and ordered to be bound over to keep the peace for 12 months. Having refused to be bound over, the applicant was committed to prison for 28 days. The second applicant took part in a protest against the building of a motorway extension in which she stood under the bucket of a JCB digger in order to impede construction work. She was likewise convicted of a public order offence, fined and ordered to be bound over. She also refused to be bound over and was committed to prison for seven days. The European Court held that in each of these cases the measures taken against the protestors interfered with their rights under article 10 of the Convention but that in each case the measures were proportionate to the legitimate aims of preventing disorder, protecting the rights of others and also (in relation to

their committal to prison for refusing to agree to be bound over) maintaining the authority of the judiciary.

94 The common feature of these cases, as the court observed in the *Kudrevicius* case, is that the disruption caused was not a side-effect of a protest held in a public place but was an intended aim of the protest. As foreshadowed earlier, this is an important distinction. It was recently underlined by a Divisional Court (Singh LJ and Farbey J) in *Director of Public Prosecutions v Ziegler* [2019] EWHC 71 (Admin); [2019] 2 WLR 1451, a case—like the *Kudrevicius* case—involving deliberate obstruction of a highway. After quoting the statement that intentional disruption of activities of others is not "at the core" of the freedom protected by article 11 of the Convention (see para 44 above), the Divisional Court identified one reason for this as being that the essence of the rights of peaceful assembly and freedom of expression is the opportunity to persuade others (see para 53 of the judgment). The court pointed out that persuasion is very different from attempting (through physical obstruction or similar conduct) to *compel* others to act in a way you desire.

95 Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

96 On the other hand, courts are frequently reluctant to make orders for the *immediate* imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons. It is notable that in the *Kudrevicius* case and in the earlier cases there cited in which custodial sentences were held by the European Court to be a proportionate restriction on the rights of protestors, in all but one instance the sentence imposed was a suspended sentence. The exception was *Steel v United Kingdom*, but in that case too the protestors were not immediately sentenced to imprisonment: it was only when they refused to be bound over to keep the peace that they were sent to prison. A similar reluctance to make (or uphold) orders for immediate imprisonment is apparent in the domestic cases to which counsel for the appellants referred, including the *Roberts* case. As Lord Burnett CJ summed up the position in that case (at para 43): "There are no bright lines, but particular caution attaches to immediate custodial sentences." There are good reasons for this, which stem from the nature of acts which may properly be characterised as acts of civil disobedience.

Civil disobedience

97 Civil disobedience may be defined as a public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations): see eg John Rawls, *A Theory of Justice* (1971) p 364. Where these conditions are met, such acts represent a form of political protest, both in the sense that they are guided by principles of justice or social good and in the sense that they are addressed to other members of the community or those who hold power within it. The public nature of the act—in contrast to the actions of other law-breakers who generally seek to avoid detection—is a demonstration of the protestor's sincerity and willingness to accept the legal consequences of their actions. It is also essential to characterising the act as a form of political communication or address. Eschewing violence and showing some measure of moderation in the level of harm intended again signal that, although the means of protest adopted transgress the law, the protestor is engaged in a form of political action undertaken on moral grounds rather than in mere criminality.

98 It seems to me that there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Second, by reason of that difference and the fact that such a protestor is generally—apart from their protest activity—a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protestor's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches. This is part of

what I believe Lord Burnett CJ meant in the *Roberts* case at para 34 (quoted above) when he referred to "a bargain or mutual understanding operating in such cases".

99 These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will none the less very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented.

The judge's approach

100 The judge had regard to the fact that the breaches of the Injunction committed by the appellants in this case were part of a protest but did not accept that this was relevant in deciding what sanction to impose. That was an error. As I have indicated, it is clear from the case law that, even where protest takes the form of intentional disruption of the lawful activities of others, as it did here, such protest still falls within the scope of articles 10 and 11 of the Convention. Any restrictions imposed on such protestors are therefore lawful only if they satisfy the requirements set out in articles 10(2) and 11(2). That is so even where the protestors' actions involve disobeying a court order. Although—as the judge observed—the appellants' rights to freedom of expression and assembly had already been taken into account in deciding whether to make the order which they disobeyed, imposing a sanction for such disobedience involved a further and separate restriction of their rights which also required justification in accordance with articles 10(2) and 11(2) of the Convention.

101 That said, the judge was in my opinion entitled to conclude—as he made it clear that he did—that the restrictions which he imposed on the liberty of the appellants by making suspended orders for their committal to prison were in any event justified by the need to protect the rights of the claimants and to maintain the court's authority. The latter aim is specifically identified in article 10(2) as a purpose capable of justifying restrictions on the exercise of freedom of expression. It is also, as it seems to me, essential for the legitimate purpose identified in both articles 10(2) and 11(2) of preventing disorder.

Reference to the Sentencing Council guideline

102 In deciding what sanctions were appropriate, the judge approached the decision, correctly, by considering both the culpability of the appellants and the harm caused, intended or likely to be caused by their breaches of the Injunction. I see no merit in the appellants' argument that, in making this assessment, he misapplied the Sentencing Council guideline on sentencing for breach of a criminal behaviour order. In *Venables v News Group Newspapers Ltd* [2019] EWHC 241 (QB) at [26], the Divisional Court thought it appropriate to have regard to that guideline in deciding what penalty to impose for contempt of court in breaching an injunction. As the court noted, however, the guideline does not apply to proceedings for committal. There is therefore no obligation on a judge to follow the guideline in such proceedings and I do not consider that, if a judge does not have regard to it, this can be said to be an error of law. The criminal sentencing guideline provides, at most, a useful comparison.

103 Caution is needed in any such comparison, however, as the maximum penalty for contempt of court is two years' imprisonment as opposed to five years for breach of a criminal behaviour order. It would be a mistake to assume that the starting points and category ranges indicated in the sentencing guideline should on that account be made the subject of a linear adjustment such that, for example, the starting point for a contempt of court that would fall in the most serious category in the guideline (category 1A) should only be of the order of ten months' custody (which is roughly 40% of the guideline starting point of two years' custody). As the Court of Appeal observed in *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65, para 40:

> "[Counsel for the appellant] was correct to submit that the decision as to the length of sentence appropriate in a particular case must take into account that the maximum sentence is committal to prison for two years. However, because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum."

104 A further material difference is that, in proceedings for contempt of court, a community order is not available as a lesser alternative to the sanction of imprisonment. There may therefore be cases where, although the sentencing guideline for breach offences might suggest that a

community order would be an appropriate sentence, it is necessary to punish a contempt of court by an order for imprisonment because the contempt is so serious that neither of the only alternative sanctions of a fine and/or an order for costs could be justified.

Sanction for the first incident

105 In relation to the first incident on 24 July 2018 involving all three appellants, there is no basis for saying that the judge's assessment of culpability and harm by reference to the sentencing guideline for breach offences, or his decision on sanction in the light of that assessment, was wrong on any of the grounds listed in para 85 above. The judge was right to start from the position that a deliberate breach of a court order is itself a serious matter. He was entitled, as he also did, to treat the appellants' culpability as aggravated by the element of planning involved in their use of lock-on devices and to take account of (i) the number of hours of disruption and delay caused by their conduct, (ii) evidence that the incident caused Cuadrilla additional (and irrecoverable) costs of around £1,000, and (iii) the fact that the incident only ended when police were deployed to cut through the arm lock devices and remove the appellants. It was also relevant that the appellants expressed no remorse and gave no indication that they would not commit further breaches of the Injunction. Nor were they entitled to any credit for admitting their contempt, as they declined to do so, thereby necessitating a trial at which evidence had to be called.

106 Had it not been for the fact that the appellants' actions could be regarded as acts of civil disobedience in the sense I have described, short immediate custodial terms would in my view have been warranted. As it is, it cannot be said that the judge's decision to impose suspended terms of imprisonment of four weeks was wrong in principle or outside the range of decisions reasonably open to him.

