Case No: QB-2020-002702
Neautral Citation Number: [2025] EWHC 2714 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 28 February 2025

BEFORE:

THE HONOURABLE MRS JUSTICE ELLENBOGEN DBE

BETWEEN:

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED
(2) LUDGATE HOUSE LIMITED (INCORPORATED IN JERSEY)
(3) SAMPSON HOUSE LIMITED (INCORPORATED IN JERSEY)

Claimants

- and -

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

Defendants

MR T MORSHEAD KC appeared on behalf of the Claimant
THE DEFENDANTS did not appear and were not represented.

APPROVED JUDGMENT

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MRS JUSTICE ELLENBOGEN:

1. By application notice dated 27 July 2020, the claimants applied, without notice, for an interim injunction and for an order for substituted service of proceedings and of the order sought. On 28 July 2020, the claimants commenced CPR Part 8 proceedings against "*Persons Unknown, entering in or remaining at the claimants' construction site, at Bankside Yards, without the claimants' permission*", by which they sought an injunction to prevent those defendants from trespassing on that site, then owned by the second claimant alone, on which that claimant had appointed the first claimant to undertake major construction works. In the Particulars of Claim, the defendants were described as, *"So-called 'urban explorers' who trespass on high-rise buildings and construction sites and upload photographs and/or video recordings of their exploits to the Internet for the entertainment of their subscribers or followers on social media."* It was said that such individuals climbed buildings under construction via cranes on site, or by use of concrete structures (such as unfinished stairwells), or construction lifts or hoists. It was pleaded that such activities posed serious risks to those involved; construction workers below (in the event of a fall); security staff; and the emergency services. It was noted that there had been trespasser fatalities at different sites, respectively in January 2018 and January 2019.

2. The claimants alleged that unknown individuals had undertaken reconnaissance of, or attempted to trespass upon, the construction site ("Bankside Yards") and pleaded their belief that there was a real and significant risk that the defendants would enter that site, or attempt to do so, unless restrained by the court. It was said that there was no arguable right for the defendants to be present, such that any attempt at access would constitute a trespass, for which damages would not be an adequate remedy given the risk of very serious harm. An injunction restraining the defendants from trespassing on the site, marked on a scheduled plan, was claimed, together with costs and further or other relief.

3. By order dated 30 July 2020, subject to a penal notice, Soole J granted an injunction in the following terms:

> *"Until 4.00 pm [on] 29 January 2021, or further order, the defendants must not, without the consent of the claimants, enter or remain upon any part of the construction site at Blackfriars Road, London SE1 9EY ("Bankside Yards") as shown edged red on the plan at Schedule 3 to this Order as demarcated from time to time by hoarding or security fencing."*

He required the claimants to post notice of the existence of the order at all main entrances to Bankside Yards, and at a minimum of five prominent locations around its perimeter. That notice was to include a statement that copies of the order, the claim form, the Particulars of Claim, the claimants' application notice dated 27 July 2020, and the supporting witness statement (with exhibits) of Mr Martin Wilshire, the Health and Safety Director of the first claimant, could be viewed: (a) at a website the URL of which was to be specified in the notice; and (b) at a physical location to be specified in the notice, which could be obtained from the claimants' solicitor, whose contact details were to be included. Soole J further ordered that the taking of such steps would stand as good service of the claim form and Particulars of Claim, pursuant to CPR 6.15, *"upon any person who shall, by knowingly breaching the terms of this order, automatically become a defendant to this action"*. Save as required by those orders, *"pursuant to CPR 6.16, service of the claim form, response pack, application and witness statements in support* [is] *dispensed with, in respect of any person who shall become a defendant to this claim as aforesaid."* The claimants provided a cross-undertaking in damages.

4. There followed various orders extending the injunction made by Soole J, in each case following the claimants' without notice application, made, respectively, by Bourne J, dated 26 January 2021; Stewart J, dated 4 March 2021; Eady J, dated 6 May 2021; William Davis J (as he then was), dated 20 July 2021 (following an order made by Master Dagnall, dated 26 October 2021, joining the third claimant, which co-owns Bankside Yards, to proceedings, and granting permission to amend the Particulars of Claim); His Honour Judge Shanks, sitting as a judge of the High Court, dated 3 March 2022, who made certain amendments to the terms of the interim injunction granted; and Jefford J, dated 21 December 2023. In each case, provision was made for substituted service and notice, and the claimants' cross undertaking in damages was maintained.

