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

WRITTEN SUBMISSIONS ON BEHALF OF LIBERTY

References to the Core, Supplemental and Second Supplemental Hearing Bundles filed by the Claimant are in the form [HBX/tab/page] and [SBX/tab/page] where X refers to the volume. References to the PDF numbering follow in red.

A. INTRODUCTION

1. These proceedings raise important issues regarding the proper drafting of newcomer injunctions against "Persons Unknown" where the objective of the injunction is to prevent future acts of protest. The following (non-exhaustive) principles ought to govern the drafting of any such injunction:

   a. Firstly, the ambit of the injunction should extend no further than necessary to achieve the purpose for which it was granted. The order should only prohibit that conduct which provides the "compelling justification" for making the order. **See Section B.**

   b. Secondly, as a general rule the "Persons Unknown" should be defined as precisely as possible by reference to the prohibited conduct, and not merely described as "Persons Unknown" *simpliciter*. **See Section C.**

   c. Thirdly, all "Persons Unknown" newcomer injunctions which are designed to prevent future acts of protest should include provision requiring the claimant(s) to obtain the Court's permission before instituting any committal application. **See Section D.**

2. Neither of the draft Orders prepared by the Claimant fully comply with the principles set out above. The original draft Order is at [HB1/4/25, PDF 27] and the revised draft Order at [SB1/4/665, PDF 27].

B. DEFINING THE PROHIBITED CONDUCT

3. "Persons Unknown" injunctions are an exceptional tool in the judicial toolbox. When made in respect of "*newcomers*" i.e. individuals who are "*truly unknowable*" at the time an injunction is granted, they criminalise conduct undertaken by citizens generally and without the democratic scrutiny which would otherwise apply to legislation made by Parliament. The Supreme Court has described such injunctions as a "*novel exercise"* of the courts' equitable jurisdiction which should only be exercised if there is compelling need to protect civil rights and the order is attended by an appropriate set of safeguards (*Wolverhampton CC v London Gypsies & Travellers* [2024] 2AC 983 ("***Wolverhampton***") at [167(i)], [187], and [188].

4. They have therefore been described as "*a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future*" (*Valero Ltd v Persons Unknown* [2024] EWHC 134 (KB) ("***Valero***") at [57] per Ritchie J). More recently, Nicklin J noted that "*the reality of the imposition of contra mundum injunction, with the threat*

of sanctions including fines and imprisonment for breach, is that it is akin to the creation of a criminal offence. It is a prohibition on conduct generally that has been imposed by a Court, not by the democratic process in Parliament": *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB) ("***MBR Acres***") at [369].

5. "Persons Unknown" injunctions also give rise to additional concerns when they are used to control future forms of public protest by a fluctuating body of protestors. This function would otherwise be the preserve of the police who are better placed to conduct contemporaneous and fact-specific assessments of rights, policies and expectations when exercising their various powers.[1] In contrast, the use of "Persons Unknown" injunction is a blunter tool to achieve the same end. That means there is a particular risk of these sorts of injunctions creating an unintended and disproportionately wide "chilling effect" on forms of protest. For judicial recognition of these issues, see: *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 at [93]; *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (QB) at [28] per Bennathan J; *Shell UK Ltd v Persons Unknown* [2024] EWHC 3130 (KB) ("***Shell***") at [18]; and *MBR Acres* at [347] – [351] per Nicklin J (correctly noting that the Supreme Court in *Wolverhampton* did not address or contradict this aspect of the Court of Appeal's reasoning in *Canada Goose UK Retail Ltd*).

6. The fact that "Persons Unknown" injunctions are necessarily something of a blunter tool is of even greater concern following the Court of Appeal's recent confirmation that the fact a protestor has committed trespass (indeed, even criminal trespass) does not mean that they cannot invoke the protection of Articles 10 and 11 ECHR: *R v Hallam* [2025] EWCA Crim 199 at [33] – [36].

