IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CLAIM NO. QB-2020-002702

BETWEEN:

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED

(2) LUDGATE HOUSE LIMITED (A COMPANY INCORPORATED IN JERSEY)

(3) SAMPSON HOUSE LIMITED (A COMPANY INCORPORATED IN JERSEY) — Claimants

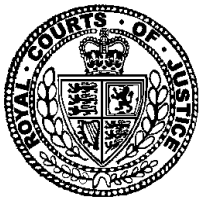
and

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

CLAIMANTS' AUTHORITIES

Hearing on 27/2/2025

1. *Elephant and Castle Property Co Ltd v. PU* [2023] EWHC 1981
2. *Wolverhampton City Council v. London Gypsies and Travellers* [2023] UKSC 47; [2024] AC 983
3. *Multiplex Construction Europe Limited v. PU* [2024] EWHC 239 (KB)
4. *Jockey Club Racecourses Ltd v PU* [2024] EWHC 1786 (Ch)
5. *Shell Oil UK Ltd v. PU* [2024] EWHC 3130 (KB)
6. *Exolum – review* [2024] EWHC 1015 (KB)
7. *Valero – review* [2025] EWHC (KB)



Neutral Citation Number: [2023] EWHC 1981 (KB)

Case No: KB-2023-002914

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 August 2023

Before :

MR JUSTICE SWEETING

- -

Between :

Elephant and Castle Property Co. Limited	**Claimant**
- and -	
Persons Unknown	**Defendant**

- -
- -

Timothy Morshead KC (instructed by **Evershed Sutherlands**) for the **Claimant**
The Defendant Did Not Appear in Court and Was Not Represented

Hearing dates: 28 July 2023

- -

Approved Judgment

This judgment was handed down remotely at 16.00pm on 31 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWEETING

Mr Justice Sweeting :

1. This is a claim for an injunction to prevent the Defendants (who can only be identified as "Persons Unknown") from trespassing within the construction compound at the construction site formerly occupied by the Elephant & Castle Shopping Centre (and other buildings) at Elephant & Castle, London SE1 6TE ("the Site"). The hearing before me was an application for interim injunctive relief.
2. The First and Second Claimants are the registered owners of the land forming the Site. The Third Claimant agreed to undertake major construction works on the Site under a JCT Design and Build (2016) contract. The contract sum is around £435 million. The Third Claimant was granted a licence to occupy and is responsible for safety on site.
3. The Third Claimant was also granted permission by the Highway Authority, Transport for London, to occupy sections of New Kent Road, Walworth Road and Newington Butts in connection with the construction works and to erect 3.0 metre high hoardings to separate these parts of the highway from the adjoining public highway.
4. The work at the Site involves the use of five "tower" cranes to erect tall buildings. The Site is protected by continuous hoardings along its perimeter. Security personnel are present 24 hours a day for 365 days a year. There are limited points of entry. There are "anti climb" measures on all tower cranes and 24 hour monitoring by closed circuit television. This includes coverage of the site boundary and the crane bases.
5. Whilst it is possible to make a construction site difficult to access with such precautions, experience suggests that it is impossible to prevent those who are determined enough from gaining entry.
6. The Claimants say that there is a threat of trespass by so called "urban explorers" who trespass on high rise buildings and construction sites and commonly upload photographs and / or video recordings of their exploits to the internet. These recordings can then be viewed for entertainment by their subscribers or followers on social media. The purpose of posting this material appears to be to depict the individuals involved at heights and in precarious or exposed situations. The Claimants believe that there is a real and significant risk that trespassers will enter the Site (or attempt to do so) in order to climb the tower cranes and/or the buildings under construction, unless they are restrained from doing so by the Court.
7. Such activity is inherently dangerous and involves risks for other people such as the Claimants' employees or contractors and the emergency services and others who have to assist if those attempting to scale cranes or buildings get into difficulties. There have been well publicised fatalities both in this country and elsewhere as a result of urban exploring leading to falls from high buildings and other structures The Claimants' experience is that when challenged urban explorers will often run away. Attempts to do so feature in videos posted online. This is in itself dangerous in the context of a construction site where there may be an elevated risk of falls and other injury to those who are not familiar with the layout, who have not received specific training and who are not wearing safety equipment. Where there is an incursion by trespassers, equipment and structures on site, including cranes, must be checked before work can resume. This means that one of the potential consequences of such trespass is delay and interruptions to work on site with associated financial loss.
8. The Claimants' initial assessment, and hope, was that the site was sufficiently far away from central London that it would not attract interest from urban explorers The Claimants have reconsidered the position in the light of recent events.
9. The Project Director for the redevelopment which is being undertaken by the Third Claimant is Mr Michael Waters. His witness statement sets out the recent history of attempted and actual incursions between the 16th of March 2023 and the 11th of June 2023. Some of these at least bear the hallmarks of trespass by urban explorers, including the use of high visibility vests as a disguise and black hoodies and balaclavas.
10. There have been a number of previous injunctions made to prevent trespass by urban explorers at other sites in London, including construction sites (see for example *Canary Wharf Investment Limited & others v Brewer & others* [2018] EWHC 1760). A witness statement from the Claimants' solicitor, Mr Wortley, exhibited a schedule of urban explorer videos and still images

uploaded since 2021. The focus of this Internet material was on construction sites in London, much of it involving tower cranes. Mr Wortley has considerable experience in cases of this sort acting on behalf of the owners and occupies of construction and other sites. In his view the injunctions which have been obtained to date have reduced the activity of urban explorers at or on the construction sites or tall buildings to which they related. He also referred to the deterrent effect of an injunction to restrain trespass having been increased by judgments in committal applications relating to Canary Wharf in November 2018 and the Shard in October 2019. The deterrent effect of an injunction may a be reason for granting it. In *Secretary of State for the Environment, Food and Rural Affairs v Meier and others* [2009] UKSC 11 Lord Neuberger said at [83]:

> "In some cases, it may be inappropriate to grant an injunction to restrain a trespassing on land unless the court considers not only that there is a real risk of the defendants so trespassing, but also that there is at least a real prospect of enforcing the injunction if it is breached. However, even where there appears to be little prospect of enforcing the injunction by imprisonment or sequestration, it may be appropriate to grant it because the judge considers that the grant of an injunction could have a real deterrent effect on the particular defendants."

11. The Claimants accordingly seek injunctive relief, with permission to issue without a named defendant and to dispense with service but with the incorporation of measures to bring the existence of the injunction to the attention of potential defendants.
12. Section 37(1) of the Senior Courts Act 1981 provides that the High Court may grant an interlocutory or final injunction where it appears to the court to be just and convenient (my emphasis). CPR Practice Direction 25A, paragraph 5.1 sets out the general procedural requirements.
13. Because the application is for interim relief, the Claimants must meet the test in *American Cyanamid Co v. Ethicon Ltd* [1975] AC 396:
14. First, is there a serious question to be tried? There is plainly a serious question to be tried in relation to the Claimants' entitlement to an injunction to restrain a threatened tort of trespass. A landowner is entitled to seek to restrain acts which would constitute a trespass (see *Patel v. W H Smith (Eziot) Ltd* [1987] 1 WLR 853 per Balcombe LJ at 858E – 859E) as is a licensee in temporary occupation of land (see *Manchester Airport v. Dutton* [2000] 1 QB 133 at 147D–G; 149H–150E; approved in *SSEFRA v. Meier* [2009] UKSC 11; [2009] 1 WLR 2780, [6] where the remedy sought was an order for possession, such an order being inappropriate in the present case given that the "urban explorers" are not permanently occupying the Site or part of the Site).
15. Secondly, would damages be an adequate remedy for a party injured by the grant of, or failure to grant, an injunction? The relief sought by the claimants is an injunction rather than damages. It does not appear at all likely that the individuals who commit torts of the sort which the injunction seeks to prevent would have the means to satisfy any financial remedy which the Claimants could obtain. Damages would not be an adequate remedy in relation to the principal harm which the injunction is intended to prevent; the risk of serious injury to individuals involved in urban exploring or those caught up in attempts to assist them or remove them from the Site. There is, conversely, nothing to suggest that the making of the injunction could cause any injury to any person affected by it and certainly no injury which could not be compensated by an award of damages. The usual cross-undertaking in damages has been offered through the Third Claimant which has provided evidence of its financial means.
16. Thirdly and alternatively where does the balance of convenience lie? Damages are not an adequate remedy in this case. The cross-undertaking is sufficient protection for the Defendants. It is not therefore necessary to consider the balance of convenience separately. However, it is clear that it would favour the granting of the injunction that the Claimants seek.
17. Because this is an application for precautionary injunctive relief against persons unknown the claimants must satisfy the procedural guidance set out in *Canada Goose UK Retail Ltd v. PU* [2020] 1 WLR 2802 at [82] to the extent affirmed in *Barking & Dagenham LBC & Otrs v.*

Persons Unknown [2022] EWCA Civ 13. I take each of the *Canada Goose/ Barking & Dagenham* requirements in turn.

> "(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."

18. Because the defendants are identified by reference to a future infringing act, they will become a defendant upon committing that act in breach of the order. I am satisfied that the Claimants have not been able to identify any persons who can properly be named as defendants because they have already trespassed or pose a real risk that they will carry out the acts prohibited by the injunction. The methods of alternative service proposed can be expected to bring the proceedings to their attention (see further below) and are similar to those used in other, like, cases.

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

19. This requirement is met. The Claimant's cause of action is based upon trespass to land. "Persons unknown" are identified as "persons unknown entering or remaining at the construction site at Elephant and Castle SY160E without the claimant s' permission or other lawful authority."

> "(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."

20. The application for injunctive relief has not been brought prematurely (see *Hooper v. Rogers* [1973] Ch 43 at 50B.) The Claimants have made an application to the court against the background of a pattern of trespass at the Site which can reasonably be attributed to those seeking to gain entry for the purpose of ascending cranes and other structures. The site is, on the evidence before me, a likely candidate for further incursions of the same nature and the risk is therefore sufficiently real to justify the court's intervention. In *Vastint Leeds BV v. Persons Unknown* [2018] EWHC 2456; [2019] 1 WLR 2, per Marcus Smith J at [31] it was suggested that what was required was a "strong probability" of breach of a claimant's rights absent an injunction and grave and irreparable harm to a claimant's rights, if breach occurs. For my part I share the view expressed by Linden J. in *Esso Petroleum Company Limited v. Persons Unknown* [2023] EWHC 1836 at [63–64] that these questions may be relevant but cannot operate as a threshold requirement. The test is the simple evaluative question originally posed by Longmore LJ in *Ineos Upstream Ltd v. Boyd* [2019] 4 WLR 100 at [34] of whether there is a "sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief" which was adopted in *Canada Goose* (see also *Bromley BC v. PU* [2020] EWCA Civ 12 per Coulson LJ at [29–30] describing Longmore LJ's summary in *Ineos* as an "elegant synthesis of a number of earlier statements of principle, which makes it now unnecessary to refer to other authorities"). In any event I consider that the requirements in *Vastint* are met in this case.

> "(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."

21. The Order provides for notice of the injunction, explaining the operation of the injunction with an accompanying marked-up map ,to be posted regularly and extensively around the site. These notices will contain a URL which will allow any potential trespasser to access the order and associated documents from a mobile phone. The proposed method is reasonably likely to bring

the proceedings and the Order to the notice of potential "Persons Unknown" defendants. This satisfies the requirements of CPR PD 25A, para 5.1(2).

> "(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."

22. The prohibition in the order is straightforward and corresponds to the tortious act on which the claim is based: "the Defendants must not until 28 July 2024 or further order, without the consent of the Claimants or other lawful authority, enter or remain upon any part of the land as shown edged red on the plan at Schedule 2 to this Order as demarcated from time to time by hoarding or security fencing (the "Elephant and Castle Construction Site"). ."

> "(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. …"

23. As far as geographical limits are concerned the scope of the Order is defined by reference to the physical features which demarcate the Site itself. In addition the order provides:

> "In the event that any change in the configuration of the hoarding has the effect of making the plan at Schedule 2 (which shows, in red, the outline of the hoarding) materially inaccurate, the Claimants shall as soon as practicable (a) update the plan attached to the notices mentioned at paragraph (5) above and (b) update the plan attached as Schedule 2 to this Order at the website mentioned in that paragraph."

24. I have given directions for the future conduct of the claim as follows:

> "This Order shall be reviewed by the Court by not later than 31 December 2023 (having regard in particular to any judgment of the Supreme Court which has by then been delivered in the appeal now known as *Wolverhampton City Council v. London Gypsies and Travellers* (2022/0046)) — such review to be conducted in writing unless the Court otherwise directs, on application to be made by the Claimants (and served in accordance with paragraph (12) above) in the week commencing 11 December 2023.
> The Claimants shall by not later than 28 July 2024 apply to the Court for an extension of this order or for a final order (such application to be served in accordance with paragraph (12) above)."

25. The order is therefore subject to a clear temporal limit insofar as the question of whether it should be continued or will become a final order will be before the court within a year and in circumstances where it will be reviewed within six months.
26. As Mr Morshead KC submitted on behalf of the Claimants there is no reason to suppose in this case that any Convention rights are engaged by the relief sought, save for the Claimants' right to property protected by Article 1 of the First Protocol. In particular, there is no reason to believe that the Site is or is likely to be or become a target of protest activity. Even if that were to be

the case the relief claimed extends only to private land on which there is no right to protest, as distinct from land to which the public has a right of access (and which, apart from an injunction, would otherwise be available for public protest). Whilst small sections of highway are involved, the Highways Authority has excluded the public from those sections for the duration of the works, so that in relation to those small areas of highway there is no public right of access.

27. There is, equally, no reason to suppose that section 12(3) of the HRA 1998 applies to the interim relief "so as to restrain publication before trial" so engaging the heightened test for the grant of injunctive relief, namely that the court is satisfied that the applicant is likely to obtain the desired relief at trial. However I also accept Mr Morshead's submission that "even if s12(3) were to apply (on the improbable basis that urban exploration is, somehow, a publication), ... the heightened test for the grant of injunctive relief which it imposes, would be satisfied."
28. For these reasons and with the modifications discussed at the hearing and now reflected in this judgment I grant the order sought.

A

Supreme Court

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

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

B

[2023] UKSC 47

2023 Feb 8, 9; Nov 29

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

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

With the intention of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued D proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981[1] prohibiting "persons unknown" from setting up such camps in the future. Injunctions of varying length were granted to some 38 local authorities, or groups of local authorities, on varying terms by way of both interim and permanent injunctions. After the hearing of an application to extend one of the injunctions which was coming to an end, a judge ordered a review of all such injunctions as remained in force and which the local authority in question wished to maintain. E The judge discharged the injunctions which were final and directed at unknown persons, holding that final injunctions could only be made against parties who had been identified and had had an opportunity to contest the order sought. The Court of Appeal allowed appeals by some of the local authorities and restored those final injunctions which were the subject of appeal, holding that final injunctions against persons unknown were valid since any person who breached one would as a consequence become a party to it and so be entitled to contest it.

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

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

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

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

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

Dicta of Lord Mustill in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361, HL(E) and of Lord Scott of Foscote in *Fourie v Le Roux* [2007] 1 WLR 320, para 25, HL(E) applied.

Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] 1 WLR 2780, SC(E), *Cameron v Hussain* [2019] 1 WLR 1471, SC(E) and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, CA considered.

South Cambridgeshire District Council v Gammell [2006] 1 WLR 658, CA and *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, CA not applied.

(2) That in principle it was such a legitimate extension of the court's practice for it to allow both interim and final injunctions against "newcomers", i e persons who at the time of the grant of the injunction were neither defendants nor identifiable and were described in the injunction only as "persons unknown"; that an injunction against a newcomer, which was necessarily granted on a without notice application, would be effective to bind anyone who had notice of it while it remained in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action; that, therefore, there was no immoveable obstacle of jurisdiction or principle in the way of granting injunctions prohibiting unauthorised encampments by Gypsies or Travellers who were "newcomers" on an essentially without notice basis, regardless of whether in form interim or final; that, however, such an injunction was only likely to be justified as a novel exercise of the court's equitable discretionary power if the applicant (i) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies), (ii) built into the application and the injunction sought procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it, (iii) complied in full with the disclosure duty which attached to the making of a without notice application and (iv) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made; that, if so justified, any injunction made by the court had to (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct, (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted, (iii) be subject to strict temporal and territorial limits, (iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court's power to grant the impugned injunctions at all failed (post, paras 142–146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

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

(i) To the extent that a particular person who has become the subject of a newcomer injunction wishes to raise particular circumstances applicable to them and relevant to a balancing of their article 8 Convention rights against the claim for an injunction, this can be done under the liberty to apply (post, para 183).

(iii) The emphasis in this appeal has been on newcomer injunctions in Gypsy and Traveller cases and nothing said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage

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

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

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

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

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

Adair v The New River Co (1805) 11 Ves 429

C *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55; [1976] 2 WLR 162; [1976] 1 All ER 779, CA

Ashworth Hospital Authority v MGN Ltd [2002] UKHL 29; [2002] 1 WLR 2033; [2002] 4 All ER 193, HL(E)

Attorney General v Chaudry [1971] 1 WLR 1614; [1971] 3 All ER 938, CA

Attorney General v Crosland [2021] UKSC 15; [2021] 4 WLR 103; [2021] UKSC 58; [2022] 1 WLR 367; [2022] 2 All ER 401, SC(E)

D *Attorney General v Harris* [1961] 1 QB 74; [1960] 3 WLR 532; [1960] 3 All ER 207, CA

Attorney General v Leveller Magazine Ltd [1979] AC 440; [1979] 2 WLR 247; [1979] 1 All ER 745; 68 Cr App R 342, HL(E)

Attorney General v Newspaper Publishing plc [1988] Ch 333; [1987] 3 WLR 942; [1987] 3 All ER 276, CA

Attorney General v Punch Ltd [2002] UKHL 50; [2003] 1 AC 1046; [2003] 2 WLR E 49; [2003] 1 All ER 289, HL(E)

Attorney General v Times Newspapers Ltd [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)

Baden's Deed Trusts, In re [1971] AC 424; [1970] 2 WLR 1110; [1970] 2 All ER 228, HL(E)

Bankers Trust Co v Shapira [1980] 1 WLR 1274; [1980] 3 All ER 353, CA

Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER F 487, SC(E)

Birmingham City Council v Afsar [2019] EWHC 1619 (QB)

Blain (Tony) Pty Ltd v Splain [1993] 3 NZLR 185

Bloomsbury Publishing Group plc v News Group Newspapers Ltd [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736

Brett Wilson LLP v Persons Unknown [2015] EWHC 2628 (QB); [2016] 4 WLR 69; [2016] 1 All ER 1006

G *British Airways Board v Laker Airways Ltd* [1985] AC 58; [1984] 3 WLR 413; [1984] 3 All ER 39, HL(E)

Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727, CA

Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA

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

H *CMOC Sales and Marketing Ltd v Person Unknown* [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep FC 62

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

Canada Goose UK Retail Ltd v Persons Unknown [2019] EWHC 2459 (QB); [2020] 1 WLR 417; [2020] EWCA Civ 303; [2020] 1 WLR 2802; [2020] 4 All ER 575, CA

Cardile v LED Builders Pty Ltd [1999] HCA 18; 198 CLR 380
Carr v News Group Newspapers Ltd [2005] EWHC 971 (QB)
Cartier International AG v British Sky Broadcasting Ltd [2014] EWHC 3354 (Ch); [2015] Bus LR 298; [2015] 1 All ER 949; [2016] EWCA Civ 658; [2017] Bus LR 1; [2017] 1 All ER 700, CA; [2018] UKSC 28; [2018] 1 WLR 3259; [2018] Bus LR 1417; [2018] 4 All ER 373, SC(E)
Castanho v Brown & Root (UK) Ltd [1981] AC 557; [1980] 3 WLR 991; [1981] 1 All ER 143, HL(E)
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334; [1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
Chapman v United Kingdom (Application No 27238/95) (2001) 33 EHRR 18, ECtHR (GC)
Commerce Commission v Unknown Defendants [2019] NZHC 2609
Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24; [2023] AC 389; [2022] 2 WLR 703; [2022] 1 All ER 289; [2022] 1 All ER (Comm) 633, PC
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
D v Persons Unknown [2021] EWHC 157 (QB)
Dresser UK Ltd v Falcongate Freight Management Ltd (The Duke of Yare) [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA
EMI Records Ltd v Kudhail [1985] FSR 36, CA
ESPN Software India Pvt Ltd v Tudu Enterprise (unreported) 18 February 2011, High Ct of Delhi
Earthquake Commission v Unknown Defendants [2013] NZHC 708
Ernst & Young Ltd v Department of Immigration 2015 (1) CILR 151
F (orse A) (A Minor) (Publication of Information), In re [1977] Fam 58; [1976] 3 WLR 813; [1977] 1 All ER 114, CA
Financial Services Authority v Sinaloa Gold plc [2013] UKSC 11; [2013] 2 AC 28; [2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
Friern Barnet Urban District Council v Adams [1927] 2 Ch 25, CA
Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536, CA
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
Harlow District Council v Stokes [2015] EWHC 953 (QB)
Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB)
Hubbard v Pitt [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA
Ineos Upstream Ltd v Persons Unknown [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Iveson v Harris (1802) 7 Ves 251
Joel v Various John Does (1980) 499 F Supp 791
Kingston upon Thames Royal London Borough Council v Persons Unknown [2019] EWHC 1903 (QB)
M and N (Minors) (Wardship: Publication of Information), In re [1990] Fam 211; [1989] 3 WLR 1136; [1990] 1 All ER 205, CA
MacMillan Bloedel Ltd v Simpson [1996] 2 SCR 1048
McPhail v Persons, Names Unknown [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All ER 393, CA
Manchester Corpn v Connolly [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER 961, CA
Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406, HL(E)
Mareva Cia Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Rep 509, CA

A *Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd* [1998] 4 VR 143
Mercedes Benz AG v Leiduck [1996] AC 284; [1995] 3 WLR 718; [1995] 3 All ER 929, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew [1983] Lexis Citation 198; The Times, 25 June 1983, CA
B *Murphy v Murphy* [1999] 1 WLR 282; [1998] 3 All ER 1
News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2) [1987] ICR 181
North London Railway Co v Great Northern Railway Co (1883) 11 QBD 30, CA
Norwich Pharmacal Co v Customs and Excise Comrs [1974] AC 133; [1973] 3 WLR 164; [1973] 2 All ER 943, HL(E)
OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23
C *Parkin v Thorold* (1852) 16 Beav 59
R v Lincolnshire County Council, Ex p Atkinson (1995) 8 Admin LR 529, DC
R (Wardship: Restrictions on Publication), In re [1994] Fam 254; [1994] 3 WLR 36; [1994] 3 All ER 658, CA
RWE Npower plc v Carrol [2007] EWHC 947 (QB)
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR 635, DC
D *Revenue and Customs Comrs v Egleton* [2006] EWHC 2313 (Ch); [2007] Bus LR 44; [2007] 1 All ER 606
Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11; [2009] 1 WLR 2780; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)
Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA (The Siskina) [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803, HL(E)
Smith v Secretary of State for Housing, Communities and Local Government [2022]
E EWCA Civ 1391; [2023] PTSR 312, CA
South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA
South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
F *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24; [1986] 3 WLR 398; [1986] 3 All ER 487, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)
TSB Private Bank International SA v Chabra [1992] 1 WLR 231; [1992] 2 All ER 245
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch);
G [2019] JPL 161
United Kingdom Nirex Ltd v Barton [1986] Lexis Citation 644; The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Winch, Persons formerly known as, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
H *Wykeham Terrace, Brighton, Sussex, In re, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204; [1970] 3 WLR 649
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37
Z Ltd v A-Z and AA-LL [1982] QB 558; [1982] 2 WLR 288; [1982] 1 All ER 556, CA

The following additional cases were cited in argument:

A v British Broadcasting Corpn [2014] UKSC 25; [2015] AC 588; [2014] 2 WLR 1243; [2014] 2 All ER 1037, SC(Sc)
Abortion Services (Safe Access Zones) (Northern Ireland) Bill, In re [2022] UKSC 32; [2023] AC 505; [2023] 2 WLR 33; [2023] 2 All ER 209, SC(NI)
Astellas Pharma Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752; The Times, 11 July 2011, CA
Birmingham City Council v Nagmadin [2023] EWHC 56 (KB)
Cambridge City Council v Traditional Cambridge Tours Ltd [2018] EWHC 1304 (QB); [2018] LLR 458
Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau intervening) [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant [2021] EWHC 1679 (Ch); [2021] 1 WLR 3834; [2022] 1 All ER 83; [2022] 1 All ER (Comm) 239
High Speed Two (HS2) Ltd v Persons Unknown [2022] EWHC 2360 (KB)
Hillingdon London Borough Council v Persons Unknown [2020] EWHC 2153 (QB); [2020] PTSR 2179
Kudrevičius v Lithuania (Application No 37553/05) (2015) 62 EHRR 34, ECtHR (GC)
MBR Acres Ltd v McGivern [2022] EWHC 2072 (QB)
Mid-Bedfordshire District Council v Brown [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA
Porter v Freudenberg [1915] 1 KB 857, CA
R (Laporte) v Chief Constable of Gloucestershire Constabulary [2006] UKHL 55; [2007] 2 AC 105; [2007] 2 WLR 46; [2007] 2 All ER 529, HL(E)
R (M) v Secretary of State for Constitutional Affairs and Lord Chancellor [2004] EWCA Civ 312; [2004] 1 WLR 2298; [2004] 2 All ER 531, CA
Redbridge London Borough Council v Stokes [2018] EWHC 4076 (QB)
Secretary of State for Transport v Cuciurean [2021] EWCA Civ 357, CA
Winterstein v France (Application No 27013/07) (unreported) 17 October 2013, ECtHR

APPEAL from the Court of Appeal

On 16 October 2020 Nicklin J, with the concurrence of Dame Victoria Sharp P and Stewart J (Judge in Charge of the Queen's Bench Civil List), ordered a number of local authorities which had been involved in 38 sets of proceedings each obtaining injunctions prohibiting "persons unknown" from making unauthorised encampments within their administrative areas, or on specified areas of land within those areas, to complete a questionnaire with a view to identifying those local authorities who wished to maintain such injunctions and those who wished to discontinue them. On 12 May 2021, after receipt of the questionnaires and a subsequent hearing to review the injunctions, Nicklin J [2021] EWHC 1201 (QB); [2022] JPL 43 held that the court could not grant final injunctions which prevented persons who were unknown and unidentified at the date of the order from occupying and trespassing on local authority land and, by further order dated 24 May 2021, discharged a number of the injunctions on that ground.

By appellant's notices filed on or about 7 June 2021 and with permission of the judge, the following local authorities appealed: Barking and Dagenham London Borough Council; Havering London Borough Council; Redbridge London Borough Council; Basingstoke and Deane Borough Council and Hampshire County Council; Nuneaton and Bedworth Borough Council and Warwickshire County Council; Rochdale Metropolitan Borough Council;

Test Valley Borough Council; Thurrock Council; Hillingdon London Borough Council; Richmond upon Thames London Borough Council; Walsall Metropolitan Borough Council and Wolverhampton City Council. The following bodies were granted permission to intervene in the appeal: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd and Basildon Borough Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR, Lewison and Elisabeth Laing LJJ) [2022] EWCA Civ 13; [2023] QB 295 allowed the appeals.

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

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

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

The appellants are concerned about the detrimental consequences which the injunctions sought by the local authorities will have for the nomadic lifestyle of Gypsies and Travellers, including a chilling effect on those seeking to practise the traditional Gypsy way of life.

A court cannot exercise its statutory power under section 37 of the Senior Courts Act 1981 so as to grant an injunction which will bind "newcomers" (i e persons who at the time of the grant of the injunction are neither defendants to the application nor identifiable, and who were described in the injunction only as "persons unknown") save on an interim basis or for the protection of Convention rights as an exercise of the jurisdiction first recognised in *Venables v News Group Newspapers Ltd* [2001] Fam 430.

The High Court's power to grant an injunction under section 37 neither expressly permits nor prohibits the making of orders against persons unknown and so does not on its own terms provide an answer to the question. Although it had previously been argued by some of the local authorities below that, regardless of any limitations which applied to section 37, the court had a separate power to grant injunctions against persons unknown by virtue of section 187B of the Town and Country Planning Act 1990 the Court of Appeal held that the procedural limitations under section 37 and section 187B were the same and that the latter did not bestow any

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

A final injunction operates only between the parties to the claim: see *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191. The act by which a person becomes a party is the service of the claim form: see *Cameron v Hussain* [2019] 1 WLR 1471. A person who is unknown and unidentifiable cannot be served with a claim form. He or she will thus not be a party and will not be bound by the final injunction.

It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: see *Porter v Freudenberg* [1915] 1 KB 857, 883, 887–888, *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, para 8 and *Cameron*, paras 17–18.

Cameron, in particular, is determinative of the appeal. It dealt with—and the decision is therefore binding as to—the position of newcomers, albeit that the proposed defendant was someone who was said to have committed an unlawful act in the past, rather than a person who might commit an unlawful act in the future. Even if *Cameron*, because of that distinction, was not strictly concerned with newcomers, the application of the Supreme Court's reasoning in that case leads inescapably to the conclusion that such persons cannot be sued.

Newcomers are by their very nature anonymous. A person unknown may, if defined with sufficient particularity, be capable of being identified with a particular person. In the first instance decision in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417, para 150 Nicklin J suggested that some of the protesters "could readily be identified on . . . camera footage as alleged 'wrongdoers' and, if necessary, given a pseudonym (e g '. . . the man shown in the footage . . . holding the loudhailer')". The person in question will still be anonymous, but he or she is identifiable and whatever the practical difficulties in locating him or her, it is not conceptually impossible to effect service. By contrast, however, designations of the type used in the instant cases, which are intended to capture newcomers ("persons unknown", "persons unknown occupying land", "persons unknown depositing waste", "persons unknown fly-tipping") do not identify anyone. They do not "enable one to know whether any particular person is the one referred to": see *Cameron*, para 16.

The Court of Appeal wrongly held that *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 was authority for the proposition that a final injunction can bind newcomers. That case concerned an interim injunction. It was explained by the Supreme Court as an example of alternative service—not as authority for the proposition that final injunctions bind newcomers—and the Court of Appeal below erred in departing from that interpretation. The other cases relied on by the Court of Appeal below (in particular *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633, *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2004] Env LR 9 and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100) provide no real support for the Court of Appeal's decision. Those cases either (at best) simply accepted, without deciding the point, that final injunctions could

bind newcomers or, when properly understood, they undermine such a conclusion.

The reasoning in *Gammell* cannot properly be extended to cover final injunctions to bind newcomers. There is a qualitative distinction between interim and final injunctions. Parties must be identified before a final determination takes place so that they have an opportunity to present their case. The courts have long been willing to accept lower—or at least different—standards of fairness at the interim stage, in recognition of the fact that interim orders are temporary and designed to hold the ring (or limit damage) pending trial. Thus, for example, interim orders may be sought without notice to the defendant, or may control the way in which a defendant deals with his or her property in order to prevent the defendant frustrating any eventual judgment. Interim orders may indeed be more favourable to a claimant than any final order could be: see, for example, *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224 ("*Spycatcher*").

As Nicklin J recognised at first instance, the courts have recognised that this can create an incentive for a claimant to obtain an interim injunction and then fail to progress the case to trial: see [2021] EWHC 1201 (QB) at [89]. The answer to this has not been to expand the principle in *Spycatcher* to final orders: instead, the court will put in place directions to ensure that the matter is progressed to a final hearing: see Nicklin J, paras 91–93. Interim relief which binds newcomers can only properly be granted where it is to preserve the position pending trial.

Although in certain cases the court has granted injunctions on a contra mundum basis (see *In re X (A Minor) (Wardship: Injunction)* [1984] 1 WLR 1422, *Venables v News Group Newspapers Ltd* [2001] Fam 430, *X (formerly Bell) v O'Brien* [2003] EMLR 37, *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB), *OPQ v BJM* [2011] EMLR 23, *RXG v Ministry of Justice* [2020] QB 703 and *D v Persons Unknown* [2021] EWHC 157 (QB)), there is a principled distinction between that line of cases and injunctions prohibiting the unauthorised use or occupation of land. Those cases were all concerned with the publication of personal information, such as the identity of offenders. Once in the public domain, the subject matter protected by the injunction is irretrievably lost. This court should confirm that an injunction contra mundum should only be granted where to do otherwise would defeat the purpose of the injunction. That principle will not apply in traveller injunction cases.

Stephanie Harrison KC, *Stephen Clark* and *Fatima Jichi* (instructed by *Hodge Jones & Allen LLP*) for Friends of the Earth, intervening.

"Persons unknown" injunctions, although said to be aimed at curtailing unlawful protest, also have a chilling effect on lawful campaigning and protest. They expose wide groups of citizens to the risk of prohibitively costly legal proceedings and punitive sanctions, including unlimited fines and imprisonment for contempt for up to two years. There are serious obstacles to contesting the claims and a significant inequality of arms when accessing justice with no costs protection.

There is an increasingly widespread use of such injunctions, often on an industry and country-wide basis, with private companies in particular utilising private law proceedings as a default mechanism to address perceived

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

The ruling of the Supreme Court in *Cameron v Hussain* [2019] 1 WLR 1471, paras 11–12 makes clear that it is not simply a matter of the court's wide discretion to entertain a claim if a person (who is not evading service) cannot be served and cannot reasonably be expected to have notice of the claim so that he may have an opportunity to defend it. Identification is necessary so that the court can be satisfied that a person is properly subject to its jurisdiction with the capacity to be a party to legal proceedings. However unjust the outcome for the claimant who may have been wronged (as in the case of the claimant in *Cameron*, who had been injured in a vehicle collision caused by the negligence of another driver of unknown identity), the claim has simply not been validly brought.

One of the purposes of a persons unknown injunction is to deter such newcomers from coming into existence and if it is effective there will only ever have been one party to the claim, namely the claimant. This is not, therefore, properly to be described as a permissible claim against persons unknown in the *Bloomsbury Publishing* sense (see *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633). It is simultaneously a claim against nobody, but can only be effective if it is in principle binding on everybody.

Justice between parties to litigation is not only about a just outcome. That outcome must be arrived at pursuant to a fair and just process. In addition to being contrary to basic principles of procedural fairness and natural justice, in both the Gypsy and Traveller context and in the protest context, newcomer injunctions can have arbitrary and disproportionate adverse impacts on fundamental rights, including the Convention rights under articles 8, 10 and 11 and the common law protections for free speech and assembly.

The notion that a person only becomes a party to proceedings by the acts that put them in breach of an order made in their absence and upon its enforcement against them is fundamentally at odds with such core principles. In contempt cases, the court's approach will not be concerned with whether the injunction should have been granted or the appropriateness of the terms which have led to the contempt. An order of the court has to be obeyed unless and until it has been set aside or varied by the court.

Even if an injunction is subsequently varied or set aside, that is irrelevant to the liability in contempt of a person who breaches the injunction (although it may be relevant to sentence): see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, paras 33–34 and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, paras 76–77. Moreover, in *Secretary of State for Transport v Cuciurean* [2021] EWCA Civ 357 at [57]–[62] the Court of Appeal rejected the argument that liability for contempt for breach of a persons unknown injunction required knowledge of its terms.

In the protest context, the courts have recognised the injustice of the enforcement of orders against individuals without giving them an opportunity to be heard and without consideration of their individual circumstances even if bound by the order when made: see *Astellas Pharma*

Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752 and *RWE Npower plc v Carrol* [2007] EWHC 947 (QB).

The lack of procedural fairness and natural justice intrinsic to orders against newcomers means that they should not even be imposed at the interim stage. If such injunctions were to be allowed on an interim basis, they should be limited to cases where there is a danger of real and imminent unlawful action, with a view to holding the ring and allowing claimants time to identify unknown but existing defendants.

Jude Bunting KC and *Marlena Valles* (instructed by *Liberty*) for Liberty, intervening.