5. In December 2024, permission was granted to the claimants to re-amend their Particulars of Claim to plead changes to the registered titles which comprised Bankside Yards. On

19 January 2024, the matter came before Ritchie J, on the claimants' application for a final injunction. As his judgment on that day (reported at [2024] EWHC 239 (KB)) makes clear, he considered that the hearing could not be effective for that purpose, for want of necessary prior notification to the defendants. Nevertheless, having regard to 13 factors to which he considered *Wolverhampton Council & Ors v London Gypsies and Travellers* [2023] UKSC 47 obliged him to have regard, he determined it to be appropriate to grant a further interim injunction in the following terms:

> *"Until 20 January 2025, or further order, the defendants must not enter and climb or remain and climb without the claimants' consent, upon any part of the claimants' construction site at Blackfriars Road, London, SE1 9UY ("the Bankside Yards Construction Site"). The outer perimeter of the Bankside Yards Construction Site is enclosed by hoardings, fences, gateways and the structures of railway arches and bridges, and the defendants must not enter or climb within that perimeter without the claimants' consent. The general location of the perimeter is shown edged red on the plan at Schedule 3 to this Order ("the Plan"). For the avoidance of doubt, this order does apply to the areas of the Bankside Yards Construction Site which are under and within railway arches, but does not apply to the railway land which is immediately above those railway arches. The location of the railway arches, and the railway land is shown hatched blue on the Plan."*

6. On 17 January 2025, the matter came before Collins-Rice J on the papers, who ordered that the claimants must apply for a hearing, pending which the injunction granted by Ritchie J would be maintained. Her observations to that order were as follows:

> "*There is considerable history to this matter. The first of a series of interim PU injunctions was made by Soole J in July 2020, and there has been a succession of extension orders made since then.*
>
> *The most recent exercise of the Court's important supervisory functions in relation to interim PU injunctions of this nature was by Ritchie J a year ago, at an oral hearing. The Judgment of Ritchie J on that occasion is essential reading in connection with the present application, in particular what he says at [10] about the difference between interim injunctions of this nature and final injunctions, and the procedure for transitioning from one to another.*
>
> *Real issues of concern must arise about the serial replication of interim orders over a period of years with no visible prospect of a final determination. I do not consider it appropriate for the Claimants to expect a further extension of 15 months to be determined on the papers. This Order makes provision for a hearing accordingly.*

> *At that hearing, the Claimants should expect not only to be required to make the case for the necessity of injunctive relief, on its merits and by reference to evidence of how matters stand now, but also to explain why this comes to Court as a request for more interim relief and how it is proposed the matter be brought to a litigation conclusion.*"

7. The hearing then sought by the claimants was listed before Ritchie J on 5 February 2025, on which date their application for a continuation of the interim injunction was adjourned to the first available date after 21 days. Of the court's own motion, the claimants were granted permission, if so advised, to apply for summary judgment, notwithstanding the absence of a Defence, and for a final order in like terms to that which Ritchie J had granted in 2024, *"but without prejudice to any alterations that the court may determine and for such duration as the court may determine, subject to such provision for review and otherwise as the court may determine, any such application to be heard on and with the application in 1A above."* Provision was made for service and notification of all relevant documentation.

8. On 12 February 2025, the claimants applied for summary judgment, pursuant to CPR Part 24, and a final injunction expiring at the end of 2026. That application, together with the adjourned application for continued interim relief, advanced in the alternative, is now before me. As they have been throughout, the claimants are represented by Mr Timothy Morshead KC, from whom I have received helpful, cogent and detailed written and oral submissions. The defendants do not appear and are not represented. To date, they have not participated in these proceedings.