7. It is these exceptional features which inform and justify the imposition of safeguards around defining the conduct prohibited pursuant to a "Persons Unknown" injunction. One such safeguard is the requirement that the prohibited conduct must correspond to the actual or threatened unlawful conduct (*Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 ("***Ineos***") at [34(4)] per Longman LJ; *Wolverhampton* at [222]). Another requirement is that the terms of the order be sufficiently clear and precise to enable persons affected by it to know what they must not do (*Ineos*, at [34(5)], *Wolverhampton* [224]). Another requirement –

[1] Which include *ex ante* powers to place restrictions upon "public assemblies" and "trespassory assemblies"; ss.14 and 14A of the Public Order Act 1986. It also includes a power to direct individuals to leave land on pain of criminal sanction where an officer reasonably believes the individual is committing aggravated trespass, see: s. 69 Criminal Justice and Public Order Act 1994.

which is of particular importance in these proceedings – is that the terms of the order must "*extend no further than the minimum necessary to achieve the purpose for which it was granted"*: see *Wolverhampton* at [222].[2] The question of whether there is a compelling justification, supported by detailed evidence, for the particular order sought is the "*overarching principle that must guide the court at all stages of its consideration*": *Wolverhampton* at [188].

8. It will not always (or even generally) be the case that defining the prohibited conduct by reference to the ingredients of the relevant cause of action will suffice to ensure that the injunction extends no further than necessary to achieve the purpose for which it was granted. In numerous cases, courts have drawn the net more tightly to prohibit only the sort of conduct which would provide the "compelling justification" for the order. See, e.g.:

   a. *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29: the injunction prohibited (among other things) blocking traffic at a particular site "*when done with a view to slowing down or stopping traffic*" and "*with the intention of causing inconvenience and delay to the claimants*" (see [53] per Leggatt LJ with whom the other Lord Justices agreed). The Court of Appeal did not consider that the inclusion of a reference to intention introduced an unacceptable degree of uncertainty ([70]) and that the history of direct action which this was designed to prevent provided "*a solid basis"* for the prohibition ([76]).

   b. *Multiplex Construction Europe Ltd v Persons Unknown* [2024] EWHC 239 (KB): the order did not prohibit mere trespass but rather staying on the site in question plus climbing ([18]). The court likewise amended the definition of the Persons Unknown to include the words "climb" or "climbing" to better mirror the substance of the claim form and witness statements and which had sought to justify the order not by a history of mere trespass, but those who committed trespass for the purpose of climbing high buildings ([17]).

   c. *Leeds Bradford Airport Ltd v Persons Unknown* [2024] EWHC 2274 (KB): the draft order was amended so as to prohibit entering, occupying or remaining on the relevant land "*for the purpose of protesting against fossil fuels*" in order not to capture the myriad of other sorts of protests that would otherwise be caught ([35] - [37]). The court also requested a recital setting out the contact details of those staff members who will offer to consider and,

[2] The principle expressed in [222] of the judgment in *Wolverhampton* is expressed in general terms and is distinct from the requirements around enjoining lawful conduct expressed at [223] and the need for strict temporal and geographical limitations expressed at [225].

if appropriate, grant permission for protest activity within the airport to "*facilitate the freedom of speech of protestors"* ([43]).

d. *The University of London v Harvie-Clarke & ors* [2024] EWHC 2895 (Ch): wording was inserted into the order to clarify that the prohibited conduct was collective or public protest, and not individual action such as wearing a T-shirt or badge with a slogan or crossing the land with a view to protesting elsewhere ([41]).

e. *Shell*: the court required that the order prohibit certain conduct carried out "*with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station*", both because this reflected the conspiracy tort relied upon but also "*to avoid the language being wider than is necessary or proportionate"* ([155][3]).

f. *MBR Acres*: an order prohibiting the obstruction of access to the land in question was qualified with the words "*direct and deliberate"* on the basis that this would capture the conduct which the injunction was intended to prevent ([392]).