It is not open to the court to significantly expand the contra mundum jurisdiction so as to permit courts in Gypsy, Roma and Traveller ("GRT") or protester cases to make persons unknown orders (interim or final) which bind newcomers. The Court of Appeal's conclusion in this case demonstrates the serious limitations of seeking to solve complex questions of social policy by deploying a tool of civil law. A court cannot lawfully make a final injunction against newcomers when the injunction is likely to interfere with the human rights of newcomers and there has not been any assessment of the individual facts of their case.

Unlike established orders such as freezing orders, *Anton Piller* orders, or possession orders which are targeted at specific people, final persons unknown injunctions frequently involve severe interference with the rights of a large category of people, often extending to vast swathes of land, entire boroughs or the entirety of the strategic road network. They can cover entirely peaceful, lawful protest.

In both GRT cases (where article 8 rights are involved) and in protest cases (where articles 10 and 11 are involved) an individual assessment of proportionality is required. In the former context, there is a clear line of Strasbourg authority emphasising the strictness of the proportionality test when imposing measures which affect the GRT community, such as injunctions to prevent encampments. A potential breach of planning authorisation, for example, will not be enough: see *Winterstein v France* (Application No 27013/07) (unreported) 17 October 2013. Consideration must be given to individualised matters such as the length of time of the encampment, the consequences of removal and the risk of becoming homeless. Similar considerations apply in protester cases: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417, para 136 and *Kudrevičius v Lithuania* (2015) 62 EHRR 34, paras 145, 155. This applies not just to Convention rights, but to fundamental common law rights such as the right to a home, to respect for one's ethnic identity and to freedom of expression.

The serious impact of persons unknown injunctions is graphically illustrated by the way in which some claimants have aggressively sought committal of persons who have breached persons unknown injunctions, even in circumstances where the breaches were "trivial and wholly technical" as in *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB). In that case a solicitor was prosecuted by a private company for attending a protest site in her professional capacity and was said to have breached the injunction by parking her car for an hour in an "exclusion zone". The committal proceedings lasted two days and were dismissed as "wholly frivolous", but

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

General category measures involve complex issues of policy and are matters for the legislature, as in the measures considered in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505: see also *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105, para 52. A court at first instance is singularly ill-equipped to make such a category assessment. B

Nigel Giffin KC and *Simon Birks* (instructed by *Walsall Metropolitan Borough Council Legal Services*) for the second respondent local authority.

The essential starting point for addressing these issues is section 37 of the Senior Courts Act 1981, because section 37 is the statutory power which is being exercised when the High Court grants an injunction in a case of this nature (unless it is acting under a specific statutory power). There are three important points to make about what Parliament has enacted in section 37(1). First, it is a statutory power which Parliament has elected to confer in terms of the greatest possible breadth. It is engaged whenever the court considers that the grant of an injunction would be "just and convenient". Secondly, section 37(1) expressly applies both to interlocutory (interim) orders, and to final orders, without drawing any distinction between them whatsoever. Thirdly, the section 37 power is expressly exercisable in "all" cases where the grant of an injunction would be just and convenient. The appellants are therefore wrong to suggest that it is only exercisable in "some" cases, not including cases of the present nature. C D

The courts are well aware that, as with any other broad discretionary power conferred upon it, the section 37 power must be exercised on a principled basis. Thus it is axiomatic, for example, that the grant of injunctive relief in a particular form must represent a proportionate response to the factual situation with which the court is faced; that the court must so far as possible ensure fairness to all those affected by the injunction; and that the injunction is consistent with Convention rights. E

It is wrong to fetter the exercise of the section 37 power in advance, whether by inflexible judge-made rules, or through the division of cases into rigid and potentially artificial categories to which distinct rules apply. Rather, a broad and flexible approach is called for: see *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389. If the grant of an injunction would not be a fair or proportionate measure on particular facts, then it will not be granted. But if an injunction in a particular form would be the appropriate response to the actual or threatened commission of a legal wrong—and especially if such an injunction represents the only effective means of protecting legal rights and preventing significant harm—then the court should be slow to conclude that it is powerless to grant such relief. F G

Newcomer injunctions are just one sub-species of the "precautionary" (quia timet) injunction which is solidly established in English law, and for whose award the courts have long since established a framework of governing principles. The claimants in these proceedings manifestly have an interest which merits protection. H

Cameron v Hussain [2019] 1 WLR 1471 should be seen as a case about the need for the court to guard against exposing people to detrimental legal consequences without their having had an opportunity to be heard or

A otherwise to defend their interests. It did not lay down an absolute conceptual or jurisprudential bar to the grant of newcomer injunctions. Albeit stating that the general rule is that proceedings may not be brought against unnamed parties, Lord Sumption specifically endorsed the approach in *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 of granting injunctions against anonymous but identifiable defendants provided B that the injunction is brought to the attention of the putative defendant (for example by posting copies of the documents in some prominent place near the land in question) and the defendant is afforded an opportunity to apply to set it aside

The practice endorsed in *Cameron* applies as much to final orders as it does to interim orders. There is no relevant conceptual difference between the two, and it would be paradoxical if the court's powers were less C extensive when making a final order after trial. Nicklin J in the present case attempted to resolve this paradox by saying that interim injunctions could only be granted against persons unknown for a short period during which they were expected to be identifiable, but there is no sign of any such approach in existing authority, for example *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 or *Ineos Upstream* D *Ltd v Persons Unknown* [2019] 4 WLR 100.

Newcomer injunctions are not intrinsically incompatible with natural justice. There are many situations in which courts make orders without having heard the persons who might be affected by them, usually because it is impractical, for one reason or another, to afford a hearing to those persons in advance of the making of the order. In such circumstances, fairness is secured by enabling any person affected to seek the recall of the order E promptly at a hearing inter partes: see *R (M) v Secretary of State for Constitutional Affairs and Lord Chancellor* [2004] 1 WLR 2298, para 39 and *A v British Broadcasting Corpn* [2015] AC 588, para 67.

Guidelines are already in place as to when newcomer injunctions should be granted and as to the safeguards which must be observed: see *Ineos* [2019] 4 WLR 100, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] F 4 WLR 29 and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. Those guidelines provide a fair balance. They would be otiose if the Supreme Court acceded to the appeal and the safeguards which they provide were to be replaced by a universal prohibition. For examples of the court applying the correct approach to particular facts, see *Hillingdon London Borough Council v Persons Unknown* [2020] PTSR 2179, G paras 95–122, *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] LLR 458, para 81 and *Birmingham City Council v Nagmadin* [2023] EWHC 56 (KB), at [34]–[37], [49]–[54], [59]–[60]. [Reference was also made to *Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant* [2021] 1 WLR 3834.]

The operation of newcomer injunctions is not intrinsically incompatible with Convention principles of proportionality. It is accepted that, depending H on the nature of the injunction in question, Convention rights of newcomers may well (though will not always) be engaged. But they have to be balanced against any competing common law or Convention rights of persons living in close proximity to the land in question who would otherwise be adversely affected by the prohibited acts. This is always a fact-sensitive exercise. The

court is well-equipped to carry out the necessary proportionality test even where the newcomers are not before the court, just as it is when granting injunctions which carry *Spycatcher*-type consequences for third parties: see *Attorney General v Punch Ltd* [2003] 1 AC 1046, paras 108, 113–114, 116, 122–123.

Mark Anderson KC and *Michelle Caney* (instructed by *Wolverhampton City Council Legal Services*) for the first respondent local authority.

Precautionary injunctions against persons unknown which bind newcomers form a species of injunction against the world, as the Court of Appeal correctly held in the present case: see [2023] QB 295, paras 119–121. The fact that they are exceptional orders that are only granted in narrow circumstances as a last resort (see *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 99 et seq and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, paras 31–34) falsifies any "floodgates" argument.

Section 37 of the Senior Courts Act 1981 frames the question which the courts must ask: is it "just and convenient" to grant an injunction? The appellants' argument would require the Supreme Court to pre-judge this question by holding in advance that it will never be just and convenient to grant an injunction to prevent future wrongs by persons who cannot be identified when the injunction is granted.

This would not only deny a remedy to the victims of unlawful encampments: it would prevent courts from granting injunctions to prevent a wide range of other wrongdoing, such as urban exploring and car cruising. To remove from the armoury of the courts the remedy which the courts have devised over the last 20 years would be to incentivise such wrongful conduct.

Moreover, if wrongdoers know that they cannot be subject to an injunction which does not name them, they will be provided with a perverse incentive to preserve their anonymity.

There is no fundamental distinction between interim and final injunctions. Section 37 includes the power to fashion an injunction which has some of the characteristics of both and such injunctions should be permitted where they are just and convenient. *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 illustrates this.

The courts have laid down guidelines as to when such injunctions should be granted and as to the safeguards which must be observed. Those guidelines provide a fair balance. They would be otiose if the Supreme Court acceded to the appeal and the safeguards which they provide were replaced by a universal prohibition. This would offend principles of justice, most notably the principle that where there is a wrong, the law should provide a remedy: see *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, para 25.

It makes no sense to say that such injunctions should only be granted to protect Convention rights. There is no authority that Convention rights must be in play before an injunction against the world can be issued. As the Court of Appeal correctly observed at paras 80 and 120, the fact that protester or encampment cases do not fall within the exceptional category with which *Venables v News Group Newspapers Ltd* [2001] Fam 430 was concerned does not mean that a species of injunction against the world is not also appropriate in protester or encampment cases.

A On the contrary, if it is right for the court to fashion an unconventional injunction, addressed to the whole world, in order to protect a claimant's Convention rights, it is unprincipled to conclude that it must never do so to protect non-Convention rights. The distinction between Convention rights and other rights is arbitrary and artificial.

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

Each of the third to tenth respondent local authorities' injunctions in these proceedings were sought and granted pursuant to section 187B of the Town and Country Planning Act 1990. Travellers injunctions under section 187B should be seen as a statutory exception to the "general" rule set C out in *Cameron v Hussain* [2019] 1 WLR 1471, para 9 that proceedings may not be brought against unnamed parties.

By section 187B(1) a local authority may seek an injunction to restrain "any actual or apprehended breach of planning control": hence the local authority only has to "apprehend" a breach in order to apply for an injunction. By subsection (2) the court "may" grant "such injunction as it thinks appropriate", thus giving it the same wide jurisdiction as under D section 37 of the Senior Courts Act 1981. (The permissive "may" in subsection (2) applies not only to the *terms* of any injunction but also to the decision *whether* to grant an injunction: see *South Bucks District Council v Porter* [2003] 2 AC 558, para 28.) And by subsection (3), rules of court (currently to be found in CPR PD 49E) may provide for injunctions to be issued against persons whose identity is unknown. In unauthorised E encampment cases the court may describe the persons targeted by reference to evidence of what might potentially happen on the land sought to be protected, in the same way that persons unknown in unauthorised development cases are often defined by reference to the evidence of what was happening on the land (for example the injunction directed at "persons unknown . . . causing or permitting hardcore to be deposited [and] caravans . . . stationed [on F specified land]" in *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88).

Section 187B does not confine itself to interim injunctions. Nor was the Court of Appeal in *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 confining itself to interim injunctions, as may be seen from its reliance (at para 29) on *Mid-Bedfordshire District Council v Brown* [2005] 1 WLR 1460, which was a case about a final injunction (under G section 187B) which bound newcomers as well as the named defendant. [Reference was also made to *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, paras 1–4 and *Redbridge London Borough Council v Stokes* [2018] EWHC 4076 (QB) at [10]–[23].]

Richard Kimblin KC and *Michael Fry* (instructed by *Treasury Solicitor*) for High Speed Two (HS2) Ltd and the Secretary of State, intervening.

H Although the appellants complain about the "chilling effect" of injunctions on the right to protest, consideration should also be given to the beneficial effect of injunctions to deter disruptive, unlawful conduct: see *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, para 83. It is no part of the Secretary of State's or HS2's case that lawful

protest should be constrained. However, since 2021 there has been significant disruption to the strategic road network caused by the unlawful conduct of protesters seeking a change of government policy. Similarly, since 2017 there has been significant disruption to the construction of the HS2 rail link by the unlawful conduct of activists opposed to the project. Hence the need for the Secretary of State and HS2 to seek tailored "newcomer" injunctions (see, for example, *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB)) to prevent activities which are not only unlawful but often risk injury to contractors and/or members of the public.

Any person affected by such injunctions will have liberty to apply at any time to vary or discharge the injunction and anyone who successfully discharges an order would in principle be entitled to their costs. Further, claimants are normally required to give a cross-undertaking in damages that, should it later be determined that the interim injunction should not have been granted, they must compensate for any loss caused by the injunction.

Although the term "contra mundum" is frequently used—the ultimate in catch-all terms—it is necessary to consider what it actually means on the particular facts of each case. It is obtuse to consider the appropriateness of a contra mundum order on the basis that everybody is affected: it is not, for example, the whole world which wishes to climb gantries on the M25. Rather, the court should (and does as a matter of practice) take a view about who, in the particular circumstances, might be affected. It will be a cautious view. It is a matter of degree and a judgement which is not difficult to make.

Drabble KC replied.

The court took time for consideration.

29 November 2023. **LORD REED PSC**, **LORD BRIGGS JSC** and **LORD KITCHIN** (with whom **LORD HODGE DPSC** and **LORD LLOYD-JONES JSC** agreed) handed down the following judgment.

1. Introduction

(1) The problem

1 This appeal concerns a number of conjoined cases in which injunctions were sought by local authorities to prevent unauthorised encampments by Gypsies and Travellers. Since the members of a group of Gypsies or Travellers who might in future camp in a particular place cannot generally be identified in advance, few if any of the defendants to the proceedings were identifiable at the time when the injunctions were sought and granted. Instead, the defendants were described in the claim forms as "persons unknown", and the injunctions similarly enjoined "persons unknown". In some cases, there was no further description of the defendants in the claim form, and the court's order contained no further information about the persons enjoined. In other cases, the defendants were described in the claim form by reference to the conduct which the claimants sought to have prohibited, and the injunctions were addressed to persons who behaved in the manner from which they were ordered to refrain.

2 In these circumstances, the appeal raises the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time

A when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date: "newcomers", as they have been described in these proceedings.

3 Although the appeal arises in the context of unlawful encampments by Gypsies and Travellers, the issues raised have a wider significance. The availability of injunctions against newcomers has become an increasingly important issue in many contexts, including industrial picketing, environmental and other protests, breaches of confidence, breaches of intellectual property rights, and a wide variety of unlawful activities related to social media. The issue is liable to arise whenever there is a potential conflict between the maintenance of private or public rights and the future behaviour of individuals who cannot be identified in advance. Recent years have seen a marked increase in the incidence of applications for injunctions of this kind. The advent of the internet, enabling wrongdoers to violate private or public rights behind a veil of anonymity, has also made the availability of injunctions against unidentified persons an increasingly significant question. If injunctions are available only against identifiable individuals, then the anonymity of wrongdoers operating online risks conferring upon them an immunity from the operation of the law.

4 Reflecting the wide significance of the issues in the appeal, the court has heard submissions not only from the appellants, who are bodies representing the interests of Gypsies and Travellers, and the respondents, who are local authorities, but also from interveners with a particular interest in the law relating to protests: Friends of the Earth, Liberty, and (acting jointly) the Secretary of State for Transport and High Speed Two (HS2) Ltd.

5 The appeal arises from judgments given by Nicklin J and the Court of Appeal on what were in substance preliminary issues of law. The appeal is accordingly concerned with matters of legal principle, rather than with whether it was or was not appropriate for injunctions to be granted in particular circumstances. It is, however, necessary to give a brief account of the factual and procedural background.

(2) The factual and procedural background

6 Between 2015 and 2020, 38 different local authorities or groups of local authorities sought injunctions against unidentified and unknown persons, which in broad terms prohibited unauthorised encampments within their administrative areas or on specified areas of land within those areas. The claims were brought under the procedure laid down in Part 8 of the Civil Procedure Rules 1998 ("CPR"), which is appropriate where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact: CPR r 8.1(2). The claimants relied upon a number of statutory provisions, including section 187B of the Town and Country Planning Act 1990, under which the court can grant an injunction to restrain an actual or apprehended breach of planning control, and in some cases also upon common law causes of action, including trespass to land.

7 The claim forms fell into two broad categories. First, there were claims directed against defendants described simply as "persons unknown", either alone or together with named defendants. Secondly, there were claims against unnamed defendants who were described, in almost all cases, by

reference to the future activities which the claimant sought to prevent, either alone or together with named defendants. Examples included "persons unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth", "persons unknown entering or remaining without planning consent on those parcels of land coloured in Schedule 2 of the draft order", and "persons unknown who enter and/or occupy any of the locations listed in this order for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphernalia".

8 In most cases, the local authorities obtained an order for service of the claim forms by alternative means under CPR r 6.15, usually by fixing copies in a prominent location at each site, or by fixing there a copy of the injunction with a notice that the claim form could be obtained from the claimant's offices. Injunctions were obtained, invariably on without notice applications where the defendants were unnamed, and were similarly displayed. They contained a variety of provisions concerning review or liberty to apply. Some injunctions were of fixed duration. Others had no specified end date. Some were expressed to be interim injunctions. Others were agreed or held by Nicklin J to be final injunctions. Some had a power of arrest attached, meaning that any person who acted contrary to the injunction was liable to immediate arrest.

9 As we have explained, the injunctions were addressed in some cases simply to "persons unknown", and in other cases to persons described by reference to the activities from which they were required to refrain: for example, "persons unknown occupying the sites listed in this order". The respondents were among the local authorities who obtained such injunctions.

10 From around mid-2020, applications were made in some of the claims to extend or vary injunctions of fixed duration which were nearing their end. After a hearing in one such case, Nicklin J decided, with the concurrence of the President of the Queen's Bench Division and the Judge in Charge of the Queen's Bench Civil List, that there was a need for review of all such injunctions. After case management, in the course of which many of the claims were discontinued, there remained 16 local authorities (or groups of local authorities) actively pursuing claims. The appellants were given permission to intervene. A hearing was then fixed at which four issues of principle were to be determined. Following the hearing, Nicklin J determined those issues: *Barking and Dagenham London Borough Council v Persons Unknown* [2022] JPL 43.

11 Putting the matter broadly at this stage, Nicklin J concluded, in the light particularly of the decision of the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 ("*Canada Goose*"), that interim injunctions could be granted against persons unknown, but that final injunctions could be granted only against parties who had been identified and had had an opportunity to contest the final order sought. If the relevant local authority could identify anyone in the category of "persons unknown" at the time the final order was granted, then the final injunction bound each person who could be identified. If not, then the final injunction granted against "persons unknown" bound no-one. In the light of that conclusion, Nicklin J

A discharged the final injunctions either in full or in so far as they were addressed to any person falling within the definition of "persons unknown" who was not a party to the proceedings at the date when the final order was granted.

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

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

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

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

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

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

F *2. The legal background*

14 Before considering the development of "newcomer" injunctions—that is to say, injunctions designed to bind persons who are not identifiable as parties to the proceedings at the time when the injunction is granted—it may be helpful to identify some of the issues of principle which are raised by such injunctions. They can be summarised as follows:

G (1) Are newcomers parties to the proceedings at the time when the injunction is granted? If not, is it possible to obtain an injunction against a non-party? If they are not parties at that point, when (if ever) and how do they become parties?

(2) Does the claimant have a cause of action against newcomers at the time when the injunction is granted? If not, is it possible to obtain an injunction without having an existing cause of action against the person enjoined?

H (3) Can a claim form properly describe the defendants as persons unknown, with or without a description referring to the conduct sought to be enjoined? Can an injunction properly be addressed to persons so described? If the description refers to the conduct which is prohibited, can the defendants properly be described, and can an injunction properly be

issued, in terms which mean that persons do not become bound by the injunction until they infringe it? A

(4) How, if at all, can such a claim form be served?

15 This is not the stage at which to consider these questions, but it may be helpful to explain the legal context in which they arise, before turning to the authorities through which the law relating to newcomer injunctions has developed in recent times. We will explain at this stage the legal background, prior to the recent authorities, in relation to (1) the jurisdiction to grant injunctions, (2) injunctions against non-parties, (3) injunctions in the absence of a cause of action, (4) the commencement of proceedings against unidentified defendants, and (5) the service of proceedings on unidentified defendants. B

(1) The jurisdiction to grant injunctions C

16 As Lord Scott of Foscote commented in *Fourie v Le Roux* [2007] 1 WLR 320, para 25, in a speech with which the other Law Lords agreed, jurisdiction is a word of some ambiguity. Lord Scott cited with approval Pickford LJ's remark in *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536, 563 that "the only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it is raised". However, as Pickford LJ went on to observe, the word is often used in another sense: "that although the court has power to decide the question it will not according to its settled practice do so except in a certain way and under certain circumstances". In order to avoid confusion, it is necessary to distinguish between these two senses of the word: between the power to decide—in this context, the power to grant an injunction—and the principles and practice governing the exercise of that power. D E

17 The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited: Spry, *Equitable Remedies*, 9th ed (2014) ("*Spry*"), p 333, cited with approval in, among other authorities, *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775, paras 20–21 and *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1, para 47 (both citing the equivalent passage in the 5th ed (1997)), and *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 ("*Broad Idea*"), para 57. The breadth of the court's power is reflected in the terms of section 37(1) of the 1981 Act, which states that: "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so." As Lord Scott explained in *Fourie v Le Roux* (ibid), that provision, like its statutory predecessors, merely confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) ("the 1873 Act") and still exists. That power was transferred to the High Court by section 16 of the 1873 Act and has been preserved by section 18(2) of the Supreme Court of Judicature (Consolidation) Act 1925 and section 19(2)(b) of the 1981 Act. F G H

A **18** It is also relevant in the context of this appeal to note that, as a court of inherent jurisdiction, the High Court possesses the power, and bears the responsibility, to act so as to maintain the rule of law.

19 Like any judicial power, the power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court. Accordingly, as Lord Mustill observed in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361:

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> "Although the words of section 37(1) [of the 1981 Act] and its forebears are very wide it is firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their application is subject to severe constraints."

C Nevertheless, the principles and practice governing the exercise of the power to grant injunctions need to and do evolve over time as circumstances change. As Lord Scott observed in *Fourie v Le Roux* at para 30, practice has not stood still and is unrecognisable from the practice which existed before the 1873 Act.

20 The point is illustrated by the development in recent times of several new kinds of injunction in response to the emergence of particular problems: for example, the *Mareva* or freezing injunction, named after one of the early cases in which such an order was made (*Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509); the search order or *Anton Piller* order, again named after one of the early cases in which such an order was made (*Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55); the *Norwich Pharmacal* order, also known as the third party disclosure order, which takes its name from the case in which the basis for such an order was authoritatively established (*Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133); the *Bankers Trust* order, which is an injunction of the kind granted in *Bankers Trust Co v Shapira* [1980] 1 WLR 1274; the internet blocking order, upheld in *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 (para 17 above), and approved by this court in the same case, on an appeal on the question of costs: *Cartier International AG v British Telecommunications plc* [2018] 1 WLR 3259, para 15; the anti-suit injunction (and its offspring, the anti-anti-suit injunction), which has become an important remedy as globalisation has resulted in parties seeking tactical advantages in different jurisdictions; and the related injunction to restrain the presentation or advertisement of a winding-up petition.

D E F G

21 It has often been recognised that the width and flexibility of the equitable jurisdiction to issue injunctions are not to be cut down by categorisations based on previous practice. In *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, for example, Lord Scarman stated at p 573, in a speech with which the other Law Lords agreed, that "the width and flexibility of equity are not to be undermined by categorisation". To similar effect, in *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24, Lord Goff of Chieveley, with whom Lord Mackay of Clashfern agreed, stated at p 44:

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

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

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

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

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

(2) Injunctions against non-parties

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

24 Where the defendants are described in a claim form, or an injunction describes the persons enjoined, simply as persons unknown, the entire world falls within the description. But the entire human race cannot be regarded as being parties to the proceedings: they are not before the court, so that they are subject to its powers. It is only when individuals are served with the claim form that they ordinarily become parties in that sense, although is also possible for persons to apply to become parties in the absence of service. As will appear, service can be problematical where the identities of the intended defendants are unknown. Furthermore, as a general rule, for any injunction to be enforceable, the persons whom it enjoins, if unnamed, must be described with sufficient clarity to identify those included and those excluded.

25 Where, as in most newcomer injunctions, the persons enjoined are described by reference to the conduct prohibited, particular individuals do not fall within that description until they behave in that way. The result is

A that the injunction is in substance addressed to the entire world, since anyone in the world may potentially fall within the description of the persons enjoined. But persons may be affected by the injunction in ways which potentially have different legal consequences. For example, an injunction designed to deter Travellers from camping at a particular location may be addressed to persons unknown camping there (notwithstanding that B no-one is currently doing so) and may restrain them from camping there. If Travellers elsewhere learn about the injunction, they may consequently decide not to go to the site. Other Travellers, unaware of the injunction, may arrive at the site, and then become aware of the claim form and the injunction by virtue of their being displayed in a prominent position. Some of them may then proceed to camp on the site in breach of the injunction. Others may obey the injunction and go elsewhere. At what point, if any, do C Travellers in each of these categories become parties to the proceedings? At what point, if any, are they enjoined? At what point, if any, are they served (if the displaying of the documents is authorised as alternative service)? It will be necessary to return to these questions. However these questions are answered, although each of these groups of Travellers is affected by the injunction, none of them can be regarded as being party to the proceedings at D the time when the injunction is granted, as they do not then answer to the description of the persons enjoined and nothing has happened to bring them within the jurisdiction of the court.

26 If, then, newcomers are not parties to the proceedings at the time when the injunctions are granted, it follows that newcomer injunctions depart from the court's usual practice. The ordinary rule is that "you cannot E have an injunction except against a party to the suit": *Iveson v Harris* (1802) 7 Ves 251, 257. That is not, however, an absolute rule: Lord Eldon LC was speaking at a time when the scope of injunctions was more closely circumscribed than it is today. In addition to the undoubted jurisdiction to grant interim injunctions prior to the service (or even the issue) of proceedings, a number of other exceptions have been created in response to F the requirements of justice. Each of these should be briefly described, as it will be necessary at a later point to consider whether newcomer injunctions fall into any of these established categories, or display analogous features.

(i) Representative proceedings

27 The general rule of practice in England and Wales used to be that the G defendants to proceedings must be named, and that even a description of them would not suffice: *Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25; *In re Wykeham Terrace, Brighton, Sussex, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204. The only exception in the Rules of the Supreme Court ("RSC") concerned summary proceedings for the possession of land: RSC Ord 113.

28 However, it has long been established that in appropriate H circumstances relief can be sought against representative defendants, with other unnamed persons being described in the order in general terms. Although formerly recognised by RSC Ord 15, r 12, and currently the subject of rule 19.8 of the CPR, this form of procedure has existed for several centuries and was developed by the Court of Chancery. Its rationale was

explained by Sir Thomas Plumer MR in *Meux v Maltby* (1818) 2 Swans 277, 281–282:

> "The general rule, which requires the Plaintiff to bring before the Court all the parties interested in the subject in question, admits of exceptions. The liberality of this Court has long held, that there is of necessity an exception to the general rule, when a failure of justice would ensue from its enforcement."

Those who are represented need not be individually named or identified. Nor need they be served. They are not parties to the proceedings: CPR r 19.8(4)(b). Nevertheless, an injunction can be granted against the whole class of defendants, named and unnamed, and the unnamed defendants are bound in equity by any order made: *Adair v The New River Co* (1805) 11 Ves 429, 445; CPR r 19.8(4)(a).

29 A representative action may in some circumstances be a suitable means of restraining wrongdoing by individuals who cannot be identified. It can therefore, in such circumstances, provide an alternative remedy to an injunction against "persons unknown": see, for example, *M Michaels (Furriers) Ltd v Askew* [1983] Lexis Citation 198, concerned with picketing; *EMI Records Ltd v Kudhail* [1985] FSR 36, concerned with copyright infringement; and *Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB), concerned with environmental protesters.

30 However, there are a number of principles which restrict the circumstances in which relief can be obtained by means of a representative action. In the first place, the claimant has to be able to identify at least one individual against whom a claim can be brought as a representative of all others likely to interfere with his or her rights. Secondly, the named defendant and those represented must have the same interest. In practice, compliance with that requirement has proved to be difficult where those sought to be represented are not a homogeneous group: see, for example, *News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2)* [1987] ICR 181, concerned with industrial action, and *United Kingdom Nirex Ltd v Barton* [1986] Lexis Citation 644, concerned with protests. In addition, since those represented are not party to the proceedings, an injunction cannot be enforced against them without the permission of the court (CPR r 19.8(4)(b)): something which, it has been held, cannot be granted before the individuals in question have been identified and have had an opportunity to make representations: see, for example, *RWE Npower plc v Carrol* [2007] EWHC 947 (QB).

(ii) Wardship proceedings

31 Another situation where orders have been made against non-parties is where the court has been exercising its wardship jurisdiction. In *In re X (A Minor) (Wardship: Injunction)* [1984] 1 WLR 1422 the court protected the welfare of a ward of court (the daughter of an individual who had been convicted of manslaughter as a child) by making an order prohibiting any publication of the present identity of the ward or her parents. The order bound everyone, whether a party to the proceedings or not: in other words, it was an order contra mundum. Similar orders have been made in subsequent cases: see, for example, *In re M and N (Minors) (Wardship:*

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

(iii) Injunctions to protect human rights

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

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

(iv) Reporting restrictions

34 Reporting restrictions are prohibitions on the publication of information about court proceedings, directed at the world at large. They are not injunctions in the same sense as the orders which are our primary concern, but they are relevant as further examples of orders granted by courts restraining conduct by the world at large. Such orders may be made under common law powers or may have a statutory basis. They generally prohibit the publication of information about the proceedings in which they are made (e g as to the identity of a witness). A person will commit a contempt of court if, knowing of the order, he frustrates its purpose by publishing the information in question: see, for example, *In re F (orse A) (A Minor) (Publication of Information)* [1977] Fam 58 and *Attorney General v Leveller Magazine Ltd* [1979] AC 440.

(v) Embargoes on draft judgments

35 It is the practice of some courts to circulate copies of their draft judgments to the parties' legal representatives, subject to a prohibition on further, unauthorised, disclosure. The order therefore applies directly to non-parties to the proceedings: see, for example, *Attorney General v Crosland* [2021] 4 WLR 103 and [2022] 1 WLR 367. Like reporting restrictions, such orders are not equitable injunctions, but they are relevant as further examples of orders directed against non-parties.

(vi) The effect of injunctions on non-parties

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

37 If non-parties are not enjoined by the order, it follows that they are not bound to obey it. They can nevertheless be held in contempt of court if they knowingly act in the manner prohibited by the injunction, even if they have not aided or abetted any breach by the defendant. As it was put by Lord Oliver of Aylmerton in *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 223, there is contempt where a non-party "frustrates, thwarts, or *subverts the purpose* of the court's order and thereby interferes with the due administration of justice in the particular action" (emphasis in original).

38 One of the arguments advanced before the House of Lords in *Attorney General v Times Newspapers Ltd* was that to invoke the jurisdiction in contempt against a person who was neither a party nor an aider or abettor of a breach of the order by the defendant, but who had done what the defendant in the action was forbidden by the order to do was, in effect, to make the order operate in rem or contra mundum. That, it was argued, was a purpose which the court could not legitimately achieve, since its orders were only properly made inter partes.

39 The argument was rejected. Lord Oliver acknowledged at p 224 that "Equity, in general, acts in personam and there are respectable authorities for the proposition that injunctions, whether mandatory or prohibitory, operate inter partes and should be so expressed (see *Iveson v Harris*; *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406)". Nevertheless, the appellants' argument confused two different things: the scope of an order inter partes, and the proper administration of justice (pp 224–225):

> "Once it is accepted, as it seems to me the authorities compel, that contempt (to use Lord Russell of Killowen's words [in *Attorney General v Leveller Magazine Ltd* at p 468]) 'need not involve disobedience to an order binding upon the alleged contemnor' the potential effect of the order contra mundum is an inevitable consequence."

40 In answer to the objection that the non-party who learns of the order has not been heard by the court and has therefore not had the opportunity to put forward any arguments which he may have, Lord Oliver responded at p 224 that he was at liberty to apply to the court:

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

A opportunity to object or to approach the court and to argue that it should be free to publish where the defendants were not, just as a person affected by notice of, for example, a *Mareva* injunction is able to, and frequently does, apply to the court for directions as to the disposition of assets in his hands which may or may not be subject to the terms of the order."

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

41 There is accordingly a distinction in legal principle between being bound by an injunction as a party to the action and therefore being in C contempt of court for disobeying it and being in contempt of court as a non-party who, by knowingly acting contrary to the order, subverts the court's purpose and thereby interferes with the administration of justice. Nevertheless, cases such as *Attorney General v Times Newspapers Ltd* and *Attorney General v Punch Ltd* [2003] 1 AC 1046, and the daily impact of freezing injunctions on non-party financial institutions (following *Z Ltd v A-Z and AA-LL* [1982] QB 558), indicate that the differences in the legal D analysis can be of limited practical significance. Indeed, since non-parties can be found in contempt of court for acting contrary to an injunction, it has been recognised that it can be appropriate to refer to non-parties in an injunction in order to indicate the breadth of its binding effect: see, for example, *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, 407; *Attorney General v Newspaper Publishing plc* [1988] Ch 333, E 387–388.

42 Prior to the developments discussed below, it can therefore be seen that while the courts had generally affirmed the position that only parties to an action were bound by an injunction, a number of exceptions to that principle had been recognised. Some of the examples given also demonstrate that the court can, in appropriate circumstances, make orders which prohibit the world at large from behaving in a specified manner. It is also F relevant in the present context to bear in mind that even where an injunction enjoins a named individual, the public at large are bound not knowingly to subvert it.

(3) Injunctions in the absence of a cause of action

43 An injunction against newcomers purports to restrain the conduct of G persons against whom there is no existing cause of action at the time when the order is granted: it is addressed to persons who may not at that time have formed any intention to act in the manner prohibited, let alone threatened to take or taken any steps towards doing so. That might be thought to conflict with the principle that an injunction must be founded on an existing cause of action against the person enjoined, as stated, for example, by Lord Diplock in *Owners of cargo lately laden on board the Siskina v Distos Cia Naviera SA* H [1979] AC 210 ("*The Siskina*"), at p 256. There has been a gradual but growing reaction against that reasoning (which Lord Diplock himself recognised was too narrowly stated: *British Airways Board v Laker Airways Ltd* [1985] AC 58, 81) over the past 40 years, culminating in the recent decision in *Broad Idea* [2023] AC 389, cited in para 17 above, where the

Judicial Committee of the Privy Council rejected such a rigid doctrine and asserted the court's governance of its own practice. It is now well established that the grant of injunctive relief is not always conditional on the existence of a cause of action. Again, it is relevant to consider some established categories of injunction against "no cause of action defendants" (as they are sometimes described) in order to see whether newcomer injunctions fall into an existing legitimate class, or, if not, whether they display analogous features.

44 One long-established exception is an injunction granted on the application of the Attorney General, acting either ex officio or through another person known as a relator, so as to ensure that the defendant obeys the law (*Attorney General v Harris* [1961] 1 QB 74; *Attorney General v Chaudry* [1971] 1 WLR 1614).

45 The statutory provisions relied on by the local authorities in the present case similarly enable them to seek injunctions in the public interest. All the respondent local authorities rely on section 222 of the Local Government Act 1972, which confers on local authorities the power to bring proceedings to enforce obedience to public law, without the involvement of the Attorney General: *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754. Where an injunction is granted in proceedings under section 222, a power of arrest may be attached under section 27 of the Police and Justice Act 2006, provided certain conditions are met. Most of the respondents also rely on section 187B of the Town and Country Planning Act 1990, which enables a local authority to apply for an injunction to restrain any actual or apprehended breach of planning control. Some of the respondents have also relied on section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, which enables the court to grant an injunction (on the application of, inter alia, a local authority: see section 2) for the purpose of preventing the respondent from engaging in anti-social behaviour. Again, a power of arrest can be attached: see section 4. One of the respondents also relies on section 130 of the Highways Act 1980, which enables a local authority to institute legal proceedings for the purpose of protecting the rights of the public to the use and enjoyment of highways.