Sanction for the second incident

107 In relation to the second incident on 3 August 2018 involving Ms Lawrie alone, somewhat different considerations apply. Although Ms Lawrie's action in standing in the path of a lorry to try to stop it was also found to be a deliberate breach of the court's order, there was no evidence of planning and the incident was far shorter in duration lasting only a few seconds. In assessing the harm caused or risked by Ms Lawrie's breach of the Injunction, the judge emphasised the danger of injury or death to which her action had exposed Ms Lawrie herself, the driver of the lorry and other road-users. However, as David Richards LJ pointed out in the course of argument, in approaching the matter in this way the judge seems to have lost sight of the fact that the purpose of paragraph 7 of the Injunction, which he was punishing Ms Lawrie for disobeying, was not to protect the safety of road-users but was to protect Cuadrilla from suffering economic loss as a result of conspiracy to disrupt its supply chain by unlawful means. In assessing the seriousness of the breach, the judge should have focused on the extent to which the breach caused, or was intended to cause or risked causing, harm of the kind which the relevant term of the Injunction was intended to prevent. Had he done this, the judge would have been bound to conclude not only that no harm was actually caused but that the amount of economic loss intended or threatened by delaying a lorry on its way to collect rainwater from the site was slight.

108 The judge was, I consider, entitled to take into account as aggravating Ms Lawrie's culpability the nature of the unlawful means used and the fact that, on his findings, it amounted not merely to a public nuisance through obstruction of the highway but to an offence of causing danger to road-users contrary to section 22A of the Road Traffic Act 1988. To be guilty of an offence under that statutory provision, it is not necessary that the person concerned should have intended to cause, or realised that they were causing, danger to life or limb, and the judge made no such finding in relation to Ms Lawrie. It is sufficient that it would be obvious to a reasonable person that their action would be dangerous—a matter of which the judge was clearly satisfied on the evidence.

109 Ms Lawrie was not prosecuted, however, and the judge was not sentencing her for a criminal offence under the Road Traffic Act. In the circumstances, giving all due weight to the nature of the unlawful means used, the fact that this was Ms Lawrie's second deliberate breach of the Injunction and her complete lack of contrition, I do not consider that the term of imprisonment of two months which the judge imposed was justified. In my judgment, although the judge was right to conclude that the custody threshold was crossed, the appropriate penalty for this contempt of court was the same as that imposed for the earlier contempt committed by all three appellants—that is, a suspended term of imprisonment of four weeks.

Conclusion

110 For these reasons, I would vary the committal order made by Judge Pelling QC on 3 September 2019 by substituting for the period of imprisonment of two months in paragraph 2 of the order a period of four weeks. In all other respects I would dismiss the appeal.

DAVID RICHARDS LJ

111 I agree.

UNDERHILL LJ

112 I agree with Leggatt LJ, for the reasons which he gives, that this appeal should be dismissed save in the one respect which he identifies. The courts attach great weight to the right of peaceful protest, even where this causes disruption to others; but it is also important for the rule of law that deliberate breaches of court orders attract a real penalty, and I can see nothing wrong in principle in the judge's conclusion that the appellants' conduct here merited a custodial sentence, albeit suspended.

Appeal dismissed in part.
Variation of committal order.

ALISON SYLVESTER, Barrister

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
[2022] EWHC 1477 (QB)

No. QB-2022-001098

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 27 April 2022

Before:

MR JUSTICE BENNATHAN

B E T W E E N :

(1) ESSO PETROLEUM CO. LIMITED
(2) EXXON MOBIL CHEMICAL LIMITED

Applicants

- and -

(1) PERSONS UNKNOWN
(2) PERSONS UNKNOWN
(3) PERSONS UNKNOWN

Respondents

MS K. HOLLAND QC (instructed by Eversheds Sutherland (International) LLP) appeared on behalf of the Applicants.

THE DEFENDANTS did not appear and were not represented.

J U D G M E N T

(Transcript prepared from a poor quality recording and without the aid of documentation)

MR JUSTICE BENNATHAN:

1 This case is an application for an injunction. The claimants are two companies that import and process oil, Esso and Exxon. The defendants are those who it is anticipated may protest against the oil industry. In describing the application, the issues I have had to consider and my conclusions I shall do my best to follow the lead of Sir Geoffrey Vos, Master of the Rolls, and use non-technical English rather than the Latin tags which have "bedevilled" this area of law and practice (*London Borough of Barking and Dagenham & Ors v. Persons Unknown & Ors* [2022] EWCA Civ. 13 [8]).

2 The claimants are represented by Katherine Holland QC and Yaaser Vanderman, and I am grateful to them and their legal team for the presentation of their case. The defendants were neither represented nor present. There was, however, a degree of opposition to the order that came about in the following manner. An individual who had received one of the claimant's solicitor's emails instructed Hodge Jones & Allen Solicitors who in turn instructed counsel, Mr Powlesland. The recipient of the email is involved in the environmental movement but, as I understand it, has not protested at any of the claimants' sites and has no intention to do so.

3 Normally the courts hear arguments from claimants and defendants, not from people who are interested in, but not part of, the litigation. In this case, without opposition from Ms Holland for the claimants, I allowed Mr Powlesland to make submissions. In doing so I shall not be seen as setting any precedent that binds other judges, or indeed myself. I simply felt that the sort of very broad order sought against unnamed defendants would benefit from the scrutiny that could attach to other submissions.

4 Mr Powlesland made wide-ranging submissions including about the inequality of wealth between oil companies and protestors. The sinister nature, as he put it, of part of the order sought to, in effect, create cooperation between the police and the claimants' oil companies, and about other cases in which he had been involved and his concerns about the courts granting of injunctions such as these. A topic Mr Powlesland focussed on was the failure, as he suggested, by the claimants to establish the eight sites were actually theirs; in other words that they could prove ownership or other legal title to each part of the site.

5 I heard those submissions and invited Ms Holland to reply. Thereafter Mr Powlesland sought to press me further and to go through each of the eight sites in detail. At that point I cut him off and retired to consider my decision. I did not do so, I hope, out of rudeness but because I felt, given his limited and unusual status in this hearing and given he had already addressed me on broad propositions, and I had received a reply, I have a duty and a right to confine argument to matters that in my view will help me arrive at the right decision.

6 Section 12(2) of the Human Rights Act 1998 limits a court's ability to grant any relief, such as an injunction, in a case where freedom of expression is involved and the defendant is neither present nor represented. That limitation does not apply, however, where the applicant has taken all practical steps to notify the defendants. In this case I have the evidence of Nawaaz Allybokus, a solicitor from Evershed, the claimants' solicitors. He makes clear that the email was sent to the various groups that are organising protests, and a copy of the interim injunction or warning of the interim injunction's existence had been left at the edge of all the claimants' sites thus alerting protestors to the existence of these proceedings. On that basis I am satisfied

the claimants have taken all practical steps and I can make the order sought if the other criteria are met.

7 Section 12(3) of the Human Rights Act also requires me not to issue an injunction unless I am persuaded the claimants are likely to succeed in any eventual action to stop "publication" that the order would forbid. On one view of the law that provision is not really aimed at protest cases such as this, but there is Court of Appeal authority that it should be taken as applying so, of course, I follow that authority. In fact the "likely" test is already required from the other parts of the law that I have to consider, so I will deal with that compendiously later in this judgment.

8 The various sites that are the subject of this application are the Fawley Petrochemical Complex in Southampton, the Hythe Terminal in Hardley, the Avonmouth Terminal near Bristol, the Birmingham Terminal, the Purfleet Terminal, the West London Terminal and the Hartland Park Logistics Hub near Farnborough and the ultimate compound at Holybourne.

9 The injunction sought before me is further to an interim injunction. What is it that the claimants fear? I have read a witness statement by Anthony Milne, Esso's Global Security Adviser, and by Mr Allybokus. Mr Milne writes that in early April of this year, four of the claimants' terminals, West London, Hythe, Purfleet and Birmingham, were subject to direct action which included attached barrels to a barrier to stop it lifting open, cutting through fences and placing objects, such as Extinction Rebellion's pink boat, so as to block an entrance. He also quotes various messages and proclamations by the group behind these protests promising more of the same and indeed calling for an escalation of their protests.

10 Mr Allybokus in his third witness statement for these proceedings updates the picture by a review of press reports of arrests [in the low hundreds] and by quoting from the protest group's website and by passing on what Mr Milne has now reported to him of actions taken since Mr Milne's witness statement.