9. The problem with the Claimant's draft Orders is that they each define the prohibited conduct (among other things) by reference to the basic ingredients of the tort of trespass. Thus, the first category of prohibited conduct is defined as entering or remaining on the relevant land without permission. In the Claimant's revised draft Order, there is no additional wording anywhere within the Order which would further limit its ambit (for example, by reference to particular acts of protest, groups, causes, intentions or effects). There are at least three problems with this approach:

a. Firstly, it does not correspond to the conduct on which the Claimant relies as providing the alleged "compelling justification" for an injunction. The Claimant relies upon a history of protest action taking place on its land under the slogan "Cambridge for Palestine" to protest against alleged involvement by the University of Cambridge in making investments said to support the State of Israel in its military operation in Gaza. More specifically, it relies upon particular forms of protest action which took the form of "encampments" or "occupations" with the object and effect of materially interfering with the ability of the

[3] The reference in this paragraph to the earlier judgment of Johnson J is a reference to [2022] EWHC 1215 (QB) where Johnson J explained at [46] that it was necessary to introduce the language of intention "*to avoid some of the prohibitions having a much broader effect than could ever be justified"* (noting that a prohibition on depositing materials on the land could capture the dropping of a sweet wrapper).

University of Cambridge to carry out important functions and which (in the case of the Greenwich House incident) gave rise to health and safety and confidentiality concerns. If the ambit of the injunction extends more widely than the specific conduct said to give rise to the "compelling justification" for it, then it is incumbent upon the claimant seeking it to show that a more narrowly defined injunction would not sufficiently achieve its objective. Any doubt in this regard ought to be resolved against the party seeking the injunction (who retains the ability to return to Court at a later date, with evidence that a narrower order has been frustrated in some particular way).

b. Secondly, the Claimant does not take a strict line against student protests whenever those protests might technically involve an act of trespass. The Claimant explains that historically, the University of Cambridge had an approach whereby "*in appropriate circumstances, it will not, for a short period, take enforcement measures against a student-led or staff occupation of its land or buildings, in respect of which the occupying group has not sought or been given the University's permission"*: [Rampton 2/24] [SB1/6/713, PDF 75]. That is reflected in the evidence filed by ELSC as to past protest activity, including on the land which is the subject of these proceedings and activity taking the form of "occupations", which has occurred without sanctions or repercussions for those participating (see e.g., [Clarke 1/2-6] [SB2/6/1159-1160, PDF 130-131]). As a University, the Claimant is under legal obligations to take steps to secure freedom of speech and assembly for its students and ensure that University premises are not denied to students for these purposes. These duties are summarised in *University of Birmingham v Persons Unknown* at [32] – [34] per Ritchie J. They include the obligation under section 43(1) of the Education Act 1996 to "*take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for... students"*.

c. Thirdly, the ratcheting effect which occurs once conduct is brought within the ambit of an injunction (§§3-4 above) is particularly problematic when it comes to the tort of trespass, precisely because this tort is so easily committed. It is a strict liability tort, actionable without proof of damages and the extent of the trespass is irrelevant to liability (see *MBR Acres* at [59] – [61] and the authorities cited therein). Furthermore, in this context, staff and students do have a general licence to enter and use the land at Senate House Yard (subject to certain alleged restrictions). That means a student could lawfully enter Senate House Yard but be converted into a trespasser to the extent that they then act in ways which

are thought to exceed the scope of that licence. A "Persons Unknown" injunction which is defined in terms which effectively serve to prohibit any act of trespass in this context would therefore cast an extraordinarily wide net. It could capture the student who enters Senate House Yard and shouts "End the War" before immediately leaving. The Claimant's revised draft Order (shorn of any other limiting language) might capture the student who stands silently in the corner of Senate House Yard holding an A4 poster that reads "More Meat Free Mondays" or wears a t-shirt to an event held at Senate House bearing the slogan "Divest from Fossil Fuels". All of these students' rights under Articles 10/11 ECHR would be engaged.

10. It would not be appropriate to make an injunction prohibiting any act of trespass on to the land in question (however trivial) in circumstances where the "compelling justification" for the injunction order sought does not arise from mere trespass, but rather remaining on the land in question with the intention of materially interfering with the ability of the University of Cambridge to carry out its functions in order to protest against the University's investments policies.

C. DEFINING THE DEFENDANTS

11. In *Wolverhampton*, the Supreme Court stated at [221] that:

> "The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in Cameron, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible". (emphasis added)

12. This principle is also reflected in the Supreme Court's comment at [132] that "*[a]lthough the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity"*. This accords with the guidance provided in *Canada Goose*, in which the Court of Appeal held that any

"Persons Unknown" "*must be defined in the originating process by reference to their conduct which alleged to be unlawful"*: [82(2)].