9. In summary, and by reference to the witness statements provided, Mr Morshead submits there to be an ongoing need for protection from trespassers and, in particular, from urban explorers, notwithstanding the extensive security measures put in place by the claimants. His submission is that there is no legal requirement for final relief and that the claimants' application for summary judgment has been made on a precautionary basis, following the order of Collins-Rice J. It is said that the evidence demonstrates both the necessity for and efficacy of injunctive relief, likely to continue until the relevant site works are complete, which is now expected to be in 2027. It is submitted that the interim orders made to date have met the requirements of a periodic review of a "newcomer" injunction,

set out in *Wolverhampton*, at [225], and in *Valero (2025 Review)* [2025] EWHC 207 (KB), at [20] to [23]; and that the 13 factors to which Ritchie J referred in his 2024 judgment remain applicable considerations as to which his conclusions remain apposite.

10. Having regard to the caselaw cited above, Mr Morshead submits that the relief sought need not be categorised as interim or final, and that it remains appropriate because:

    a. *"The injunction against newcomers is a wholly new type of injunction"*: see *Wolverhampton*, at [144]. The legal framework for such an order is one *"enabling an escape from the twin silos of final and interim injunctions and recognising that injunctions against newcomers are all in substance without notice injunctions"*: see *Wolverhampton*, at [151];

    b. "Newcomer" injunctions are a new form of injunction for the enforcement of rights which are not seriously in dispute, as distinct from the familiar kind of interim injunction, which is granted for "holding the ring", pending a resolution of disputed rights: *Wolverhampton*, at [163];

    c. It follows that there is no meaningful distinction between "final" and "interim" orders: *Wolverhampton*, at [138]; [139]; [140] to [143]; [167]; and [238];

    d. Equity looks to the substance, not the form: *Wolverhampton*, at [139]; [151]; and [238(iii)(b)]. What is critical is that the injunction contain adequate protections, including machinery which will ensure that:

        i. the court continues to supervise the order, which is achieved by imposing a requirement of periodic review: *Wolverhampton*, at [107] and [217];

        ii. as to the duration of the injunction, the relief must not "outflank nor outlast the compelling circumstances relied upon" to justify the order: *Wolverhampton*, at [167(4)]; and

        iii. anyone potentially affected is to be notified of the order and can apply for the court to consider the matter: *Wolverhampton*, at [232]; and

e. In particular, no order against newcomers is ever truly "final", precisely because anyone potentially affected by it has liberty to apply — including on any grounds which could have been raised when the order was made: *Wolverhampton*, at [232].

11. In short, Mr Morshead submits, the Supreme Court agreed with the Master of the Rolls that, *"for as long as the court is concerned with the enforcement of an order, the action is not at an end"*: *Wolverhampton*, at [107], such that it is not improper in this novel jurisdiction, in which there is no such thing as a "litigation conclusion" until circumstances indicate that it is no longer necessary, or that it is otherwise inappropriate, for the injunction to continue, for the claimants to apply for an extension of the existing interim injunction, without coupling it with an application for final relief.

12. Mr Morshead further submits that, consistent with the approach favoured by Farbey J in *Exolum Pipeline System Ltd & Ors v Persons Unknow*n [2024] EWHC 1015 (KB), especially at [24] to [27], the claimants must demonstrate, and have demonstrated, a compelling need for the continued relief sought. They are also obliged adequately to advertise/give notice of an intended application for a newcomer injunction, which they are said now to have done, acknowledging that certain errors had been made at an earlier stage. Furthermore, given the nature of the exercise undertaken by Ritchie J in January 2024, Mr Morshead submits that all that is required of this court is that it undertake a review of that order, consistent with the principles summarised in *Valero (2025 Review)*.

13. Should his submissions as to finality not be accepted, Mr Morshead invites the court to grant relief in final form, pursuant to the application for summary judgment, on which no order would otherwise be required. In either event, the relief is sought until the end of 2026, without the need for review in the meantime. Recognising that a 12-monthly review has become the convention in proceedings in which persons unknown are the defendants, the duration of the order sought in this case is said to be justified by the claimants' expectation that, by the end of 2026, the features of the site which are most tempting to urban explorers will have been removed, and that there will be no material change in the meantime; and by their confirmation in evidence that they shall themselves keep the order under review and, should they consider it safe to do so, apply to discontinue the injunction in advance of that date. In such circumstances, and having regard to the substantial costs incurred in mobilising for a review/renewal hearing, it is

said to be a proper exercise of the court's discretion that it make an order which would avoid the need for earlier review, a position which might equally be achieved by making: an indefinite order, subject to review in January 2027; or an order to expire in early January 2027, unless an application for renewal were made in December 2026.