11 To summarise the groups behind the protest they are "Just Stop Oil" and "Extinction Rebellion." There is also mention of a subgroup referred to as "Youth Swarm." The groups publicise their planned action, and they claim such actions as their own when they have occurred, and they make calls for other groups and individuals to join any such protests. The various detailed types of conduct that the claimants seek to have prohibited are all limited to actions on land owned by them, with the possible caveat I will come to later. It is significant that none of the actions the claimants seek to prohibit by this order are actions on the public highways with, once more, the caveat to which I will return.

12 I have been told by Ms Holland QC that another judge has granted an order or injunction against people carrying out activities on public highways. I do not know the details of that, nor have I sought them, but I have no doubt that other judges faced with other cases, and other applications, will arrive at orders different from the one I am going to grant in this case.

13 The power of the court to grant injunction is set out in very broad terms in s.37 of the Senior Courts Act 1981. One criminal offence that characterises the sort of conduct that the claimants fear is s.68 of the Criminal Justice and Public Order Act 1994, the offence of aggravated trespass; a trespass done to obstruct or disrupt a lawful activity. Another offence relevant to protests on roads is wilful obstruction of a highway, contrary to s.137 of the Highways Act 1980, which carries a power of arrest.

14 The well-established test for the grant of an interim injunction was described in *American Cyanamid Co. v. Ethicon Ltd* [1975] AC 396. The first two aspects, whether there was a serious question to be tried and whether damages would be an adequate remedy were no injunction granted, are easily met in this case. The actions planned, carried out and publicised by the groups listed above clearly amount to a strong basis for an action for trespass and private and public uses. Given the sort of sums involved in the oil industry and the impracticality of obtaining damages on that scale from a diverse group of protestors, some of whom may have no assets, damages would obviously not be an adequate remedy.

15 The injunction sought is an anticipatory injunction in the sense that any order against persons unknown always is, and is further placed within that category because not all of the sites have been the target of any protest. In *Vastint Leeds BV v. Persons Unknown* [2018] EWHC 2456 (Ch) Marcus Smith J summarised the effect of two decisions of the Court of Appeal on this topic and I adopt his summary with gratitude. The questions I have to address are:

> (1) Is there a strong possibility that the defendants will imminently act to infringe the claimants' rights?
>
> (2) If so, would the harm be so "grave and irreparable" that damages would be an inadequate remedy?

I note that the use of those two words raises the bar higher than the similar test found within *American Cyanamid*.

16 Injunctions against unidentified defendants were considered by the Court of Appeal in the case of *Ineos Upstream Limited v. Persons Unknown* [2019] 4 WLR 100 and *Canada Goose Retail Limited v. Persons Unknow*n [2020] 1 WLR 2802. As both cases are recent decisions concerning unknown defendants in protest cases they are of particular significance to the case I have had to decide.

17 *Ineos* concerned protests against fracking. There was an argument before the Court that addressed the protestors' Art.10 and Art.11 rights under the European Convention of Human Rights, the rights to freedom of expression and association. In the course of the judgment it was said at para.30 that, "Courts should be inherently cautious about granting injunctions against unknown persons, since the reach of such an injunction is necessarily difficult to assess in advance". In his conclusions Longmore LJ "tentatively" framed the requirements of an injunction so as to include:

> (1) The terms must not be so wide that they prohibit lawful conduct.
>
> (2) The terms must be sufficiently clear and precise to enable persons potentially affected to know what they must not do.

18 *Canada Goose* was concerned with protests against clothing containing animal products. The Court of Appeal's judgment revisited *Ineos* and another decision from a fracking protest appeal, namely *Cuadrilla Bowland Limited v. Persons Unknown* [2020] 4 WLR 29, and described at para.82 a modified version of Longmore LJ's requirements. Once more I will reproduce only those that are pertinent to this case:

> (1) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that,

there is no other proportionate means of protecting the claimant's rights.

(2) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

19 An issue in any case like this is how I should approach the limitations on the Art.10 and Art.11 rights of the defendants. I turn to consider the Supreme Court's decision in the case of *The Director of Public Prosecutions v. Ziegler & Ors* [2020] 2 AC 408. Protestors had blocked a road leading to a venue where an arms fair was being held, by sitting in the road and attaching themselves to heavy objects, so-call "lock boxes." They had been arrested and prosecuted for obstructing the highway under s.137 of the Highways Act 1980, which offence has a "lawful excuse" defence. District Judge Hamilton, the District Judge hearing the trial, dismissed the charges on the basis that, having weighed up the considerations that point either way, including the protestors' Art.10 and Art.11 rights, he concluded the prosecution had failed to negate the statutory defence advanced by the defendants.

20 The Divisional Court allowed an appeal against the decision of the District Judge. The Supreme Court then allowed a further appeal and restored the dismissals. *Ziegler* was an important, perhaps a landmark, decision about the right to protest but its effect should not be misunderstood. The Supreme Court did not declare that henceforth all blocking of roads was a legitimate and lawful form of political action, but that on occasions it might not be a crime under that section of that act. It is notable that the Supreme Court discussed and approved a list of considerations of the detailed facts that a judge should weigh in such cases before reaching a decision.

21 The limits to *Ziegler* are made clear in the *Director of Public Prosecutions v. Cuciurean* [2022] EWHC 736 (Admin), in which Lord Burnett, Chief Justice, held that *Ziegler* did not impose an extra test in a case of aggravated trespass under s.68 of the Criminal Justice and Public Order Act 1994, as Art.10 and Art.11 rights do not generally include the right to trespass, and Parliament had said the balance between those rights and the lawful occupier's rights under Art.1 of Protocol 1 of the Convention by the terms of the s.68 offence.

22 The right to peaceful enjoyment of one's property has been honoured by the courts for centuries, albeit not described as a human right nor still less as Art.1 of Protocol 1. Article 10 and Art.11 rights have been described in numerous cases from which I select only two examples.

(1) In *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ. 23, Laws LJ said at para.43:

> Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.

(2) In *Kudrevičius and Others v. Lithuania* [2015] 62 EHRR 34 at para.91, the European Court of Human Rights stated that:

> ... the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively ...

23 It is clear that once breach proceedings are underway it is no defence for the alleged contemnor to argue that the injunction should not have been granted in the first place, or that its terms are too broad. The balance between property rights and the right of protestors is one that has to be struck, in this case now, when the injunction is granted (see *National Highways Limited v. Heyatawin & Ors* [2021] EWHC 3078 (QB) [44] and [45]).

24 Only one side was formally represented before me. Nonetheless, as I am being asked to impose an injunction that could expose those who breach it to imprisonment, I need to justify why I make any order. The order I am prepared to make forbids various acts of trespass including the blocking of gates on the claimants' premises. I make that order having been satisfied that:

> (1) Were the underlying claims ever to reach trial the claimants have a strong basis for an action of trespass and private and public nuisance, on the basis of a protest that had already occurred on some sites and are threatened for others.
>
> (2) Given the sort of sums involved in the oil industry and the impracticality of obtaining damages on that scale from a diverse group of protestors, some of whom may have no assets, damages would obviously not be an adequate remedy.
>
> (3) There is a strong possibility that the defendants will imminently act to infringe the claimants' rights, given they have already done so and "promised" [if that is the right word] that similar actions will continue on other sites.
>
> (4) The harm caused by the activities I will seek to prevent on the terms of an injunction would amount to "grave and irreparable" harm in that trespassing on the sites could lead to highly dangerous outcomes, given the highly flammable or even explosive nature of the materials being handled. Prolonged obstruction of entrances could also lead to a different type of very serious damage in that some of the sites at least are parts of the critical national infrastructure and numerous businesses, emergency services, hospitals and other key parts of society depend on oil based fuels.

25 The claimants have rights under Art.1 of Protocol 1 and must be entitled, as are all companies and individuals, to seek the protection of the courts. The fact that others have strongly held views about fossil fuels and the environment cannot be a basis for my refusing protection to a law abiding business once the relevant criteria are met.