46 Another exception, of great importance in modern commercial practice, is the *Mareva* or freezing injunction. In its basic form, this type of order restrains the defendant from disposing of his assets. However, since assets are commonly held by banks and other financial institutions, the principal effect of the injunction in practice is generally to bind non-parties, as explained earlier. The order is ordinarily made on a without notice application. It differs from a traditional interim injunction: its purpose is not to prevent the commission of a wrong which is the subject of a cause of action, but to facilitate the enforcement of an actual or prospective judgment or other order. Since it can also be issued to assist the enforcement of a decree arbitral, or the judgment of a foreign court, or an order for costs, it need not be ancillary to a cause of action in relation to which the court making the order has jurisdiction to grant substantive relief, or indeed ancillary to a cause of action at all (as where it is granted in support of an order for costs). Even where the claimant has a cause of action against one defendant, a freezing injunction can in certain limited circumstances be granted against another defendant, such as a bank, against which the

A claimant does not assert a cause of action (*TSB Private Bank International SA v Chabra* [1992] 1 WLR 231; *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 and *Revenue and Customs Comrs v Egleton* [2007] Bus LR 44).

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

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

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

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

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

51 The commencement of proceedings is an essentially formal step, normally involving the issue of a claim form in an appropriate court. The forms prescribed in the CPR include a space in which to designate the claimant and the defendant. As was observed in *Cameron v Hussain* [2019] 1 WLR 1471 ("*Cameron*"), para 12, that is a format equally consistent with their being designated by name or by description. As was explained earlier, the claims in the present case were brought under Part 8 of the CPR. CPR r 8.2A(1) provides that a practice direction "may set out circumstances in which a claim form may be issued under this Part without naming a defendant". A number of practice directions set out such circumstances, including Practice Direction 49E, paras 21.1–21.10 of which concern applications under certain statutory provisions. They include section 187B of the Town and Country Planning Act 1990, which concerns proceedings for an injunction to restrain "any actual or apprehended breach of planning control". As explained in para 45 above, section 187B was relied on in most of the present cases. CPR r 55.3(4) also permits a claim for possession of property to be brought against "persons unknown" where the names of the trespassers are unknown.

52 The only requirement for a name is contained in paragraph 4.1 of Practice Direction 7A, which states that a claim form should state the full name of each party. In *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 ("*Bloomsbury*"), it was said that the words "should state" in paragraph 4.1 were not mandatory but imported a discretion to depart from the practice in appropriate cases. However, the point is not of critical importance. As was stated in *Cameron,* para 12, a practice direction is no more than guidance on matters of practice issued under the authority of the heads of division. It has no statutory force and cannot alter the general law.

53 As we have explained at paras 27–33 above, there are undoubtedly circumstances in which proceedings may be validly commenced although the defendant is not named in the claim form, in addition to those mentioned in the rules and practice directions mentioned above. All of those examples—representative defendants, the wardship jurisdiction, and the principle established in the *Venables* case [2001] Fam 430—might however be said to be special in some way, and to depend on a principle which is not of broader application.

54 A wider scope for proceedings against unnamed defendants emerged in *Bloomsbury*, where it was held that there is no requirement that the defendant must be named. The overriding objective of the CPR is to enable the court to deal with cases justly and at proportionate cost. Since this objective is inconsistent with an undue reliance on form over substance, the joinder of a defendant by description was held to be permissible, provided that the description was "sufficiently certain as to identify both those who are included and those who are not" (para 21). It will be necessary to return to that case, and also to consider more recent decisions concerned with proceedings brought against unnamed persons.

55 Service of the claim form is a matter of greater significance. Although the court may exceptionally dispense with service, as explained below, and may if necessary grant interlocutory relief, such as interim injunctions, before service, as a general rule service of originating process is

the act by which the defendant is subjected to the court's jurisdiction, in the sense of its power to make orders against him or her (*Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502, 523; *Barton v Wright Hassall LLP* [2018] 1 WLR 1119). Service is significant for many reasons. One of the most important is that it is a general requirement of justice that proceedings should be brought to the notice of parties whose interests are affected before any order is made against them (other than in an emergency), so that they have an opportunity to be heard. Service of the claim form on the defendant is the means by which such notice is normally given. It is also normally by means of service of the order that an injunction is brought to the notice of the defendant, so that he or she is bound to comply with it. But it is generally sufficient that the defendant is aware of the injunction at the time of the alleged breach of it.

56 Conventional methods of service may be impractical where defendants cannot be identified. However, alternative methods of service can be permitted under CPR r 6.15. In exceptional circumstances (for example, where the defendant has deliberately avoided identification and substituted service is impractical), the court has the power to dispense with service, under CPR r 6.16.

3. The development of newcomer injunctions to restrain unauthorised occupation and use of land—the impact of Cameron and Canada Goose

57 The years from 2003 saw a rapid development of the practice of granting injunctions purporting to prohibit persons, described as persons unknown, who were not parties to the proceedings when the order was made, from engaging in specified activities including, of most direct relevance to this appeal, occupying and using land without the appropriate consent. This is just one of the areas in which the court has demonstrated a preparedness to grant an injunction, subject to appropriate safeguards, against persons who could not be identified, had not been served and were not party to the proceedings at the date of the order.

(1) Bloomsbury

58 One of the earliest injunctions of this kind was granted in the context of the protection of intellectual property rights in connection with the forthcoming publication of a novel. The *Bloomsbury* case [2003] 1 WLR 1633, cited at para 52 above, is one of two decisions of Sir Andrew Morritt V-C in 2003 which bear on this appeal. There had been a theft of several pre-publication copies of a new Harry Potter novel, some of which had been offered to national newspapers ahead of the launch date. By the time of the hearing of a much adjourned interim application most but not all of the thieves had been arrested, but the claimant publisher wished to have continued injunctions, until the date a month later when the book was due to be published, against unnamed further persons, described as the person or persons who had offered a copy of the book to the three named newspapers and the person or persons in physical possession of the book without the consent of the claimants.

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

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

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

He regarded the problem as essentially procedural, and as having been cured by the introduction of the CPR. He concluded, at para 21:

> "The crucial point, as it seems to me, is that the description used must be sufficiently certain as to identify both those who are included and those who are not. If that test is satisfied then it does not seem to me to matter that the description may apply to no one or to more than one person nor that there is no further element of subsequent identification whether by service or otherwise."

(2) Hampshire Waste Services

60 Later that same year, Sir Andrew Morritt V-C made another order against persons unknown, this time in a protester case, *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2004] Env LR 9 ("*Hampshire Waste Services*"). The claimants, operators of a number of waste incinerator sites which fed power to the national grid, sought an injunction to restrain protesters from entering any of various named sites in connection with a "Global Day of Action against Incinerators" some six days later. Previous actions of this kind presented a danger to the protesters and to others and had resulted in the plants having to be shut down. The police were, it seemed, largely powerless to prevent these threatened activities. The Vice-Chancellor, having referred to *Bloomsbury*, had no doubt the order was justified save for one important matter: the claimants were unable to identify any of the protesters to whom the order would be directed or upon whom proceedings could be served. Nevertheless, the Vice-Chancellor was satisfied that, in circumstances such as these, joinder by description was permissible, that the intended defendants should be described as "persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites at [specified addresses] in connection with the 'Global Day of Action Against Incinerators' (or similarly described event) on or around 14 July 2003", and that posting notices around the sites would amount to effective substituted service. The court should not refuse an application simply because difficulties in enforcement were envisaged. It was, however, necessary that any person who wished to do so should be able promptly to apply for the order to be discharged, and that was allowed for. That being so, there was no need for a formal return date.

61 Whereas in *Bloomsbury* the injunction was directed against a small number of individuals who were at least theoretically capable of being identified, the injunction granted in *Hampshire Waste Services* was effectively made against the world: anyone might potentially have entered or remained on any of the sites in question on or around the specified date. This

A is a common if not invariable feature of newcomer injunctions. Although the number of persons likely to engage in the prohibited conduct will plainly depend on the circumstances, and will usually be relatively small, such orders bear upon, and enjoin, anyone in the world who does so.

(3) Gammell

B **62** The *Bloomsbury* decision has been seen as opening up a wide jurisdiction. Indeed, Lord Sumption observed in *Cameron*, para 11, that it had regularly been invoked in the years which followed in a variety of different contexts, mainly concerning the abuse of the internet, and trespasses and other torts committed by protesters, demonstrators and paparazzi. Cases in the former context concerned defamation, theft of C information by hacking, blackmail and theft of funds. But it is upon cases and newcomer injunctions in the second context that we must now focus, for they include cases involving protesters, such as *Hampshire Waste Services*, and also those involving Gypsies and Travellers, and therefore have a particular bearing on these appeals and the issues to which they give rise.

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

64 The material aspects of the two cases are substantially similar, and it will suffice for present purposes to focus on the *South Cambridgeshire* case. The Court of Appeal (Brooke and Clarke LJJ) had earlier granted an E injunction under section 187B of the Town and Country Planning Act 1990 against persons described as "persons unknown . . . causing or permitting hardcore to be deposited . . . caravans, mobile homes or other forms of residential accommodation to be stationed . . . or existing caravans, mobile homes or other forms of residential accommodation . . . to be occupied" on land adjacent to a Gypsy encampment in rural Cambridgeshire: *South* F *Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 ("*South Cambs*"). The order restrained the persons so described from behaving in the manner set out in that description. Service of the claim form and the injunction was effected by placing them in clear plastic envelopes in a prominent position on the relevant land.

65 Several months later, Ms Gammell, without securing or applying for the necessary planning permission or making an application to set the G injunction aside or vary its terms, proceeded to station her caravans on the land. She was therefore a newcomer within the meaning of that word as used in this appeal, since she was neither a defendant nor on notice of the application for the injunction nor on the site when the injunction was granted. She was served with the injunction and its effect was explained to her, but she continued to station the caravans on the land. On an H application for committal by the local authority she was found at first instance to have been in contempt. Sentencing was adjourned to enable her to appeal against the judge's refusal to permit her to be added as a defendant to the proceedings, for the purpose of enabling her to argue that the injunction should not have the effect of placing her in contempt until a

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

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick LJJ agreed, stated that each of the appellants became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Ms Gammell had therefore already become a defendant when she stationed her caravan on the site. Her proper course (and that of any newcomer in the same situation) was to make a prompt application to vary or discharge the injunction as against her (which she had not done) and, in the meantime, to comply with the injunction. The individualised proportionality exercise could then be carried out with regard to her particular circumstances on the hearing of the application to vary or discharge, and might in any event be relevant to sanction. This reasoning, and in particular the notion that a newcomer becomes a defendant by committing a breach of the injunction, has been subject to detailed and sustained criticism by the appellants in the course of this appeal, and this is a matter to which we will return.

(4) Meier

67 We should also mention a decision of this court from about the same time concerning Travellers who had set up an unauthorised encampment in wooded areas managed by the Forestry Commission and owned by the Secretary of State for the Environment, Food and Rural Affairs: *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 ("*Meier*"). This was in one sense a conventional case: the Secretary of State issued proceedings alleging trespass by the occupying Travellers and sought an order for possession of the occupied sites. More unusual (and ultimately unsuccessful) was the application for an order for possession against the Travellers in respect of other land which was wholly detached from the land they were occupying. This was wrong in principle for it was simply not possible (even on a precautionary basis) to make an order requiring persons to give immediate possession of woodland of which they were *not* in occupation, and which was wholly detached from the woodland of which they *were* in occupation (as Lord Neuberger of Abbotsbury MR explained at para 75). But that did not mean the courts were powerless to frame a remedy. The court upheld an injunction granted by the Court of Appeal against the defendants, including "persons names unknown", restraining them from entering the woodland which they had not yet occupied. Since it was not argued that the injunction was defective, we do not attach great significance to Lord Neuberger MR's conclusion at para 84 that it had not been established that there was an error of principle which led to its grant. Nevertheless, it is notable that Lord Rodger of Earlsferry JSC expressed the view that the injunction had been rightly granted, and cited the decisions of Sir Andrew Morritt V-C in *Bloomsbury* and *Hampshire Waste Services*, and the grant of the injunction in the *South Cambs* case, without disapproval (at paras 2–3).

(5) Later cases concerning Traveller injunctions

68 Injunctions in the Traveller and Gypsy context were targeted first at actual trespass on land. Typically, the local authorities would name as actual or intended defendants the particular individuals they had been able to identify, and then would seek additional relief against "persons unknown", these being persons who were alleged to be unlawfully occupying the land but who could not at that stage be identified by name, although often they could be identified by some form of description. But before long, many local authorities began to take a bolder line and claims were brought simply against "persons unknown".

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

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

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

72 Following the decision in *Harlow District Council v Stokes* and an assessment of the efficacy of the orders made, a large number of other local authorities applied for and were granted similar injunctions over the period from 2017–2019, with the result that by 2020 there were in excess of 35 such injunctions in existence. By way of example, in *Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019] EWHC 1903 (QB), the injunction did not identify any named defendants.

73 All of these injunctions had features of relevance to the issues raised by this appeal. Sometimes the order identified the persons to whom it was directed by reference to a particular activity, such as "persons unknown occupying land" or "persons unknown depositing waste". In many of the cases, injunctions were granted against persons identified only as those who might in future commit the acts which the injunction prohibited (e g *UK Oil and Gas Investments plc v Persons Unknown* [2019] JPL 161). In other cases, the defendants were referred to only as "persons unknown". The injunctions remained in place for a considerable period of time and, on occasion, for years. Further, the geographical reach of the injunctions was extensive, indeed often borough-wide. They were usually granted without the court hearing any adversarial argument, and without provision for an early return date.

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

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

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

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

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

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

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

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

which has inevitably involved weighing all of these considerations, including the relevance of the breadth of the injunctions sought and the fact that the injunctions were directed against "persons unknown", in deciding whether they should be granted and, if so, for how long; and whether they should be made subject to particular conditions and safeguards and, if so, what those conditions and safeguards should be.

(6) Cameron

80 The decision of the Supreme Court in *Cameron* [2019] 1 WLR 1471 (para 51 above) highlighted further and more fundamental considerations for this developing jurisprudence, and it is a decision to which we must return for it forms an important element of the case developed before us on behalf of the appellants. At this stage it is sufficient to explain that the claimant suffered personal injuries and damage to her car in a collision with another vehicle. The driver of that vehicle failed to stop and fled the scene. The claimant then brought an action for damages against the registered keeper, but it transpired that that person had not been driving the vehicle at the time of the accident. In addition, although there was an insurance policy in force in respect of the vehicle, the insured person was fictitious. The claimant could not sue the insurers, as the relevant legislation required that the driver was a person insured under the policy. The claimant could have sought compensation from the Motor Insurers' Bureau, which compensates the victims of uninsured motorists, but for reasons which were unclear she applied instead to amend her claim to substitute for the registered keeper the person unknown who was driving the car at the time of the collision, so as to obtain a judgment on which the insurer would be liable under section 151 of the Road Traffic Act 1988 ("the 1988 Act"). The judge refused the application.

81 The Court of Appeal allowed the claimant's appeal. In the Court of Appeal's view, it would be consistent with the CPR and the policy of the 1988 Act for proceedings to be brought and pursued against the unnamed driver, suitably identified by an appropriate description, in order that the insurer could be made liable under section 151 of the 1988 Act for any judgment obtained against that driver.

82 A further appeal by the insurer to the Supreme Court was allowed unanimously. Lord Sumption considered in some detail the extent of any right in English law to sue unnamed persons. He referred to the decision in *Bloomsbury* and the cases which followed, many of which we have already mentioned. Then, at para 13, he distinguished between two kinds of case in which the defendant could not be named, and to which different considerations applied. The first comprised anonymous defendants who were identifiable but whose names were unknown. Squatters occupying a property were, for example, identifiable by their location though they could not be named. The second comprised defendants, such as most hit and run drivers, who were not only anonymous but could not be identified.

83 Lord Sumption proceeded to explain that permissible modes of service had been broadened considerably over time but that the object of all of these modes of service was the same, namely to enable the court to be satisfied that one or other of the methods used had either put the defendant in a position to ascertain the contents of the claim or was reasonably likely to

enable him to do so within an appropriate period of time. The purpose of service (and substituted service) was to inform the defendant of the contents of the claim and the nature of the claimant's case against him; to give him notice that the court, being a court of competent jurisdiction, would in due course proceed to decide the merits of that claim; and to give him an opportunity to be heard and to present his case before the court. It followed that it was not possible to issue or amend a claim form so as to sue an unnamed defendant if it was conceptually impossible to bring the claim to his attention.

84 In the *Cameron* case there was no basis for inferring that the offending driver was aware of the proceedings. Service on the insurer did not and would not without more constitute service on that offending driver (nor was the insurer directly liable); alternative service on the insurer could not be expected to reach the driver; and it could not be said that the driver was trying to evade service for it had not been shown that he even knew that proceedings had been or were likely to be brought against him. Further, it had not been established that this was an appropriate case in which to dispense with service altogether for any other reason. It followed that the driver could not be sued under the description relied upon by the claimant.

85 This important decision was followed in a relatively short space of time by a series of five appeals to and decisions of the Court of Appeal concerning the way in which and the extent to which proceedings for injunctive relief against persons unknown, including newcomers, could be used to restrict trespass by constantly changing communities of Travellers, Gypsies and protesters. It is convenient to deal with them in broadly chronological order.

(7) Ineos

86 In *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, the claimants, a group of companies and individuals connected with the business of shale and gas exploration by fracking, sought interim injunctions to restrain what they contended were threatened and potentially unlawful acts of protest, including trespass, nuisance and harassment, before they occurred. The judge was satisfied on the evidence that there was a real and imminent threat of unlawful activity if he did not make an order pending trial and it was likely that a similar order would be made at trial. He therefore made the orders sought by the claimants, save in relation to harassment.

87 On appeal to the Court of Appeal it was argued, among other things, that the judge was wrong to grant injunctions against persons unknown and that he had failed properly to consider whether the claimants were likely to obtain the relief they sought at trial and whether it was appropriate to grant an injunction against persons unknown, including newcomers, before they had had an opportunity to be heard.

88 These arguments were addressed head on by Longmore LJ, with whom the other members of the court agreed. He rejected the submission that a claimant could never sue persons unknown unless they were identifiable at the time the claim form was issued. He also rejected, as too absolutist, the submission that an injunction could not be granted to restrain newcomers from engaging in the offending activity, that is to say persons who might only

form the intention to engage in the activity at some later date. Lord Sumption's categorisation of persons who might properly be sued was not intended to exclude newcomers. To the contrary, Longmore LJ continued, Lord Sumption appeared rather to approve the decision in *Bloomsbury* and he had expressed no disapproval of the decision in *Hampshire Waste Services*.

89 Longmore LJ went on tentatively to frame the requirements of an injunction against unknown persons, including newcomers, in a characteristically helpful and practical way. He did so in these terms (at para 34): (1) there must be a sufficiently real and imminent risk of a tort being committed to justify quia timet relief; (2) it is impossible to name the persons who are likely to commit the tort unless restrained; (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order; (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; (5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and (6) the injunction should have clear geographical and temporal limits.

(8) Bromley

90 The issue of unauthorised encampments by Gypsies and Travellers was considered by the Court of Appeal a short time later in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. This was an appeal against the refusal by the High Court to grant a five-year de facto borough-wide prohibition of encampment and entry or occupation of accessible public spaces in Bromley except cemeteries and highways. The final injunction sought was directed at "persons unknown" but it was common ground that it was aimed squarely at the Gypsy and Traveller communities.

91 Important aspects of the background were that some Gypsy and Traveller communities had a particular association with Bromley; the borough had a history of unauthorised encampments; there were no or no sufficient transit sites to cater for the needs of these communities; the grant of these injunctions in ever increasing numbers had the effect of forcing Gypsies and Travellers out of the boroughs which had obtained them, thereby imposing a greater strain on the resources of those which had not yet applied for such orders; there was a strong possibility that unless restrained by the injunction those targeted by these proceedings would act in breach of the rights of the relevant local authority; and although aspects of the resulting damage could be repaired, there would nevertheless be significant irreparable damage too. The judge was satisfied that all the necessary ingredients for a quia timet injunction were in place and so it was necessary to carry out an assessment of whether it was proportionate to grant the injunction sought in all the circumstances of the case. She concluded that it was not proportionate to grant the injunction to restrain entry and encampments but that it was proportionate to grant an injunction against fly-tipping and the disposal of waste.

92 The particular questions giving rise to the appeal were relatively narrow (namely whether the judge had fallen into error in finding the order sought was disproportionate, in setting too high a threshold for assessment of the harm caused by trespass and in concluding that the local authority had

failed to discharge its public sector equality duty); but the Court of Appeal was also invited and proceeded to give guidance on the broader question of how local authorities ought properly to address the issues raised by applications for such injunctions in the future. The decision is also important because it was the first case involving an injunction in which the Gypsy and Traveller communities were represented before the High Court, and as a result of their success in securing the discharge of the injunction, it was the first case of this kind properly to be argued out at appellate level on the issues of procedural fairness and proportionality. It must also be borne in mind that the decision of the Supreme Court in *Cameron* was not cited to the Court of Appeal; nor did the Court of Appeal consider the appropriateness as a matter of principle of granting such injunctions. Conversely, there is nothing in *Bromley* to suggest that final injunctions against unidentified newcomers cannot or should never be granted.

93 As it was, the Court of Appeal dismissed the appeal. Coulson LJ, with whom Ryder and Haddon-Cave LJJ agreed, endorsed what he described as the elegant synthesis by Longmore LJ in *Ineos* (at para 34) of certain essential requirements for the grant of an injunction against persons unknown in a protester case (paras 29–30). He considered it appropriate to add in the present context (that of Travellers and Gypsies), first, that procedural fairness required that a court should be cautious when considering whether to grant an injunction against persons unknown, including Gypsies and Travellers, particularly on a final basis, in circumstances where they were not there to put their side of the case (paras 31–34); and secondly, that the judge had adopted the correct approach in requiring the claimant to show that there was a strong probability of irreparable harm (para 35).

94 The Court of Appeal was also satisfied that in assessing proportionality the judge had properly taken into account seven factors: (a) the wide extent of the relief sought; (b) the fact that the injunction was not aimed specifically at prohibiting anti-social or criminal behaviour, but just entry and occupation; (c) the lack of availability of alternative sites; (d) the cumulative effect of other injunctions; (e) various specific failures on the part of the authority in respect of its duties under the Human Rights Act and the public sector equality duty; (f) the length of time, that is to say five years, the proposed injunction would be in force; and (g) whether the order sought took proper account of permitted development rights arising by operation of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596), that is to say the grant of "deemed planning permission" for, by way of example, the stationing of a single caravan on land for not more than two nights, which had not been addressed in a satisfactory way. Overall, the authority had failed to satisfy the judge that it was appropriate to grant the injunction sought, and the Court of Appeal decided there was no basis for interfering with the conclusion to which she had come.

95 Coulson LJ went on (at paras 99–109) to give the wider guidance to which we have referred, and this is a matter to which we will return a little later in this judgment for it has a particular relevance to the principles to which newcomer injunctions in Gypsy and Traveller cases should be subject. Aspects of that guidance are controversial; but other aspects about which

there can be no real dispute are that local authorities should engage in a process of dialogue and communication with travelling communities; should undertake, where appropriate, welfare and impact assessments; and should respect, appropriately, the culture, traditions and practices of the communities. Similarly, injunctions against unauthorised encampments should be limited in time, perhaps to a year, before review.

(9) Cuadrilla

96 The third of these appeals, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, concerned an injunction to restrain four named persons and "persons unknown" from trespassing on the claimants' land, unlawfully interfering with their rights of passage to and from that land, and unlawfully interfering with the supply chain of the first claimant, which was involved, like *Ineos*, in the business of shale and gas exploration by fracking. The Court of Appeal was specifically concerned here with a challenge to an order for the committal of a number of persons for breach of this injunction, but, at para 48 and subject to two points, summarised the effect of *Ineos* as being that there was no conceptual or legal prohibition against suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort. Nonetheless, it continued, a court should be inherently cautious about granting such an injunction against unknown persons since the reach of such an injunction was necessarily difficult to assess in advance.

(10) Canada Goose

97 Only a few months later, in *Canada Goose* [2020] 1 WLR 2802 (para 11 above), the Court of Appeal was called upon to consider once again the way in which, and the extent to which, civil proceedings for injunctive relief against persons unknown could be used to restrict public protests. The first claimant, Canada Goose, was the UK trading arm of an international retailing business selling clothing containing animal fur and down. It opened a store in London but was faced with what it considered to be a campaign of harassment, nuisance and trespass by protesters against the manufacture and sale of such clothing. Accordingly, with the manager of the store, it issued proceedings and decided to seek an injunction against the protesters.

98 Specifically, the claimants sought and obtained a without notice interim injunction against "persons unknown" who were described as "persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at [the claimants' store]". The injunction restrained them from, among other things, assaulting or threatening staff and customers, entering or damaging the store and engaging in particular acts of demonstration within particular zones in the vicinity of the store. The terms of the order did not require the claimants to serve the claim form on any "persons unknown" but permitted service of the interim injunction by handing or attempting to hand it to any person demonstrating at or in the vicinity of the store or by email to either of two stated email addresses, that of an activist group and that of People for the Ethical Treatment of Animals (PETA) Foundation ("PETA"), a charitable company dedicated to the protection of the rights of

A animals. PETA was subsequently added to the proceedings as second defendant at its own request.

99 The claimants served many copies of the interim injunction on persons in the vicinity of the store, including over 100 identifiable individuals, but did not attempt to join any of them as parties to the claim. As for the claim form, this was sent by email to the two addresses specified for service of the interim injunction, and to one other individual who had requested a copy.

100 In these circumstances, an application by the claimants for summary judgment and a final injunction was unsuccessful. The judge held that the claim form had not been served on any defendant to the proceedings; that it was not appropriate to permit service by alternative means (under CPR r 6.15) or to dispense with service (under CPR r 6.16); and that the interim injunction would be discharged. He also considered that the description of the persons unknown was too broad, as it was capable of including protesters who might never intend to visit the store, and that the injunction was capable of affecting persons who did not carry out any activities which were otherwise unlawful. In addition, he considered that the proposed final injunction was defective in that it would capture future protesters who were not parties to the proceedings at the time when the injunction was granted. He refused to grant a final injunction.

101 The Court of Appeal dismissed the claimants' appeal. It held, first, that service of proceedings is important in the delivery of justice. The general rule is that service of the originating process is the act by which the defendant is subjected to the court's jurisdiction—and that a person cannot be made subject to the jurisdiction without having such notice of the proceedings as will enable him to be heard. Here there was no satisfactory evidence that the steps taken by the claimants were such as could reasonably be expected to have drawn the proceedings to the attention of the respondent unknown persons; the claimants had never sought an order for alternative service under CPR r 6.15 and there was never any proper basis for an order under CPR r 6.16 dispensing with service.

102 Secondly, the Court of Appeal held that the court may grant an interim injunction before proceedings have been served (or even issued) against persons who wish to join an ongoing protest, and that it is also, in principle, open to the court in appropriate circumstances to limit even lawful activity where there is no other proportionate means of protecting the claimants' rights, as for example in *Hubbard v Pitt* [1976] QB 142 (protesting outside an estate agency), and *Burris v Azadani* [1995] 1 WLR 1372 (entering a modest exclusion zone around the claimant's home), and to this extent the requirements for a newcomer injunction explained in *Ineos* required qualification. But in this case, the description of the "persons unknown" was impermissibly wide; the prohibited acts were not confined to unlawful acts; and the interim injunction failed to provide for a method of alternative service which was likely to bring the order to the attention of the persons unknown. The court was therefore justified in discharging the interim injunction.

103 Thirdly, the Court of Appeal held (para 89) that a final injunction could not be granted in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated

only between the parties to the proceedings. As authority for that proposition, the court cited *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 per Lord Oliver at p 224 (quoted at para 39 above). That, the court said, was consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471 that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. It followed, in the court's view, that a final injunction could not be granted against newcomers who had not by that time committed the prohibited acts, since they did not fall within the description of "persons unknown" and had not been served with the claim form. This was not one of the very limited cases, such as *Venables* [2001] Fam 430, in which a final injunction could be granted against the whole world. Nor was it a case where there was scope for making persons unknown subject to a final order. That was only possible (and perfectly legitimate) provided the persons unknown were confined to those in the first category of unknown persons in *Cameron*—that is to say anonymous defendants who were nonetheless identifiable in some other way (para 91). In the Court of Appeal's view, the claimants' problem was that they were seeking to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters (para 93).

104 This reasoning reveals the marked difference in approach and outcome from that of the Court of Appeal in the proceedings now before this court and highlights the importance of the issues to which it gives rise and to which we referred at the outset. Indeed, the correctness and potential breadth of the reasoning of the Court of Appeal in *Canada Goose*, and how that reasoning differs from the approach taken by the Court of Appeal in these proceedings, lie at the heart of these appeals.

(11) The present case

105 The circumstances of the present appeals were summarised at paras 6–12 above. In the light of the foregoing discussion, it will be apparent that, in holding that interim injunctions could be granted against persons unknown, but that final injunctions could be granted only against parties who had been identified and had had an opportunity to contest the final order sought, Nicklin J applied the reasoning of the Court of Appeal in *Canada Goose* [2020] 1 WLR 2802. The Court of Appeal, however, departed from that reasoning, on the basis that it had failed to have proper regard to *Gammell* [2006] 1 WLR 658, which was binding on it.

106 The Court of Appeal's approach in the present case, as set out in the judgment of Sir Geoffrey Vos MR, with which the other members of the court agreed, was based primarily on the decision in *Gammell*. It proceeded, therefore, on the basis that the persons to whom an injunction is addressed can be described by reference to the behaviour prohibited by the injunction, and that those persons will then become parties to the action in the event that they breach the injunction. As we will explain, we do not regard that as a satisfactory approach, essentially because it is based on the premise that the injunction will be breached and leaves out of account the persons affected by the injunction who decide to obey it. It also involves the logical paradox that a person becomes bound by an injunction only as a result of

A infringing it. However, even leaving *Gammell* to one side, the Court of Appeal subjected the reasoning in *Canada Goose* to cogent criticism.

107 Among the points made by the Master of the Rolls, the following should be highlighted. No meaningful distinction could be drawn between interim and final injunctions in this context (para 77). No such distinction had been drawn in the earlier case law concerned with newcomer injunctions.
B It was unrealistic at least in the context of cases concerned with protesters or Travellers, since such cases rarely if ever resulted in trials. In addition, in the case of an injunction (unlike a damages action such as *Cameron*) there was no possibility of a default judgment: the grant of an injunction was always in the discretion of the court. Nor was a default judgment available under Part 8 procedure. Furthermore, as the facts of the earlier cases demonstrated and *Bromley* [2020] PTSR 1043 explained, the court needed to keep injunctions
C against persons unknown under review even if they were final in character. In that regard, the Master of the Rolls made the point that, for as long as the court is concerned with the enforcement of an order, the action is not at an end.

4. A new type of injunction?

D 108 It is convenient to begin the analysis by considering certain strands in the arguments which have been put forward in support of the grant of newcomer injunctions, initially outside the context of proceedings against Travellers. They may each be labelled with the names of the leading cases from which the arguments have been derived, and we will address them broadly chronologically.

E 109 The earliest in time is *Venables* [2001] Fam 430 discussed at paras 32–33 above. The case is important as possibly the first contra mundum equitable injunction granted in recent times, and in our view correctly explains why the objections to the grant of newcomer injunctions against Travellers go to matters of established principle rather than jurisdiction in the strict sense: i e not to the power of the court, as was later confirmed by Lord Scott of Foscote in *Fourie v Le Roux* [2007] 1 WLR 320
F at para 25 (cited at para 16 above). In that respect the *Venables* injunction went even further than the typical Traveller injunction, where the newcomers are at least confined to a class of those who might wish to camp on the relevant prohibited sites. Nevertheless, for the reasons we explained at paras 25 and 61 above, and which we develop further at paras 155–159 below, newcomer injunctions can be regarded as being analogous to other
G injunctions or orders which have a binding effect upon the public at large. Like wardship orders contra mundum (para 31 above), *Venables*-type injunctions (paras 32–33 above), reporting restrictions (para 34 above), and embargoes on the publication of draft judgments (para 35 above), they are not limited in their effects to particular individuals, but can potentially affect anyone in the world.

H 110 *Venables* has been followed in a number of later cases at first instance, where there was convincing evidence that an injunction contra mundum was necessary to protect a person from serious injury or death: see *X (formerly Bell) v O'Brien* [2003] EMLR 37; *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB); *A (A Protected Party) v Persons Unknown* [2017] EMLR 11; *RXG v Ministry of Justice* [2020] QB 703;

In re Persons formerly known as Winch [2021] EMLR 20 and [2021] EWHC 3284 (QB); [2022] ACD 22); and *D v Persons Unknown* [2021] EWHC 157 (QB). An injunction contra mundum has also been granted where there was a danger of a serious violation of another Convention right, the right to respect for private life: see *OPQ v BJM* [2011] EMLR 23. The approach adopted in these cases has generally been based on the Human Rights Act rather than on principles of wider application. They take the issue raised in the present case little further on the question of principle. The facts of the cases were extreme in imposing real compulsion on the court to do something effective. Above all, the court was driven in each case to make the order by a perception that the risk to the claimants' Convention rights placed it under a positive duty to act. There is no real parallel between the facts in those cases and the facts of a typical Traveller case. The local authority has no Convention rights to protect, and such Convention rights of the public in its locality as a newcomer injunction might protect are of an altogether lower order.

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

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

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

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

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

A Nor was there any specific interim relief, such as an injunction, which could be enforced in a way that would bring the proceedings to the unknown person's attention. The impossibility of service in such a case was, Lord Sumption said, "due not just to the fact that the defendant cannot be found but to the fact that it is not known who the defendant is" (ibid). The alternative service approved by the Court of Appeal—service on the B insurer—could not be expected to reach the driver, and would be tantamount to no service at all. Addressing what, if the case had proceeded differently, might have been the heart of the matter, Lord Sumption added that although it might be appropriate to dispense with service if the defendant had concealed his identity in order to evade service, no submission had been made that the court should treat the case as one of evasion of service, and there were no findings which would enable it to do so.

C **114** We do not question the decision in *Cameron*. Nor do we question its essential reasoning: that proceedings should be brought to the notice of a person against whom damages are sought (unless, exceptionally, service can be dispensed with), so that he or she has an opportunity to be heard; that service is the means by which that is effected; and that, in circumstances in which service of the amended claim on the substituted defendant would be D impossible (even alternative service being tantamount to no service at all), the judge had accordingly been right to refuse permission to amend.

115 That said, with the benefit of the further scrutiny that the point has received on this appeal, we have, with respect, some difficulties with other aspects of Lord Sumption's analysis. In the first place, we agree that it is generally necessary that a defendant should have such notice of the proceedings as will enable him to be heard before any final relief is ordered. E However, there are exceptions to that general rule, as in the case of injunctions granted contra mundum, where there is in reality no defendant in the sense which Lord Sumption had in mind. It is also necessary to bear in mind that it is possible for a person affected by an injunction to be heard after a final order has been made, as was explained at para 40 above. Furthermore, notification, by means of service, and the consequent ability to F be heard, is an essentially practical matter. As this court explained in *Abela v Baadarani* [2013] 1 WLR 2043, para 37, service has a number of purposes, but the most important is to ensure that the contents of the document served come to the attention of the defendant. Whether they have done so is a question of fact. If the focus is on whether service can in practice be effected, as we think it should be, then it is unnecessary to carry out the preliminary G exercise of classifying cases as falling into either the first or the second of Lord Sumption's categories.