Discussion and conclusions

The legal principles

14. Since the judgment of the Supreme Court in *Wolverhampton*, a number of courts have considered and determined applications for injunctions against persons unknown in a variety of circumstances. Whilst *Wolverhampton* was concerned with unlawful encampments by persons unknown in the Gypsy and Traveller communities, the court recognised that the issues raised had a wider significance (see [3]) and that the appeal raised matters of legal principle (see [5], albeit that it was also clear that nothing which it said should be taken as prescriptive in relation to so-called "newcomer" injunctions in other cases, (see [235] to [236]), by which term it was referring to *"persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date"* (see [2]). The court expressed itself to be in no doubt that an injunction against newcomers is a wholly new type of injunction, having no very closely related ancestor from which it might be described as evolutionary off-spring, although analogies could be drawn with some established forms of order [144]. At [167], it held as follows, going on to consider the identified requirements in greater detail at [187] to [234]:

> *"...although the attempts thus far to justify them are in many respects unsatisfactory, there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:*
>
> *(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied*

upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

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

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

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

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

15. In *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 178 (Ch), Sir Anthony Mann, sitting as a judge of the High Court, was concerned with the disposal of CPR Part 8 proceedings in which the claimant was seeking a continuation of injunctive relief against persons unknown, to restrain them from trespassing on certain parts of its property at Epsom Racecourse, by way of protest. He summarised the principles and procedural safeguards applicable to newcomer injunctions derived from

Wolverhampton, at [14] to [19], which, so far as necessary, I set out below and gratefully adopt:

> *"...*
>
> *15. The court analysed the jurisdiction to grant injunctions against such persons and found that injunctions which in other contexts would be regarded as "final" (as opposed to interim) were not in fact properly so regarded but were of a distinct kind. After an extensive review the court held:*
>
> > *'139 ... In sympathy with the Court of Appeal on this point we consider that this constant focus upon the duality of interim and final injunctions is ultimately unhelpful as an analytical tool for solving the problem of injunctions against newcomers. In our view the injunction, in its operation upon newcomers, is typically neither interim nor final, at least in substance. Rather it is, against newcomers, what is now called a without notice (i.e. in the old jargon ex parte) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.'*
>
> *16. This has consequences as to the requirements:*
>
> > *'142. Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards. Viewed in that way they then need to be set against the established categories of injunction to see whether they fall into an existing legitimate class, or, if not, whether they display features by reference to which they may be regarded as a legitimate extension of the court's practice.'*
>
> *17. That case involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before*

an injunction is granted, most of its requirements are equally applicable to other types of cases such as protest cases like the present (of which there are now a number):

'167. [recited above]'

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

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

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

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

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

    v) *There is a vital duty of full disclosure on the applicant, extending to "full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the*

substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application." – paragraph 219. Although this is couched in terms of the local authority's obligations, that is because that was the party seeking the injunction in that case. In my view it plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.

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

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

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

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

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

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

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

> *xiii) The order must contain a generous liberty to apply – paragraph 232.*
>
> *xiv) The court will need to consider whether a cross-undertaking in damages is appropriate even though the application is not technically one for an interim injunction where such undertakings are generally required.*
>
> *19. The court recognised that not all the general requirements laid down will be applicable in protester, as opposed to Traveller, cases. I have borne that in mind, and have, as I have indicated, omitted reference to some of the matters which do not seem to me to be likely to apply in protester cases."*

16. In *Valero (2025 Review)*, Hill J was concerned with an annual review of a final injunction previously granted by Ritchie J, having a five-year duration, subject to review. The defendants were persons unknown who were environmental activists engaged in trespass and/or other suspected tortious activity. At [20] to [23], Hill J set out the legal framework applicable on review:

> *"20. In Wolverhampton ... [225] the Supreme Court observed that review hearings of this kind:*
>
> > *"...will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been: whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for continuance; and whether and on what a basis a further order ought to be made."*
>
> *21. In HS2 v Persons Unknown [2024] EWHC 1277 (KB), Ritchie J considered how the Court should approach its task at such a hearing:*
>
> > *"32. Drawing these authorities together, on a review of an interim injunction against PUs [Persons Unknown] and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-*

strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.