26 Mr Powlesland addressed me about the contrast between the access to the courts between oil companies and private individuals without great, private wealth. Access to the courts and public funding representation are intensely political matters that I cannot address. I have to hear what is said, consider what the proper law is, and then apply the law as is laid down both by Parliament and the numerous courts superior to me.

27 On the submissions that the claimants have not shown that they own or have other legal rights to the land, I have read the detailed submissions in the claimants' first skeleton argument and the numerous attachments and documents exhibited thereto. There was an issue that one site had been used by the claimants for many years but lacks any formal status, such as demonstrable legal ownership or a documented lease. The answer to that is short: a basic proposition of property law is that one who exercises a possessory right, as the claimants clearly do, is entitled to enforce that right. I declined Mr Powlesland's invitation to oblige the claimants to describe each legal basis for each part of each site that will be covered by this injunction. I am fully satisfied the claimants have shown they have sufficient proprietal interest on all remaining sites.

28 I do have a concern in cases such as this about banning any blocking of the road flowing from the Supreme Court case law in *Ziegler*. The effect of that decision, it seems to me, is that Parliament and the Supreme Court have brought about a situation where the rights of protestors and the rights of those against whom they protect can be assessed and weighed carefully with knowledge of all the facts. An injunction banning any blocking of any road would have the effect of demolishing that delicate balance. There would be no "lawful excuse" defence to a breach of that order. Protestors whose identities, dispositions and activities were completely unknown to the court when the order was made would be liable to imprisonment.

29 In my view the better course when dealing with actions by protestors that might be found lawful on a *Ziegler* assessment, is that taken by the claimants in this case allowing this court to leave those matters to the police to enforce and the Magistrates' Court to adjudicate. I should make clear that these observations on the law after *Ziegler* do not seek to encourage individuals to block highways nor to assure anyone that such action can be carried out with impunity. The police have the power to arrest those they consider to be committing an offence under s.137 of the Highways Act 1980, and the courts have the power to convict them.

30 Taken the approach I have, I am not purporting to lay down any sort of immutable rule. There will be cases where the court is justified in making an order that bans any blocking of a road. To quote Sir Geoffrey Vos, Master of the Rolls, once more from *London Borough of Barking and Dagenham* at para.123:

> The court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under s.37 against the world.

31 The qualification to that is that Ms Holland QC, for the claimants, sought to rely on the private law right of an owner of land under common law to have access to the highway at any point where his or her land touches it. I acknowledge, of course, that common law does indeed establish such a right. However, my view, in this case at least,-is that should not be used to avoid the *Ziegler* issue and in any event an attempt to create an adjunct to an order otherwise confined to private land would inevitably lead me to make an order that would be unclear, which an injunction must not be.

32 The claimants also sought an order for all the relevant police forces to disclose material that would be evidence of breaches of the injunctions. All the various police forces that cover the claimants' numerous sites were notified of this application and all replies stated they were neutral on the application and have no objection to the court dealing with it at the hearing. It seems to me that the disclosure sought is the most sensible and efficient way to identify any breaches of the injunction but the terms of the draft order need the addition of suitable confidentiality clauses. This was an aspect to which Mr Powlesland objected, as I have described already, but it seems to me best that any evidence that could be used by the claimants to pursue breaches is gathered by the legally regulated and democratically accountable police forces of the United Kingdom. On that basis I also make this part of the order sought.

33 I have asked Ms Holland QC to draft an order that reflects my comments both in the course of the hearing and in this judgment. I am prepared to allow Mr Powlesland to make any submissions by email on the detail of the draft order, but I will not entertain any further substantive arguments about the scope of the injunction.

CERTIFICATE

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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

No. QB-2020-002702

[2024] EWHC 239 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 19 January 2024

Before:

MR JUSTICE RITCHIE

B E T W E E N :

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED
(2) LUDGATE HOUSE LIMITED
(A company incorporated in Jersey)
(3) SAMPSON HOUSE LIMITED
(A company incorporated in Jersey) Claimants

- and -

PERSONS UNKNOWN ENTERING IN OR REMAINING AT
THE CLAIMANTS' CONSTRUCTION SITE AT BANKSIDE YARDS
WITHOUT THE CLAIMANTS' PERMISSION Defendants

MR T MORSHEAD (instructed by Eversheds Sutherland (International LLP) appeared on behalf of the Claimants.

THE DEFENDANTS did not attend and were unrepresented.

J U D G M E N T

MR JUSTICE RITCHIE:

1 In this case, by an application dated 21 December 2023, the three Claimants apply for a final prohibitory injunction against persons unknown to last for approximately three years, until February 2027. The evidence in support is provided by Mr Wortley in a witness statement dated 21 December 2023 and a later witness statement dated 18 January 2024. The procedure set out in the Notice of Application asked for an on-paper consideration of a temporary further interim injunction pending a hearing. This is the hearing relating to the application for the final injunction.

2 Going to the chronology of these proceedings, the relevant property is Bankside Yards, Blackfriars Road, London, SE1 9UY ("the Site"). The owners are the second and third Claimants and the main contractors on site are the first Claimant, who are entitled to possession.

3 An application for an interim injunction was made on 27 July 2020 and an interim *ex parte* injunction was made by Soole J on 30 July 2020 until 21 January 2021. Judgment was given by Soole J, which I have read and incorporate into this judgment.

4 The *ex parte* interim injunction was probably extended by Bourne J in January, but I have not seen the order and this judgment is subject to that order being confirmed as in existence by the Claimants' leading counsel, which I understand will take place this afternoon. The order that was actually put in the bundle was from another case. However, it is clear that there was a return date for the *ex parte* injunction because a witness statement was filed by Martin Wilshire on 25 January 2021, who is Director of Health and Safety at the first Claimant, that set out two recent incidents, despite the interim injunction. The first was dated before the interim injunction and involved something not particularly relevant. Four males were pointing at a crane on the Site and when the security services on Site made themselves apparent, the four males went away. They never entered the Site. The second is more worrying, because it occurred on 5 January 2021 and an unnamed person climbed a scaffold gantry on the Site but left when security was deployed. This was a direct action which was relevant to and potentially in breach of the injunction ordered by Soole J.

5 Hearsay evidence was given by Mr Wortley about urban exploring and videos of this taking place in London on cranes at various unknown locations, but also in White City. There was in Warsaw, which may not be the most relevant piece of evidence that I have ever read, but it at least showed that urban exploring by climbing buildings and cranes has prevalent in London and Europe.

6 Moving on from the order which was probably made by Bourne J, a further order was made by Stewart J on 4 March 2021, which recited the orders of Soole J (and Bourne J of 26 January 2021), which gives me some succour about the order of Bourne J and was based on the witness statement of Martin Wilshire which I have just recited. This extended the order of Bourne J to 19 May 2021. On 6 May 2021, Eady J extend the order of Stewart J to 26 July 2021. On 20 July 2021, Davis J extended the order of Eady J to January 2022. Master Dagnall, on 26 October 2021, joined the third Claimant to the claim.

7 In a witness statement dated 23 February 2022 in support of extending the interlocutory injunction further, Stuart Wortley informed the Court that a third crane was soon to be erected, updated the Court on urban explorers spotted in Blackfriars (no-one had entered the Site) and referred to evidence from Mr Wilshire and Mr Clydesdale, who believed that, despite the prevalence of urban explorers in London, the Site had not been chosen because

of the injunction being plastered all over the Site in accordance with the orders. Mr Wortley sought a final injunction in that witness statement. Exhibited to the witness statement was the judgment of Eyre J in *Mace v Persons Unknown* [2022] EWHC 329, which I have read, which gives a useful summary of the general risk in London of urban exploring and climbing on sites and of some attempts to enter the Site itself.