13. It is therefore clear that when courts are considering the terms of a proposed Persons Unknown injunction: (1) the intended subjects of the injunction "*must*" be defined by as precise a description as is possible; (2) that principle applies "*[e]ven where the persons sought to be subjected to the injunction are newcomers*"; (3) it is only permissible to dispense with this requirement in respect of newcomers where it is "*impossible*" to identify the class of newcomers to whom the injunction is directed more precisely; and (4) even where it is shown that it is "*impossible*" to identify newcomers as a class, there remains a duty to identify non-newcomers as precisely as possible. The Claimant must bear the burden of showing that it is "*impossible*" to narrow down the injunction by class at all. It would be a perverse result if the claimant could gain broader relief simply because it has failed to adequately specify the category of affected persons with sufficient precision.

14. However, in his recent judgment in ***MBR Acres***, Nicklin J held at [355] to [362] that there was no reason to continue trying to define with specificity the categories of "Persons Unknown" who are subject to these newcomer injunctions. In summary, his view was that there is no necessary reason to seek to identify particular categories of "Persons Unknown" in circumstances where the Supreme Court had confirmed in ***Wolverhampton*** that these injunctions are properly made without notice and that there are (in reality) no defendants to them. Instead, courts may simply define these sorts of orders as being addressed to "Persons Unknown" *simpliciter* and should instead focus their energies upon precisely defining the prohibited conduct.

15. This court is invited to hold that the guidance provided in [221] of ***Wolverhampton*** remains applicable, and that claimants should not address their injunctions to "Persons Unknown" *simpliciter* unless they can demonstrate that there is no other practicable way of defining the class more narrowly or there is some other good reason to do so. Cases involving orders addressed to "Persons Unknown" *simpliciter* ought to be the exception, not the rule. ***MBR Acres*** is best understood as an exceptional case, where the categories of "*Persons Unknown"* was ultimately so long (extending to page four of an eight-page order: [361]) as to give rise to real concerns about the clarity of the order.

16. This procedural safeguard is another useful means by which the Court can ensure that individuals who were never intended to be caught by an injunction fall outside of its ambit (where, for example, there might otherwise be difficulties in defining the prohibited conduct more narrowly). Requiring the claimant to identify, as precisely as possible, the class of individuals in respect of whom an injunction, including a newcomer injunction, is intended to capture is an important discipline. This requirement also has an incremental benefit of increasing the likelihood that persons who are intended to be captured by any application or injunction order will pay attention to notices affixed to the land and which seek to advertise the fact of any application, hearing or injunction order. Many such notices might run to several pages. Some might only read the title of the proceedings at the top of any such notices (see, e.g., the original notice in these proceedings at [HB1/5/38, PDF 40]). If the title of proceedings refers only to "Persons Unknown" *simpliciter*, there is a lesser chance of persons appreciating the significance of the application for them.

D. REQUIREMENT TO OBTAIN THE COURT'S PERMISSION BEFORE INSTITUTING COMMITTAL PROCEEDINGS

17. In *Wolverhampton*, the Supreme Court made clear its expectation that the "*the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience"*: [187].

18. One such evolution concerns the requirement for claimants to obtain the permission of the court before bringing committal applications against persons alleged to have breached the terms of any "Persons Unknown" injunction order.

19. In *MBR Acres*, Nicklin J held that all *contra mundum* newcomer injunctions, "*particularly those in protest cases"*, should include a requirement that the Court's permission be obtained before a committal application can be instituted. See, in particular, [47] – [48] and [389] - [390].

20. He explained at [389(2)] that such a provision operates as additional safeguard, ensuring that newcomers are only subjected to the inherent cost and stress of being made subject to a committal application where the court is satisfied that the application is (1) one that has a real prospect of success; (2) is not one which relies upon wholly technical or insubstantial breaches; and (3) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it.