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

22. *In Arla Foods v Persons Unknown [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as:*

"...allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate."

23. *Earlier this year, in Transport for London v Persons Unknown and Others [2025] EWHC 55 (KB) ("TfL") at [54]-[57], Morris J took a similar approach. At [55], he observed that:*

"TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue.""

Analysis and decision

17. In determining the applications before me, I have considered the following witness statements and (where applicable) the exhibits thereto:

a. the first, second and third witness statements of Mr Martin Philip Wilshire, respectively dated 27 July 2020; 25 January 2021; and 12 February 2025;

b. the second, third, and fourth witness statements of Mr Stuart Sherbrook Wortley[1], being the partner then having conduct of the proceedings at the firm of solicitors then instructed by the claimants, respectively dated 23 February 2022; 21 December 2023; and 18 January 2024;

c. the first witness statement of Mr Jamie Philip Godden, the Project Director of the first claimant, dated 20 December 2024;

d. the first, second and third witness statements of Ms Emma Margaretha Florence Pinkerton, being the partner at the claimants' solicitors having conduct of these proceedings, respectively dated 20 December 2024; 20 January 2025; and 4 February 2025; and

e. the first witness statement of Ms Rachel Bott, being the senior associate at the claimants' solicitors having conduct of these proceedings, dated 24 February 2025.

18. From *Wolverhampton*, it is clear that the distinction between interim and final orders which is of relevance in relation to other forms of injunction is of no practical significance to newcomer injunctions, because: (1) however expressed, the order will be subject to review, and the proceedings in which it is made will not conclude until the injunction is no longer required or appropriate; and (2) at whichever stage of the proceedings the order is made, the test will be one of compelling need, a threshold higher than that required by *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. I share the view expressed by Farbey J, in *Exolum*, at [25], that the balance of convenience test adds nothing to that of compelling need. That disposes of the concern which gave rise to the observations made by Collins-Rice J in this case. By parity of reasoning, it would appear that an order for summary judgment is either inappropriate or ineffectual in connection with newcomer injunctions. This is a developing jurisdiction and I have not heard full argument on that point, but it is unnecessary for me to decide it in this case, and I, therefore, make no order on that application.

19. The real questions are whether, and, if so, for how long and in what terms, the injunctive relief granted by Ritchie J in January 2024 ought to be extended, and whether that

[1] I am informed that there is, in fact, no first witness statement.

question ought to be addressed de novo or by way of review, having regard to the written evidence and submissions which I have received.

20. I accept Mr Morshead's submission that no person unknown who is on notice of this application could have had any expectation of a de novo hearing, as distinct from a review, and would be alive to the judgment of Ritchie J in which his reasons for the order then made were set out. To date, as I have previously observed, there has been no defendant participation in these proceedings at any time, and there is nothing to indicate that anyone actually or potentially affected by the order now sought would have made a decision as to whether or not to participate in the hearing before me according to whether the court would be engaged in a de novo exercise, rather than a review. It is appropriate that a realistic and pragmatic approach be adopted in such circumstances, in particular recognising that: (1) a review is never a rubber-stamping exercise, and involves careful analysis of the evidence and probing of counsel representing the claimant; and (2) any person affected by any continued injunction can apply to the court for its variation or discharge. In those circumstances, I am satisfied that it is appropriate to approach the claimants' application by way of review of the order of Ritchie J, as continued by Collins-Rice J pending this judgment, though, on the facts of this case, I consider that the outcome would have been no different following de novo consideration.