8 By an order of HHJ Shanks, sitting as a Deputy High Court Judge, on 3 March 2022, the interim injunction was extended until 31 December 2023. Pursuant to the expiry of that order, Mr Wortley filed his witness statement for this hearing on 21 December 2023; it updated the facts relating to trespasses on Site. There had only been one trespass. Therefore, Mr Wortley suggested the injunctions were having the desired effect. The trespass occurred on 20 December 2023, when two individuals entered the Site. They were intercepted by security and left. The reasons why the Claimants were seeking the injunction were the same as before and, in summary, they were urban exploring (which means climbing on building sites), which is inherently dangerous and puts the perpetrators, security and the public at risk and, of course, it puts the builders on Site at risk. The suggestion was made that the Site is an obvious target because it has cranes and other high structures. It is suggested that the injunctions were being effective as deterrents to urban explorers and it suggested that the balance of convenience, which I describe as the "balance of justice," favoured further restraint. This witness pointed out that the interlocutory injunctions did not restrain lawful activity because they were restricted wholly to the Site and asserted that damages would not be an adequate remedy, only an injunction would. The witness referred also to an injunction granted by Sweeting J at Elephant and Castle on a building site there and I have read the judgment of Sweeting J in that case. The solicitor for the Claimants, Mr Wortley, requested that the injunction be granted until 15 February 2027.

9 By an order made by Jefford J on 21 December 2023, a short, temporary extension of the injunction was granted to the date of this hearing. A further witness statement was filed on 18 January 2024 by Mr Wortley relating to the service of notice of the order made by Jefford J and also updated the Court that there had been no further incidents. I have taken into account the skeleton argument provided by Mr Morshead KC, for which I am very grateful, and in discussion during the hearing the conclusion that I reached was that the proper procedure for granting a final injunction in the light of the recent case law had not been properly followed.

10 It seems to me, following the decision made in *Wolverhampton Council & Ors v London Gypsies and Travellers* [2023] UKSC 47 and [2024] 2 WLR 45, that final injunctions can be granted but that power does not override the necessary notifications to persons unknown to bring a final hearing before the Court. It is not for me to advise on the appropriate methods, but one method that is available is through the summary judgment procedure. Another, of course, is to list the final hearing and to call witnesses or to have permission to rely on written witness statements, if that is granted. Neither of those procedures has been followed and so it seems to me that it would be improper for me to treat this as a final hearing, it being *ex parte* and no notification having been given through alternative service to any unknown persons. As for the appropriate method for alternative service for bringing a final hearing or for an application for summary judgment, that is a matter for the Claimants to consider and, if necessary, obtain the relevant order upon. Therefore, I refuse to consider a final order, but I do consider it correct to consider a further interim order.

11 The grounds for granting an interim order, since the *Wolverhampton* case, it seems to me involve not less than 13 factors, which I will run through very briefly.

1 – Substantive requirements

12 There must be a civil cause of action identified in the claim form and particulars of claim. The usual feared or *quia timet* torts relied upon are trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy, and consequential damage. In this case it is trespass, but not pure trespass. It is trespass allied specifically in the particulars of claim to urban exploration by way of climbing high on buildings causing a substantial risk as outlined above.

2 – Sufficient evidence to prove the claim

13 There must be sufficient evidence before the Court to justify the Court finding that the claim has a reasonable prospect of success. For the reasons set out in the previous judgment of Soole J and the reasons accepted by the other judges which I have set out above, I do consider that there is sufficient evidence to justify a finding that there is not only a real issue to be tried, but that the Claimant has a realistic prospect of success.

3 – Whether there is a realistic defence

14 Whilst this is not a summary judgment application it is an *ex parte* application. As the Supreme Court made clear in *Wolverhampton,* it is incumbent upon the Claimants to put before the Court the potential defences of the persons unknown and for those to be considered. That has been briefly touched upon in the skeleton argument of Mr Morshead, particularly in relation to Human Rights. This is not a case which involves a breach of the Human Rights of the persons unknown by way of freedom of speech or freedom of assembly. Rather, the case only concerns matters which take place on the Claimants' land. For the reasons that are explained in the skeleton argument in paras. 40 through to 47 there is no reason to suppose that anyone's Convention rights are engaged by the relief sought in this claim. I do not consider that s.12(3) of *the Human Rights Act* is breached by the continuation of the interim injunctions.

4 – The balance of convenience and compelling justification

15 It is necessary for the Court to find, in relation to a final injunction, something higher than the balance of convenience, but because I am not dealing with the final injunction, I am dealing with an interlocutory injunction against PUs, the normal test applies. Even if a higher test applied at this interlocutory stage, I would have found that there is compelling justification for granting the *ex parte* interlocutory injunction, because of the substantial risk of grave injury or death caused not only to the perpetrators of high climbing on cranes and other high buildings on the Site, but also to the workers, security staff and emergency services who have to deal with people who do that and to the public if explorers fall off the high buildings or cranes.

5 – Whether damages are an adequate remedy

16 It is quite clear to me that damages could not be an adequate remedy for severe personal injury either caused to building site workers, security service staff, emergency workers or members of the public. Compensation may follow but insurance will probably not be in place and in any event money does not cure serious injuries.

6 – The procedural requirements

17 The PUs must be clearly identified 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.

In this case, I have departed from the practice used by the other High Court judges and deputy High Court judges in this case by requiring the Claimants to add the words "climb or climbing" in the definition of PUs. I was concerned that the scope of the interlocutory injunctions granted to date and sought in future would cover homeless people who sought to enter the Site and sleep under a tarpaulin, or youths who sought to drink alcopops on Site but had no intention of climbing anywhere. If those were the perpetrators which were to be restrained by this injunction, I would not have granted it. in my judgment it is not the purpose of this jurisdiction in the High Court to make PU injunctions against mere vagrants or trespassers, there must be something more and the full requirements must be satisfied. In this case, for those who climb high structures and create real risks of substantial harm to those I have listed above, the factors are satisfied. In the interim order I will make the definition of PUs has been altered to include climbing. I am satisfied that it better mirrors the substance of the claim form and the witness statements in support.

7 – The terms of the injunction

18 The prohibitions must be set out in clear words and should not be framed in legal technical terms (like the word "tortious", for instance). I am afraid I use that word a lot, but it is not to be used in the terms of the injunction. Further, if and insofar 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. In this case, the behaviour is clearly and plainly stated in the terms of the injunction as "trespass plus climbing" or "staying on the site plus climbing" and I am satisfied that that is sufficiently tight. There is no risk of this breaching the rights of persons unknown on public highways or in public areas because it only relates geographically to the Site.

8 – Prohibitions must match the pleaded claim

19 In this case they do, now that the words "climbing" are added.

9 – The geographical boundaries

20 The boundaries are set out in clear plans which were attached to the previous injunctions and will be attached to the injunction which I grant.

10 – Temporal limits - duration

21 The duration of any final injunction should only be such as is proven to be reasonably necessary to protect the Claimants' legal rights in the light of the evidence of past tortious activity and the future feared or *quia timet* tortious activity. In this case, I am not granting a final injunction, I am granting a further interim injunction and I consider that a year or approximately a year is an appropriate duration for that to keep costs down and because there is no evidence currently before me that the general public wishes to stop urban exploration or abseiling on building sites.

11 – Service

22 Understanding that PUs are, by their nature, not identified, the proceedings, the evidence, the summary judgment application (if one is made) and any draft order and notice of a hearing must be served by alternative means which have been considered and sanctioned by the Court. In this case, the application is *ex parte* and I consider that is appropriate in the circumstances. However, if it was a final hearing, then appropriate and authorised alternative service would need to be proven.

12 – The right to set aside or vary

23 PUs must be given the right to apply to set aside or vary the injunction on shortish notice, as set out in the judgment in *Wolverhampton*. They are given that right in the order that I have made and they were given that right in the previous interlocutory orders. I note that nobody took that right up.

13 – Review

24 At least in relation final orders, they are not final in PU cases, they are *quasi* final. Final orders in PU cases are clearly not final, they are *quasi* final in that they need to be reviewed in accordance with the judgment of the Supreme Court in *Wolverhampton*. Provision needs to be made for reviewing the injunction in future and the regularity of reviews depends on the circumstances. In this case, I do not need to consider review because it is a further interlocutory injunction that I am granting.

Conclusion

25 Having run through the 13 factors I do consider, on the balance of convenience, that it is appropriate to grant a further interim injunction and I do so. I will consider the terms of the injunction as discussed with leading counsel when they are sent through to my clerk. I understand that no costs are required and, hence, the order will say "no costs on the application".