116 We also have reservations about the theory that it is necessary, in order for service to be effective, that the defendant should be identifiable. For example, Lord Sumption cited with approval the case of *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69, as illustrating circumstances in which alternative service was legitimate because "it is possible to locate or H communicate with the defendant and to identify him as the person described in the claim form" (para 15). That was a case concerned with online defamation. The defendants were described as persons unknown, responsible for the operation of the website on which the defamatory statements were published. Alternative service was effected by sending the claim form to

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

117 We also have difficulty in fitting the unnamed defendants in *Bloomsbury* [2003] 1 WLR 1633 within Lord Sumption's class of identifiable persons who in due course could be served. It is true that they would have had to identify themselves as the persons referred to if they had sought to do the prohibited act. But if they learned of the injunction and decided to obey it, they would be no more likely to be identified for service than the hit and run driver in *Cameron.* The *Bloomsbury* case also illustrates the somewhat unstable nature of Lord Sumption's distinction between anonymous and unidentifiable defendants. Since the unnamed defendants in *Bloomsbury* were unidentifiable at the time when the claim was commenced and the injunction was granted, one would have thought that the case fell into Lord Sumption's second category. But the fact that the unnamed defendants would have had to identify themselves as the persons in possession of the book if (but only if) they disobeyed the injunction seems to have moved the case into the first category. This implies that it is too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued. For these reasons also, it seems to us that the classification of cases as falling into one or other of Lord Sumption's categories (or into a third category, as suggested by the Court of Appeal in *Canada Goose,* para 63, and in the present case, para 35) may be a distraction from the fundamental question of whether service on the defendant can in practice be effected so as to bring the proceedings to his or her notice.

118 We also note that Lord Sumption's description of *Bloomsbury* and *Gammell* as cases concerned with interim injunctions was influential in the later case of *Canada Goose.* It is true that the order made in *Bloomsbury* was not, in form, a final order, but it was in substance equivalent to a final order: it bound those unknown persons for the entirety of the only relevant period, which was the period leading up to the publication of the book. As for *Gammell,* the reasoning did not depend on whether the injunctions were interim or final in nature. The order in Ms Gammell's case was interim ("until trial or further order"), but the point is less clear in relation to the order made in the accompanying case of Ms Maughan, which stated that "this order shall remain in force until further order".

119 More importantly, we are not comfortable with an analysis of *Bloomsbury* which treats its legitimacy as depending upon its being categorised as falling within a class of case where unnamed defendants may be assumed to become identifiable, and therefore capable of being served in due course, as we shall explain in more detail in relation to the supposed

Gammell solution, notably included by Lord Sumption in the same class alongside *Bloomsbury*, at para 15 in *Cameron*.

120 We also observe that *Cameron* was not concerned with equitable remedies or equitable principles. Nor was it concerned with newcomers. Understandably, given that the case was an action for damages, Lord Sumption's focus was particularly on the practice of the common law courts and on cases concerned with common law remedies (e g at paras 8 and 18–19). Proceedings in which injunctive relief is sought raise different considerations, partly because an injunction has to be brought to the notice of the defendant before it can be enforced against him or her. In some cases, furthermore, the real target of the injunctive relief is not the unidentified defendant, but the "no cause of action defendants" against whom freezing injunctions, *Norwich Pharmacal* orders, *Bankers Trust* orders and internet blocking orders may be obtained. The result of the orders made against those defendants may be to enable the unnamed defendant then to be identified and served, and effective relief obtained: see, for example, *CMOC Sales and Marketing Ltd v Person Unknown* [2019] Lloyd's Rep FC 62. In other words, the identification of the unknown defendant can depend upon the availability of injunctions which are granted at a stage when that defendant remains unidentifiable. Furthermore, injunctions and other orders which operate contra mundum, to which (as we have already observed) newcomer injunctions can be regarded as analogous, raise issues lying beyond the scope of Lord Sumption's judgment in *Cameron*.

121 It also needs to be borne in mind that the unnamed defendants in *Bloomsbury* formed a tiny class of thieves who might be supposed to be likely to reveal their identity to a media outlet during the very short period when their stolen copy of the book was an item of special value. The main purpose of seeking to continue the injunction against them was not to act as a deterrent to the thieves or even to enable them to be apprehended or committed for contempt, but rather to discourage any media publisher from dealing with them and thereby incurring liability for contempt as an aider and abetter: see *Cameron*, para 10; *Bloomsbury*, para 20. As we have explained (paras 41 and 46 above), it is not unusual in modern practice for an injunction issued against defendants, including persons unknown, to be designed primarily to affect the conduct of non-parties.

122 In that regard, it is to be noted that Lord Sumption's reason for regarding the injunction in *Bloomsbury* as legitimate was not the reason given by the Vice-Chancellor. His justification lay not in the ability to serve persons who identified themselves by breach, but in the absence of any injustice in framing an injunction against a class of unnamed persons provided that the class was sufficiently precisely defined that it could be said of any particular person whether they fell inside or outside the class of persons restrained. That justification may be said to have substantial equitable foundations. It is the same test which defines the validity of a class of discretionary beneficiaries under a trust: see *In re Baden's Deed Trusts* [1971] AC 424, 456. The trust in favour of the class is valid if it can be said of any given postulant whether they are or are not a member of the class.

123 That justification addresses what the Vice-Chancellor may have perceived to be one of the main objections to the joinder of (or the grant of injunctions against) unnamed persons, namely that it is too vague a way of

doing so: see para 7. But it does not seek directly to address the potential for injustice in restraining persons who are not just unnamed, but genuine newcomers: e g in the present context persons who have not at the time when the injunction was granted formed any desire or intention to camp at the prohibited site. The facts of the *Bloomsbury* case make that unsurprising. The unnamed defendants had already stolen copies of the book at the time when the injunction was granted, and it was a fair assumption at the time of the hearing before the Vice-Chancellor that they had formed the intention to make an illicit profit from its disclosure to the media before the launch date. Three had already tried to do so, been identified and arrested. The further injunction was just to catch the one or two (if any) who remained in the shadows and to prevent any publication facilitated by them in the meantime.

124 There is therefore a broad contextual difference between the injunction granted in *Bloomsbury* and the typical newcomer injunction against Travellers. The former was directed against a small group of existing criminals, who could not sensibly be classed as newcomers other than in a purely technical sense, where the risk of loss to the claimants lay within a tight timeframe before the launch date. The typical newcomer injunction against Travellers, on the other hand, is intended to restrain Travellers generally, for as long a period as the court can be persuaded to grant an injunction, and regardless of whether particular Travellers have yet become aware of the prohibited site as a potential camp site. The Vice-Chancellor's analysis does not seek to render joinder as a defendant unnecessary, whereas (as will be explained) the newcomer injunction does. But the case certainly does stand as a precedent for the grant of relief otherwise than on an emergency basis against defendants who, although joined, have yet to be served.

125 We turn next to the supposed *Gammell* [2006] 1 WLR 658 solution, and its apparent approval in *Cameron* as a juridically sound means of joining unnamed defendants by their self-identification in the course of disobeying the relevant injunction. It has the merit of being specifically addressed to newcomer injunctions in the context of Travellers, but in our view it is really no solution at all.

126 The circumstances and reasoning in *Gammell* were explained in paras 63–66 above. For present purposes it is the court's reasons for concluding that Ms Gammell became a defendant when she stationed her caravans on the site which matter. At para 32 Sir Anthony Clarke MR said this:

> "In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case . . . In the case of KG she became both a person to whom the injunction was addressed and the defendant when she caused or permitted her caravans to occupy the site. In neither case was it necessary to make her a defendant to the proceedings later."

The Master of the Rolls' analysis was not directed to a submission that injunctions could not or should not be granted at all against newcomers, as is now advanced on this appeal. No such submission was made. Furthermore, he was concerned only with the circumstances of a person who had both been served with and (by oral explanation) notified of the terms of the

injunction and who had then continued to disobey it. He was not concerned with the position of a newcomer, wishing to camp on a prohibited site who, after learning of the injunction, simply decided to obey it and move on to another site. Such a person would not, on his analysis, become a defendant at all, even though constrained by the injunction as to their conduct. Service of the proceedings (as opposed to the injunction) was not raised as an issue in that case as the necessary basis for in personam jurisdiction, other than merely for holding the ring. Neither *Cameron* nor *Fourie v Le Roux* had been decided. The real point, unsuccessfully argued, was that the injunction should not have the effect against any particular newcomer of placing them in contempt until a personalised proportionality exercise had been undertaken. The need for a personalised proportionality exercise is also pursued on this appeal as a reason why newcomer injunctions should never be granted against Travellers, and we address it later in this judgment.

127 The concept of a newcomer automatically becoming (or self-identifying as) a defendant by disobeying the injunction might therefore be described, in 2005, as a solution looking for a problem. But it became a supposed solution to the problem addressed in this appeal when prayed in aid, first briefly and perhaps tentatively by Lord Sumption in *Cameron* at para 15 and secondly by Sir Geoffrey Vos MR in great detail in the present case, at paras 28, 30–31, 37, 39, 82, 85, 91–92, 94 and 96 and concluding at 99 of the judgment. It may fairly be described as lying at the heart of his reasoning for allowing the appeals, and departing from the reasoning of the Court of Appeal in *Canada Goose*.

128 This court is not of course bound to consider the matter, as was the Master of the Rolls, as a question of potentially binding precedent. We have the refreshing liberty of being able to look at the question anew, albeit constrained (although not bound) by the ratio of relevant earlier decisions of this court and of its predecessor. We conduct that analysis in the following paragraphs. While we have no reason to doubt the efficacy of the concept of self-identification as a defendant as a means of dealing with disobedience by a newcomer with an injunction, the propriety of which is not itself under challenge (as it was not in *Gammell*), we are not persuaded that self-identification as a defendant solves the basic problems inherent in granting injunctions against newcomers in the first place.

129 The *Gammell* solution, as we have called it, suffers from a number of problems. The most fundamental is that the effect of an injunction against newcomers should be addressed by reference to the paradigm example of the newcomer who can be expected to obey it rather than to act in disobedience to it. As Lord Bingham observed in *South Bucks District Council v Porter* [2003] 2 AC 558 (cited at para 65 above) at para 32, in connection with a possible injunction against Gypsies living in caravans in breach of planning controls, "When granting an injunction the court does not contemplate that it will be disobeyed". Lord Rodger JSC cited this with approval (at para 17) in the *Meier* case [2009] 1 WLR 2780 (para 67 above). Similarly, Baroness Hale of Richmond JSC stated in the same case at para 39, in relation to an injunction against trespass by persons unknown, "We should assume that people will obey the law, and in particular the targeted orders of the court, rather than that they will not."

130 A further problem with the *Gammell* solution is that where the defendants are defined by reference to the future act of infringement, a person who breaches the order will, by that very act, become bound by it. The Court of Appeal of Victoria remarked, in relation to similar reasoning in the New Zealand case of *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185, that an order of that kind "had the novel feature—which would have appealed to Lewis Carroll—that it became binding upon a person only because that person was already in breach of it": *Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd* [1998] 4 VR 143, 161.

131 Nevertheless, a satisfactory solution, which respects the procedural rights of all those whose behaviour is constrained by newcomer injunctions, including those who obey them, should if possible be found. The practical need for such injunctions has been demonstrated both in this jurisdiction and elsewhere: see, for example, the Canadian case of *MacMillan Bloedel Ltd v Simpson* [1996] 2 SCR 1048 (where reliance was placed at para 26 on *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 as establishing the contra mundum effect even of injunctions inter partes), American cases such as *Joel v Various John Does* (1980) 499 F Supp 791, New Zealand cases such as *Tony Blain Pty Ltd v Splain* (para 130 above), *Earthquake Commission v Unknown Defendants* [2013] NZHC 708 and *Commerce Commission v Unknown Defendants* [2019] NZHC 2609, the Cayman Islands case of *Ernst & Young Ltd v Department of Immigration* 2015 (1) CILR 151, and Indian cases such as *ESPN Software India Pvt Ltd v Tudu Enterprise* (unreported) 18 February 2011.

132 As it seems to us, the difficulty which has been experienced in the English cases, and to which *Gammell* has hitherto been regarded as providing a solution, arises from treating newcomer injunctions as a particular type of conventional injunction inter partes, subject to the usual requirements as to service. The logic of that approach has led to the conclusion that persons affected by the injunction only become parties, and are only enjoined, in the event that they breach the injunction. An alternative approach would begin by accepting that newcomer injunctions are analogous to injunctions and other orders which operate contra mundum, as noted in para 109 above and explained further at paras 155–159 below. Although the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity. Viewed in that way, if newcomer injunctions operate in the same way as the orders and injunctions to which they are analogous, then anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they have been served with the proceedings. Anyone affected by the injunction can apply to have it varied or discharged, and can apply to be made a defendant, whether they have obeyed it or disobeyed it, as explained in para 40 above. Although not strictly necessary, those safeguards might also be reflected in provisions of the order: for example, in relation to liberty to apply. We shall return below to the question whether this alternative approach is permissible as a matter of legal principle.

133 As we have explained, the *Gammell* solution was adopted by the Court of Appeal in the present case as a means of overcoming the difficulties arising in relation to final injunctions against newcomers which had been

identified in *Canada Goose* [2020] 1 WLR 2802. Where, then, does our rejection of the *Gammell* solution leave the reasoning in *Canada Goose*?

134 Although we do not doubt the correctness of the decision in *Canada Goose*, we are not persuaded by the reasoning at paras 89–93, which we summarised at para 103 above. In addition to the criticisms made by the Court of Appeal which we have summarised at para 107 above, and with which we respectfully agree, we would make the following points.

135 First, the court's starting point in *Canada Goose* was that there were "some very limited circumstances", such as in *Venables*, in which a final injunction could be granted contra mundum, but that protester actions did not fall within "that exceptional category". Accordingly, "The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224" (para 89). The problem with that approach is that it assumes that the availability of a final injunction against newcomers depends on fitting such injunctions within an existing exclusive category. Such an approach is mistaken in principle, as explained in para 21 above.

136 The court buttressed its adoption of the "usual principle" with the observation that it was "consistent with the fundamental principle in *Cameron* . . . that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard" (ibid). As we have explained, however, there are means of enabling a person who is affected by a final injunction to be heard after the order has been made, as was discussed in *Bromley* and recognised by the Master of the Rolls in the present case.

137 The court also observed at para 92 that "An interim injunction is temporary relief intended to hold the position until trial", and that "Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end". That is an unrealistic view of proceedings of the kind in which newcomer injunctions are generally sought, and an unduly narrow view of the scope of interlocutory injunctions in the modern law, as explained at paras 43–49 above. As we have explained (e g at paras 60 and 73 above), there is scarcely ever a trial in proceedings of the present kind, or even adversarial argument; injunctions, even if expressed as being interim or until further order, remain in place for considerable periods of time, sometimes for years; and the proceedings are not at an end until the injunction is discharged.

138 We are also unpersuaded by the court's observation that private law remedies are unsuitable "as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters" (para 93). If that were so, where claimants face the prospect of continuing unlawful disruption of their activities by groups of individuals whose composition changes from time to time, then it seems that the only practical means of obtaining the relief required to vindicate their legal rights would be for them to adopt a rolling programme of applications for interim orders, resulting in litigation without end. That would prioritise formalism over substance, contrary to a basic principle of equity (para 151 below). As we shall explain, there is no overriding reason why the courts cannot devise procedures which enable injunctions to be granted which

prohibit unidentified persons from behaving unlawfully, and which enable such persons subsequently to become parties to the proceedings and to seek to have the injunctions varied or discharged.

139 The developing arguments about the propriety of granting injunctions against newcomers, set against the established principles re-emphasised in *Fourie v Le Roux* and *Cameron*, and then applied in *Canada Goose*, have displayed a tendency to place such injunctions in one or other of two silos: interim and final. This has followed through into the framing of the issues for determination in this appeal and has, perhaps in consequence, permeated the parties' submissions. Thus, it is said by the appellants that the long-established principle that an injunction should be confined to defendants served with the proceedings applies only to final injunctions, which should not therefore be granted against newcomers. Then it is said that since an interim injunction is designed only to hold the ring, pending trial between the parties who have by then been served with the proceedings, its use against newcomers for any other purpose would fall outside the principles which regulate the grant of interim injunctions. Then the respondents (like the Court of Appeal) rely upon the *Gammell* solution (that a newcomer becomes a defendant by acting in breach of the interim injunction) as solving both problems, because it makes them parties to the proceedings leading to the final injunction (even if they then take no part in them) and justifies the interim injunction against newcomers as a way of smoking them out before trial. In sympathy with the Court of Appeal on this point we consider that this constant focus upon the duality of interim and final injunctions is ultimately unhelpful as an analytical tool for solving the problem of injunctions against newcomers. In our view the injunction, in its operation upon newcomers, is typically neither interim nor final, at least in substance. Rather it is, against newcomers, what is now called a without notice (i e in the old jargon ex parte) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.

140 More to the point, the injunction typically operates against a particular newcomer before (if ever) the newcomer becomes a party to the proceedings, as we have explained at paras 129–132 above. An ordinarily law-abiding newcomer, once notified of the existence of the injunction (e g by seeing a copy of the order at the relevant site or by reading it on the internet), may be expected to comply with the injunction rather than act in breach of it. At the point of compliance that person will not be a defendant, if the defendants are defined as persons who behave in the manner restrained. Unless they apply to do so they will never become a defendant. If the person is a Traveller, they will simply pass by the prohibited site rather than camp there. They will not identify themselves to the claimant or to the court by any conspicuous breach, nor trigger the *Gammell* process by which, under the current orthodoxy, they are deemed then to become a defendant by self-identification. Even if the order was granted at a formally interim stage, the compliant Traveller will not ever become a party to the

proceedings. They will probably never become aware of any later order in final form, unless by pure coincidence they pass by the same site again looking for somewhere to camp. Even if they do, and are again dissuaded, this time by the final injunction, they will not have been a party to the proceedings when the final order was made, unless they breached it at the interim stage.

141 In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal for contempt: see para 129 above, and the cases there cited, with which we agree. Furthermore the evaluation of potential injustice inherent in the process of granting injunctions against newcomers is more likely to be reliable if there is no assumption that the newcomer affected by the injunction is a person so regardless of the law that they will commit a breach of it, even if the grant necessarily assumes a real risk that they (or a significant number of them) would, but for the injunction, invade the claimant's rights, or the rights (including the planning regime) of those for whose protection the claimant local authority seeks the injunction. That is the essence of the justification for such an injunction.

142 Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards. Viewed in that way they then need to be set against the established categories of injunction to see whether they fall into an existing legitimate class, or, if not, whether they display features by reference to which they may be regarded as a legitimate extension of the court's practice.

143 The distinguishing features of an injunction against newcomers are in our view as follows:

(i) They are made against persons who are truly unknowable at the time of the grant, rather than (like Lord Sumption's class 1 in *Cameron*) identifiable persons whose names are not known. They therefore apply potentially to anyone in the world.

(ii) They are always made, as against newcomers, on a without notice basis (see para 139 above). However, as we explain below, informal notice of the application for such an injunction may nevertheless be given by advertisement.

(iii) In the context of Travellers and Gypsies they are made in cases where the persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance. The conduct restrained is typically either a plain trespass or a plain breach of planning control, or both.

(iv) Accordingly, although there are exceptions, these injunctions are generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant's entitlement, even though the injunction sought is of course always discretionary. They

and the proceedings in which they are made are generally more a form of enforcement of undisputed rights than a form of dispute resolution.

(v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.

(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant's rights (or the rights of the neighbouring public which the local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.

(vii) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.

(viii) Nor is the injunction designed (like a freezing injunction, search order, *Norwich Pharmacal* or *Bankers Trust* order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities.

144 Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. It is in some respects just as novel as were the new types of injunction listed in para 143(viii) above, and it does not even share their family likeness of being developed to protect the integrity and effectiveness of some related process of the courts. As Mr Drabble KC for the appellants tellingly submitted, it is not even that closely related to the established quia timet injunction, which depends upon proof that a named defendant has threatened to invade the claimant's rights. Why, he asked, should it be assumed that, just because one group of Travellers have misbehaved on the subject site while camping there temporarily, the next group to camp there will be other than model campers?

145 Faced with the development by the lower courts of what really is in substance a new type of injunction, and with disagreement among them

about whether there is any jurisdiction or principled basis for granting it, it behoves this court to go back to first principles about the means by which the court navigates such uncharted water. Much emphasis was placed in this context upon the wide generality of the words of section 37 of the 1981 Act. This was cited in para 17 above, but it is convenient to recall its terms:

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

This or a very similar formulation has provided the statutory basis for the grant of injunctions since 1873. But in our view a submission that section 37 tells you all you need to know proves both too much and too little. Too much because, as we have already observed, it is certainly not the case that judges can grant or withhold injunctions purely on their own subjective perception of the justice and convenience of doing so in a particular case. Too little because the statutory formula tells you nothing about the principles which the courts have developed over many years, even centuries, to inform the judge and the parties as to what is likely to be just or convenient.

146 Prior to 1873 both the jurisdiction to grant injunctions and the principles regulating their grant lay in the common law, and specifically in that part of it called equity. It was an equitable remedy. From 1873 onwards the jurisdiction to grant injunctions has been confirmed and restated by statute, but the principles upon which they are granted (or withheld) have remained equitable: see *Fourie v Le Roux* [2007] 1 WLR 320 (paras 16 and 17 above) per Lord Scott of Foscote at para 25. Those principles continue to tell the judge what is just and convenient in any particular case. Furthermore, equitable principles generally provide the answer to the question whether settled principles or practice about the general limits or conditions within which injunctions are granted may properly be adjusted over time. The equitable origin of these principles is beyond doubt, and their continuing vitality as an analytical tool may be seen at work from time to time when changes or developments in the scope of injunctive relief are reviewed: see eg *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (para 21 above).

147 The expression of the readiness of equity to change and adapt its principles for the grant of equitable relief which has best stood the test of time lies in the following well-known passage from *Spry* (para 17 above) at p 333:

> "The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. Unfortunately there have sometimes been made observations by judges that tend to confuse questions of jurisdiction or of powers with questions of discretions or of practice. The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the

categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate."

148 In *Broad Idea* [2023] AC 389 (para 17 above) at paras 57–58 Lord Leggatt JSC (giving the opinion of the majority of the Board) explained how, via *Broadmoor Special Health Authority v Robinson* [2000] QB 775 and *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 and [2018] 1 WLR 3259, that summary in *Spry* has come to be embedded in English law. The majority opinion in *Broad Idea* also explains why what some considered to be the apparent assumption in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39–40 that the relevant equitable principles became set in stone in 1873 was, and has over time been conclusively proved to be, wrong.

149 The basic general principle by reference to which equity provides a discretionary remedy is that it intervenes to put right defects or inadequacies in the common law. That is frequently because equity perceives that the strict pursuit of a common law right would be contrary to conscience. That underlies, for example, rectification, undue influence and equitable estoppel. But that conscience-based aspect of the principle has no persuasive application in the present context.

150 Of greater relevance is the deep-rooted trigger for the intervention of equity, where it perceives that available common law remedies are inadequate to protect or enforce the claimant's rights. The equitable remedy of specific performance of a contractual obligation is in substance a form of injunction, and its availability critically depends upon damages being an inadequate remedy for the breach. Closer to home, the inadequacy of the common law remedy of a possession order against squatters under CPR Pt 55 as a remedy for trespass by a fluctuating body of frequently unidentifiable Travellers on different parts of the claimant's land was treated in *Meier* [2009] 1 WLR 2780 (para 67 above) as a good reason for the grant of an injunction in relation to nearby land which, because it was not yet in the occupation of the defendant Travellers, could not be made the subject of an order for possession. Although the case was not about injunctions against newcomers, and although she was thinking primarily of the better tailoring of the common law remedy, the following observation of Baroness Hale JSC at para 25 is resonant:

> "The underlying principle is ubi ius, ibi remedium: where there is a right, there should be a remedy to fit the right. The fact that 'this has never been done before' is no deterrent to the principled development of the remedy to fit the right, provided that there is proper procedural protection for those against whom the remedy may be granted."

To the same effect is the dictum of Anderson J (in New Zealand) in *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 (para 130 above) at p 187, cited by Sir Andrew Morritt V-C in *Bloomsbury* [2003] 1 WLR 1633 at para 14.

151 The second relevant general equitable principle is that equity looks to the substance rather than the form. As Lord Romilly MR stated in *Parkin v Thorold* (1852) 16 Beav 59, 66–67:

> "Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it find, that by

A insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance."

That principle assists in the present context for two reasons. The first (discussed above) is that it illuminates the debate about the type of injunction with which the court is concerned, here enabling an escape from
B the twin silos of final and interim and recognising that injunctions against newcomers are all in substance without notice injunctions. The second is that it enables the court to assess the most suitable means of ensuring that a newcomer has a proper opportunity to be heard without being shackled to any particular procedural means of doing so, such as service of the proceedings.

C **152** The third general equitable principle is equity's essential flexibility, as explained at paras 19–22 above. Not only is an injunction always discretionary, but its precise form, and the terms and conditions which may be attached to an injunction (recognised by section 37(2) of the 1981 Act), are highly flexible. This may be illustrated by the lengthy and painstaking development of the search order, from its original form in *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55 to the much more sophisticated
D current form annexed to Practice Direction 25A supplementing CPR Pt 25 and which may be modified as necessary. To a lesser extent a similar process of careful, incremental design accompanied the development of the freezing injunction. The standard form now sanctioned by the CPR is a much more sophisticated version than the original used in *Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509. Of course, this
E flexibility enables not merely incremental development of a new type of injunction over time in the light of experience, but also the detailed moulding of any standard form to suit the justice and convenience of any particular case.

153 Fourthly, there is no supposed limiting rule or principle apart from justice and convenience which equity has regarded as sacrosanct over time. This is best illustrated by the history of the supposed limiting principle (or
F even jurisdictional constraint) affecting all injunctions apparently laid down by Lord Diplock in *The Siskina* [1979] AC 210 (para 43 above) that an injunction could only be granted in, or as ancillary to, proceedings for substantive relief in respect of a cause of action in the same jurisdiction. The lengthy process whereby that supposed fundamental principle has been broken down over time until its recent express rejection is described in detail
G in the *Broad Idea* case [2023] AC 389 and needs no repetition. But it is to be noted the number of types of injunctive or quasi-injunctive relief which quietly by-passed this supposed condition, as explained at paras 44–49 above, including *Norwich Pharmacal* and *Bankers Trust* orders and culminating in internet blocking orders, in none of which was it asserted that the respondent had invaded, or even threatened to invade, some legal right of the applicant.

H **154** It should not be supposed that all relevant general equitable principles favour the granting of injunctions against newcomers. Of those that might not, much the most important is the well-known principle that equity acts in personam rather than either in rem or (which may be much the same thing in substance) contra mundum. A main plank in the appellants'

submissions is that injunctions against newcomers are by their nature a form of prohibition aimed, potentially at least, at anyone tempted to trespass or camp (depending upon the drafting of the order) on the relevant land, so that they operate as a form of local law regulating how that land may be used by anyone other than its owner. Furthermore, such an injunction is said in substance to criminalise conduct by anyone in relation to that land which would otherwise only attract civil remedies, because of the essentially penal nature of the sanctions for contempt of court. Not only is it submitted that this offends against the in personam principle, but it also amounts in substance to the imposition of a regime which ought to be the preserve of legislation or at least of byelaws.

155 It will be necessary to take careful account of this objection at various stages of the analysis which follows. At this stage it is necessary to note the following. First, equity has not been blind, or reluctant, to recognise that its injunctions may in substance have a coercive effect which, however labelled, extends well beyond the persons named as defendants (or named as subject to the injunction) in the relevant order. Very occasionally, orders have already been made in something approaching a contra mundum form, as in the *Venables* case already mentioned. More frequently the court has expressly recognised, after full argument, that an injunction against named persons may involve third parties in contempt for conduct in breach of it, where for example that conduct amounts to a contemptuous abuse of the court's process or frustrates the outcome which the court is seeking to achieve: see the *Bloomsbury* case [2003] 1 WLR 1633 and *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, discussed at paras 37–41, 61–62 and 121–124 above. In all those examples the court was seeking to preserve confidentiality in, or the intellectual property rights in relation to, specified information, and framed its injunction in a way which would bind anyone into whose hands that information subsequently came.

156 A more widespread example is the way in which a *Mareva* injunction is relied upon by claimants as giving protection against asset dissipation by the defendant. This is not merely (or even mainly) because of its likely effect upon the conduct of the defendant, who may well be a rogue with no scruples about disobeying court orders, but rather its binding effect (once notified to them) upon the defendant's bankers and other reputable custodians of his assets: see *Z Ltd v A-Z and AA-LL* [1982] QB 558 (para 41 above).

157 Courts quietly make orders affecting third parties almost daily, in the form of the embargo upon publication or other disclosure of draft judgments, pending hand-down in public: see para 35 above. It cannot we hope be doubted that if a draft judgment with an embargo in this form came into the hands of someone (such as a journalist) other than the parties or their legal advisors it would be a contempt for that person to publish or disclose it further. Such persons would plainly be newcomers, in the sense in which that term is here being used.

158 It may be said, correctly, that orders of this kind are usually made so as to protect the integrity of the court's process from abuse. Nonetheless they have the effect of attaching to a species of intangible property a legal regime giving rise to a liability, if infringed, which sounds in contempt, regardless of the identity of the infringer. In conceptual terms, and shorn of

A the purpose of preventing abuse, they work in rem or contra mundum in much the same way as an anti-trespass injunction directed at newcomers pinned to a post on the relevant land. The only difference is that the property protected by the former is intangible, whereas in the latter it is land. In relation to any such newcomer (such as the journalist) the embargo is made without notice.

B **159** It is fair comment that a major difference between those types of order and the anti-trespass order is that the latter is expressly made against newcomers as "persons unknown" whereas the former (apart from the exceptional *Venables* type) are not. But if the consequences of breach are the same, and equity looks to the substance rather than to the form, that distinction may be of limited weight.

C **160** Protection of the court's process from abuse, or preservation of the utility of its future orders, may fairly be said to be the bedrock of many of equity's forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying
D relevant documents in advance of the formal process of disclosure. *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.

E **161** But internet blocking orders (para 49 above) stand in a different category. The applicant intellectual property owner does not seek assistance from internet service providers ("ISPs") to enable it to identify and then sue the wrongdoers. It seeks an injunction against the ISP because it is a much more efficient way of protecting its intellectual property rights than suing the numerous wrongdoers, even though it is no part of its case against the ISP that it is, or has even threatened to be, itself a wrongdoer. The injunction is
F based upon the application of "ordinary principles of equity": see *Cartier* [2018] 1 WLR 3259 (para 20 above) per Lord Sumption JSC at para 15. Specifically, the principle is that, once notified of the selling of infringing goods through its network, the ISP comes under a duty, but only if so requested by the court, to prevent the use of its facilities to facilitate a wrong by the sellers. The proceedings against the ISP may be the only proceedings
G which the intellectual property owner intends to take. Proceedings directly against the wrongdoers are usually impracticable, because of difficulty in identifying the operators of the infringing websites, their number and their location, typically in places outside the jurisdiction of the court: see per Arnold J at first instance in *Cartier* [2015] Bus LR 298, para 198.

162 The effect of an internet blocking order, or the cumulative effect of such orders against ISPs which share most of the relevant market, is
H therefore to hinder the wrongdoers from pursuing their infringing sales on the internet, without them ever being named or joined as defendants in the proceedings or otherwise given a procedural opportunity to advance any defence, other than by way of liberty to apply to vary or discharge the order: see again per Arnold J at para 262.

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

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

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

166 Tempting though the superficial similarities may be as between possession orders against squatters and injunctions against newcomers, they afford no relevant precedent for the following reasons. First, they are the creature of the common law rather than equity, being a modern form of the old action in ejectment which is at its heart an action in rem rather than in personam: see *Manchester Corpn v Connolly* [1970] Ch 420, 428–429 per Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780, paras 33–36 per Baroness Hale JSC. Secondly, possession orders of this kind are not truly injunctions. They authorise a court official to remove persons from land, but disobedience to the bailiff does not sound in contempt. Thirdly, the possession order works once and for all by a form of execution which puts the owner of the land back in possession, but it has no ongoing effect in prohibiting entry by newcomers wishing to camp upon it after the order has been executed. Its shortcomings in the Traveller context are one of

A the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties.

167 These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of
B 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
C planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

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

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

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

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

168 The issues in this appeal have been formulated in such a way that the appellants have the burden of showing that the balancing exercise
H involved in weighing those competing considerations can never come down in favour of granting such an injunction. We have not been persuaded that this is so. We will address the main objections canvassed by the appellants and, in the next section of this judgment, set out in a little more detail how we conceive that the necessary protection for newcomers' rights should

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

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

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

171 Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one. This was a matter which received only cursory examination during the hearing of this appeal. Mr Anderson KC for Wolverhampton submitted (on instructions quickly taken by telephone during the short adjournment) that, in summary, byelaws took too long to obtain (requiring two stages of negotiation with central government), would need to be separately made in relation to each site, would be too inflexible to address changes in the use of the relevant sites (particularly if subject to development) and would unduly criminalise the process of enforcing civil rights. The appellants did not engage with the detail of any of these points, their objection being more a matter of principle.

172 We have not been able to reach any conclusions about the issue of practicality, either generally or on the particular facts about the cases before the court. In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment.

A **173** A second main objection in principle was lack of procedural fairness, for which Lord Sumption's observations in *Cameron* were prayed in aid. It may be said that recognition that injunctions against newcomers are in substance without notice injunctions makes this objection all the more stark, because the newcomer does not even know that an injunction is being sought against them when the order is made, so that their inability to attend to oppose is hard-wired into the process regardless of the particular facts.

B **174** This is an objection which applies to all forms of without notice injunction, and explains why they are generally only granted when there is truly no alternative means of achieving the relevant objective, and only for a short time, pending an early return day at which the merits can be argued out between the parties. The usual reason is extreme urgency, but even then it is customary to give informal notice of the hearing of the application to the C persons against whom the relief is sought. Such an application used then to be called "ex parte on notice", a partly Latin phrase which captured the point that an application which had not been formally served on persons joined as defendants so as to enable them to attend and oppose it did not in an appropriate case mean that it had to be heard in their absence, or while they were ignorant that it was being made. In the modern world of the CPR, D where "ex parte" has been replaced with "without notice", the phrase "ex parte on notice" admits no translation short of a simple oxymoron. But it demonstrates that giving informal notice of a without notice application is a well-recognised way of minimising the potential for procedural unfairness inherent in such applications. But sometimes even the most informal notice is self-defeating, as in the case of a freezing injunction, where notice may provoke the respondent into doing exactly that which the injunction is E designed to prohibit, and a search order, where notice of any kind is feared to be likely to trigger the bonfire of documents (or disposal of laptops) the prevention of which is the very reason for the application.

175 In the present context notice of the application would not risk defeating its purpose, and there would usually be no such urgency as would justify applying without notice. The absence of notice is simply inherent in F an application for this type of injunction because, quoad newcomers, the applicant has no idea who they might turn out to be. A practice requirement to advertise the intended application, by notices on the relevant sites or on suitable websites, might bring notice of the application to intended newcomers before it came to be made, but this would be largely a matter of happenstance. It would for example not necessarily come to the attention of G a Traveller who had been camping a hundred miles away and who alighted for the first time on the prohibited site some time after the application had been granted.

176 But advertisement in advance might well alert bodies with a mission to protect Travellers' interests, such as the appellants, and enable them to intervene to address the court on the local authority's application with focused submissions as to why no injunction should be granted in the H particular case. There is an (imperfect) analogy here with representative proceedings (paras 27–30 above). There may also be a useful analogy with the long-settled rule in insolvency proceedings which requires that a creditors' winding up petition be advertised before it is heard, in order to give advance notice to stakeholders in the company (such as other creditors)

and the opportunity to oppose the petition, without needing to be joined as defendants. We say more about this and how advance notice of an application for a newcomer injunction might be given to newcomers and persons and bodies representing their interests in the next section of this judgment.

177 It might be thought that the obvious antidote to the procedural unfairness of a without notice injunction would be the inclusion of a liberal right of anyone affected to apply to vary or discharge the injunction, either in its entirety or as against them, with express provision that the applicant need show no change of circumstances, and is free to advance any reason why the injunction should either never have been granted or, as the case may be, should be discharged or varied. Such a right is generally included in orders made on without notice applications, but Mr Drabble KC submitted that it was unsatisfactory for a number of reasons.