21. Thus, he made an order in the following terms:

> "14. Any contempt application against any person not being a named Defendant in these proceedings may only be brought with the permission of the Court.
>
> 15. Any application for permission under paragraph 14 above ("a Permission Application") must be made by Application Notice attaching the proposed contempt application and evidence in support. To obtain the Court's permission, the evidence in support of the Permission Application will need to show that the proposed contempt application: (1) has a real prospect of success; (2) does not rely on wholly technical or insubstantial breaches; and (3) is supported by evidence that the proposed respondent had actual knowledge of the terms of the injunction in paragraph 1 above before being alleged to have breached it.
>
> 16. The Court will normally, where possible, expect the Claimants to have notified the proposed respondent in writing of the allegation(s) that she/she [sic.] has breached the injunction. Any response by the proposed respondent should be provided to the court with the Permission Application.
>
> 17. Unless the Court directs otherwise, any Permission Application will be dealt with on the papers."

22. Nicklin J's approach ought to be adopted, at least in cases like the present where the intended purpose and effect of the injunction is to prevent future acts of protest. To be clear, this is not a substitute for ensuring that the body of the order itself is narrowly tailored. It is an additional safeguard, which is necessary and proportionate given the risks associated with using "Persons Unknown" injunctions to seek to control future protest activity and their propensity to create a "chilling effect" on activity which would otherwise engage Article 10/11 rights:

    a. All "Persons Unknown" injunctions have the potential to catch within their net persons who were never intended to be caught; are in no way connected to the conduct giving rise to the "compelling justification" for the same; and whose conduct would not have justified the injunction had it been considered at the outset. There is therefore a greater risk of these injunctions being enforced against persons whose conduct may give rise to a very different balance of considerations from an Article 10/11 perspective. The broader the terms in which the injunction is drafted, the greater this risk. See ***Ineos*** at [31] per Longmore LJ ("*the reach of such an injunction is necessarily difficult to assess in advance*").

    b. Such injunctions are particularly vulnerable to abuse in the protest context. By making such an injunction, the court is typically placing enforcement into the hands of the very person who is the target of the protest. That produces a heightened risk of claimants using

these injunctions to take action against protestors for otherwise trivial infringements as a form of deterrent. See *MBR Acres* at [371] per Nicklin J.

c. Protestors who are made subject to a committal application for breach of the terms of a "Persons Unknown" injunction enjoy none of the safeguards which they would enjoy as part of the criminal justice process. The Crown Prosecution Service takes an independent decision as to the strength of the evidence and whether prosecution would be in the public interest, and a prosecutor is required to act as a "minister of justice".[4] Even if a private prosecution were exceptionally brought, the Director of Public Prosecutions has the power to take over and discontinue the prosecution.[5] A private claimant seeking to enforce a "Persons Unknown" injunction is not subject to any analogous requirement to consider whether it is necessary or proportionate to bring a committal application. See *MBR Acres* at [370] and [373].

d. Experience shows that these risks are real and not speculative. *MBR Acres* was a case about protest activity directed at a particular facility for breeding animals for use in animal testing. Having obtained an initial "Persons Unknown" injunction, the claimant issued a committal application against a solicitor representing the rights of certain protestors. That application was dismissed after a two-day hearing as totally without merit. Nicklin J considered the solicitor's behaviour was "*either not a civil wrong at all, or a breach of the civil law that was utterly trivial"*. A further committal application was brought against a protestor in terms which Nicklin J thought "*would be laughable, if it did not have such serious implications"*. See *MBR Acres* at [47] – [48], [51] and [372].

23. In these proceedings, Fordham J included a provision requiring permission before any committal application is brought at [17] of his first interim order made on 27 February 2025: [SB1/11/927, PDF 289]. The Claimant's revised (but not original) draft Order includes such a provision at [14]: [SB1/4/669, PDF 31]. An adaptation of Nicklin J's fuller order, excerpted at §21 above, would bring further clarity.

HOLLIE HIGGINS
ROSALIND COMYN

17 March 2025

Instructed *pro bono* by Liberty

[4] *Zinga* [2014] 1 WLR 2228, [61] per Lord Thomas CJ.
[5] Sections 6(2) and 23 of the Prosecution of Offences Act 1985.