CERTIFICATE

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Case No: KB-2024-002317
Neutral Citation Number: [2024] EWHC 2274 (KB)

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
ROYAL COURTS OF JUSTICE

MR JUSTICE RICHIE

BETWEEN:

LEEDS BRADFORD AIRPORT LTD & ORS

Claimant

- and -

PERSONS UKNOWN

Defendants

MR T MORSHEAD KC appeared on behalf of the Claimant
NO REPRESENTATION on behalf of the Defendants

JUDGMENT

TRANSCRIPT APPROVED

1. This is an ex parte application issued on 16 July 2024, for injunctions against Persons Unknown, to exclude them from three airports and for alternative service provisions. It was listed for two and a half hours and so I am giving an ex tempore judgment to fit within that period.

2. The action was commenced by a claim form issued on 16 July 2022, for an injunction against trespass, private and/or public nuisance by persons unknown. The particulars of claim served with the claim form defined persons unknown in two categories: the first category is in three parts. There must be (1) a purpose to protest; (2) on the land of the Claimants who run the airports or on their clients land; (3) the unknown person must enter either the land or a flight on the land, and by "flight", I mean aircraft. The second category covers a protest which actually takes place on the premises. Most of the examples I will give in this judgment are going to relate to Leeds Bradford Airport but they apply equally to the other two airports the subject of this claim, which are Luton London and Newcastle International. The particulars of claim went on to set out the areas over which the injunctions are claimed shown specifically on the three numbered plans.

3. The Claimants set out that the public have implied consent to enter the airports for travel, drop off, meeting and other lawful business, but that no one has the right to enter for protests or such activities as have been threatened by “Just Stop Oil” (JSO) recently. It was pleaded that any person entering or staying on the airport land for the purpose of protest would be a trespasser. Third party areas were identified, in which the Claimants are not entitled to possession, but it was pleaded that the Claimants are entitled to protect their rights by extending the injunction over the third party land if such protection by injunction is necessary and proportionate to give effect to the injunction over their own land. Highways constituted some of the third-party land and if protest occurred on the identified highways it was pleaded that would interfere with access to the Claimants’ airports, and would constitute a breach of the airport's bylaws. In submissions it was suggested it would constitute private and/or public nuisance.

4. The pleading set out various threats made by environmental organisations, including a threat on 13 September 2023, in relation to highways protests and on 9 March 2024 at a meeting in Birmingham, reported by the Daily Mail, allegedly of JSO, threatening direct

action at airports in the summer, including: cutting fences, cycling on runways, climbing onto planes and staging sit-ins. Website threats were also set out on the JSO website involving non-violent civil resistance at airports. JSO had threatened to put together teams of ten to fourteen people, collecting altogether around 200 people, to carry out this direct action. They also published a fund raising or crowdfunding page, on which it was said that this would be their most audacious action yet.

5. By an email dated 6 June 2024, sent out to JSO members, it was said that this summer action at airports was coordinated internationally across Europe, taking the fight to airports. Four days before, on 2 June 2024, environmental groups through Extinction Rebellion had carried out direct action at Farnborough, and 14 days later on 20 June 2024, direct action had taken place by JSO at Stansted, including spraying orange paint on a private jet.

6. It was pleaded that Extinction Rebellion had carried out repeated actions at Luton Airport between 2019 and 2022. It was pleaded there was a strong probability of direct action at airports this summer and that the Claimants sought injunctions to prevent apprehended trespass and nuisance. It was that pleaded direct action at airports was dangerous and was banned by the byelaws of the airports. It was pleaded that the byelaws and enforcement of breaches thereof only resulted in modest benefit and had no or little "off putting" effect. The *Public Order Acts 1994 and 2023* were pleaded, but it was pleaded that those would not protect the Claimants in advance. The Claimants sought injunctions to be reviewed every 12 months for Persons Unknown not to enter or occupy the airports and protest.

7. Evidence has been put before me from the following witnesses: Mr V Hodder, the Chief Executive Officer of Leeds Bradford Airport, in a witness statement dated 15 July 2024; Mr Alberto Martin, the Chief Executive Officer of Luton Airport, in a witness statement dated 15 July 2024: Mr Nick Jones, the CEO of Newcastle Airport, in a witness statement dated 16 July 2024; and Mr Alexander Wright, a lawyer at Eversheds, in four witness statements, the first dated the 16 July 2024, the second dated 17 July 2024, the third and fourth dated variously 17 and 18 July 2024.

8. Mr Hodder asserts in evidence that JSO threatens to disrupt Leeds Airport in the summer of 2024 and points to there having been some protests already and previous Extinction Rebellion protests. He gives evidence that there is a £100 million expansion going on at the airport which is jointly owned with Luton and Newcastle by an organisation. The Claimants are not trying to restrain peaceful, legitimate protests, however, the airport at Leeds carries four million passengers per annum and intends to expand to carry seven million passengers per annum. They would expect about 17,200 passengers per day, alongside 25 commercial deliveries per day. He set out that ten commercial airlines operate at the airport, alongside private aircraft.

9. He gave evidence that passengers have a license to enter the airport, but protesters do not. He set out the detailed statutory obligations on the airport owners in relation to safety and maintenance and clearly explained that the Claimants would have to shut down any areas of the airport which had become unsafe and would have to remove obstacles and debris from runway and other surfaces. He set out the byelaws of Leeds Airport which: required the public to leave if requested to for causing disturbances, prohibited demonstrations, prohibited obstructions or tampering with equipment, prohibited flags and banners, prohibited climbing walls and fences, and prohibited causing dangers.

10. He set out nine historic protests about the Leeds Airport between June 2019 and March 2022, by Extinction Rebellion, healthcare workers and Stay Grounded UK. All of those, except one, were lawful protests and, in my judgment, none of them justify the relevant requirements for granting **ex parte** injunctions against Persons Unknown. The one which was potentially not lawful, involved protesters chaining themselves to the Civic Hall railings, all the rest occurred in Leeds and were focussed either at the Magistrates Court or at the Civic Centre.

11. Mr Hodder also summarised activities at other airports, but I will come to those when dealing with the evidence of Mr Wright. Indeed, he relied on the evidence of Mr Wright to assert that there was a real and imminent risk that needed an injunction. He set out that Leeds Airport, on request, had previously granted specific areas for protestors to carry out peaceful protests, but that no requests had been made by Just Stop Oil or any environmental protest group for this summer. He set out the exquisite vulnerability of

airports due to their operational complexity and of these three airports due to the nearness of the terminals to the runways and the lack of airbridges taking passengers directly into aircraft. In these airports many passengers walk across the tarmac to get onto an aircraft.

12. He pointed out the vulnerability of Leeds due to the public highway crossing the middle of the airport, underneath the runway and warned of the huge financial costs of disruption. He asserted the Claimants had reasonable fears that Leeds would be the target of protestors in the summer, which would include accessing airside, damaging property and runways. He set out his evidence on the balance of convenience, including the risk of very serious disruption, the lack of advanced warning and that damages would not be an adequate remedy. The first Claimant only seeks to restrain unlawful activity. He asserted that the junction would be an effective deterrent because it had been in other fields of commercial enterprise. He accepted that the Claimant had never enforced its byelaws previously through criminal prosecution, but that he feared that any such prosecution would cause delay and might be taken over by the DPP, would be reactive and not proactive and would only result in a small penalty. He asserted, importantly, that he considered the threat to the airport was credible, due to the environmental organisations' historic direct actions and that the significant harm that would be caused if they did so again and asserted that this justified the injunction.

13. He set out recent injunctions obtained by London City; Manchester; Stanstead; East Midlands and Heathrow airports variously on 20 June, 5 July and 9 July 2024, and then he exhibited those injunctions to his witness statement. I have read them. He offered undertakings. In the exhibits it is clear that there were environmental attacks (reported in the press) at Farnborough and Stansted, which were unlawful and direct action was taken by the protesters. Chief Superintendent Howells set out that many people had been arrested who were JSO members planning to disrupt airports across the country. I am afraid I have not noted the dates of those arrests and it is not apparent from the exhibit. He also exhibited news reports of a direct action protest at Munich in February 2023, but I will come to that later.