178 The first was that, if the injunction was final rather than interim, it would be decisive of the legal merits, and be incapable of being challenged thereafter by raising a defence. We regard this submission as one of the unfortunate consequences of the splitting of the debate into interim and final injunctions. We consider it plain that a without notice injunction against newcomers would not have that effect, regardless of whether it was in interim or final form. An applicant to vary or discharge would be at liberty to advance any reasons which could have been advanced in opposition to the grant of the injunction when it was first made. If that were not implicit in the reservation of liberty to apply (which we think it is), it could easily be made explicit as a matter of practice.

179 Mr Drabble KC's next objection to the utility of liberty to apply was more practical. Many or most Travellers, he said, would be seeking to fulfil their cultural practice of leading a peripatetic life, camping at any particular site for too short a period to make it worth going to court to contest an injunction affecting that site. Furthermore, unless they first camped on the prohibited site there would be no point in applying, but if they did camp there it would place them in breach of the injunction while applying to vary it. If they camped elsewhere so as to comply with the injunction, their rights (if any) would have been interfered with, in circumstances where there would be no point in having an expensive and risky legal argument about whether they should have been allowed to camp there in the first place.

180 There is some force in this point, but we are not persuaded that the general disinclination of Travellers to apply to court really flows from the newcomer injunctions having been granted on a without notice application. If for example a local authority waited for a group of Travellers to camp unlawfully before serving them with an application for an injunction, the Travellers might move to another site rather than raise a defence to the prevention of continued camping on the original site. By the time the application came to be heard, the identified group would have moved on, leaving the local authority to clear up, and might well have been replaced by another group, equally unidentifiable in advance of their arrival.

181 There are of course exceptions to this pattern of temporary camping as trespassers, as when Travellers buy a site for camping on, and are then proceeded against for breach of planning control rather than for

trespass: see eg the *Gammell* case and the appeal in *Bromley London Borough Council v Maughan* heard at the same time. In such a case the potential procedural injustice of a without notice injunction might well be sufficient to require the local authority to proceed against the owners of the site on notice, in the usual way, not least because there would be known targets capable of being served with the proceedings, and any interim application made on notice. But the issue on this appeal is not whether newcomer injunctions against Travellers are always justified, but rather whether the objections are such that they never are.

182 The next logical objection (although little was made of it on this appeal) is that an injunction of this type made on the application of a local authority doing its duty in the public interest is not generally accompanied by a cross-undertaking in damages. There is of course a principled reason why public bodies doing their public duty are relieved of this burden (see *Financial Services Authority v Sinaloa Gold plc* [2013] 2 AC 28), and that reasoning has generally been applied in newcomer injunction cases against Travellers where the applicant is a local authority. We address this issue further in the next section of this judgment (at para 234) and it would be wrong for us to express more definite views on it, in the absence of any submissions about it. In any event, if this were otherwise a decisive reason why an injunction of this type should never be granted, it may be assumed that local authorities, or some of them, would prefer to offer a cross undertaking rather than be deprived of the injunction.

183 The appellants' final main point was that it would always be impossible when considering the grant of an injunction against newcomers to conduct an individualised proportionality analysis, because each potential target Traveller would have their own particular circumstances relevant to a balancing of their article 8 rights against the applicant's claim for an injunction. If no injunction could ever be granted in the absence of an individualised proportionality analysis of the circumstances of every potential target, then it may well be that no newcomer injunction could ever be granted against Travellers. But we reject that premise. To the extent that a particular Traveller who became the subject of a newcomer injunction wished to raise particular circumstances applicable to them and relevant to the proportionality analysis, this would better be done under the liberty to apply if, contrary to the general disinclination or inability of Travellers to go to court, they had the determination to do so.

184 We have already briefly mentioned Mr Drabble KC's point about the inappropriateness of an injunction against one group of Travellers based only upon the disorderly conduct of an earlier group. This is in our view just an evidential point. A local authority that sought a borough-wide injunction based solely upon evidence of disorderly conduct by a single group of campers at a single site would probably fail the test in any event. It will no doubt be necessary to adduce evidence which justifies a real fear of widespread repetition. Beyond that, the point goes nowhere towards constituting a reason why such injunctions should never be granted.

185 The point was made by Stephanie Harrison KC for Friends of the Earth (intervening because of the implications of this appeal for protesters) that the potential for a newcomer injunction to cause procedural injustice was not regulated by any procedure rules or practice statements under the

CPR. Save in relation to certain statutory applications referred to in para 51 above this is true at present, but it is not a good reason to inhibit equity's development of a new type of injunction. A review of the emergence of freezing injunctions and search orders shows how the necessary procedural checks and balances were first worked out over a period of development by judges in particular cases, then addressed by textbook writers and academics and then, at a late stage in the developmental process, reduced to rules and practice directions. This is as it should be. Rules and practice statements are appropriate once experience has taught judges and practitioners what are the risks of injustice that need to be taken care of by standard procedures, but their reduction to settled (and often hard to amend) standard form too early in the process of what is in essence judge-made law would be likely to inhibit rather than promote sound development. In the meantime, the courts have been actively reviewing what these procedural protections should be, as for example in the *Ineos* and *Bromley* cases (paras 86–95 above). We elaborate important aspects of the appropriate protections in the next section of this judgment.

186 Drawing all these threads together, we are satisfied that there is jurisdiction (in the sense of power) in the court to grant newcomer injunctions against Travellers, and that there are principled reasons why the exercise of that power may be an appropriate exercise of the court's equitable discretion, where the general conditions set out in para 167 above are satisfied. While some of the objections relied upon by the appellants may amount to good reasons why an injunction should not be granted in particular cases, those objections do not, separately or in the aggregate, amount to good reason why such an injunction should never be granted. That is the question raised by this appeal.

5. The process of application for, grant and monitoring of newcomer injunctions and protection for newcomers' rights

187 We turn now to consider the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers, and the safeguards that should accompany the making of such an order. As we have mentioned, these are matters to which judges hearing such applications have given a good deal of attention, as has the Court of Appeal in considering appeals against the orders they have made. Further, the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience. Nevertheless, they do have a bearing on the issues of principle we have to decide, in that we must be satisfied that the points raised by the appellants do not, individually or collectively, preclude the grant of what are in some ways final (but regularly reviewable) injunctions that prevent persons who are unknown and unidentifiable at the date of the order from trespassing on and occupying local authority land. We have also been invited to give guidance on these matters so far as we feel able to do so having regard to our conclusions as to the nature of newcomer injunctions and the principles applicable to their grant.

(1) Compelling justification for the remedy

188 Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that

A there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i)).

189 This gives rise to three preliminary questions. The first is whether the local authority has complied with its obligations (such as they are) properly to consider and provide lawful stopping places for Gypsies and
B Travellers within the geographical areas for which it is responsible. The second is whether the authority has exhausted all reasonable alternatives to the grant of an injunction, including whether it has engaged in a dialogue with the Gypsy and Traveller communities to try to find a way to accommodate their nomadic way of life by giving them time and assistance to find alternative or transit sites, or more permanent accommodation. The third is whether the authority has taken appropriate steps to control or even
C prohibit unauthorised encampments and related activities by using the other measures and powers at its disposal. To some extent the issues raised by these questions will overlap. Nevertheless, their importance is such that they merit a degree of separate consideration, at least at this stage. A failure by the local authority in one or more of these respects may make it more difficult to satisfy a court that the relief it seeks is just and convenient.

D

(i) An obligation or duty to provide sites for Gypsies and Travellers

190 The extent of any obligation on local authorities in England to provide sufficient sites for Gypsies and Travellers in the areas for which they are responsible has changed over time.

191 The starting point is section 23 of the Caravan Sites and Control of
E Development Act 1960 ("CSCDA 1960") which gave local authorities the power to close common land to Gypsies and Travellers. As Sedley J observed in *R v Lincolnshire County Council, Ex p Atkinson* (1995) 8 Admin LR 529, local authorities used this power with great energy. But they made little or no corresponding use of the related powers conferred on them by section 24 of the CSCDA 1960 to provide sites where caravans might be brought, whether for temporary purposes or for use as permanent
F residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

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

193 Some 25 years later, the CJPOA repealed section 6 of the CSA 1968. But the *power* to provide sites for Travellers and Gypsies remained.
H This is important for it provides a way to give effect to the assessment by local authorities of the needs of these communities, and these are matters we address below.

194 The position in Wales is rather different. Any local authority applying for a newcomer injunction affecting Wales must consider the

impact of any legislation specifically affecting that jurisdiction including the Housing (Wales) Act 2014 ("H(W)A 2014"). Section 101(1) of the H(W)A 2014 imposes on the authority a duty to "carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to its area". If the assessment identifies that the provision of sites is inadequate to meet the accommodation needs of Gypsies and Travellers in its area and the assessment is approved by the Welsh Ministers, the authority has a *duty* to exercise its powers to meet those needs under section 103 of the H(W)A 2014.

(ii) General "needs" assessments

195 For many years there has been an obligation on local authorities to carry out an assessment of the accommodation needs of Gypsies and Travellers when carrying out their periodic review of housing needs under section 8 of the Housing Act 1985.

196 This obligation was first imposed by section 225 of the Housing Act 2004. This measure was repealed by section 124 of the Housing and Planning Act 2016. Instead, the duty of local housing authorities in England to carry out a periodic review of housing needs under section 8 of the Housing Act 1985 has since 2016 included (at section 8(3)) a duty to consider the needs of people residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed.

(iii) Planning policy

197 Since about 1994, and with the repeal of the statutory duty to provide sites, the general issue of Traveller site provision has come increasingly within the scope of planning policy, just as the government anticipated.

198 Indeed, in 1994, the government published planning advice on the provision of sites for Gypsies and Travellers in the form of Department of the Environment Circular 1/94 entitled *Gypsy Sites and Planning*. This explained that the repeal of the statutory duty to provide sites was expected to lead to more applications for planning permission for sites. Local planning authorities ("LPAs") were advised to assess the needs of Gypsies and Travellers within their areas and to produce a plan which identified suitable *locations* for sites (location-based policies) and if this could not be done, to explain the *criteria* for the selection of appropriate locations (criteria-based policies). Unfortunately, despite this advice, most attempts to secure permission for Gypsy and Traveller sites were refused and so the capacity of the relatively few sites authorised for occupation by these nomadic communities continued to fall well short of that needed, as Lord Bingham explained in *South Bucks District Council v Porter* [2003] 2 AC 558, at para 13.

199 The system for local development planning in England is now established by the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") and the regulations made under it. Part 2 of the PCPA 2004 deals with local development and stipulates that the LPA is to prepare a development scheme and plan; that this must set out the authority's policies; that in preparing the local development plan, the authority must have regard to national policy; that each plan must be sent to the Secretary of State for

A independent examination and that the purpose of this examination is, among other things, to assess its soundness and that will itself involve an assessment whether it is consistent with national policy.

200 Meantime, the advice in Circular 1/94 having failed to achieve its purpose, the government has from time to time issued new planning advice on the provision of sites for Gypsies and Travellers in England, and that B advice may be taken to reflect national policy.

201 More specifically, in 2006 advice was issued in the form of the Office of the Deputy Prime Minister Circular 1/06 *Planning for Gypsy and Traveller Caravan Sites*. The 2006 guidance was replaced in March 2012 by *Planning Policy for Traveller Sites* ("PPTS 2012"). In August 2015, a revised version of PPTS 2012 was issued ("PPTS 2015") and this is to be read with the National Planning Policy Framework. There has recently been a C challenge to a decision refusing planning permission on the basis that one aspect of PPTS 2015 amounts to indirect discrimination and has no proper justification: *Smith v Secretary of State for Housing, Communities and Local Government* [2023] PTSR 312. But for present purposes it is sufficient to say (and it remains the case) that there is in these policy documents clear advice that LPAs should, when producing their local plans, identify and D update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets to address the needs of Gypsies and Travellers for permanent and transit sites. They should also identify a supply of specific, developable sites or broad locations for growth for years 6–10 and even, where possible, years 11–15. The advice is extensive and includes matters to which LPAs must have regard including, among other things, the presumption in favour of sustainable development; E the possibility of cross-authority co-operation; the surrounding population's size and density; the protection of local amenities and the environment; the need for appropriate land supply allocations and to respect the interests of the settled communities; the need to ensure that Traveller sites are sustainable and promote peaceful and integrated co-existence with the local communities; and the need to promote access to appropriate health services F and schools. The LPAs are also advised to consider the need to avoid placing undue pressure on local infrastructure and services, and to provide a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampments.

202 The availability of transit sites (and information as to where they may be found) is also important in providing short-term or temporary accommodation for Gypsies and Travellers moving through a local authority G area, and an absence of sufficient transit sites in an area (or information as to where available sites may be found) may itself be a sufficient reason for refusing a newcomer injunction.

(iv) Consultation and co-operation

H 203 This is another matter of considerable importance, and it is one with which all local authorities should willingly engage. We have no doubt that local authorities, other responsible bodies and representatives of the Gypsy and Traveller communities would benefit from a dialogue and co-operation to understand their respective needs; the concerns of the local authorities, local charities, business and community groups and members

of the public; and the resources available to the local authorities for deployment to meet the needs of these nomadic communities having regard to the wider obligations which the authorities must also discharge. In this way a deeper level of trust may be established and so facilitate and encourage a constructive approach to the implementation of proportionate solutions to the problems the nomadic communities continue to present, without immediate and expensive recourse to applications for injunctive relief or enforcement action.

(v) Public spaces protection orders

204 The Anti-social Behaviour, Crime and Policing Act 2014 confers on local authorities the power to make public spaces protection orders ("PSPOs") to prohibit encampments on specific land. PSPOs are in some respects similar to byelaws and are directed at behaviour and activities carried on in a public place which, for example, have a detrimental effect on the quality of life of those in the area, are or are likely to be persistent or continuing, and are or are likely to be such as to make the activities unreasonable. Further, PSPOs are in general easier to make than byelaws because they do not require the involvement of central government or extensive consultation. Breach of a PSPO without reasonable excuse is a criminal offence and can be enforced by a fixed penalty notice or prosecution with a maximum fine of level three on the standard scale. But any PSPO must be reasonable and necessary to prevent the conduct and detrimental effects at which it is targeted. A PSPO takes precedence over any byelaw in so far as there is any overlap.

(vi) Criminal Justice and Public Order Act 1994

205 The CJPOA empowers local authorities to deal with unauthorised encampments that are causing damage or disruption or involve vehicles, and it creates a series of related offences. It is not necessary to set out full details of all of them. The following summary gives an idea of their range and scope.

206 Section 61 of the CJPOA confers powers on the police to deal with two or more persons who they reasonably believe are trespassing on land with the purpose of residing there. The police can direct these trespassers to leave (and to remove any vehicles) if the occupier has taken reasonable steps to ask them to leave and they have caused damage, disruption or distress as those concepts are elucidated in section 61(10). Failure to leave within a reasonable time or, if they do leave, a return within three months is an offence punishable by imprisonment or a fine. A defence of reasonable excuse may be available in particular cases.

207 Following amendment in 2003, section 62A of the CJPOA confers on the police a power to direct trespassers with vehicles to leave land at the occupier's request, and that is so even if the trespassers have not caused damage or used threatening behaviour. Where trespassers have at least one vehicle between them and are there with the common purpose of residing there, the police, (if so requested by the occupier) have the power to direct a trespasser to leave and to remove any vehicle or property, subject to this proviso: if they have caravans that (after consultation with the relevant local

A authorities) there is a suitable pitch available on a site managed by the authority or social housing provider in that area.

208 Focusing more directly on local authorities, section 77 of the CJPOA confers on the local authority a power to direct campers to leave open-air land where it appears to the authority that they are residing in a vehicle within its area, whether on a highway, on unoccupied land or on
B occupied land without the consent of the occupier. There is no need to establish that these activities have caused damage or disruption. The direction must be served on each person to whom it applies, and that may be achieved by directing it to all occupants of vehicles on the land; and failing other effective service, it may be affixed to the vehicles in a prominent place. Relevant documents should also be displayed on the land in question. It is an
C offence for persons who know that such an order has been made against them to fail to comply with it.

(vii) Byelaws

209 There is a measure of agreement by all parties before us that the power to make and enforce byelaws may also have a bearing on the issues before us in this appeal. Byelaws are a form of delegated legislation made
D by local authorities under an enabling power. They commonly require something to be done or refrained from in a particular area or location. Once implemented, byelaws have the force of law within the areas to which they apply.

210 There is a wide range of powers to make byelaws. By way of example, a general power to make byelaws for good rule and government
E and for the prevention and suppression of nuisances in their areas is conferred on district councils in England and London borough councils by section 235(1) of the Local Government Act 1972 ("the LGA 1972"). The general confirming authority in relation to byelaws made under this section is the Secretary of State.

211 We would also draw attention to section 15 of the Open Spaces Act
F 1906 which empowers local authorities in England to make byelaws for the regulation of open spaces, for the imposition of a penalty for breach and for the removal of a person infringing the byelaw by an officer of the local authority or a police constable. Notable too is section 164 of the Public Health Act 1875 (38 & 39 Vict c 55) which confers a power on the local authority to make byelaws for the regulation of public walks and pleasure
G grounds and for the removal of any person infringing any such byelaw, and under section 183, to impose penalties for breach.

212 Other powers to make byelaws and to impose penalties for breach are conferred on authorities in relation to commons by, for example, the Commons Act 1899 (62 & 63 Vict c 30).

213 Appropriate authorities are also given powers to make byelaws in relation to nature reserves by the National Parks and Access to the
H Countryside Act 1949 (12, 13 & 14 Geo 6, c 97) (as amended by the Natural Environment and Rural Communities Act 2006); in relation to National Parks and areas of outstanding natural beauty under sections 90 and 91 of the 1949 Act (as amended); concerning the protection of country parks under section 41 of the Countryside Act 1968; and for the protection and

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

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

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

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

(viii) A need for review

217 Various aspects of this discussion merit emphasis at this stage. Local authorities have a range of measures and powers available to them to deal with unlawful encampments. Some but not all involve the enactment and enforcement of byelaws. Many of the offences are punishable with fixed or limited penalties, and some are the subject of specified defences. It may be said that these form part of a comprehensive suite of measures and powers and associated penalties and safeguards which the legislature has considered appropriate to deal with the threat of unauthorised encampments by Gypsies and Travellers. We rather doubt that is so, particularly when dealing with communities of unidentified trespassers including newcomers.

A But these are undoubtedly matters that must be explored upon the review of these orders.

(2) Evidence of threat of abusive trespass or planning breach

218 We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against
B persons unknown, including newcomers, in Gypsy and Traveller cases must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent. We have no doubt that local authorities
C are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219 The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and
D arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and
E the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

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

F

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

221 The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms)
G by name or in some other way, as Lord Sumption explained in *Cameron* [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other
H persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.

(4) The prohibited acts

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

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

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

(5) Geographical and temporal limits

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

(6) Advertising the application in advance

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

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

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

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

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

(7) Effective notice of the order

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

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

(8) Liberty to apply to discharge or vary

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

apply to vary or discharge the whole or any part of the order (again, see para 167(ii) above). This is so whether the order is interim or final in form, so that a respondent can challenge the grant of the injunction on any grounds which might have been available at the time of its grant.

(9) Costs protection

233 This is a difficult subject, and it is one on which we have received little assistance. We have considerable concern that costs of litigation of this kind are way beyond the means of most if not all Gypsies and Travellers and many interveners, as counsel for the first interveners, Friends of the Earth, submitted. This raises the question whether the court has jurisdiction to make a protective or costs capping order. This is a matter to be considered on another day by the judge making or continuing the order. We can see the benefit of such an order in an appropriate case to ensure that all relevant arguments are properly ventilated, and the court is equipped to give general guidance on the difficult issues to which it may give rise.

(10) Cross-undertaking

234 This is another important issue for another day. But a few general points may be made at this stage. It is true that this new form of injunction is not an interim order, and it is not in any sense holding the ring until the final determination of the merits of the claim at trial. Further, so far as the applicant is a public body acting in pursuance of its public duty, a cross undertaking may not in any event be appropriate. Nevertheless, there may be occasions where a cross undertaking is considered appropriate, for reasons such as those given by Warby J in *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB), a protest case. These are matters to be considered on a case-by-case basis, and the applicant must equip the court asked to make or continue the order with the most up-to-date guidance and assistance.

(11) Protest cases

235 The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers. Any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

236 Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected;

A the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.

(12) Conclusion

B **237** There is nothing in this consideration which calls into question the development of newcomer injunctions as a matter of principle, and we are satisfied they have been and remain a valuable and proportionate remedy in appropriate cases. But we also have no doubt that the various matters to which we have referred must be given full consideration in the particular proceedings the subject of these appeals, if necessary at an appropriate and C early review.

6. Outcome

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

(i) The court has jurisdiction (in the sense of power) to grant an injunction against "newcomers", that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.

(ii) Such an injunction (a "newcomer injunction") will be effective to bind E anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect contra mundum, and is not to be justified on the basis that those who disobey it automatically become defendants.

F (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:

(a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.

(b) That equity looks to the substance rather than to the form.

G (c) That equity takes an essentially flexible approach to the formulation of a remedy.

(d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.

These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.

H (iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:

(a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.

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

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

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

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

Appeal dismissed.

COLIN BERESFORD, Barrister

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

No. QB-2020-02702

[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

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Neutral Citation Number: [2024] EWHC 1786 (Ch)

Case No: BL-2023-000713

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9th July 2024

Before :

SIR ANTHONY MANN
Sitting as a Judge of the High Court

- -

Between :

JOCKEY CLUB RACECOURSES LIMITED	**Claimant**
- and -	
(2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "RACE TRACK" ON THE DAY OF A "RACING FIXTURE", EXCEPT AT "CROSSING POINTS" WITH "AUTHORISATION", AS DESCRIBED BELOW	
(3) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY "CROSSING POINTS" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW	
(4) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "PARADE RING" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW	
(5) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY PART OF THE AREAS DESCRIBED BELOW AS THE "HORSES' ROUTE TO THE PARADE RING" AND/OR THE "HORSES' ROUTE TO THE RACE TRACK" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW	
(6) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE "HORSE RACES", AS	

DESCRIBED BELOW
(7) PERSONS UNKNOWN INTENTIONALLY CAUSING ANY OBJECT TO ENTER ONTO AND/OR REMAIN ON THE "RACE TRACK" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW
(8) PERSONS UNKNOWN INTENTIONALLY ENDANGERING ANY PERSON AT THE LOCATION DESCRIBED BELOW AS THE "EPSOM RACECOURSE" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW

Defendants

- -
- -

Alan Maclean KC and Antonia Eklund (instructed by **Pinsent Masons LLP**) for the **Claimant**
The Defendants did not appear and were not represented.

Hearing date: 8th July 2024
- -

Approved Judgment

Sir Anthony Mann :

Background

1. This is the disposal hearing of these Part 8 proceedings in which the claimant, the Jockey Club, seeks a continuation of injunctive relief against persons unknown to restrain them from trespassing on certain parts of their property at Epsom racecourse.

2. This action has its origins in a fear of the claimant that its running of the Derby race in June 2023 would be disrupted by animal rights protesters, orchestrated, at least to some extent, by a loose association known as Animal Rising. That association (if that is the right word) does not have any apparent corporate or unincorporated existence, but it appears to be a form of movement in which those interested in its objectives can participate. Its object seems to be to prevent what it considers to be cruelty to animals which is said to take various forms, including, for present purposes, horseracing. It has a website whose content has a significance to these proceedings.

3. The claimant is the freehold owner of land at Epsom which comprises the racecourse and a number of ancillary buildings and areas. Its rights are, however, circumscribed by various rights of the public in relation to Epsom Downs. The scope of the ownership, and the nature of those public rights, appear from a previous judgement of mine on an application for an interim injunction which I granted in May 2023 – see [2023] EWHC 1811 (Ch). I do not propose to set out again here matters appearing in that judgement; they should, so far as necessary, be taken as incorporated in this judgement.

4. In 2023, before the running of the Derby, the claimant became aware of a threat to disrupt the running of the Derby by entering various parts of the Jockey club land and, in various potential ways, interfering with the race. Attempts had previously been made to disrupt the running of the Grand National, and indeed the start of that race in that year was delayed as a result. In those circumstances the Jockey club commenced these proceedings in order to restrain interference with its running of the race.

5. An application for an interim injunction was made to me and I granted it. The reasons for the grant of that injunction appear in the judgement to which I have just made reference. An account of the background to the grant of the injunction, and to the circumstances of my granting it, appear fully in that judgement and again I do not propose to repeat them here. They should be treated as incorporated into this judgement. In particular, that judgement explains the various areas of the racecourse affected.

6. At the time of the commencement of these proceedings and of the hearing of the injunction the claimant had been able to identify one particular individual who it was thought was threatening to interfere with the race. That was a Mr Daniel Kidby, and he was made the first defendant to the proceedings. Otherwise the claimant was unable to identify the various animal activists who threatened or planned to disrupt the race. In those circumstances they sought an injunction against persons unknown described in various ways by reference to the geographical or topographical areas which it was anticipated would be or might be affected. That was in line with authorities at the time dealing with the obtaining of injunctions against persons

unknown. How that technique worked in practice is apparent from the heading to this judgment.

7. When the race meeting took place the event was heavily policed and stewarded. One protester entered the actual racetrack by way of protest shortly after the race had started. That was a Mr Ben Newman. He was duly charged with a public order offence and served a number of weeks in prison on remand. He was joined as 9th defendant to these proceedings and also became the subject of committal proceedings for infringement of my order and on 11 October 2023 he was sentenced by Miles J to 2 months imprisonment, suspended.

8. These proceedings were restored before Roth J on 15 March 2024, on which occasion he ordered that Mr Kidby and Mr Newman take appropriate steps if they were going to defend the claim against them and gave permission to the Jockey Club to file further evidence. The Club duly availed itself of that opportunity.

9. Shortly after the hearing before Roth J Mr Kidby and Mr Newman both settled with the Jockey Club, giving undertakings not to do the acts complained of, those undertakings lasting five years. Thus for practical purposes they fell out of these proceedings and they continued as proceedings against the various categories of persons unknown to which I have referred above. In a witness statement dated 4 October 2023 Mr Newman accepted that he had wrongfully breached the injunction and reflected on the fact that his time in prison had caused him to reflect on his actions and he expressed his regret for them. In his case it would appear that the threat of prison had become a real deterrent. One can draw the inference that it would be the same for others.

10. The evidence before me on this occasion comprised, first, a witness statement of Mr Nevin Truesdale, chief executive of the Jockey Club, which was the witness statement originally provided in support of these Part 8 proceedings and which was deployed on the interim application before me (along with other limited witness statements). That evidence set out the property background to the case and the reasons for supposing that persons were proposing to disrupt the race and thereby commit trespasses. Pursuant to the permission given by Roth J Mr Truesdale filed a second witness statement signed on 5 April 2024. That witness statement gives evidence of various public pronouncements of Animal Rising on its website, on its Facebook page and in press releases. That material boasted of previous activities of its members in disruptive protests and indicated intentions to carry on activities including disrupting race meetings, albeit that a press release of 4 April 2024 stated that it would not target the Grand National this year and it was suspending its campaign of direct action against racing indefinitely. The reason for not targeting the Grand National meeting was said to be that there was a "huge public conversation" since the Grand National and Derby, and it would appear that the public had in large part been convinced that they do not want racing to be part of the fabric of British culture going forward. The claimant does not accept the genuineness of that analysis. Mr Truesdale gave evidence of attendance figures at some race meetings which gainsay it and points to statements on the then website which threatened disruption of race meetings. That is material on the basis of which I am invited to view with suspicion any protestations that animal rising does not intend to disrupt race meetings. He also pointed to the disruption of other sporting events by other activists, such as throwing confetti, jigsaw puzzle pieces and orange paint variously at Wimbledon, the golf Open Championship,

the Ashes and the World Snooker Championship. I am invited to infer, and I do, that the claimant's race meetings are potentially vulnerable to such protests even if Animal Rising is genuine in its statement that its own disruptive activities in that area have been suspended indefinitely, which I do not accept is a strong enough assertion.

11. There has, however, been a recent change in the website. The claimant has made an application to adduce further evidence as part of its duty of full and frank disclosure. During the hearing I indicated that I would allow in the new evidence and give reasons in this judgment. That evidence takes the form of a witness statement of Julian Diaz-Rainey, a solicitor at Pinsent Masons, solicitors acting for the claimant. In that witness statement Mr Diaz-Rainey provides evidence that the Animal Rising website has recently been updated to remove references to plans to disrupt horse-racing activities. The material to which Mr Truesdale referred in his second witness statement which professed an intention to disrupt in that way have been removed – indeed the pages which evidence that intention have been removed. It is not known when that change happened, but it must be since Mr Truesdale's second witness statement. That is drawn to my attention because, quite properly, the claimant is aware of its obligation to draw adverse material to my attention.

12. I allow that evidence in in order that the claimant can fulfil its obligation of full and frank disclosure. Mr Diaz-Rainey's witness statement goes on to point out, as a counter to his earlier disclosure, that Animal Rising has not given up its challenge to the horse-racing industry and its intention to try to stop it, and that it trumpets what it calls its successes to date. This material appears in website and Facebook postings. I allow that evidence too. It is a legitimate counter to the evidence disclosed under the full and frank disclosure obligation.

13. The result of this evidence is the following findings, which I make:

    i) The claimant is the freehold owner of the racecourse property which it is trying to protect.

    ii) Animal rights protesters have no legal right to be on the property in order to carry out disruptive protests.

    iii) Despite Animal Rising's statement that is it suspending the disruption of horse-racing activities, there remains a serious risk that its members, or others, will try to disrupt the claimant's races in order to gain publicity unless restrained by this court. It is not possible to identify the individuals who would be concerned, but nonetheless there is a very serious risk.

    iv) That disruption, if it occurred, would give rise to a serious risk to life and limb of humans and horses, and would cause damage to the Jockey Club of the nature referred to in my earlier judgment. Damages would not be an adequate remedy for any disruption to racing activities.

    v) The disruption would be an actionable trespass and an actionable interference with the claimant's rights to hold races under the Epsom and Walton Downs Regulation Act 1984 (see my earlier judgment) and to manage its part of the Downs accordingly.

Relevant law

14. The ability of the courts to grant injunctions against persons unknown, and the requirements for the exercise of that jurisdiction, have recently (and since my first judgment) been the subject of consideration by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 WLR 45. The case deals with "persons unknown" who are sought to be barred, being persons who are not identifiable as parties to the proceedings at the time when the injunction is granted, as opposed to persons whose current attributes are known but whose identities are not. In that case the persons unknown were Travellers. That category of persons unknown were designated as "newcomers", and injunctions of the kind sought in that case, and in other protester cases, were called "newcomer injunctions". I shall, of course, adopt the same nomenclature.

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 (ie 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 now a number):

> "167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. 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."

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.

20. In the course of argument Mr MacLean drew to my attention two decisions of Ritchie J in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) and *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134, and to the decision of Farbey J in *Exolum Pipeline System Ltd v Persons Unknown* [2024] EWHC 1015 (KB). Other than to observe that in the third of those cases Farbey J drew attention to the need to balance the claimant's claim against the Article 10 (free speech) and Article 11 (freedom of association) rights of the protesters (which I shall do) I do not think it necessary to refer to those cases which apply *Wolverhampton* to their particular circumstances. I have, however, borne those cases in mind.

Decision

21. Taking all those matters into account, I find that it is appropriate to grant a newcomers injunction in this case, with the appropriate safeguards. I deal with the procedural matters which *Wolverhampton* requires to be taken into account in the following manner, following the sub-paragraph numbering appearing above.

(i) It is clear enough that there is a threat of wrongful behaviour against which the Jockey Club with its proprietary rights is entitled to be protected. Real harm will be caused if it is not stopped – see my earlier judgment. There plainly was a very substantial risk of wrongdoing when I made my first order in the case, and that is demonstrated by the acts of Mr Newman which were carried out in the face of the injunction. The greater risk is to the running of the Derby meeting because of the publicity and attention which that race involves, but there still a risk to other meetings. The only question about this is whether that risk should be seen to have gone away because of the more recent pronouncements of Animal Rising and the removal of the threats from the website. I do not consider that it has gone away.

Those who associate themselves with Animal Rising have been shown to be vehement in their cause. The reasons given for suspending the campaign against racing are not plausible. They give the appearance of seeking to find some justification for the ostensible abandonment of the campaign to mask what is really going on. It is not plausible that the real reason is that those behind the website have changed their minds about racing. It is more plausible that the statements and the withdrawal of references to horse racing are some sort of tactical move, leaving open the real possibility that the campaign and the unlawful activities associated with it will be re-ignited, which could happen at short notice. The ostensible withdrawal of the horse racing campaign came only after Mr Kidby and Mr Newman were served with the second witness statement of Mr Truesdale, which pointed up the then references to the campaign against horse racing. It looks as though the withdrawal was a tactical response to that. I consider that there is still a compelling case and a strong possibility of a risk of disruption.

(ii) I am satisfied that there is no practical alternative to an injunction. Before the 2023 Derby the Jockey Club sought to negotiate a peaceful protest mechanism by proffering a site within the racecourse premises at which Animal Rising could promote its cause peacefully, but that was turned down. The activities might contravene some of the byelaws, but not all of them, and in any event the only remedy under those is a fine capped at £50, and that is not going to be a deterrent. There may be criminal sanctions for the sort of activities which are threatened, but the Jockey Club is not a prosecuting authority and it is impractical to suppose that they are a deterrent in themselves. If they were the threats would not be real. An injunction is the only practical answer. It provides a real risk of punishment and its prosecution is in the hands of the claimant, not prosecuting authorities. The case of Mr Newman suggests that committal proceedings are likely to be perceived as a cogent deterrent against infringement.

(iii) I am satisfied that there are no other practical steps that the Club can take to prevent the wrong. See (ii). It is not practical to suppose that the activities of the protesters can be completely prevented by any sensible levels of policing or stewarding, though obviously stewarding and policing have a part to play in the overall strategy.

(iv) As to byelaws, see (ii) above.

(v) The Jockey Club is obviously aware of its duty of full and frank disclosure, as is demonstrated by the evidence of Mr Diaz-Rainey referred to above. I am as satisfied as I can be that this duty has been fulfilled.

(vi) I am satisfied that this requirement has been fulfilled.

(vii) This point arose on the application for the interim injunction. The order proposes the same technique of identifying defendants by reference to their specific intended activities. This is effective and adequate.

(viii) I will ensure that the order achieves this objective. The present draft seems to do so but it will be considered further after this judgment has been delivered.

(ix) The territorial limits will appear in the order. They will be clearly limited to the racecourse and particular areas, which will be delineated by maps and plans. This has already been achieved in the interim injunction. A time limit of 5 years is proposed. I agree that that is an appropriate limit. The one year which the Supreme Court thought would be prima facie appropriate in Traveller cases is too short to deal with a campaign such as that of the animal rights activists. In the case of an annual event like the Derby it would lead to an annual application. An annual review (see below) is more appropriate.

(x) The claimant proposes an annual review. That is sensible.

(xi) I am satisfied that proper notice of this application has been given. This has been done by posting it on the Club's website page and Facebook page, and by emailing to Animal Rights at its website. It has also posted at at least 2 locations on its racecourse. These methods of service are in accordance with directions given by Roth J in his order of 15 March 2024.

(xii) Service of the order will be dealt with in the order. It will largely mirror the technique for service of the proceedings, though extra steps will be appropriate in the period of, and leading up to, race meetings.

(xiii) The order will contain a liberty to apply, as the draft before me reflects.

(xiv) I cannot see that any cross-undertaking in damages is appropriate in this case.

22. The satisfaction of those matters will fulfil the requirements of the Supreme Court as set out in paragraph 167 of its judgment and the later paragraphs dealing with procedural matters. The only other matter left for consideration is the interaction with the Article 10 and Article 11 rights of the newcomers. Insofar as the injunction would impinge on those rights it is quite plain that it falls within the qualification of those rights in those Articles as being necessary in a democratic society to prevent disorder and crime and to protect the rights of others – the claimants and those wishing to attend race meetings. The balance is clearly in favour of granting the injunction.