The evidence

21. In summary, the evidence before Ritchie J, encompassing that which had been before those judges who had previously considered the matter, was as follows. In support of the original application before Soole J, Mr Wilshire's witness statement had explained that one particular variant of urban exploration was known as "roof topping", an activity in which individuals gain access to the roof of a building (without the owner's consent), in order to take photographs or videos. Typically, such individuals will target the tallest "trophy" buildings in any given city, in particular those offering the best views. That activity affects tall structures under construction, and the cranes used to construct them, as well as occupied buildings. Photographs and videos of urban explorers in situations which are self-evidently dangerous are uploaded to social media platforms, itself promoting more widespread activity, and encouraging "copycat" behaviour, resulting in repeated trespass on certain sites. Furthermore, the desire to acquire and post exciting and novel footage, and the fact that those who post content can be paid according to the

number of subscribers to that content, encourages engagement in increasingly dangerous activities, such as using the horizontal arms of cranes as monkey bars, or performing acrobatic stunts on ledges at extreme height. It is said that certain urban explorers have been able to secure sponsorship from brands wishing to target a young audience. Construction sites, which include tower cranes, have become a particular target for urban explorers. The Bankside Yards site includes a minimum of three such cranes.

22. The risks of urban exploring on construction sites, whilst largely self-evident, have been detailed in the claimants' evidence. It is noted that an Internet search has revealed a number of fatalities since 2013, including of boys aged 12 and 13. At the time of the original application in this case, it was said that the first claimant had eight major construction projects in progress, all of which protected by injunction, which had been seen to have had a significant deterrent effect, in having operated dramatically to have reduced the number of incidents. It was also noted that the first claimant would be implementing the following security measures at Bankside Yards, albeit that no site could ever be 100 per cent secure: timber site hoardings which would be a minimum of two metres high; lighting; 24-hour security personnel; both silent and audible intruder alarms; anti-climb measures on hoardings and tower cranes; and closed circuit television, including, in some instances, motion sensors. Mr Wilshire expressed himself satisfied that all sensible precautions which could have been taken to prevent urban explorers from gaining access to the site had been taken, notwithstanding which it remained under imminent threat of trespass by them. He detailed incidents of trespass and attempted trespass at other claimant construction sites, which had taken place between 16 October 2019 and 27 June 2020, asserting his belief that, having carefully assessed the threat posed to security and health and safety operations by urban explorers, the response was appropriate and proportionate. It was noted that Bankside Yards was in a prominent location, and would become an obvious target as the construction phase proceeded, with the tower cranes already being a target. The activities in which urban explorers engaged were dangerous not only to themselves but to the emergency services personnel and others who would need to come to their assistance, should they get into difficulty. Those engaged in urban exploring activity appeared to demonstrate little insight into those risks, including of the hidden dangers which could arise on construction sites. Mr Wilshire stated his belief that injunctions operated as an effective deterrent because the more experienced individuals engaged in such activity understood the breach of an injunction

to constitute a contempt of court. The order then sought by the claimants was to prevent unlawful activity, for which it was said there could be no lawful justification. Damages would not be an adequate remedy for the significant risk of death and personal injury which such activity posed. There could be no question of any defendant suffering actionable loss or requiring compensation in damages, notwithstanding which the cross-undertaking was offered.

23. Later witness statements observed that there had been further recent incidents at Bankside Yards; that urban exploring continued to cause a problem for major construction sites in prominent locations in Central London (of which Bankside Yards, located on the South Bank of the River Thames, overlooking the City of London was one), with tower cranes being a particular target; and that an injunction remained necessary, as the project moved into the next phase of works and further tower cranes would be erected. It was believed that, but for the injunction, there would have been many more incidents of trespass, partly indicated by the prevalence of urban exploring on London construction sites which did not have the protection of an injunction.