14. Alberto Martin sets out matters in relation to Luton Airport. I have taken all of those into account, but it is not necessary for the purposes of this judgment to summarise that evidence, save to say that he listed the historic events at Luton which included four events

only one of which was Direct Action. In January 2020, Extinction Rebellion marched from the airport to the town; on 29 August 2020, Extinction Rebellion accessed the airport terminal and roundabout and entrance; on 2 December 2021, protesters attended the local authority meeting and on 30 May 2024, protesters protested at Luton Train Station. He set out his fears and apprehensions about protests within Luton Airport, and made the same or similar submissions about the balance of convenience, and he offered an undertaking.

15. Nick Jones, the CEO of Newcastle Airport gave evidence in his witness statement. Again, I will not summarise it here, because it follows the same course as the previous two Chief Executive Officers.

16. Evidence was provided by Alexander Wright, a solicitor from Eversheds. It is important when providing such evidence that the statements at the start are set out: (1) that the evidence provided is from within the witness' own knowledge and (2) where it is not within the witness' knowledge and is hearsay, that the sources should be stated. That promise regretfully was not always fulfilled throughout the witness statement. I make no criticism of Mr Wright for that, because he was clearly doing his best, but it is very important on ex-parte applications for the evidential rules to be followed. He set out that Roger Hallam was the founder of JSO in February 2022, and the had previously founded Extinction Rebellion. This was apparently obtained from the JSO website. He asserted, through hearsay obtained from an unknown source, because it is not stated in the witness statement, that in September 2019, Roger Hallam flew drones at Heathrow and was convicted of a conspiracy to cause a public nuisance and given a two-year prison sentence which was suspended. He asserted from Roger Hallam's own website that he had been imprisoned three times.

17. In relation to previous JSO actions, Mr Wright set out twenty-nine direct actions or potentially such, which were probably unlawful and which included invading: the Bafta Ceremony, Everton Football Club, art galleries, Silverstone Grant Prix, the National Gallery, petrol filling stadiums, Central London roads, the Queen Elizabeth II bridge, Harrods, MI5, M25 junctions, the Snooker Championship, the Chelsea Flower Show, the Rugby Premiership final, the Ashes, the Lords cricket grounds, Wimbledon, The Proms, The Open Golf Championship, a performance of Les Miserable, Parliament Square, the

Royal Courts of Justice, the British Library, a wedding, Stonehenge and Stansted Airport. He recited that injunctions had been granted by the High Court against Just Stop Oil, Extinction Rebellion and Youth Climate Swarm for direct actions taken between March and April 2022, at various oil terminals, including Kingsbury in Staffordshire. One of those was obtained by Valero Energy.

18. He set out that Ben Smith, the Chief Constable at Warwickshire, in a witness statement dated 10 April 2022, had summarised that hundreds of arrests had taken place before those injunctions were issued and there were significant costs of policing the various protests around the country at oil terminals. These produced significant adverse effects on the community.

19. In relation to civil claims: there were eight Queens Bench Division actions set out in the witness statement. Mr Wright asserted, without giving the source of the evidence, that the injunctions stopped the direct protests and that there had been no applications to commit for contempt, certainly within the knowledge of Eversheds who were involved in some of those actions. The source of that information can be implied. He also set out that a variety of Local Councils and the National Highways organisation had obtained injunctions and he pointed to JSO posts which appeared to accept injunctions made protests impossible.

20. Turning then to the threats in relation to these injunctions. The key ones were obtained by an undercover journalist from the Daily Mail, at a meeting with JSO on 9 March 2024, in which a woman called Indigo Rumbelow stated the JSO planned to gather at the airports and use direct action by cutting fences, cycling on runways and climbing onto airplanes. Further investigative journalism was reported by the Evening Standard of another meeting chaired by Phoebe Plummer, which set out "radical", "unignorable" action in alliance with a European group called "A22". Mr Wright set out excerpts from the JSO website that they were planning to put together teams of ten to fourteen people who would risk arrest. The JSO boasted that their new actions were going to be big. On their fundraising page they boasted gathering £24,275 for this endeavour. I note that neither Mr Wright nor the Claimants made any effort to identify the names of the account holders or the account numbers by approaching Mr Hallam, or either of the two defendants, Indigo Rumbelow or Phoebe Plummer or applying for disclosure.

21. Mr Wright set out that the police had made various arrests for conspiracy to disrupt national infrastructure in June 2024, then he set out EU/USA wide airport protests in Munich, Farnborough, Stansted, Dusseldorf and Boston (I believe that is Boston USA) and Braunschweig, which I believe may be in Austria, but it is not stated. Those protests taking place between November 2022 and June 2024, the latest two being in England.

22. Mr Wright then set out that he did not know the names, and the Claimants did not know the names of the persons who would protest. This rather undermined his evidence about Mr Hallam, Ms Rumbelow and Ms Plummer and I shall come to that later. In relation to service, he explained that the Claimants had concerns that the PU's would deliberately target airports if served with a notice of application for the injunctions, and that direct action might be accelerated by service although no evidence was put before the Court in support of that assertion. He set out previous ex parte injunctions for airport owners granted by Julian Knowles J and her Honour Judge Coe KC, sitting as a Deputy High Court Judge.

23. In a second witness statement he set out a report of how protestors had been arrested on 25 June 2024 by the police, which suggested that they were carrying bandages, which they were intending to deploy at Gatwick Airport. The news report is short and does not provide much detail. In a third witness statement, a very worrying threat is laid out, sent by Just Stop Oil to the new Prime Minister, on 17 July 2024, threatening a campaign of non-cooperation at airports unless the government complied with various demands in relation to fossil fuel. In a fourth witness statement, Mr Wright provided some evidence about property rights.

24. That brings me then to the matters that need to be determined in considering whether to grant the injunction requested. I am grateful to counsel for his careful and full submissions. I am going to follow the checklist set out in the *Valero Energy Ltd & Ors v Persons Unknown* [2024] EWHC 134, bearing the time in mind. I take into account the guidance in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802, and *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 WLR 45, and *Cuadrilla Bowland Ltd v Persons Unknown* [2024] WLR.

THE CAUSE OF ACTION

25. The cause of action pleaded by the Claimants involves trespass, private and public nuisance. There is no claim for an economic tort or conspiracy. It is based on quia timet, because as yet there has been no group action at any of these three airports. However, it is clear from the authorities that past direct action is not a prerequisite of granting a quia timet injunction. By quia timet I should say I mean "what we fear". Secondly, having looked at the disclosure provided in the professionally and fully provided bundles supplied by Eversheds and the Claimants, I consider that there has been full and frank disclosure by the Claimants seeking injunctions against the Persons Unknown. Thirdly, I have to consider whether the evidence is sufficient to prove the claim.

26. At this stage, I am content to find that the ownership evidence is sufficient and that the historic evidence is sufficient for proof of a risk of a trespass, of private nuisance or of public nuisance at the three airports or the approach roads included within the red circumference lines drawn on the three plans.

27. Next, I have to consider whether there is a realistic defence. Is there any defence to protestors entering, for instance Leeds Airport, intending to disrupt directly the activities at Leeds Airport by any physical method, or intending to protest in breach of the byelaws. The range of potential protests that has been used by environmental groups which involve themselves in unlawful direct action in the past, has been very wide. It has included trespass and then locking on, digging, climbing structures, damaging structures, spraying paint, blocking off structures, sit-ins and many others. For such activities, I do not foresee any realistic defence. I take into account, of course, that any injunction that will be granted, will be against unlawful activity, or activity in breach of the airport's byelaws, not against lawful activity.

28. I then come to the next part of this decision, which is the balance of convenience. That test is not the correct test on ex parte injunctions against persons unknown. The test is whether there is a "compelling justification" for granting the injunction. To assess that I need to look first at the key threats and historic events I have set out. The most relevant, it seems to me, is the threat made to the new Prime Minister of Great Britain, which is parallel with the threats made to a previous Prime Ministers in the last two years, relating to oil terminals. These threats have a history of not being lightly made and have a history

of being seen through by illegal, unlawful activity, including trespass, public and private nuisance.