Conclusion

23. In all the circumstances I will grant the relief sought, subject to such adjustments as emerge from further consideration after this judgment has been delivered.

Neutral Citation Number: [2024] EWHC 3130 (KB)

Claim 1: No: QB-2022-001241 ("Haven Claim")
Claim 2: No: QB-2022-001259 ("Tower Claim")
Claim 3: No: QB-2022-001420 ("Petrol Stations Claim")

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/12/2024

Before :
Mr Justice Dexter Dias

- -

Between :

(1) Shell U.K. Limited

Claimant: Claim 1

-and-

PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE CLAIMANT, OR BLOCKING THE ENTRANCES TO THAT SITE

Defendants: Claim 1

(2) Shell International Petroleum Company Limited

Claimant: Claim 2

-and-

PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING KNOWN AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL CENTRE TOWER") WITHOUT THE CONSENT OF THE CLAIMANT, OR DAMAGING THE BUILIDNG, OR DAMAGING OR BLOCKING THE ENTRANCES TO THE SAID BUILDING

(3) Shell U.K. Oil Products Limited

Claimant: Claim 3

-and-

PERSONS UNKNOWN DAMAGING AND/OR BLOCKING THE USE OF OR ACCESS TO ANY SHELL PETROL STATION IN ENGLAND AND WALES, OR TO ANY EQUIPMENT OR INFRASTRUCTURE UPON IT, BY EXPRESS OR IMPLIED AGREEMENT WITH OTHERS, IN CONNECTION WITH ENVIRONMENTAL PROTEST CAMPAIGNS WITH THE INTENTION OF DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION

-and-

14 named defendants, including:
Emma Ireland (D7)
Charles Philip Laurie (D8)

- -
- -

Myriam Stacey KC and Joel Semakula (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**
Emma Ireland (D7, Claim 3) in person
Charles Philip Laurie (D8, Claim 3) in person
No other defendant appeared or was represented

Hearing dates: 22-23 October 2024
- -
JUDGMENT

Approved Judgment

This judgment was handed down remotely at 10.30 am on 5th December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Mr Justice Dexter Dias

Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. To assist the parties and the public to follow the court's line of reasoning, the text is divided into 13 sections and four annexes as set out in the table below.

§I.

INTRODUCTION

3. Three claims are being heard together. The case overall is about whether the claimants, a number of companies in the Shell Group ("Shell"), should be granted final injunctions against Persons Unknown ("PUs") and a number of named environmental protesters, who took direct and deliberately disruptive action against Shell during 2022. Two of these protesters, Emma Ireland and Charles Philip Laurie, appear in person and addressed the court at length, carefully explaining why they, and many other protesters, have directed protests against Shell. The protesters include supporters or affiliates of environmental campaigning and activism groups including Just Stop Oil ("JSO"), Extinction Rebellion ("XR"), Youth Climate Swarm and Scientists' Rebellion.

4. The protesters strongly object to Shell's involvement in the extraction, distribution, supply and sale of fossil fuels, and thus Shell's involvement in the burning of the fuels. Such incineration releases carbon dioxide and greenhouse gases into the atmosphere through the process of hydrocarbon combustion. Indeed, the whole point of the complex supply chain created by the fossil fuel industry is the supply of such fuel for burning hydrocarbons. The three claims sharply raise, perhaps for the first time in these direct action environmental protest cases, the applicability and legal relevance of the Aarhus Convention ("Aarhus") (full title: Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), an international convention that the United Kingdom is party to, having ratified the treaty almost 20 years ago in 2005 (analysed in detail in **Section X. Aarhus Convention Analysis**). In particular, Ms Ireland and Mr Laurie rely on Article 3(8) of Aarhus, which provides insofar as material:

> "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement."

5. Their joint submission is that the grant of final injunctions would be "in breach of Aarhus" and "an excessive use of the law". More generally, the environmental protest groups in these three claims maintain that burning fossil fuel is a major contributor to the environmental emergency they wish to bring to the urgent attention of the general public and the Government. They intend to pressurise the Government into ending investment in fossil fuels and halting the issuing of licences and consents for their exploration, development and production. In pursuit of this aim, from the spring until the autumn of 2022, environmental groups, including JSO, directed protests at the fossil fuel industry, including Shell. Their tactics have been variable and have explored new ways to manifest their rights under the European Convention on Human Rights ("ECHR") to freedom of expression and assembly and association. Some people support them; others share their concerns about climate change and the environment but disapprove of their protest methods. In this it is important to remind oneself of the words of Sedley LJ in *Redmond-Bate v DPP* [2000] HRLR 249 at para 20:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

Shell maintains that the acts of the protesters have gone beyond mere irritation, but damage or create the strong probability of damaging Shell's substantive rights under the civil law. Various of the campaign groups have explicitly called for acts of "civil disobedience", a term with a long and complex history. It was defined by Rawls in his landmark *A Theory of Justice* (1971) as a

> "public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government." (p.364)

6. A key issue the court has been invited to examine by the defendants is whether peaceful acts contrary to the law and the rights of others under the civil law are protected by the Aarhus Convention, and if so, in what way. Previously in these claims, when Shell

sought to protect its commercial interests from what it said was unlawful protest activity, various judges of this court granted interim injunctions against a shifting array of defendants to prohibit direct action protest which targeted three different parts of Shell's broad business activities:

(1) "**Haven**": Shell's Haven Oil Refinery in Stanford-le-Hope, Essex, a substantial fuel storage and distribution facility (**Claim 1**);

(2) "**Tower**": Shell Centre Tower on London's South Bank, an administrative centre for Shell's UK operations (**Claim 2**);

(3) "**Petrol stations**": petrol stations which are retail customers of Shell, buying Shell's fuel and selling it on to the public and commercial customers via fuel pumps on petrol station forecourts (**Claim 3**).

7. This judgment must be read in conjunction with the previous judgments of this court. The relevant judgments are tabulated below for convenience and when mentioned will be referred to by the name of the judge (for example, "the Hill judgment" or "Johnson J at para XX"). In all of them, Shell succeeded in obtaining or renewing interim injunctions.

Judgment Date	**Site(s)**	**Expiry**	**Judge**	**Citation**
5 May 2022	Haven Tower	2 May 2023	Bennathan J	Ex tempore (no transcript available)
20 May 2022	Petrol stations	12 May 2023	Johnson J (hearing 13 May 2022)	[2022] EWHC 1215 (QB)
23 May 2023	All 3 claims	12 May 2024	Hill J (hearing dates: 25-26 April 2023)	[2023] 1 WLR 4358 [2023] EWHC 1229 (KB)
24 April 2024	All 3 claims	12 November 2024 or 4 weeks after final hearing (whichever later)	Cotter J	[2024] EWHC 1546 (KB)

8. Therefore, these are three separate but connected claims that have been managed together for administrative convenience and efficiency. I come to this case completely independently and have considered the claims afresh. Having received submissions for a day and a half, I reserved judgment and extended the interim injunctions pending the handing down of the court's decision. This is that decision.

9. Before turning to the specific details of the claims, there are four immediate contexts to the applications for final injunctive relief.

§II. FOUR CONTEXTS

Context 1: The burning of fossil fuels

10. It is a significant understatement to say that climate change and the existence or not of an environmental emergency are controversial, highly contested issues. There has been a mass of litigation in both civil and criminal courts as a result of this vital public debate. The most recent expression in the courts comes from our highest court, the Supreme Court, in *R (on the application of Finch on behalf of the Weald Action Group)(Appellant) v Surrey County Council and others (Respondents)* [2024] UKSC 20. Neither party had provided the court with this authority, but the court drew it to their attention and ensured both parties had an opportunity to read its material passages and make submissions on it. Lord Leggatt, delivering the unanimous judgment of the court, said at the very outset of the court's judgment:

> "1. Anyone interested in the future of our planet is aware by now of the impact on its climate of burning fossil fuels—chiefly oil, coal and gas. When fossil fuels are burnt, they release carbon dioxide and other "greenhouse gases"—so called because they act like a greenhouse in the earth's atmosphere, trapping the sun's heat and causing global surface temperatures to rise. According to the United Nations Environment Programme ("UNEP") Production Gap Report 2023, p 3, close to 90% of global carbon dioxide emissions stem from burning fossil fuels.
>
> 2. The whole purpose of extracting fossil fuels is to make hydrocarbons available for combustion. It can therefore be said with virtual certainty that, once oil has been extracted from the ground, the carbon contained within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming. This is true even if only the net increase in greenhouse gas emissions is considered. Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere: see UNEP's 2019 Production Gap Report, p 50, which reported, based on studies using elasticities of supply and demand from the economics literature, that each barrel of oil left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term."

11. It is that "virtual certainty" noted by the Supreme Court that is of concern to the defendants in this case, objecting to Shell's involvement in the fossil fuel business due to its damaging impact, they maintain, on climate change and the environmental emergency. Shell's position is simple: its business is lawful. It has rights under the law. These rights have been violated by protesters and there is a real and imminent risk of future unlawful interference by direct action activists. This is Shell's rationale for seeking, securing and continuing injunctive relief. Shell seeks the court's legal protection against direct action which breaches its "civil rights" as the Supreme Court termed them in the recent seminal case of *Wolverhampton CC v London Gypsies and Travellers* [2024] 2 WLR 45 at para 167 ("*Wolverhampton*"). The term "civil rights", coming to prominence in the 1960s, here simply means Shell's rights under the civil law. It is important to note that the draft orders sought by Shell do not seek to prevent lawful protest. Direct action is action that seeks to prevent, obstruct or interfere with other people's ability to carry out their lawful activity. However, the two defendants

who appeared and represented themselves in the case claim that their acts of protest are lawful (or not unlawful) because they are necessary and proportionate infringements of Shell's rights. This is because their protests, and those of others, must be seen in the context of the damage they claim Shell is causing through its fossil fuel commercial activities. Indeed, Ms Ireland submits that if Shell properly understood the damage it is producing across the world, it would "consent" to the protests. Shell disputes this.

Context 2: The Special Rapporteur's mission

12. The second context is the recent "mission" visit to the United Kingdom by the United Nations Special Rapporteur on Environmental Defenders. This office was established in October 2021 by a consensus of parties to the Aarhus Convention, including the United Kingdom, to provide "a rapid response mechanism for the protection of environmental defenders" (UN Economic Commission for Europe website ("UNECE") unece.org; examined in detail later in **Section X**). This international treaty played a significant role in the submissions before me, and I must deal with its status in domestic law and assess its significance for the discretionary decisions the court is being invited to make in these claims.

13. The role of the Special Rapporteur is to "take measures to protect any person experiencing, or at imminent threat of experiencing, penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention". The Aarhus Convention protects not just individuals but non-governmental organisations seeking to safeguard the environment. The Special Rapporteur is "the first mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure" (both quotes UNECE, ibid.).

14. The Special Rapporteur who visited the United Kingdom is Michael Forst. Mr Forst was elected at an extraordinary meeting of signatory parties in October 2022. He visited between 10-12 January 2024. I set out parts of his mission report since it is cited by and relied on by both Ms Ireland and Mr Laurie, who took part in direct action protests at Shell's Cobham petrol station in August 2022 (Claim 3). They emphasise the significance of the mission report, coming as it does from an officeholder appointed by the parties to this important international convention that the United Kingdom has chosen to become party to. Mr Forst writes:

> "On 10 – 12 January 2024, I made my first visit to the United Kingdom since I was elected as UN Special Rapporteur on Environmental Defenders under the Aarhus Convention in June 2022. During my visit I met with government officials and with environmental defenders, including NGOs, climate activists and lawyers. I am issuing this statement in the light of the extremely worrying information I received in the course of these meetings regarding the increasingly severe crackdowns on environmental defenders in the United Kingdom, including in relation to the exercise of the right to peaceful protest.
>
> These developments are a matter of concern for any member of the public in the UK who may wish to take action for the climate or environmental protection. The right to peaceful protest is a basic human right. It is also an essential part of a healthy democracy. Protests, which aim to express dissent and to draw attention to a particular issue, are by their nature disruptive. The fact that they cause

> disruption or involve civil disobedience do not mean they are not peaceful. As the UN Human Rights Committee has made clear, States have a duty to facilitate the right to protest, and private entities and broader society may be expected to accept some level of disruption as a result of the exercise of this right.
>
> During my visit, however, I learned that, in the UK, peaceful protesters are being prosecuted and convicted under the Police, Crime, Sentencing and Courts Act 2022, for the criminal offence of "public nuisance", which is punishable by up to 10 years imprisonment. I was also informed that the Public Order Act 2023 is being used to further criminalize peaceful protest. In December 2023, a peaceful climate protester who took part for approximately 30 minutes in a slow march on a public road was sentenced to six months imprisonment under the 2023 law.
>
> …
>
> In addition to the new criminal offences, I am deeply troubled at the use of civil injunctions to ban protest in certain areas, including on public roadways. Anyone who breaches these injunctions is liable for up to 2 years imprisonment and an unlimited fine. Even persons who have been named on one of these injunctions without first being informed about it – which, to date, has largely been the case – can be held liable for the legal costs incurred to obtain the injunction and face an unlimited fine and imprisonment for breaching it. The fact that a significant number of environmental defenders are currently facing both a criminal trial and civil injunction proceedings for their involvement in a climate protest on a UK public road or motorway, and hence are being punished twice for the same action, is also a matter of grave concern to me.
>
> As a final note, during my visit, UK environmental defenders told me that, despite the personal risks they face, they will continue to protest for urgent and effective action to address climate change. For them, the threat of climate change and its devastating impacts are far too serious and significant not to continue raising their voice, even when faced with imprisonment. We are in the midst of a triple planetary crisis of climate change, biodiversity loss and pollution. Environmental defenders are acting for the benefit of us all. It is therefore imperative that we ensure that they are protected. While the gravity of the information I received during my visit leads me to issue the present statement to express my concerns without delay, I will continue to look more deeply into each of the issues raised during my visit and in the formal complaints submitted to my mandate. In this regard, I also look forward to engaging in a constructive dialogue with the Government of the United Kingdom in order to ensure that members of the public in the UK seeking to protect the environment are not subject to persecution, penalization or harassment for doing so.
>
> 23 January 2024"

Context 3: Abandonment of costs

15. The third context is a development in court at the very end of legal submissions on the second listed day of the hearing. Shell announced through counsel that it would not be seeking costs against the named defendants in this claim. This was announced in open court without notice to the court or the two attending defendants, Ms Ireland and Mr

Laurie. Shell's change of position caused them to be overwhelmed by emotion, given the strain they have been under as litigants in person. They had feared being bankrupted through an award of Shell's costs against them. The court directed that Shell's new stance on costs be reduced to writing so there could be no future misunderstanding. The script ultimately filed is in these terms:

1. "In this particular case [Claim 3], [Shell U.K. Oil Products Limited] has taken the decision not to seek costs against Named Defendants in the event that it secures the injunctive relief sought.
2. That decision has been arrived at in the specific circumstances of these proceedings including by having regard to the fact that: (i) the Court was addressed by unrepresented Named Defendants who acted in person and who had not breached the injunctions since they have been in place; (ii) substantive new issues of public importance were raised by those Defendants namely the applicability of the Aarhus Convention as a consideration to the Court's discretion under s.37 Senior Courts Act 1981 in the context of environmental protest injunctions, which had not been previously considered by any Court to date; and (iii) they conducted themselves throughout the proceedings in a respectful and constructive manner to everyone and were of assistance to the Court.
3. However, this is a bespoke decision which is limited to the present case and does not reflect Shell policy or its approach in any future case.
4. In deciding not to pursue costs in this case, C3 is giving up its *in principle* entitlement to its reasonable and proportionate costs against those persons who have been joined pursuant to the obligations under *Canada Goose* and against whom a final injunction is secured on the application of the usual costs rules CPR r.44.2(2)(a). Costs should follow the event and a successful party's entitlement to such costs is necessary in a democratic society for the purposes of Articles 10 and 11 of the ECHR. C3's *in principle* entitlement is reinforced by the fact that: (i) that the Named Defendants were invited to sign undertakings in order to avoid potential costs consequences; (ii) the consequence of refusing to sign such undertakings was repeatedly explained to them; and (iii) the desire to make submissions is no justification for refusing to sign such undertakings, in circumstances where interested persons may address the Court pursuant to CPR r.40.9 and/or the Cotter J Petrol Stations Order provide for any other person who "claims to be affected by the Order and wishes to vary or discharge it or to be heard at the final hearing" (§15)."

Context 4: The cautionary approach to PUs

16. Each of the three applications for final orders includes applications for injunctive relief against PUs. This is a serious step. It should not be underestimated or taken for granted as the senior courts have repeatedly observed. The Court of Appeal noted in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA) ("*Ineos*") at para 31:

> "A court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance."

17. This cautionary note was repeated by the court in *Bromley LBC v Persons Unknown* [2020] 4 All ER 114 (CA) at para 34:

> *"*a court should always be cautious when considering granting injunctions against persons unknown.*"*

18. This is because the precautionary prohibition may seriously impinge on the right to freedom of expression and the right to protest of very large numbers of members of the public. This is why such injunctions are sometimes called injunctions "against the world" (contra mundum). While such far-reaching scope is sometimes authorised in intellectual property and privacy cases, when it occurs in public protest situations, its seriousness attains a different complexion. It is not something that can or should go through as a matter of routine, and is an aspect of these claims I have anxiously considered.

19. I have taken the non-conventional step of providing these four contexts at the beginning of the judgment to illustrate how complex, important and multifaceted these claims are. To offer another crude measure: the papers provided to me exceeded 8000 pages. Inevitably, this judgment, which must deal with all three claims, is lengthy. I have tried to simplify wherever possible. However, some of the complexity remains indispensable to an informed understanding of the court's reasoning, and for that there can be no apology.

§III. PARTIES

20. I now detail the parties to the claims. In all three claims the Shell corporate entity involved is represented by Ms Stacey KC and Mr Semakula. No defendant appeared in any of the claims save for Claim 3 (petrol stations), where Ms Ireland and Mr Laurie appeared in person. Both counsel and both litigants in person made submissions to the court, for which it is grateful. The court particularly wishes to note the thoughtful and respectful way in which Ms Ireland and Mr Laurie conducted themselves throughout. Further, the public gallery was invariably filled with their supporters, who also conducted themselves responsibly throughout. This demonstrates how this serious and contentious issue can be explored in public in a productive and constructive way.

Claim 1: Haven

21. In the first claim, the claimant is Shell U.K. Limited. This company is the freeholder of the Shell Haven Oil Refinery facility, on the Thames Estuary, south of Basildon and between Tilbury and Southend-on-Sea. The defendants are PUs. The torts relied on are trespass, public nuisance, private nuisance (interference with access from the public highway) and private nuisance (interference with private right of way).

Claim 2: Tower

22. In the second claim, the claimant is Shell International Petroleum Company Limited. This company is the freehold owner of the Shell Centre Tower, a large office building rising prominently on the South Bank's Belvedere Road near to the London Eye. The defendants are PUs. The torts relied on are trespass, public nuisance in the form of

obstruction of the highway, private nuisance in the form of interference with access from the highway, and private nuisance in the form of interference with private right of way.

Claim 3: Petrol stations

23. In the third claim, the claimant is Shell U.K. Oil Products Limited. This company supplies fuel to Shell-branded petrol stations across the country. While Shell has a proprietary right in the land on which some petrol stations are situated, it does not in all the outlets it wishes to protect through injunctive relief. Therefore, rather than trespass or nuisance, the tort relied on is a conspiracy to injure. The claim, put very shortly, is that jointly conducted direct action at or on petrol station forecourts creates very real risk of significant harm and injury. The defendants are PUs and a number of named defendants. Fourteen identified individuals were joined to the claim by Soole J at a review and case management hearing on 15 March 2024. They had been arrested on suspicion of criminal damage and/or aggravated trespass and/or conspiracy to destroy or damage property and/or wilful obstruction of the highway and/or causing a public nuisance and/or being in possession of an offensive weapon at the petrol station sites in connection with certain environmental protest groups.

24. On 16 October 2023, Shell's solicitors wrote to 29 of the 30 protesters identified as being arrested at petrol stations protests at Cobham Services and Acton Vale in August 2022. One person had died in the interim. Shell invited the remaining 29 protesters to agree to undertakings not to engage in certain protest activities, the breach of such promise exposing them to fine, asset seizure or imprisonment for contempt of court. A further letter was sent on 16 November 2023. Fourteen people gave undertakings. That left 15 people. One person gave an undertaking on 5 March 2024. Therefore, when the matter came before Soole J on 15 March, the remaining 14 people were joined to the claim as named defendants. Of these named defendants, on 26 September 2024, the third named defendant gave an undertaking in the terms the claimant sought. That left 13 defendants, including Ms Ireland as the seventh defendant and Mr Laurie as the eighth.

§IV. ISSUES

25. The issues before the court were:

    (1) Whether to grant final orders in respect of each of the three claims;

    (2) Whether the duration of the final orders should be 5 years;

    (3) Whether alternative service orders should be granted;

    (4) Whether to grant the application to remove the third defendant from Claim 3 (petrol stations) and consequently amend the claim form and particulars of claim to reflect the strike out.

26. I can deal with Issue 4 immediately. I have carefully reviewed the evidence and it is appropriate to grant the application to remove the third defendant in the petrol stations

claim. She has given the undertaking sought. I need say no more about it. That leaves the three prime issues for the court to determine.

§V. APPROACH TO JUDGMENT

27. I make plain that my approach to the judgment text is heavily informed by the approach of the Court of Appeal in *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ. 407. The court stated at para 58:

> "... a judgment is not a summing-up in which every possible relevant piece of evidence must be mentioned."

28. Therefore, I focus on what has been essential to my determinations in this case. Numerous side issues were thrown up. I do not need to resolve them all. The critical issues are clear. I focus on those as are necessary to determine the remaining three prime identified issues here. While I do not set out all the evidence the court received, and it is extensive, I emphasise that as part of my review I considered or reconsidered all the prime evidence. I reserved judgment for precisely that reason.

§VI. THE PROTESTS

29. The targeting of Shell in the first part of 2022 led to its seeking injunctive relief from the court. That said, Shell has repeatedly emphasised that it does not oppose lawful protest. The most recent evidential expression of this sentiment can be found in the statement of Paul Eilering, the Interim Cluster Security Manager for the Shell businesses' UK assets, in a statement filed on 1 July 2024 in support of the final injunctions:

> "The Claimants have not sought orders which stop protesters from undertaking peaceful protests whether near the Shell Sites or otherwise. That remains the case. The Claimants' concern continues to be the need to reinforce its proprietary rights and to mitigate the serious health, safety and wellbeing risks (to the Claimants' employees, contractors, visitors and indeed protesters themselves) posed by the kind of unlawful actions and activities which prompted the Claimants to seek injunctive relief back in April 2022."

30. Against this, the protesters maintain that Shell is in truth more concerned about its profits and brand reputation than the welfare of people or the planet. As Mr Laurie put it, Shell "just doesn't care" and "does not take the climate emergency seriously". As Ms Ireland says, if Shell did actually care, and understood the consequences of its actions, "it would consent to the protests". How have matters come to this? I now provide a brief account of the protests.

Haven

31. Mr Prichard-Gamble, a security manager with Shell, provided evidence that Shell became aware in early 2022 that environmental campaign groups, including XR and JSO, intended to target the fossil fuel industry, including Shell. XR called for a

campaign of civil disobedience, which would include "testing the limits of the protest law", to end "the fossil fuel economy". One of Shell's Distribution Operations Managers Ian Brown provided Bennathan J with a statement dated April 2022 detailing protest activity around Haven. This included a six-hour incident on 3 April 2022 whereby a group of protesters blocked the main access road to Haven, boarded tankers and blocked a tanker, requiring police attendance. Further, protesters tried to access the jetty at Haven; and similar incidents at fuel-related sites near to Haven caused concern that Haven was an imminent target. Deep anxiety arose because the Haven site is used for the storage and distribution of highly flammable hazardous products. Unauthorised access could cause a fire or explosion. Unauthorised access to the jetty could lead to a significant release of hydrocarbons into the Thames Estuary resulting in serious pollution and risk to health and the local environment. Thus Shell's stated concern was for the safety and well-being of Shell's staff and contractors, the protesters themselves and the local environment.

Tower

32. On 6 April 2022, what appeared like paint was thrown on the walls and above one of the staff entrances to the Tower, resulting in black marks and substantial spattering. On 13 April 2022 approximately 500 protesters closed on the Tower, banging drums and carrying banners stating, "Jump Ship" and "Shell=Death", clearly directed at Shell staff, several glued themselves to the reception area of the Tower and another Shell office nearby. On 15 April 2022, approximately 30 protesters with banners obstructed the road outside the Tower. On 20 April 2022, 11 protesters with banners, used a megaphone and ignited smoke flares. Protesters also inscribed the XR logo on the outside of the Tower. On several occasions the Tower was placed in security "lockdown".

Petrol stations

33. Benjamin Austin is a Health, Safety and Security Manager with Shell. He provided a statement to Johnson J about protests directed at petrol stations. He narrated how on 28 April 2022, two petrol stations on the M25 were the targets of protest activity. Forecourt entrances were blocked and the displays of fuel pumps were either obscured with spray paint or smashed with hammers. Kiosks were interfered with "to stop the flow of petrol", while protesters glued themselves to one another or fuel pumps or the roof of a tanker. In total, 55 fuel pumps were damaged, including 35 out of the 36 pumps at Cobham. They became unsafe for use and the forecourt was closed. Johnson J noted at para 9 that the protesters were "committed to protesting in ways that are unlawful, short of physical violence to the person". The campaign websites referred to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time". He continued at para 18:

> "18. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour does not disperse easily and can travel long distances. There is therefore close regulation …

19. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason. The evidence shows that at the protests on 28 April 2022 protesters used mobile phones on the forecourts to photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations." I was not shown any positive evidence as to the risks posed by spray paint, glue or other solvents in the vicinity of fuel or fuel vapour, but I was told that this, too, was a potential cause for concern."

34. On 24 August 2022, there was another protest at the Cobham M25 petrol station. This was the direct action that Ms Ireland and Mr Laurie took part in. The forecourt was blocked by seated protesters. Two petrol pump screens were smashed. Ms Ireland did not do this. Mr Laurie had intended to smash petrol pump screens, but "changed course", as he put it in his witness statement, when he saw police at the scene. He glued himself to the ground instead, blocking the forecourt. Both Ms Ireland and Mr Laurie were arrested. They stand trial at Winchester Crown Court in August 2025 and are on bail pending that hearing.

§VII. INJUNCTION TERMS

35. The future acts of protest that the claimants seek to restrain vary according to the site. The shared intention is to avoid interference with the claimants' right under the civil law not to be subject to the torts specifically pleaded by Shell.

Claim 1: Haven

36. In respect of Haven, the acts sought to be restrained are:

a. Entering or remaining upon any part of Haven without the consent of the Claimant;

b. Blocking access to any of the gateways to Haven the locations of which are identified and marked blue on "Plan 1" and "Plan 2" which are appended to this Order in the Third Schedule;

c. Causing damage to any part of Haven whether by:

i. Affixing themselves, or any object, or thing, to any part of Haven, or to any other person or object or thing on or at Haven;

ii. Erecting any structure in, on or against Haven;

iii. Spraying, painting, pouring, sticking or writing with any substance on or inside any part of Haven; or

iv. Otherwise.

Claim 2: Tower

37. The Tower injunction is applied for in similar terms to Claim 1.

Claim 3: Petrol stations

38. In respect of Petrol Stations, the acts relate to the disruption or interference with the supply or sale of fuel (to those premises or outlets connected to Shell). They are specified as:

a. Directly blocking or impeding access to any pedestrian or vehicular entrance to a Petrol Station forecourt or to a building within the Petrol Station;

b. Causing damage to any part of a Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;

c. Operating or disabling any switch or other device in or on a Petrol Station so as to interrupt the supply of fuel from that Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Petrol Station; and

d. Causing damage to any part of a Petrol Station, whether by:
   i. Affixing or locking themselves, or any object or person, to any part of a Petrol Station, or to any other person or object on or in a Petrol Station;
   ii. Erecting any structure in, on or against any part of a Petrol Station;
   iii. Spraying, painting, pouring, depositing or writing in any substance on to any part of a Petrol Station.

39. Each draft order further specifies that the defendant must not do any of these acts by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

§VIII. LAW

40. Frequently in judgments, judges have the advantage of saying that the law is uncontroversial and can be stated shortly. I do not have that advantage. The law around protests and particularly injunctive relief against PUs - what is sometimes called "against the world" - has rapidly evolved in the last few years. Few areas of law in the recent past have undergone development of such rapidity accompanied by stringent scrutiny all the way to the Supreme Court. Therefore, the legal context for these claims is markedly different to that of a decade ago, or even five years previously, as the Court of Appeal noted in *London Borough of Barking and Dagenham and Others v Persons Unknown and Others* [2022] EWCA Civ 13 ("*Barking*").

41. This has, as Lord Reed put it in *Wolverhampton* at para 22:

> "illustrate[d] the continuing ability of equity to innovate both in respect of orders designed to protect and enhance the administration of justice … [and] in respect of orders designed to protect substantive rights."

42. I will set down the main features of this evolution, simplifying wherever possible, dealing first with the discretionary power confirmed by section 37 of the Senior Courts Act 1981 ("SCA 1981") before reviewing the main features of the common law. I stress that I have considered and adopt the law as previously set down in the claims at the interlocutory stage by Johnson, Hill and Cotter JJ in the judgments tabulated above, and am grateful to them for it.

1. Statute

43. The authority to grant an injunction in the exercise of the court's general "equitable discretionary power" (*Wolverhampton*, para 167) is set down in section 37 of the SCA 1981. It provides:

> "the High Court may by order (whether interlocutory or final) grant an injunction, in all cases in which it appears to the court to be just and convenient to do so"
>
> and
>
> "on such terms and conditions as the court thinks fit."

44. Injunctions are equitable in origin and section 37 is a statutory "confirmation" of how decisions about them should be approached (*Wolverhampton*, para 17). Section 37, as explained by Lord Scott in *Fourie v Le Roux* [2007] UKHL 1, simply confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 ("the 1873 Act") and still exists. That power was transferred to the High Court by section 16 of the 1873 Act (see Spry, *Equitable Remedies* (9th ed) at 333). The power of courts with equitable jurisdiction to grant injunctions is, subject to any statutory limitations, unlimited.

2. Common law

45. Survey of the authorities involving recent protest cases reveals different formulations of the "test" (if that it is) to be applied. This is inevitable: the senior courts have repeatedly stated that there is no uniform and invariable test or standard. This was recognised as long ago as *Hooper v Rogers* [1975] Ch 43, where at 50, Russell LJ, giving the judgment of the Court of Appeal said:

> "In different cases, differing phrases have been used in describing circumstances in which mandatory injunctions and quia timet injunctions will be granted. In truth, it seems to me that the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant
> circumstances."

46. In this case, while recognising the existence of no "absolute standard" to definitively measure how to do justice between the parties, I adopt the approach of the Supreme Court in *Wolverhampton* at para 218. The claimant

> "must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent."

47. For assistance, I add para 167(i) since it was referred to:

> "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."

48. Linden J was, to my mind, right to sound a note of caution in *Esso Petroleum v PUs* [2023] EWHC 1837 (KB) at para 63 about reducing any formulation to an invariable test:

> "With respect, I confess to some doubts about whether the two questions which he [Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch)] identified are part of a *"test"* or a *"two stage"* test. To my mind they are questions which the Court should consider in applying the test under section 37 Senior Courts Act 1981, namely what is *"just and convenient"* but they are not threshold tests."

49. Linden J then went on quote from *Gee on Commercial Injunctions* (7th Edition) which says at 2-045:

> "There is no fixed or 'absolute' standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief. The graver the likely consequences, and the risk of wrongdoing the more the court will be reluctant to consider the application as 'premature'. But there must be at least some real risk of an actionable wrong."

50. This, it seems to me, must be right. This is precisely why the Supreme Court has identified questions of the probability of rights breach with attendant harm. The court will inevitably and rightly be concerned by the risk of very grave consequence and may be prepared to grant injunctive relief where the risk of occurrence is lower than a case where the harm is less severe. All these factors have to be weighed together. Therefore, *solely* for organisational purposes, and without suggesting the existence of a universal test, I examine the case approaching the relevant questions by separating out two vital factors that need to be assessed holistically:

> (1) **Consequences**: of conduct in terms of (a) breach of rights and (b) level of harm ("Limb 1");
> (2) **Risk**: of the conduct's future occurrence ("Limb 2").

51. The approach to be adopted when granting a final injunction in the context of protests against PU (including newcomers) is not materially altered by the decision of the Supreme Court in *Wolverhampton*. The Supreme Court confirmed that injunctions can be granted against PUs, including "newcomers" (para 167) and expressly stated at para 235 that:

> "nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction".

52. Therefore, the following seven "procedural guidelines" in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 ("*Canada Goose*") at para 82 remain good law and must still be satisfied in claims for protest injunctions against PUs and have been applied in all subsequent protest injunction cases:

> "(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 nontechnical 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."

53. Ritchie J said in *Valero Energy Ltd v PU* [2024] EWHC 134 (KB) ("*Valero*") at para 57 that:

> "in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place."

54. The Supreme Court stated in *DPP v Ziegler* [2021] UKSC 23 ("*Ziegler*") that if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction, a careful balancing exercise is required. The injunction must be necessary and proportionate to the need to protect the claimants' right.

55. The situation is different with trespass to private land. A landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on her or his land (*Snell's Equity* (34th ed) at para 18-012). Further, Convention rights under the ECHR do not confer a right to trespass onto private land. The basis for this conclusion is that the rights under Articles 9, 10 and 11 are qualified rights. This matter has been explored by the courts at senior level. In *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, Warby LJ said:

> "9. The following general principles are well-settled, and uncontroversial on this appeal.
>
> (1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in Articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 [43] (Laws LJ) and *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039, reflecting the Strasbourg jurisprudence.
>
> (2) But the right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Article 10 and 11. Trespass is an interference with A1P1 rights, which in turn requires justification. In a democratic society, Articles 10 and 11 cannot normally justify a person in trespassing on land of which another has *the right to possession*, just because the defendant wishes to do so for the purposes of protest against government policy. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to make such a protest."

56. In *DPP v Cuciurean* [2022] EWHC 736 (Admin), an HS2 protest case before the Divisional Court, Lord Burnett CJ said:

> "45. We conclude that there is no basis in the Strasbourg jurisprudence to support the respondent's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg Court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of *destroying* the *essence* of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.
>
> 46. The approach taken by the Strasbourg Court should not come as any surprise. Articles 10, 11 and A1P1 are all qualified rights. The Convention does not give priority to any one of those provisions. We would expect the Convention to be read as a whole and harmoniously. Articles 10 and 11 are subject to limitations or restrictions which are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the 1994 Act. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms."

57. For these reasons, in *HS2 v PUs* [2022] EWHC 2360 (KB), Julian Knowles J said at para 80:

> "In relation to defences to trespass, genuine and *bona fide* concerns on the part of the protesters about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede*, [63]."

58. In similar vein, in *Halsbury's Law*s (5th ed) at para 325, it is said that generally "it is not a defence to show that although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public."

§IX. ANALYSIS OF THE 15 FACTORS: PART I

59. To assist in the analysis, I reduce the "guidelines" Ritchie J identifies to tabular form for ease of reference, remaining indebted to him for his analysis. I perceive these to amount to a series of 15 factors that together form a vital checklist. I use the term "factor" to underline that these are matters for the court to examine and then weigh in the overall equitable discretionary exercise under section 37 of the SCA 1981. Once the court has evaluated the factors globally and holistically, an accurate decision on whether it is "just and convenient" to exercise the section 37 discretion in favour of granting the injunction applied for is possible. Only then may terms be properly determined. The statutory working of section 37 is deliberately framed as "may" grant not "must", and the court retains an overall equitable discretion whether to grant the injunction or not depending on the overall justice of the case. The court must exercise its necessarily wide discretion judicially. I take that to mean rationally, reasonably and based on the totality of evidence, fairly considered.