24. From the evidence variously served subsequent to the order of Ritchie J, it is clear that "roof topping" and other urban explorer activity continues to be highly problematic at construction sites, and that there are persistent efforts by individuals who engage in it, notwithstanding stringent security measures. The evidence is that, in addition to the tower cranes at Bankside Yards, a scaffold bridge creates a high-level platform which can be accessed (potentially via a scalable external common tower and the hoist which runs up that tower), from which iconic skyline features of Greater London are visible, and the last of which will remain in place until the fourth quarter of 2026. A recent fatality in Spain is noted. It is said that the incidents of trespass and attempted trespass have decreased since an injunction has been in place, and that the latter was a necessary adjunct to the stringent security measures in place. A serious breach by four individuals who had entered the site on 10 February 2025 had not resulted in any arrest, or the ability to identify those individuals by name, and the first claimant had undertaken to put in place additional measures recommended by the security report, which had followed as soon as possible. It is speculated that the individuals concerned might have understood the injunction to have lapsed (and I note the timing of it relative to the date on which the order of Ritchie J would otherwise have expired) and noted that the first claimant has

received a request for copies of documents relating to a similar injunction, which is in place over a different construction site, said to indicate that the notification process is working, and that the injunctive relief is effective. Social media activity is said to indicate that the urban explorer community continues to grow.

25. When making his order in January 2024, Ritchie J was satisfied of the unlawful activity, and the dangers thereby posed to urban explorers and third parties, for which there was no apparent lawful justification, going on to find that, whether applying the test of compelling need or the *American Cyanamid* test, the injunction was warranted, and that damages would not be an adequate remedy. Taking those findings as my starting point for this review, I am satisfied that further evidence which I have received and summarised above establishes a continuing and imminent threat of similar activity, and that it would appear that, notwithstanding the recent incursion which I have summarised, the injunction has, to date, operated as an effective deterrent. Both the relevant deponents and Mr Morshead have considered any material matter which might be advanced by the defendants and, correctly to my mind, have identified none. In answer to a question from the court, Mr Morshead stated that he is aware of no organisation or interest group which might be considered to represent those engaged in urban exploring (who appear to be a group of unconnected individuals, united simply by their common interest in that activity, which is of self-evident considerable danger to urban explorers and others), and which ought specifically to be notified of steps taken in these proceedings. I am satisfied from the available evidence that there has been no material change since the order of Ritchie J was made; that the risk giving rise to that injunction remains present; and that there is no countervailing interest which it is necessary to weigh in the balance — this is not, for example, a situation in which it is apparent that any protest is being made. It is clear from the evidence that all appropriate notification has been given.

26. Accordingly, and with the qualifications which follow, I am satisfied that it is appropriate to make the order sought by the claimants, in which all of the protections required by *Wolverhampton* have been incorporated and which, consistent with the analysis in that case, is stated to be neither interim nor final.

27. I accept that history indicates that, for as long as one or more of the tempting features of the Bankside Yards is in place, that site is likely to remain a target for urban explorers. On the evidence before me, the earliest date on which all such features will have been removed is 30 September 2026, some 19 months from now. The claimants have demonstrated that they take their obligations in connection with the injunction sought seriously, and have undertaken to return to the court in the event of a material change in the position as it now stands. I recognise that, on each occasion on which the matter is restored, significant cost is likely to be incurred. In all such circumstances, and where there is no lawful reason for the activity advanced or apparent, I am satisfied that, subject to further order in the meantime, the next review need not take place until 2 October 2026, a date which is intended to ensure that the duration of the relief granted will not outlast the compelling circumstances on which the claimants rely. To be clear, that does not relieve them of their undertaking to come back to the court at an earlier stage, in the event of a material change in circumstance, which undertaking is to be inserted in Schedule 2 to the order and will express the duty implicit in any application made without notice. As the claimants maintain their willingness to offer a cross-undertaking in damages and seek an order that costs be reserved, it is unnecessary for me to address the need for either such provision.

28. A separate order will be made: (1) granting permission to the claimants to re-amend their claim form and Particulars of Claim so as to describe the defendants in a manner consistent with the form of the relief granted by the injunction; and (2) to the effect that no order is made on the application for summary judgment at this stage, with liberty to the claimants to apply to restore the application if and when appropriate. Both such orders, together with the re-re-amended claim form and Particulars of Claim, shall be notified to the defendants by the same means by which the order containing injunctive relief is to be notified, a matter which should itself be recorded in the order. Costs are reserved.

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

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This transcript has been approved by the Judge