29. The other direct activity which involved torts and crimes took place at Farnborough and Stansted. The threat in relation to other airports may well have been reduced or undermined by Police actions in carrying out substantial numbers of arrests around the country, including the one relation to the Gatwick bandages protesters. These are not fanciful concerns.

30. Secondly, I need to look at the institutions which are bringing these applications. Airports are a part of the national infrastructure which are acutely sensitive to terrorist threats and are highly regulated in relation to safety, maintenance and security. They are also complicated organisations, involving the moment of thousands of members of the public, close to highly combustible materials and within fast-moving, huge pieces of equipment. Such organisations are acutely sensitive to chaotic disruption caused by unlawful direct action.

31. 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 would be potentially catastrophically interrupted, delayed or cancelled by disruption at any of these airports in the summer season. 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 airport and which run the airport, financially. However, I do not have the financial aspects at the front of my mind because there is no pleaded economic torts claim.

32. I take into account that JSO and Extinction Rebellion have made good on their threats in the past, in a way which has caused enormous taxpayer and private financial expense and disruption, at oil terminals, on roads, at sporting events and has threatened airports. I also take into account that the evidence before me shows that previous High Court injunctions have been effective in preventing unlawful behaviour. I take into account the rights of the protestors, lawfully to express their views and how important it is that those rights are not fettered. Classic examples of those are the list of events set out in

the witness statement of Mr Hodder in and around Leeds, particularly at the City Council. Lawful protesting is the right of every English and Welsh person and is not to be restricted lightly.

33. I have come, at this stage, to the firm judgment that there is compelling justification for granting injunctions to prevent fossil fuel protestors from entering or staying at these three airports, and from protesting there and from any direct action which could cause chaos, danger and would constitute the torts set out in the particulars of claim.

34. Next, I have to consider whether damages would be an adequate remedy. In my judgment they would not be an adequate remedy for a number of reasons. Firstly, because the PU's are, by definition, unknown. Secondly, because there is no evidence before me and I know of no case in which a PU has stumped up damages for any of the protests carried out at oil terminals or motorways, at finals of sporting events for the chaos they have caused. Thirdly, because none of the Defendants in these cases have made any effort to disclose Just Stop Oil's bank accounts and whether they are in the names of Mr Hallam or Phoebe Plummer or Indigo Rumbelow or anybody else, nor to disclose how much money is within those accounts. Even if they did, I have no evidence that those sums would go anywhere near to compensating the aircraft carriers, the airport owners, the delayed or denied passengers, the shops or the emergency services for the chaos that would be caused by a direct action protest at an airport, for instance, on the tarmac. It seems to me that damages are plainly not going to be an adequate remedy, nor will there be adequate damages, to provide any remedy on the evidence before me. It is better to prevent the chaos than to fail to compensate for the chaos.

35. Coming then to partly substantive and partly procedural requirements, as to identifying PU's, I do not consider that the current definitions of PU's are satisfactory and I will require the definitions to qualify a protest by use of the words "About fossil fuels". I have listened carefully to the well-structured and persuasive submissions of Mr Morshead, but I am afraid I do not accept them. It is the duty of this Court, as required by the Appellate Courts, to make absolutely clear and in plain language, the definition of PU's. I consider that there is a potential lack of clarity in defining PU's just as "protestors". Many people protest to many aircraft carriers and airports about a huge range of things, including delayed luggage, dirty floors, poor announcements and other

matters. There may be protests, individually or by families or groups, that would otherwise be caught by the current, too broad, definition.

36. Having carefully listened to Mr Morshead's submissions about an injunction extending to the aircraft owned by other organisations who are not the Claimants, I am afraid I do not consider that there is a compelling justification for the injunction covering the flights going in and out of the airports. I consider that the injunctions should be restricted to the areas within the red boundary and that is sufficient to capture fossil fuel protestors who enter the boundary or go to the terminal. Any who get through security will most likely have their banners and/or their orange paint or lock-on devices, and they would have to go through the security gates, unless they cut their way in through the perimeter fencing. If they get out to walk across the tarmac, they will be caught by the injunction. If they wish only to protest by getting onto the flight, then I consider that whilst that protest is equally dangerous and would cause chaos, that it is insufficiently immediate for this to be covered by an injunction. It may be a different matter if one of the aircraft carriers wishes to join the proceedings and ask for the injunction to be extended to cover their aircraft, on the basis of actual perceived risks, but I would need to see the evidence of that.

37. In relation to the terms of the injunction as drafted, I consider that they are sufficient save, for instance in relation to Leeds, they say with immediate effect unless they are discharged or extended by a further order, the first defendant and each of them are forbidden from entering, occupying or remaining on any party of Leeds Bradford Airport without the consent of the first Claimant. I would add to that "for the purpose of protesting against fossil fuels" and I would add the word "prior" to “the consent of the first Claimant”. Subject to that, it seems to me that that matches the pleading for trespass and/or private or public nuisance. This of course would be a private nuisance if it was within the aircraft boundaries.

38. As for the geographic boundaries, I have looked very carefully at the helpfully coloured plans which show areas owned and possessed by the Claimants; areas which are owned but not possessed by the Claimants, for instance, those run by the private jet companies; and areas leased out to shops. Finally, the areas not owned by the Claimants on which they have equipment; I consider that for the areas within the Claimant's possession,

injunctions should be granted. I consider that, for the areas within the possession of the private jet operators, it is relevant for them to be asked whether they support the injunction. I have seen no email which says they directly do support it. I was given the submission by counsel that generally, they support it. It seems to me at this stage, in view of the fact of what happened at Stansted, which was direct action on private jets, that it is necessary for the good operation of these airports, that the injunction covers those private operations which are within at least the freehold ownership of the airports, even if they are let out to the private organisations.

39. Finally, in relation to the landing lights, I consider that the injunction should cover the them. They are equipment owned by the Claimant organisations and if protestors seek to disrupt night flights, they could disrupt the effective operation of those landing lights. That could be extremely chaotic and dangerous. The particular legal niceties of who owns the land, it seems to me, do not affect the necessity for those to be covered by the injunction. I rely in relation to that on paragraph 50 of the judgment of Leggatt LJ, in his judgment in *Cuadrilla*

40. In relation to the temporal limits, I consider that the request to review annually is an efficient, safe and fair way to protect the ECHR rights of Persons Unknown. In relation to service, I consider that the methods of alternative service, as set out in the draft order, namely a specific injunction page on the Claimants' website, sending emails to Just Stop Oil and Extinction Rebellion email addresses and affixing notices at and around the three airports, are sensible ways of bringing the injunctions to the attention of the Persons Unknown. What should be added to that is that the injunctions should be provided to the Judicial Press office and Reuters, so that they can be used by press organisations to publicise their existence. That should be added to the alternative service provisions.

41. The right to vary or set aside should of course be included in the order and that right, it seems to me, should also be granted specifically to Mr Hallam, Phoebe Plummer and Indigo Rumbelow. Those three persons should be served directly, either through any addresses given on Mr Hallam's website, or by alternative service on the Just Stop Oil and Extinction Rebellion's email addresses.

42. There are a couple of tidy up matters I should deal with in this judgment. The first is alternative remedies. I should make it plain that I have considered the enforcement of byelaws by criminal prosecution and the enforcement of the *Public Order Acts 1994 and 2023:* sections 1, 2 and 7. Whilst those have changed the landscape somewhat in this application for an injunction, I do not consider they undermine the need for a proactive approach in avoiding what could be catastrophic, tortious damage for the Claimants and to their customers. I should also say that I have granted permission to amend the claim to tidy up some defects in the plans and to consider economic torts, naming defendants and other matters. I do not restrict the amendment in any way, I have just given a general permission to amend the particulars of claim which have not yet been served.

43. To facilitate the freedom of speech of protestors I have invited the Claimants to put a recital in the quasi-final injunction, setting out the contact details for the staff members, who will offer to consider and, if appropriate, grant permission for controlled protest areas within the three airports. There was evidence before me that this has been done before, and it seems to me that it is appropriate for the contact details to be made available to those recitals.

END

(This judgment has been approved by the judge)