Factor	**Summary**
1.	Cause of action clearly identified
2.	Full and frank disclosure by claimant
3.	Sufficient evidence to prove claim
4.	No defence (or no realistic defence where no defence filed)
5.	Balance of convenience / compelling justification or need
6.	Proportionate interference with ECHR rights
7.	Damages not adequate remedy
8.	Clear identification of defendants: (a) Named defendants identified in claim form and injunction order by tortious acts prohibited (b) PUs capable of being identified and served
9.	Terms of injunction: (a) Sufficiently clear and precise (b) Only prohibiting lawful conduct where no other proportionate means to protect claimant's rights
10.	Correspondence between terms of injunction and threatened tort
11.	Clear and justifiable geographical limit
12.	Clear and justifiable temporal limit
13.	Service: all reasonable steps taken to notify defendants
14.	Right to set aside or vary
15.	Review

60. I now examine each of the 15 factors in turn, comprising as they do a structured and essential checklist.

1 Cause of action clearly identified

61. The next table sets down the prime elements of each of the torts pleaded by the claimants.

Trespass	(a) entry onto land in the possession of another (b) without justification or the other's consent
Private nuisance	(a) substantial and unreasonable interference (b) with the land of another or the enjoyment of that land
Public nuisance	(a) wrongful acts or omissions on or near a highway (b) causing the public ("all the King's subjects") or all members of an identifiable class proximate to the acts' operation (c) to be hindered or prevented from freely, safely and conveniently passing along the highway (d) [and] possessors of land must demonstrate substantial inconvenience or damage to them
Conspiracy to injure by unlawful means	(a) an unlawful act by the defendant (b) with the intention of injuring the claimant (c) pursuant to an agreement with others (d) which injures the claimant

Haven and Tower

62. These sites share a common feature: Shell has a proprietary right in the land. The torts relied on reflect that interest, being trespass to land and private nuisance. It is unarguable but that they have been clearly identified. As noted by Julian Knowles J in *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB) at para 85:

> "Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land: *Bamford v Turnley* (1862) 3 B & S; *West v Sharp* [1999] 79 P&CR 327, 332:
>
> Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. There is no actionable interference with a right of way if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him".

63. The unlawful interference with the claimant's right of access to its land via the public highway, where a claimant's land adjoins a public highway, can be a private nuisance (*Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29) ("*Cuadrilla*"). In *Cuadrilla* the Court of Appeal said at para 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."

Petrol stations

64. The petrol stations claim sits in a different legal context as Shell does not possess proprietary rights or a sufficient degree of control over all the service station locations. For simplicity's sake, Shell relies on the tort of conspiracy to injure by unlawful means. The claim is that Shell has been the target of a coordinated campaign of protest activity directed at and intended to harm it economically and commercially by disrupting its supply and sale of fuel, which is a lawful activity. The elements of the tort are set out in *Cuadrilla* by Leggatt LJ (as he then was) at para 18 and in the immediately preceding table. This tort was relied on by Julian Knowles J in *Esso Petroleum v PUs* [2023] EWHC 2013 (KB). It was also examined and approved in connection with these claims by Johnson J in *Shell U.K. Oil Products Limited v Persons unknown* [2022] EWHC 1215 (QB) at para 26.

65. On element (a), it is not necessary for the claimant to establish that the underlying conduct is actionable by itself. This was noted by Johnson J at para 29:

> "29. For the purposes of the present case, it is not necessary to decide whether a breach of statutory duty can found a claim for conspiracy to injure, or whether every (other) tort can do so. It is only necessary to decide whether the claimant has established a serious issue to be tried as to whether the torts that are here in play may suffice as the unlawful act necessary to found a claim for conspiracy to injure. Those torts involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant (where the petrol station is being operated under the claimant's brand, selling the claimant's fuel). Recognising the torts as capable of supporting a claim in conspiracy to injure does not undermine or undercut the rationale for those torts. It would be anomalous if a breach of contract (where the existence of the cause of action is dependent on the choice of the contracting parties) could support a claim for conspiracy to injure, but a claim for trespass could not do so. Likewise, it would be anomalous if trespass to goods did not suffice given that criminal damage does. I am therefore satisfied that the claimant has established a serious issue to be tried in respect of a relevant unlawful act."

66. On (b): the intention of the activities of the protesters is evident from their conduct and the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. That is a prime objective of their protests.

67. On (c): no one suggests that this was anything but a coordinated and agreed joint group protest.

68. On (d): there can be little debate about loss. The petrol stations were unable to sell fuel, with the forecourts being blockaded, petrol pumps damaged and the service station shut to the public. That was all part of the objective of the protest as a stepping stone to raising awareness about fossil fuels. There can be no doubt that the tort relied on by the claimant in the petrol stations claim has been clearly identified with evidence filed by the claimant going to each of the elements. This tort was considered in detail by Johnson J at para 30. He said:

> "The intention of the defendants' unlawful activities is plain from their conduct and from the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. They are not solitary activities but are protests involving numbers of activists acting in concert. They therefore apparently undertake their protest activities in agreement with one another. Loss is occasioned because the petrol stations are unable to sell the claimant's fuel."

69. When the case came before Hill J for review, powerful argument was advanced by Mr Simblet KC on behalf of one defendant that reliance on wide-ranging economic torts, such as conspiracy to injure through unlawful means, was discouraged by the Court of Appeal in *Boyd v Ineos* [2019] 4 WLR 100. The court discharged those parts of an order based on public nuisance and unlawful means conspiracy, leaving only those based on trespass and private nuisance. Hill J concluded at para 129:

> "in *Cuadrilla*, the prohibitions were made out on the facts from claims in private nuisance and at para 81 the court described the prohibition corresponding to unlawful means conspiracy as "a different matter" on which Cuadrilla did not need to rely. However, as Ms Stacey highlighted, the discharge of the injunction based on conspiracy by the Court of Appeal in *Ineos* involved materially different facts, namely, a challenge to an injunction sought before any offending conduct had taken place; and terms which were impermissibly wide. In *Cuadrilla* at para 47 the Court of Appeal noted that the fact that the injunction had been made before any alleged unlawful interference with the claimant's activities had occurred was "important in understanding the decision" and I agree. In contrast, the injunction granted by Johnson J was based on past conduct having already occurred and was suitably narrow in focus."

70. I find in respect of each of the three claims that this requirement has been met.

2 Full and frank disclosure

71. With regard to PUs, the injunctions sought are without notice, by definition. As such, the claimant must act fairly in all material respects, including "a duty to act in the utmost good faith and to disclose to the court all matters which are material to be taken into account by the court in deciding whether or not to grant relief without notice, and if so on what terms" (*Gee on Commercial Injunctions* at para 9-001; there is nothing new in this: see *Thomas A. Edison Ltd v Bullock* (1912) 15 C.L.R. 679 at 682, per Isaacs J; *Dormeuil Freres SA v Nicolian Ltd* [1988] 1 WLR. 1362 at 1368).

72. In respect of named defendants, there remains a high duty of full and frank disclosure. Here Shell has filed and served many thousands of pages of evidence and background material. I detect no want of frankness as opposed to extensive and candid disclosure. It is noticeable that this point was not taken by any named or appearing defendant. I find this requirement met.

3 Sufficient evidence to prove claim

73. The two-limbed approach outlined by the Supreme Court in *Wolverhampton* is useful organisationally here.

Limb 1: strong probability

74. For the reasons given above, I am satisfied that should the acts that the claimants fear take place that there is a "strong probability" of a breach of the claimants' rights in civil law by committing a tort. In large measure the rationale of the direct action as opposed to other forms of protest is avowedly to interrupt, interfere and disrupt. The defendants' case is not that there is no interference, but that it is justified, in the sense of proportionate to the damage they claim Shell is causing.

Limb 2: real and imminent risk

75. As noted by Hill J, Mr Prichard-Gamble on behalf of Shell provided evidence of harm and risk (see Hill judgment at paras 38-40). He stated that (i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites, he states, presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them. In a recent statement, Mr Eilering states:

> "2.4 Each of the Injunction Orders have been carefully considered and drawn so as to ensure that they are not too wide and only prohibit activity which would be clearly unlawful.
>
> 2.6 The Injunction Orders have been obeyed and have acted as an effective deterrent against unlawful protest activity. They continue to have that deterrent effect and ensure that damage and harm is avoided."

76. Mr Prichard-Gamble has provided an updated witness statement emphasising that the risk of rights violation to Shell and risk of harm should it occur continues. Marcus Smith J addressed the question of future harm in his judgment in *Vastint* at para 31(5):

> "it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of

> the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material:
>
> > (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind."

77. In this case, Shell has filed evidence about grave concern that direct action protests could cause localised leaks and pollution through the release of highly toxic substances, serious or severe injury or death through combustion of dangerously flammable liquids, resulting in harm to employees, contractors, members of the public and protesters that cannot be or cannot be easily undone.

78. That evidence is compelling. Indeed, in respect of damaging petrol pumps, Ms Ireland has circulated the information about the risk it produces within protest "circles" and she now says that she would not endorse future protest action involving damage to petrol pumps due to the risk presented by it. Mr Laurie's position is more nuanced. Coming from his engineering background, he told the court that risk is not "binary". It exists along a spectrum and damaging petrol pumps "is not a straightforward situation". There is a "gradient of risk we all exist on". However, he recognised that "just because we think some form of protest is safe, that does not make it [objectively] safe".

79. The court accepts the evidence that direct action that involves damaging petrol pumps plainly carries with it the risk of serious injury and Ms Ireland is right to recognise and change her stance in light of that risk. Protests that may release the highly toxic and flammable substances that Shell store and supply plainly carries with it the associated danger of serious harm.

80. I will deal with general risk first before turning to three categories of defendants (1) Ms Ireland and Mr Laurie; (2) named defendants in Claim 3 (see Annex A for details); (3) PUs generally. I examine Ms Ireland's evidence before Mr Laurie simply because she precedes him in the list of named defendants and addressed the court first.

General risk

81. In terms of general risk of future direct action against Shell, I begin by noting the observations of Cotter J at para 41:

> "There have been 63 separate protests at Shell Tower since the April renewal hearing. Apart from three incidents in June 2023 when protesters accessed the entrance to the Tower, these appear, I say no more, to have been lawful protests. I pause to observe that this is also of significance as it gives credence to the claimants' repeated assertion that it does not seek to prevent protesters from undertaking lawful peaceful protests, whether or not such protests arise near to its premises. It also highlights how it is possible to protest against the use of fossil fuels without infringing the rights of the claimants or others."

82. Cotter J added at para 43:

> "the Protest Groups had made comments reiterating that this is "an indefinite campaign of civil resistance" and (in March 2024) that "non violent civil resistant to a harmful state will continue with coordinated radical actions."

83. In June 2024, JSO repeated its statements that supporters will continue to take action to "demand necessary change" that this UK government "end the extraction and burning of oil, gas and coal by 2030" and will continue "the resistance" if the Government fails to "sign up to a legally binding treaty to phase out fossil fuels by 2030". Student members of JSO have posted that "[t]his November, hundreds of students are coming to London – this is going to be the biggest episode of civil disobedience this country has ever since. Be there, November 12." As Linden J put it in *Esso Petroleum Company Ltd v PUs* [2023] EWHC 1837 (KB) ("*Esso Petroleum*") at para 67:

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

84. Similarly, Ritchie J noted in *Valero* (at para 64):

> "I find that the reduction or abolition of direct tortious activity against the Claimants' 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence".

85. I find that similar considerations apply to the direct action protests against Shell as at autumn 2024. In her careful analysis, Hill J noted at para 30 the ending of direct action protests at Haven following the injunction, but noted wider fossil fuel protests elsewhere:

> "30. There do not appear to have been any further unlawful protest incidents at the Haven. However, the evidence shows a significant number of incidents in relation to oil refinery sites between August 2022 and February 2023. These included protest action at a number of oil refineries located in Kingsbury. The main road used to access the site was closed as a result of protesters making the road unsafe, by digging and occupying a tunnel underneath it, access roads were also blocked by protesters performing a sit-down roadblock. Similar activity occurred at the Gray's oil terminal in West Thurrock in August/ September 2022. On 28 August 2022 eight people were arrested after protesters blocked an oil tanker in the vicinity of the Gray's terminal, climbing on top of it and deflating its tyres. On 14 September 2022 around fifty protesters acted in breach of the North Warwickshire local authority injunction in relation to the Kingsbury site."

86. Hill J then continued at para 39:

> "(i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent

effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them."

87. In respect of petrol stations, Hill J noted:

"18 Johnson J was provided with witness statements from Benjamin Austin, the claimant's health, safety and security manager, dated 3 and 10 May 2022. In his judgment, he explained that, on 28 April 2022, there were protests at two petrol stations (one of which was a Shell petrol station) on the M25, at Clacket Lane and Cobham. Entrances to the forecourts were blocked. The display screens of fuel pumps were smashed with hammers and obscured with spray paint. The kiosks were "sabotaged … to stop the flow of petrol". Protesters variously glued themselves to the floor, a fuel pump, the roof of a fuel tanker or each other. A total of 55 fuel pumps were damaged (including 35 out of 36 pumps at Cobham) to the extent that they were not safe for use, and the whole forecourt had to be closed: paras 12–13. Johnson J also referred to wider protests in April/early May 2022 at oil depots in Warwickshire and Glasgow: paras 14–15.

19 Johnson J explained that he had not been shown any evidence to suggest that XR, JSO or Insulate Britain had resorted to physical violence against others. He noted, however, that they are "committed to protesting in ways that are unlawful, short of physical violence to the person". He observed that their websites demonstrate this, with references to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time": para 9.

20 He summarised the various risks that arise from these types of protest, in addition to the physical damage and the direct financial impact on the claimant (from lost sales), as follows [quoting paras 18-19 in the Johnson J judgment quoted at this judgment's para 33 ante, before continuing at para 21]:

> "21. Aside from the physical damage that has been caused at the petrol stations, and the direct financial impact on the claimant (from lost sales), these types of protest give rise to additional potential risks. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour does not disperse easily and can travel long distances. There is therefore close regulation, including by the Dangerous Substances and Explosives Atmosphere Regulations 2002, the Highway Code, Health and Safety Executive guidance on "Storing petrol safely" and "Dispensing petrol as a fuel: health and safety guidance for employees", and non-statutory guidance, "Petrol Filling Stations – Guidance on Managing the Risks of Fire and Explosions."
>
> "22. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason (see annex 6 to the Highway Code: "Never smoke, or use a mobile phone, on the forecourt of petrol stations as these are major fire risks and could cause an explosion."). The evidence shows that at the protests on 28 April 2022 protesters used mobile phones on the forecourts to

> photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations." I was not shown any positive evidence as to the risks posed by spray paint, glue or other solvents in the vicinity of fuel or fuel vapour, but I was told that this, too, was a potential cause for concern."

88. Hill J stated at para 21 that Johnson J:

> "noted the evidence that the campaign orchestrated by the groups in question looked set to continue and cited JSO's statement on its website that the disruption would continue "until the government makes a statement that it will end new oil and gas projects in the UK: para 16."

89. In the exhibit to his statement in the core bundle, Mr Eilering on behalf of Shell appends the online report of Shell's AGM. The report dated 21 May 2024 documents how protesters from "numerous" climate campaigning groups, including XR, disrupted the AGM by singing "Shell Kills", while outside the hotel where the meeting took place, protesters unfurled a sign saying "SHELL PROFITS KILL". Beyond this, Mr Eilering exhibits several hundred pages of articles and documents recording recent protest activity not only in the United Kingdom but internationally directed towards the fossil fuel industry. This documentation builds on the earlier filed statements by Mr Prichard-Gamble attesting to the ongoing threat to the business interests of Shell from those who object to their involvement in fossil fuel extraction and supply.

90. During the course of the hearing before me, the claimants provided the court with an updated 19-page chronology of protest activity from 1 July to 15 October 2024. As Mr Laurie points out, many of the incidents listed took place in other countries or were not directed at Shell. These included protests or results of courts cases around protests with different targets, including JSO supporters spraying orange pain at departure boards at Heathrow Airport; JSO activists throwing soup at Van Gogh's Sunflowers painting and stopping traffic in Parliament Square; and the occupation of the offices of Policy Exchange by XR activists.

91. The filed chronology documents that no direct action protests have breached Shell's rights. That said, there have been regular peaceful protests outside Shell Tower. These have involved small numbers of protesters usually in silent vigils with banners:

> 3 and 10 July
> Peaceful protest outside Shell Tower – one member of Christian Climate Action.
>
> 17 July
> Similarly at Shell Tower, with two protesters.
>
> Same day in Manchester: Extinction Rebellion activists have protested at the National Cycling Centre in Manchester to call on the former policy adviser for British Cycling, Chris Boardman, to convince British Cycling to drop Shell as its

sponsor of the Paris Olympics. Protesters held signs and placards carried messages like ‘Shell Lie, Cyclists Die’ and ‘[Heart] Chris, Hate Shell’.

24 July
One female protester from Christian Climate Action protested peacefully outside Shell Tower on Belvedere Road. Protester was carrying Placard that reads "I Pray Shell Stops Climate Chaos".

30 July
Twelve XR protesters set up outside Shell Tower. The protesters held up large banners reading "REVEAL THE TRUTH" and "SHELL KILLS". The protesters made speeches and sang a song.

31 July
Three protesters from Christian Climate protested peacefully outside Shell Tower.

1 August
5 protesters peacefully protested outside Shell Tower. They were carrying placards that read " Thousands of Children Killed by Oil Pollution in Niger Delta " "Was It Worth It". They took pictures of Shell Centre on Belvedere Road.

3 August
Climate activists from Shropshire cycle from London to the Paris Olympics to protest against Shell’s sponsorship of British Cycling.

7 and 14 August
Two protesters from Christian Climate protested peacefully outside Shell Tower.

21 August
Two Christian Climate protesters protested peacefully outside Shell Tower.

28 August
One protester from Christian Climate Action peacefully protested outside Shell Tower. Protester was carrying Placard that reads "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying our planet".

5 September
2 protesters from Christian Climate Action set up outside Shell Tower. Protesters were carrying a placard that read 'To Ignore The Climate Science Is Insane' and a banner reading 'We Are Crucifying Our Planet'.

11 September
1 male protester from Christian Climate Action set up outside Shell Tower carrying a placard reading "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying Our Planet".

12 September

> 2 male protesters from Asthma and Lung UK set up outside Shell Tower with two bicycles with large digital displays on the back stating:
> Toxic air stunts lung growth in children.
> Air pollution affects our health before we're born.
> 99% of people in the UK breathe unsafe air.
> Toxic air causes up to 43000 premature deaths in the UK every year.
>
> 18 September
> 1 female protester from Christian Climate Action set up outside Shell Tower. A second protester then turned up with a placard reading "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying our Planet".
>
> 25 September
> 1 male and 1 female protester from Christian Climate Action set up to protest outside Shell Tower. They carried a placard reading "To Ignore Climate Science Is Insane" and a banner reading "We Are Crucifying our Planet".
>
> 2 October
> 2 Protesters from Christian Climate Action set up outside Shell Tower and sat next to planters. They were carrying placards that read "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying Our Planet".
>
> 8 October
> Protesters stood outside the Royal Court displaying placards and banners ahead of a key appeal case against Shell.
>
> 9 October
> 2 protesters from Christian Climate Action set up outside Shell Tower. They produced banners and a flag and knelt down to carry out their silent protest.
>
> 15 October
> Shell's Chief Energy Advisor, Peter Wood, was giving a presentation at the World Energies Summit in London. While walking to the event he was questioned by a member of Fossil Free London who questioned him about Shell in the Niger Delta.

92. Further, there is evidence filed by Shell that senior executives have been "doorstepped" and subject to abusive and threatening messaging on social media.

Ms Ireland and Mr Laurie

Ms Ireland

93. Emma Ireland is currently "job free", as she puts it, and lives in Bristol. She has a long track record of dedicating herself to others. Ms Ireland filed a skeleton argument and a witness statement dated 17 October 2024 with the court. To provide an overview of her defence, I extract and combine her submissions by combining both documents. She states:

> "I trained as a social worker from 2009-2011. Since 2012 I have worked in mental health, sometimes as a support worker and other times at more senior

levels, as a care co-ordinator. I am currently job free. I have recently been volunteering with food cycle, cooking 3 course community meals with waste food. I have a work contract starting on 1st November working in a mental health setting, with people who have been street homeless for a long time. I care deeply for others and look for ways to support fellow human beings and the earth, be it in my paid work, with family and friends, neighbours, or volunteering. For 3 months of this year I have volunteered on organic farms in the UK.

We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest. We have not yet faced criminal trial for the acts that led to our inclusion on this injunction, so it remains to be seen whether the protest will be judged as lawful. We believe our actions have to date, been entirely within the law as it stood on 24.08.22. Since then the Government has, after much lobbying from Fossil Fuel Companies, passed even stronger laws protecting companies such as Shell. For clarity, I am asking for the Shell Petrol Station injunction to be discontinued.

Events of August 24th 2022
On that day, I attended Cobham Service Station with other supporters of the Just Stop Oil campaign. I walked towards the entrance of the forecourt and sat down on the ground. There were 5 others who sat down too. There was a banner that read Just Stop Oil. The entrance to the forecourt was blocked. Cars continued to leave the petrol station via the exit road. When asked to move I continued to stay seated on the ground. I had my back to the petrol pumps. I am aware that there was damage caused to 2 petrol pump screens by one or two other people.

I sat in the entrance of the Shell Petrol station, as an act of protest, to demand that the government stop issuing new licences for the discovery, development and production of new oil and gas in the UK.

I also took this action to get this message out to Shell and to the public, who were there on the day, and other members of the public and the government via the media. To raise the alarm that we are in a climate emergency and we have to act like it. I put my body on the line and 2 petrol pump screens were decommissioned, to temporarily pause the flow of new petrol into some cars for a limited time. By jolting the status quo, I hoped that this more embodied message, would get through to some more people. Because we all need to be doing more, every day, at all times, to reduce our harmful impact on the climate and to encourage others to do so as well.

I was arrested for causing a public nuisance, and was taken to Staines police station. I pleaded not guilty at the first appearance at Guildford Crown Court. I have been released on unconditional bail for this matter and the trial is currently listed for 11 August 2025 [now at Winchester Crown Court].

My spiritual faith, beliefs and views regarding climate change are set out in my witness statement. These views are sincerely held, reflecting those of many citizens who are concerned about climate change and the role of fossil fuels in perpetuating further man-made global warming.

The health and safety concerns of potential future actions at Shell petrol stations has been discussed in evidence. I too take this point very seriously. I agree that a protest should not be allowed that causes physical harm to staff, customers, passers by and protesters.

I hold the belief that if those that run Shell fully understood the part that they were playing in the climate crisis, in the deepest part of their heart and sole [sic], they would have consented to the damage having been caused the pumps and the disruption to the sale of their fuel.

Since the injunction was made the law relating to protest has changed significantly, offering greater protection to the fossil fuel industry. For instance, s.7 Public Order Act 2023 means that people can be arrested almost immediately after the protest begins and they will face up to a year in prison. I do not understand why there is any need for the injunction to continue to exist in addition to these draconian laws.

Shell requested the interim injunction when these new laws were not yet in force. I propose that the criminal laws of this country are protection enough for Shell to be able to continue to effectively and safely sell petrol to the public. Who can say whether it is the injunction, or the criminal laws, or something else that has meant that there have been no more actions by environmental groups on any petrol station of any brand in England and Wales since August 2022. The evidence since August 2022 given by the claimant talks about other types of actions on other sites in the UK, that are not petrol stations.

[A]nalysis from Carbon Majors Database, has proposed that just 57 oil, gas and cement producers are directly linked to 80% of the world's global fossil fuel CO2 emissions since the 2016 Paris Agreement. Shell has been named as one of these.

We are in a climate emergency. Let us not be a country that continues to use injunctions to create new laws that are overly harsh for environmental defenders and protect big oil companies.

The scientific consensus on the climate emergency could not be clearer. We are in a climate crisis, driven by rising temperatures and extreme weather. An average of over 1.5°C warming would be catastrophic for humanity. The International Panel for Climate Change (IPCC) reports state that we are already overshooting the targets of liveability. We cannot keep burning fossil fuels if we are to have any chance of a liveable future.

I feel that it is my calling to do all I can to reduce the negative impact of climate change at this time. I feel that part of this is to invite others to question what they can do, within their sphere of influence. I understand that for each of us this may be different. In 2022 I became a supporter of Just Stop Oil in order to demand that the government stop issuing licences for the exploration, discovery and development of new oil and gas projects in the UK. For me, this demand felt necessary, clear and reasonable.

> I feel so privileged to be saying this from a place where I have a home, enough food and I am well. The reality for many today, especially in the global south, is that their lives are being ripped apart due to fires, floods, famine caused by climate change. It is us in the global north who have played the biggest part in climate change. I feel it is our responsibility to do all we can as individuals, and to ask those, with different spheres of influence, to do what they can too. This is why I protested on that day, and why I am defending myself at this trial.
>
> Since that day I have been arrested a further five times, each time for participating in protests as a supporter of Just Stop Oil. The demand to the government, on each of these occasions was to stop issuing new oil and gas licences:
>
> - On August 26 2022 I was arrested for blocking the entrance to a petrol station forecourt in London.
> - On 8 October 2022 I was arrested for sitting in a road in London , causing a disruption to traffic. For this I was charged, pleaded not guilty to wilful obstruction of the highway, and later the case was dropped.
> - On 21 October 2022, I was arrested for sitting in a road in London, causing a disruption to traffic. For this I was found guilty of Wilful Obstruction of the Highway. I was sentenced to £200 court costs £26 surcharge and conditional discharge of 12 months.
> - On 10 July 2023, I was arrested for continuing to walk slowly down a road in London, causing traffic to move more slowly. I was arrested for breaching s.12. I was later found guilty for breaching s.12. I was sentenced to £120 court costs and £120 fine. I was also given £120 fine for the above action, due to the conditional discharge.
> - On 10 November 2023 I was arrested for walking slowly down a London road. I was later found guilty of Wilful Obstruction of the Highway and sentenced to £348 costs, £200 fine, £80 surcharge."

Conclusion on Ms Ireland

94. Ms Ireland has devoted her life to supporting and helping others. She sees her environmental activism as being connected to that life's work. She is a person with an acute empathetic sensibility, and as she puts it, "I have always been able to feel the suffering of others". It is commendable that in her career she has sought to assist vulnerable people because of that insight. She is committed to protecting the environment, has never owned a car, and indeed cycled to London for the court hearing all the way from Bristol over several days.

95. The claimant submits that the court should draw an inference against Ms Ireland from her declining to sign an undertaking. The inference is that her refusal makes it more likely that she would take unlawful direct action against Shell again in future should the injunction be discharged. I listened very carefully to Ms Ireland's explanation for wishing to attend the court hearing and not signing the undertaking. It is true, as the claimant submits, that it would be possible for Ms Ireland to sign the undertaking and apply to attend the hearing as an interested party. However, Ms Ireland appears in person. I am not convinced that she has the confidence and legal wherewithal to take this more sophisticated legal course. Further, I am persuaded by the sincerity of her comments to the court that she wished to address it personally to explain the reasons

for her protest activities and felt her ability to do so would be compromised by the undertaking. Therefore, I decline to make an inference against her. I turn to the other matters.

96. Two days after her protest in Cobham 24 August 2022, Ms Ireland was arrested on the forecourt of another petrol station, this time in the Acton area of west London. In October of that year, she was arrested for disrupting the traffic in London, although no further action was ultimately taken. Later in October 2022, she disrupted the traffic and was found guilty of Wilful Obstruction of the Highway. In July 2023, she again disrupted the traffic and was again found guilty. In November 2023, she again disrupted the London traffic. She was again found guilty of Wilful Obstruction of the Highway. Therefore, Ms Ireland's commitment to environmental activism has continued following the Cobham protest. She has been convicted of criminal offences for it and that has not dampened her moral commitment.

97. That said, she submits to the court that "the criminal law might well be enough of a factor to deter future protests [rendering] an injunction unnecessary", pointing to the coming into force of the Public Order Act 2023. She supports this point with the fact that "there have been no further protests at petrol stations since August 2022".

98. I have no doubt whatsoever that Ms Ireland is a selfless and committed person. She feels the suffering of others acutely. That extends beyond those in her immediate circle whom she has helped and includes people who are partially sighted or without sight, and people living with mental health problems and trauma. That act of imaginative empathy extends to the many millions of people in the Global South who she says are suffering because of climate change. It also extends, as she powerfully put it, to "the suffering of the Earth". She does not think that Shell has changed since her action at Cobham in August 2022, except that it has resiled from its "green and sustainable commitments". Ms Ireland stated that 57 producers are responsible for 80 per cent of global fossil fuel carbon dioxide emissions. Shell is one of them. Lives in the Global South are being "ripped apart" by this climate emergency. This is why she feels the obligation to protest and "do all we can".

99. While she is committed to relieving the suffering of others "from a peaceful place", the court is left in little doubt that should the injunctions be discharged, such is the passion and strength of Ms Ireland's commitment to trying to effect change, there is a real and imminent risk of her engaging in direct action protests and breaching the claimant's rights and there is a strong probability that it would constitute a tort committed against Shell. I am not persuaded that the coming into force of the Public Order Act 2023 with the 12-month maximum sentence would be effective to deter Ms Ireland. It is unlikely that Ms Ireland would act alone, because as she told the court in terms, she is "still a supporter of JSO" and has circulated information to protest groups. The overwhelming probability is that her future direct action would again be joint and coordinated tortious action. This is because since her arrest at Cobham in August 2022, and despite it, she has risked arrest and repeated arrest and that has not deterred her from continuing to intervene.

100. Ms Ireland told the court that "to do nothing is not within my nature". Therefore, I find that as against Ms Ireland the claimant has produced sufficient evidence to prove its claim on both limbs identified in *Wolverhampton*.

Mr Laurie

101. Charles Phillip Laurie lives in Faversham, Kent. Mr Laurie is a retired civil engineer and Quaker, whose faith is immensely important to him and closely connected to his activism. He filed a skeleton argument and a witness statement with the court dated 16 October 2024. Once more, extracts from both are melded to provide an overview of Mr Laurie's defence. He states:

> "We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest.
>
> On 24th August 2022 – Cobham Service Station – I was arrested for public nuisance and possession of articles with the intent to cause or damage property. On that day, I attended Cobham Service Station with other protesters from JSO group. Initially my plan was to cause damage to the petrol pumps of the service station with two other protesters, whilst five other protesters blocked the entrance to the station forecourt and glued themselves to the ground.
>
> Whilst I was walking towards the petrol pumps, I changed my mind about causing damage to the petrol pumps and I changed course to join the other protesters at the entrance to the forecourt. I sat down with them and glued myself to the ground. I was arrested.
>
> The interim injunction and its extension are "immensely troubling for me because it curtails my right to peacefully protest outside petrochemical facilities, offices and retail facilities are which are owned and operated by Shell.
>
> On 26 August 2022, Shell's Petrol Stations at Acton Park and Acton Vale were subjected to action by protesters that went well beyond peaceful protest. As part of what Just Stop Oil described as a week-long "series of actions disrupting oil terminals and petrol stations in support of [Just Stop Oil's] demand that the UK government end new oil and gas projects in the UK", individuals once again blocked the entrance to the petrol station and caused damage to 10 fuel pumps in total across the two Shell Petrol Stations.
>
> I would ask that you consider if the cost is actually a big or small number. I am sure that the numbers are big for those Shell trading businesses actually impacted but at the highest level in terms of a business making 19.5 billion dollars profit in the past year, it is very, very small. Whether you want to regard it as being large or small is down to you. For me it is very small, and fits exactly for the requirement protest to be proportional.
>
> All protests that gave rise to this injunction where at locations directly connected with the harm being caused by the ongoing operations of Shell.
>
> There is no evidence that I will act in breach of the Claimant's rights in the future such that "imminent and real risk of harm test" for an anticipatory injunction is met.

> Another way to look at this might be that this injunction shields Shell from the consequences of public discontent at the decisions made at senior levels within the company.
>
> I am a Quaker. I integrate my faith in everything I do in my life but particularly through my activism. Quakerism calls for Quakers to live by our values and actively participate in the upholding of these values where we see it is necessary. Activism is the practical side of my faith. It is interconnected. Quakerism is not about heaven or an afterlife, it is about the world we are in now. That's why so many Quakers are involved in activism about climate change.
>
> Human induced climate change is real. It is happening now. My Environmental Science degree tells me that there is cause and effect in the laws of physics. If you increase CO2 in the atmosphere the temperature has to increase.
>
> The products sold by fossil fuel companies such as Shell are one of the major causes of climate change. These companies know the risks their products pose. Their role is totally malign. They deny the impact, delay action, destroy lives and environments. They take no responsibility for the output of their products, at all times seeking to maximise their sales which is a death sentence to many people and the planet.
>
> In general, business is unable to see past profit. Generally, if they think taking action to reduce their impact on climate change will undermine their profits they prefer to continue with business as usual and where necessary green wash past any issues.
>
> This is why it is important to me to protest; my faith requires me to take action to alert people to the dangers of climate change and put pressure on the Government and fossil fuel companies to change their ways, while the Government and big business are failing to do so."

Conclusion on Mr Laurie

102. For similar reasons to Ms Ireland's case, I refuse to draw an adverse inference against Mr Laurie that the claimant invites me to make. I judge that it is neither safe nor reasonable.

103. Mr Laurie engages in environmental activism and protest animated by his religious, spiritual and moral beliefs. His Quakerism compels him to take action against what he perceives to be a vast societal and global wrong, the climate emergency. He is entitled to hold these views. Some will agree with him; others will not. His right to hold that belief must be respected and protected by the law. The issue in this case is how he seeks to intervene in the public sphere in furtherance of that belief. His sincerely held Quaker views, and the moral imperative to take action that arises because of them, have not changed. He continues to believe that Shell and fossil fuel companies like it are "one of the major causes of climate change". He maintains that the role of Shell is "totally malign". Shell and others "destroy lives and environments". He regards the impact of the protests on Shell to be "small" and "proportional", given the vast resources at its disposal. I judge that the strength of Mr Laurie's sincerely held religious and moral beliefs significantly outweigh any further deterrent effect that the operation of the

Public Order Act 2023 might have. He has been willing to risk arrest previously. He had gone to the Cobham petrol station in August 2022 with the intention of causing criminal damage himself, such is the force of his conviction. He was one of the protesters arrested outside Inner London Crown Court for holding placards, although it must be emphasised that the case against him for that protest was discontinued. The fact that at Cobham he did not damage any petrol pump is no real answer as the presence and deployment of the police caused him to alter his approach. Further, I found his comments about the risk that smashing petrol pumps may cause indicative of his belief, grounded in his scientific background and training, that such direct action is not as risk—laden as Shell's evidence maintains. That increases the risk that he would engage in future similar direct action. It is noteworthy that despite the presence of the police at Cobham, he was still prepared to protest and be arrested in the furtherance of his cause and moral concerns.

104. He spoke passionately and emotionally when addressing the court. He stated:

> "Shell have abandoned all the promises that they were going to be become the greenest energy company in the world. Shell say they are going to drill a new gas field in the North Sea, so 'how is that green ambition going?'."

105. He continued, "I cannot make a promise that I will not protest again, but cannot say I will." If the injunctions are discharged, he says he may resume the protests against Shell but tells the court he is unable to say he will or not. He provided a different analysis of the changes in the law and increased sentencing under section 7 of the Public Order Act 2023. He emphasises that:

> "Maximum sentences are artificial as rarely used. Instead, the real change is the new police powers. The police only have to determine the action is 'more than minor' disruption [through obstruction] and they do that really quickly. The change enables the police to break up the protests more quickly and it is not the sentences that 'protects Shell'."

106. On Mr Laurie's analysis, then, the increased sentencing powers are not the material difference in deterring protests: it is rather the police's ability to break up protests far earlier. He concluded his submissions by telling the court:

> "This is a very serious issue. But Shell is putting this CO2 into the atmosphere causing thousands and millions of deaths, even hundreds of millions of deaths, not in the future, but in the next few years, probably in my lifetime and certainly the lifetime of my children. It is so serious we must look in the mirror and take action."

107. It seems to me that the real and imminent risk remains that without a final and continuing injunction, Mr Laurie would in pursuit of his sincere beliefs take unlawful direct action again against Shell and there is a strong probability that this would result in a breach of Shell's rights under the civil law. Therefore, I find that as against Mr Laurie the claimant has produced sufficient evidence to prove its claim on both limbs of *Wolverhampton*.

Other named defendants

108. As to the risk or threat attaching to the other named defendants, I draw an adverse inference from their failure to sign the undertakings, enter a defence, attend the final hearing or otherwise engage in these proceedings. I note the observations of Linden J in *Esso Petroleum* at para 45:

> "it would have been easy for Defendants to give assurances or evidence to the court that there was no intention to carry out direct action at the various sites, but a decision was taken not to do so. As I have indicated in other cases, this provides an insight into the mindset of those who would, unless restrained, engage in unlawful activities with the aim of halting the Claimants' business in fossil fuels."

PUs

109. In respect of PUs, I cannot draw an inference regarding undertakings.

110. However, in respect of the other named defendants and PUs, I find that the claimants have provided sufficient evidence to prove the claim and meet the two limbs of the *Wolverhampton* approach. The argument that direct action against Shell since the granting of the injunctions has significantly diminished must be seen in light of the observation of Cotter J at para 19 that injunctions are granted on the assumption that they will be obeyed and thus have a material effect. Indeed, the likely effectiveness of an injunction must be one of the factors in the section 37 discretionary assessment of whether to grant it at all. There have been, as set out in the claimant's chronology, repeated unlawful acts directed at airports and universities.

111. It is significant that the series of recent protest injunction cases touching on various elements of the energy and fossil fuel sector, this court has found a continuing real and imminent risk of direct action resulting in tortious breach of the claimants' rights. While it would be naïve to ignore that context of diverse and disparate targeting of the fossil fuel sector, I emphasise that I judge this case on the evidence before me. I note what Ritchie J said in *Valero* at para 64:

> "I find that the reduction or abolition of direct tortious activity against the Claimants' 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence".

112. Finally on this point, Hill J noted at para 36:

> "The claimants liaise regularly with the police, whose intelligence indicates that there continues to be an ongoing threat; that the protest campaign is not over; and that protest groups will continue to attempt to put pressure on the Government to halt new investment in fossil fuels. It is apparent that JSO continues to have the ability to draw on a large group of protesters who are willing to be arrested; that they take action using a variety of tactics and target locations across the UK; and that they employ tactics that attract the media and public interest. Further, there is a high level of crossover between the individual protest groups, who appear to share disruptive tactics between them. His view was that activities of the sort described above would be likely to increase as a result of the Government's recent approval of the building of a new power station, the cost-of-living crisis and the

likely increase in support for JSO given that environmental concerns affect the majority of the public."

113. Stepping back and assessing the totality of the evidence before me, I find that should the injunctions be discharged, a real and imminent risk arises of direct action tortious interference with the claimants' rights by the named defendants and PUs.

4 Defences

5 Balance of convenience/compelling need

6 Proportionate interference with ECHR rights

114. Only two defences have been filed, those of Ms Ireland and Mr Laurie. They share a common approach. The main lines of their defence can be reduced to three key features:

(1) An injunction amounts to an unlawful, that is unnecessary and disproportionate, interference with their Article 9, 10 and 11 Convention rights;

(2) The disruption caused and Shell's loss is "proportional" to the acts committed by Shell in pursuit of its business interests;

(3) The Aarhus Convention protects "environmental defenders" from the "excessive" use of law.

115. Since the analysis of these points engages questions of balance of convenience and compelling need and proportionality, I consider Factors 5 (balance of convenience) and 6 (proportionality) within this section. I examine the defences of Ms Ireland and Mr Laurie first, before considering the position of PUs.

Convention rights and proportionality

116. Article 9 of the ECHR provides:

"Article 9 – Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

117. I cannot see that the granting of anticipatory injunctions interferes with the defendants' freedom of thought or conscience or indeed religion. They can adhere and continue to believe what they wish. Equally, I am not persuaded that the injunctions interfere with

the right of defendants to "manifest" their beliefs. However, and in any event, any interference is subject to the proportionality analysis in respect of other Convention rights that follows and what is crucial to appreciate is that Article 9 is a qualified right and explicitly limited to matters "prescribed by law" which are necessary "in a democratic society". It is protection not just of public order and health (which must include bodily safety and integrity), but the protection of the rights and freedoms of others, which are capable of including rights under the civil law, such as those claimed by Shell.

118. I turn to Articles 10 and 11, the rights to freedom of expression and freedom of peaceful assembly and association with others.

> "**Article 10 of the Convention**
>
> **Freedom of expression**
>
> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.
>
> **Article 11 of the Convention**
>
> **Freedom of assembly and association**
>
> Everyone has the right to freedom of peaceful assembly and to freedom of association with others …"

119. The argument advanced by the defendants is a repeat of the argument that was fully developed by Mr Simblet KC before Hill J. Nevertheless, I reconsider it here. Both rights are once more qualified rights. Art 10 is qualified in this way:

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

120. The qualification to Article 11 is in these terms:

> "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

121. The first point is that in respect of interferences with or entry onto the private property belonging to Shell, ECHR rights do not confer a right to enter onto private land (*DPP*

v Cuciurean [2022] EWHC 736 (Admin), para 45 and paras 76-77; *Ineos* at para 36, per Longmore LJ). Johnson J at paras 55-56 identified the four-part approach to issues of rights violation and proportionality taken by the Supreme Court in *Ziegler*:

> "55. The injunction interferes with the defendants' rights to assemble and express their opposition to the fossil fuel industry.
>
> 56. Unless such interference can be justified, it is incompatible with the defendants' rights under articles 10 and 11 ECHR and may not therefore be granted (see sections 1 and 6 of the Human Rights Act 1998). Articles 10 and 11 ECHR are not absolute rights. Interferences with those rights can be justified where they are necessary and proportionate to the need to protect the claimant's rights: articles 10(2) and 11(2) ECHR. Proportionality is assessed by considering if (i) the aim is sufficiently important to justify interference with a fundamental right, (ii) there is a rational connection between the means chosen and the aim in view, (iii) there is no less intrusive measure which could achieve that aim, and (iv) a fair balance has been struck between the rights of the defendants and the general interest of the community, including the rights of others: *DPP v Ziegler* [2021] UKSC 23 [2022] AC 408 *per* Lord Sales JSC at [125]."

122. Of course, this is a familiar rubric and echoes the widely cited four-part proportionality test set down by Lord Reed in *Bank Mellat* v *HM Treasury No. 2* [2013] UKSC 39 at para 74:

> "It is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

123. I consider in turn each of the four *Ziegler* elements.

Ziegler (i): legitimate aim

124. The legitimate aim of the proposed final injunction is the protection of the claimants' right to carry on their business, which, despite falling under severe criticism as it does from the defendants, remains under the law a lawful business. I have received no argument identifying the illegality of Shell's core business under the law of England and Wales. The defendants argue that Shell contributes to the climate emergency, but that is distinct from identifying a clear basis in law that the sale of fuel from service stations in the United Kingdom, as but one example, is unlawful. On that point, I received no argument. It was, of course, open to the defendants or any of them to argue that there is no legitimate aim worthy of protection as the core business of fuel sale is illegal. That was not an argument advanced.

125. Instead, the focus was on the balance between the risk to global environmental factors created, it is said, by Shell and the far less intrusive infringements of Shell's rights by the protests. That is essentially an evaluative (balance) argument and not one about

legitimate aim. However, Johnson J while touching on this point, focused on aim and *Ziegler* (i) at para 57:

> "The defendants might say that there is an overwhelming global scientific consensus that the business in which the claimant is engaged is contributing to the climate crisis and is thereby putting the world at risk, and that the claimant's interests pale into insignificance by comparison. This is not, however, "a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important" – *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039 *per* Lord Neuberger at [41]. It is not for the court, on this application, to adjudicate on the important underlying political and policy issues raised by these protests. It is for Parliament to determine whether legal restrictions should be imposed on the trade in fossil fuels. That is why the defendants' actions are directed at securing a change in Government policy. The claimant is entitled to ask the court to uphold and enforce its legal rights, including its right to engage in a lawful business without tortious interference. Those rights are prescribed by law and their enforcement is necessary in a democratic society. The aim of the injunction is therefore sufficiently important to justify interferences with the defendants' rights of assembly and expression: cf. *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 *per* Morgan J at [105] and *Cuadrilla per* Leggatt LJ at [45] and [50]."

126. I find that the objectives of the injunctions do constitute a legitimate aim.

Ziegler (ii): rational connection

127. As to rational connection, it is important to be clear what this means. I take it to mean that not only is there a clear and logical connection between the measure and the objective or legitimate aim sought and that the measure can be seen to be an effective means to further the aim – to achieve it. In this case, I judge that the injunctions sought clearly have the capacity to deter and protect the claimants' rights. Indeed, it is likely that they have materially contributed to achieving that aim since their granting on an interim basis. I find that that is a reasonable inference from the significant falling away of direct action breaches of Shell's civil law rights.

Ziegler (iii): least intrusive measure

128. It is essential that the measure is the least intrusive action consistent with achieving the legitimate aim. Both Johnson J and Hill J (and indeed Cotter J in the April 2024 review) so found. Indicative of the level of intrusion is that the injunctions as drafted, as before, in terms only prohibit future acts of unlawful protest. For similar reasons, the court finds that the injunctions are the least intrusive measure, being directed exclusively at unlawful rights breaches.

Ziegler (iv): fair balance

129. As to the fourth element, Hill J considered the question of balance between the competing rights and concluded at paras 179-80:

> "the injunctions strike a fair balance between the Defendants' rights to assembly and expression and the Claimants' rights: they protect the Claimants' rights insofar as is necessary to do so but not further;
>
> "the interferences with the Defendants' rights of free assembly and expression caused by the injunctions are necessary for and proportionate to the need to protect the Claimants' rights."

130. Hill J's conclusion was adopted by Cotter J at para 59, when he held:

> "As for interference with the defendants' rights to free assembly and expression necessary for the proportionate need to protect the claimants' rights under Articles 10(2) and 11(2), read with section 6(1) of the Human Rights Act, it is right to note that all three of the injunctions interfere with the defendants' rights under Articles 10(1) and 11(1). However, such interference can be justified when it is necessary and proportionate to protect the claimants' rights. I adopt Hill J's reasoning and conclusions at paragraphs 179 to 180 in this regard."

131. To the extent that it is necessary to consider proportionality separately, and invoke the four-part *Bank Mellat* test enunciated by Lord Reed, I reach the same conclusions as in the *Ziegler* analysis. As Ms Stacey put it with accuracy, in fact the point "overlaps". However, before reaching my decision on "fair balance" and the infringement of the defendants' rights, I must address the question of the Aarhus Convention. The court considers whether (1) it is relevant to the exercise of its discretion in granting an injunction; (2) if so, in what way and to what extent, whether as part of the *Ziegler* analysis or as a freestanding point.

132. Before I consider the Aarhus Convention, I reflect on the argument that was put before Cotter J that the creation of additional criminal offences relating to protesting and increased police powers represent a material change of circumstances since the granting of the injunctions in 2022 and 2023. Cotter J held from para 22:

> "22. Mr Laurie's submission is that the coming into force of the Public Order Act 2023 represents a material change, since the orders were made by Hill J, as sections 1, 2 and 7 create new offences. Sections 1 and 2 create the offences of locking-on and being equipped for locking-on; and section 7, interference with use or operation of key national infrastructure.
>
> 25 Mr Laurie's admirably brief submission was that in light of these new offences, the orders were no longer necessary. Put simply, fear of prosecution will prevent the unlawful activity which is prohibited by their terms. Where the criminal law provides that conduct will be an offence, with the potential for significant penalties, including imprisonment, the civil law does not need to provide additional protection.
>
> 26 No authorities have been cited to me in support of (or against) this proposition."

133. Part of the Aarhus argument that I must turn to, and as noted at the start of the judgment as reported by the Special Rapporteur, is that the simultaneous use of criminal and civil proceedings is oppressive and "excessive" use of the law. I make three initial observations about this.

134. **First**, that I agree with Cotter J that the change in criminal law is potentially relevant as a material change in circumstances.

135. **Second**, however, what is essential is to assess the evidence about what the significance of that change is or is likely to be. As to the deterrent effect of increased criminal sanction and powers, the submission is advanced without any or any solid evidence. It is just as possible that the reduction in direct action unlawful protests targeting Shell is a result of the interim injunctions granted. It seems to me speculative to assign the change in pattern of protest to the coming into force of the Public Order Act 2023. Indeed, Mr Eilering notes in his statement at para 8.5.2 in relation to protests that postdate the coming into force of the new statute that:

> "both the Fourth and Tenth Defendant in the Shell Petrol Station Proceedings were recently arrested under the Public Order Act. Pages 304-306 of Exhibit PE1. I am also aware that the Fifteenth Defendant was arrested after spraying a University of Leeds building with orange paint."

136. The ongoing nature of protests was noted by Ritchie J in *Valero*, where he reviewed the evidence filed on behalf of the claimant up to December 2023, and thus after the enactment of the new Public Order Act on 3 May 2023. He summarised the evidence of Ms Pinkerton in this way at para 41:

> "41. Miss Pinkerton extracted some quotes from the Just Stop Oil press releases including assertions that their campaign would be "*indefinite*" until the Government agreed to stop new fossil fuel projects in the UK and mentioning their supporters storming the pitch at Twickenham during the Gallagher Premiership Rugby final. Further press releases in June and July 2023 encouraging civil resistance against oil, gas and coal were published. In an open letter to the police unions dated 13th September 2023 Just Stop Oil stated they would be back on the streets from October the 29th for a resumption after their 13 week campaign between April and July 2023 which they asserted had already cost the Metropolitan Police more than £7.7 million and required the equivalent of an extra 23,500 officer shifts."

137. **Third**, and vitally, the argument confuses the focus of the criminal law and civil injunctive relief. It is certainly the case that one of the stated objectives of criminal sentencing is to deter as well as punish. As the Sentencing Act 2020 provides:

> "57 Purposes of sentencing: adults
>
> (1) This section applies where—
>
> (a) a court is dealing with an offender for an offence, and
>
> (b) the offender is aged 18 or over when convicted.
>
> (2) The court must have regard to the following purposes of sentencing—
>
> (a) the punishment of offenders,
>
> (b) the reduction of crime (**including its reduction by deterrence**),
>
> (c) the reform and rehabilitation of offenders,
>
> (d) the protection of the public, and

> (e) the making of reparation by offenders to persons affected by their offences."
>
> (emphasis provided)

138. Thus deterrence is both a recognised and legitimate aim of criminal sanction and one shared by jurisdictions across the world. However, in any specific case one must carefully assess whether the evidence supports that the particular enactment has in fact attained the powerful (here additional) deterrent effect claimed. Indeed, Mr Laurie in oral submissions argued that the real impact of the Public Order Act 2023 was not the increased sentencing powers, empowering the court to impose sentences of imprisonment up to 12 months (section 7(3)(b)). Instead, he argues that it is the ability of the police to intervene earlier and when the levels of disruption through protest were lower. This is all a matter of debate and speculation. It is not a reliable or safe basis to make important discretionary judgments.

139. Another of the chief aims of criminal sentencing is to punish offenders, as the Sentencing Act 2020 made clear. That is looking, as Mr Semakula put it succinctly, at the past. By contrast, injunctive relief is looking towards the future and seeking to prevent future harm. This point was considered by Hill J at para 178:

> "178. On the other hand, as Johnson J observed at para 60, simply leaving it to the police to enforce the criminal law would not adequately protect the rights of the claimant in the petrol stations claim: such enforcement could only take place after the event, meaning inevitable loss to the claimant; and some of the activities that the injunction sought to restrain are not breaches of the criminal law and could not be enforced by the exercise of conventional policing functions. The same is true of the claimants' rights at the Haven and Tower sites. Indeed the balance is even clearer in those respects given that the sites involve the claimants' private property, as to which see *Cuciurean*, paras 45–46, 76 and the conclusion at para 77, that articles 10 and 11 "do not bestow any 'freedom of forum' to justify trespass on private land or publicly owned land which is not accessible by the public".

140. Therefore, while I do accept that the enactment of the Public Order Act 2023 is a material change, it remains evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell. Further, given that criminal and civil proceedings are directed at distinctly different objectives, the argument that the parallel proceedings are a form of, as Mr Laurie put it, "double punishment", is misplaced. An anticipatory injunction is granted not to punish, but to prevent identifiable future harm. As the Supreme Court put it in *Wolverhampton* at para 141, an injunction is not granted "as stage one in a process intended to lead to committal for contempt" (per Lord Reed). Punishment may result if there is contemptuous breach; punishment is not the objective of the injunction, preventing future harm is.

141. I break off the systematic analysis of the 15 factors to examine the substance of the Aarhus argument.

§X. AARHUS CONVENTION ANALYSIS

142. There is a significant amount of analysis to undertake, so I divide it into four subsections and flag them as follows:

(1) Short history and context;

(2) Status of Special Rapporteur;

(3) Status of the Aarhus Convention;

(4) Discussion.

143. The significance of the Aarhus Convention (here "Aarhus" or "the Convention") for this case is that both appearing defendants rely on it in their defence. Their common position is that Aarhus "protects environmental defenders from excessive use of the law" and the grant of final injunctions against them would "breach Aarhus" and particularly Article 3(8).

144. The claimants submit that Aarhus is an unincorporated convention and thus is "not justiciable" in these courts. Only certain narrow, highly specific - and for these purposes irrelevant – exceptions have been incorporated into domestic law. These are irrelevant provisions about costs in judicial statutory review by dint of the Civil Procedure Rules 1998 Part 46.24-28 (indeed, two of the historic referrals of the UK to the Convention's Compliance Committee have concerned the high costs of legal challenge in environment matters: *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2008/27 Concerning Compliance by the United Kingdom of Great Britain and Northern Ireland' UN Doc ECE/MP.PP/C.1/2010/6/Add.2* (24 September 2010) (ACCC/C/2008/27 UK); *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2008/23 Concerning Compliance by the United Kingdom of Great Britain and Northern Ireland' UN Doc ECE/MP.PP/C.1/2010/6/Add.1* (24 September 2010)). Thus, Mr Semakula, who very ably took the Aarhus issue on behalf of the claimants, submitted that "none of the circumstances for Aarhus to be taken into account apply here". It should not factor in the court's discretionary decision. However, even if it should be considered, there would be no breach of Aarhus by granting the proportionate injunctions sought by Shell.

(1) Short history and context

145. On 25 June 1998, the Aarhus Convention was adopted at the Fourth "Environment for Europe" Ministerial Conference in Aarhus, Denmark. The United Kingdom signed the treaty and had been involved in its evolution and formulation. A series of meetings of the signatories took place, before in May 2005 the United Kingdom ratified Aarhus. Aarhus enshrines Principle 10 of the 1992 Rio Declaration on Environment and Development:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in

> their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

146. To achieve these objectives, the Convention is grounded in three foundational "pillars":

(1) Access to information (Articles 4-5)
(2) Public participation (Articles 6-8)
(3) Access to justice (Article 9)

147. The UNECE guide to the Convention states that the instrument is "unique" because it "explicitly links environmental rights with human rights" (while this connection is not made explicit in the text of the Convention, it has been frequently recognised by the Convention's institutional bodies: see the rapid response mechanism decision, post at para 151). In making such connection, the UNECE emphasises the Convention's confirmation that "you have a right to information about, to have a say in, and if necessary, seek justice regarding important decisions that affect you and your environment." The "three pillars" act to provide a "mutually reinforcing mechanism to hold Governments to decision-makers accountable." Further:

> "progressive Governments increasingly recognize and understand that environmental decisions will only be sustainable if reached through transparent, participatory and accountable process. The Aarhus Convention provides Governments with standards to ensure that this happens."
>
> And the Convention:
>
> "makes clear that we have an obligation to protect and improve the environment for the benefit of present and future generations."

148. The UNECE document emphasises that the Convention is "a living treaty" to be interpreted in "a dynamic way". A further aspect of the history of the Convention is provided by Lord Leggatt in *Finch* at paras 19-21:

> "19. The Aarhus Convention was itself partly based on Council Directive 85/337/EEC of 27 June 1985, which introduced the EIA procedure within the European Economic Community (as it was then called). That Directive was amended after the Aarhus Convention came into force by Directive 2003/35/EC to implement obligations arising under the Aarhus Convention and was later codified in the EIA Directive. Recital (18) to the EIA Directive refers to the Aarhus Convention and recital (19) records that:
>
> > 'Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and wellbeing.'
>
> 20. Obligations arising under the Aarhus Convention have been built into articles 6, 8 and 9 of the EIA Directive. Thus, article 6 imposes obligations on member states to inform the public early in the decision-making procedure of various

matters, which include details of the arrangements made for public participation in the process; to make available to the public concerned the information gathered where an EIA is required; and to give the public concerned early and effective opportunities to express comments and opinions before the decision on the request for development consent is taken. The "public concerned" is defined in article 1(2)(e) as "the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures" required by the EIA Directive and specifically includes NGOs promoting environmental protection. Article 8 of the EIA Directive requires the results of such public consultation to be "duly taken into account" in the decision-making procedure; and article 9(1) provides that the public must be promptly informed of the decision taken and of "the main reasons and considerations on which the decision is based, including information about the public participation process".

21. The rationale underpinning these public participation requirements is expressed in recital (16) to the EIA Directive:

> "Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken."

Two important ideas are included within this rationale. First, public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, the public participation requirements serve an important educational function, contributing to public awareness of environmental issues. Guaranteeing rights of public participation in decision- making and promoting education of the public in environmental matters does not guarantee that greater priority will be given to protecting the environment. But the assumption is that it is likely to have that result, or at least that it is a prerequisite. You can only care about what you know about."

149. This authoritative exposition by the Supreme Court identifies the focus of the Convention, and highlights how parts of it have been incorporated. The corollary of that is that large parts of the text of the Convention have quite deliberately not been incorporated into domestic law by the United Kingdom. I now deal with the most relevant parts of the Convention for this case, citing Article 3(8) in full.

> "Article 1
> OBJECTIVE
> In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.
>
> Article 3

> 4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.
>
> 8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings. "

150. There has been growing international recognition of the importance of environmental human rights defenders and concern about the obstacles and threats they have faced (see UN General Assembly, Resolution adopted by the Human Rights Council on 21 Mary 2019, "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development"; among numerous UNECE records voicing such concerns, see "Information note on the situation regarding environmental defenders in Parties to the Aarhus Convention from 2017 to date", 24th meeting of Working Group of the Parties, Geneva, 1-3 July 2020).

151. Thereafter, there was a proposal for the creation of a "rapid response mechanism" for the protection of environmental defenders, resulting in a new mandate. The Meeting of Parties to the Aarhus Convention seventh session in Geneva on 21 October 2021 adopted the rapid response proposal. At its third extraordinary session (Geneva, 23-24 June 2022), the Meeting of the Parties by consensus elected Mr. Michel Forst as Special Rapporteur on Environmental Defenders under the Aarhus Convention (decision VII/9 of the Meeting of the Parties ("the Decision")). The Special Rapporteur's role is to take measures to protect any person experiencing or at imminent threat of penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention. The terms of reference make plain how the mandate is closely linked to Article 3(8). This is the first international mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure.

152. The Decision recognised in terms:

> "the critical importance of establishing and maintaining a safe environment that enables members of the public to exercise their rights in conformity with the Convention" and to ensure "due protection of environmental defenders."

153. The Decision expressed "alarm" at:

> "the serious situation faced by environmental defenders, including, but not limited to, threats, violence, intimidation, surveillance, detention and even killings, as reported by States Members of the United Nations, and by intergovernmental and non-governmental organizations and other stakeholders"

154. The Decision clarified the definition of environmental defenders which are:

> "any person exercising his or her rights in conformity with the provisions of the Convention"

and the decision acknowledged:

> "that the safety of environmental defenders is critical in achieving the entire 2030 Agenda for Sustainable Development, and in particular its Sustainable Development Goal 16."

155. Therefore, the mandate of the Special Rapporteur is to monitor the treatment of environmental defenders and, where necessary, raise the issue with the relevant national government through a "letter of allegation". Should the response not satisfy the Special Rapporteur, the matter can be referred on to the Convention's Compliance Committee, which has a mandate operating in parallel to the Rapporteur's. The Compliance Committee oversees the compliance of member states with their obligations under the Convention.

(2) Status of the Special Rapporteur

156. Shell submits that Michel Forst's statement is simply "an opinion" and "has little or no status in a domestic law claim". While what he says is an opinion, this to my mind cannot reduce his detailed observations and concerns to insignificance. While it is true that what Mr Forst says is not the determination of a court of law, it is the assessment of the official with a mandate granted by the United Nations to monitor and safeguard the rights of those who express concern about pressing environmental issues that have the potential to affect us all. Out of respect to Mr Forst and indeed the United Nations, I have carefully read and considered what Mr Forst has said in his mission statement.

(3) Status of the Convention

157. While the United Kingdom has withdrawn from the European Union, Brexit did not alter the United Kingdom's ratification of Aarhus, and the UK remains a signatory and party. The question here is the Convention's enduring status in domestic law. My focus is on the unincorporated parts of the treaty. There can be no argument but that due to their being unincorporated they cannot be directly applied in domestic law. But that is not an end to it. The question of the legal relevance of international treaties that are not incorporated was considered by the Supreme Court in *R (SG) v Secretary of State for Work and Pensions* [2015] 1 WLR 1449 (SC) ("*SG*"). Put shortly, in considering Convention rights under the ECHR, regard may be had to international law conventions. Lord Reed said:

> "82 As an unincorporated international treaty, the UNCRC [United Nations Convention on the Rights of the Child] is not part of the law of the United Kingdom (nor, it is scarcely necessary to add, are the comments on it of the United Nations Committee on the Rights of the Child). The spirit, if not the precise language of article 3.1 has been translated into our law in particular contexts through section 11(2) of the Children Act 2004 and section 55 of the Borders, Citizenship and Immigration Act 2009: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, para 23. The present case is not however concerned with such a context.
>
> 83 The UNCRC has also been taken into account by the European Court of Human Rights in the interpretation of the Convention, in accordance with article

31 of the Vienna Convention on the Law of Treaties. As the Grand Chamber stated in *Demir v Turkey* (2008) 48 EHRR 1272 ["*Demir*"], para 69,

> "the precise obligations that the substantive obligations of the Convention impose on contracting states may be interpreted, first, in the light of relevant international treaties that are applicable in the particular sphere". It is not in dispute that the Convention rights protected in our domestic law by the Human Rights Act can also be interpreted in the light of international treaties, such as the UNCRC, that are applicable in the particular sphere."

(4) Discussion on Aarhus

158. Relevance or applicability cannot amount to surreptitious incorporation. What cannot happen is for the common law to be used to incorporate otherwise unincorporated international conventions "through the back door" (*A v Secretary of State for the Home Department* (No 2) [2005] 1 WLR 414 (CA)). That is because the court cannot do what Parliament declined to do: give direct effect to an international treaty that remains, in its relevant provisions for these purposes, unincorporated.

159. Upon enquiry by the court, the parties agree that Aarhus does not explicitly mention "excessive use of the law". That phrase is the defendants' characterisation of the essential thrust of the Convention read as a whole. In particular, they rely on Article 3(8) and the obligations of signatory parties to protect environmental defenders from penalisation, persecution and harassment.

160. The United Kingdom has not incorporated Article 3(8). However, in line with *SG* (Supreme Court), *Demir* (Grand Chamber) and the Vienna Convention on the Law of Treaties, I find that the Aarhus Convention:

> (1) Is a relevant treaty in the sphere of environmental rights and protest about environmental issues;
>
> (2) Is relevant to the interpretation of substantive rights under the ECHR, and particularly the rights under ECHR Articles 9, 10 and 11.

161. While it is submitted by the claimants that the court's focus should strictly remain on the ECHR as it is incorporated into domestic law by the Human Rights Act 1998, that misses the point of the Supreme Court's observations about relevance of unincorporated international treaties. While the United Kingdom has not incorporated Article 3(8), nor has it disowned it. This country continues to be a signatory to Aarhus. Thus, it must be taken to respect its terms and all of them save for any reservations. There is no reservation that has been brought to my attention in respect of Article 3(8). There is, of course, an understandable and material overlap between Articles 10 and 11 of the ECHR and Article 3(8) of Aarhus. The rights enjoyed under the ECHR are meaningless if states decline to protect them. What Article 3(8) of the Aarhus Convention achieves in the protection of the rights of protesters is to provide a poignant focus on the importance of ensuring that environmental defenders are not penalised, persecuted or harassed for exercising right in conformity with the Aarhus Convention. To repeat: the three pillars of Aarhus are (1) access to information (Articles 4-5); (2) public participation (Articles 6-8); and (3) access to justice (Article 9) in relation to decision-making around environmental matters. It can be said that protest is part and parcel of

public participation in a wider understanding of decision-making that "may have a significant effect on the environment", to borrow from Article 6(1)(b). Article 6(1)(a) provides:

> "Article 6
>
> PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES 1.
>
> Each Party: (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I"

162. Annex I then provides a list of relevant activities:

> "Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a) 1. 2. Energy sector:- Mineral oil and gas refineries; Installations for gasification and liquefaction"

163. Stepping back to consider all this, people who protest about and wish to draw attention to the fossil fuel industry (Annex I) seem to me to be capable of falling within the "public participation" provisions of Article 6, which in turn is connected to the Article 3(8) protections. It should also be remembered that Article 3(3) provides:

> "3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters."

164. While there is a focus on participation in decision-making, I recognise that the concept of environmental defender is capable of extending to those engaging in protests about environmental projects (see the communication of the Compliance Committee against Belarus about protests against a new nuclear plant: *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2014/102 Concerning Compliance by Belarus'*).

165. I accept that the terms of the Convention do not spell out a necessity for peaceful or non-violent action. This is a point made by Mr Forst in his UK mission report ("The fact that they cause disruption or involve civil disobedience do not mean they are not peaceful."). That said, I can find no basis within Aarhus that authorises environmental defenders to deliberately break or flout the law or materially violate the lawful rights of others. This appears to extend to "civil disobedience", should that be in deliberate breach of the law in the Rawlsian sense (*A Theory of Justice*, ibid., where what is being avowedly "disobeyed" is the law, for a claimed higher purpose, framed by those protesting often as the protection of human and environmental ecosystems, ecology and life). No Aarhus authorisation or exemption for unlawful acts has been brought to my attention, including for acts of civil disobedience in violation of national law. Contrast that with the putative case of arrests and prosecutions or the granting of an injunction to prohibit entirely peaceful protesters such as those who have regularly gathered with placards near to Shell without infringing any of Shell's rights. Then it is strongly arguable that Aarhus would be engaged, with possible breaches of Article 3(8). I do not rule on that scenario as I have not been invited to, the situation not arising here. However, in cases of Aarhus breach, the mechanism is for the Special Rapporteur to

bring the concern to the attention of the national government through a letter of allegation, and if not satisfied with the response, or if none were forthcoming, to refer the matter to the Convention's Compliance Committee. On the question of acts of intentional or deliberate disobedience, I note what Leggatt LJ said in *Cuadrilla* at para 94:

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

166. What Aarhus is directed at explicitly in Article 3 is imposing obligations on signatories ("Each Party") to ensure that the exercise of rights under the Convention is not subject to penalisation, persecution and harassment. I cannot see how that would protect a protester who causes, for example, criminal damage and creates a significant hazard risk to health and the immediate environment by smashing the glass of petrol pumps. Each case, I emphasise, must be examined on its own facts and merits. However, I find nowhere in the Aarhus Convention an endorsement or authorisation of the right to break the law by committing crimes or unlawfully violating the rights of others or causing deliberate damage.

167. As to legal principle, the Aarhus Convention is not and cannot be determinative of these claims. However, I am persuaded, and find, that the substance of the Convention is relevant to the court's assessment of interferences with the Convention rights of protesters under the ECHR and proportionality analyses. It consequently has relevance for the court's equitable discretion confirmed by section 37 of the Senior Courts Act 1981. I must explain what relevance means in this context. It is a matter for the court to have regard to in making its discretionary decision rather than a freestanding and independently justiciable right, Aarhus not having been incorporated. It is relevant to recognise, and I do, that the United Kingdom remains a party to an international treaty that obliges member states to guarantee the rights of public participation in decision-making and access to justice in environmental matters in conformity with the provisions of Aarhus Convention and ensure that those who act in such conformity are not penalised, persecuted or harassed.

168. Having concluded the Aarhus analysis, I apply it to the overall questions of defences, balance of convenience and compelling need and proportionality under *Ziegler*. I have carefully considered whether the granting of the injunctive relief sought by Shell in this case exclusively directed at unlawful acts, while explicitly exempting lawful protest, would be, as the defendants maintain, contrary to Article 3(8) of the Aarhus Convention. Given that there is nothing in Aarhus authorising, for example, committing criminal offences, and that lawful protest is not prohibited under the terms of the injunction, I cannot find a putative breach of Aarhus.

169. I therefore add the Aarhus analysis to the four-part *Ziegler* analysis. I include the recognition of the United Kingdom's unincorporated treaty obligations under Aarhus in the proportionality assessment overall. Having done so, I concur with Hill and Cotter

JJ that the granting of the injunctive relief sought by Shell is necessary and proportionate, even including full Aarhus obligation recognition. The balance of convenience, which can be alternatively understood as the balance of prejudice, significantly favours the grant of injunctive relief as what is being prohibited in future is unlawful protest in breach of the lawful rights vested in the claimants where the potential damage caused by future unlawful breaches have the capacity to be irreversible, certainly should it involve serious physical injury or death. There is undoubtedly a compelling need to prohibit future unlawful protests in the way that the Supreme Court identified in *Wolverhampton* at para 167, in other words, to prevent the claimants from being subject to the torts pleaded. The explicit inclusion of the lawful protest exemption within the orders strikes the right balance between the competing interests. Defendants can apply to vary or set aside the injunctions or any of them and they will be regularly reviewed. While breaches of the claimants' rights in civil law may not be capable of remedy, there is no evidence that the defendants would in any event be able to provide a remedy in damages. The damage may be "grave and irreparable" as Marcus Smith J put it in *Vastint* at para 31(4)(d).

170. The question with regard to PUs is whether there is a realistic defence. The court has examined the filed defences of Ms Ireland and Mr Laurie in detail and concluded that they do not provide a defence to the claims. There is no logical basis to envisage that the position of PUs would be superior to the rejected defences of the appearing defendants.

171. Having analysed the relevance of the Aarhus Convention and completed the *Ziegler* analysis, including analysing balance of convenience and compelling need and proportionality, I return to my systematic analysis of the 15-part factor checklist and reach Factor 7.

§XI. ANAYSIS OF THE 15 FACTORS: PART II

7 Damages not adequate remedy

172. There is no evidence that either Ms Ireland or Mr Laurie would have the financial resources to compensate Shell for the damage caused by their protests, particularly if serious injury or the leaking of toxic substances resulted. I note that Ms Ireland has said in future she would not be prepared to participate in protests that damaged petrol pumps. However, presently Ms Ireland receives limited income. Mr Laurie was less clear about his future intentions about petrol pumps and spoke about the spectrum of risk in a way that suggested that he may indeed participate in such a protest in future should the injunctions be discharged. These are very specific examples, but there is a wider picture about economic torts. There is no undertaking from any of the named defendants to pay damages or costs. Against this, Shell has offered cross-undertakings in damages. I am satisfied that this would be an adequate remedy for the defendants. Hill J summarised the position as it had evolved before the court in these claims at paras 133-37:

> 133 "The note of Bennathan J's judgment indicates that he accepted that (i) the activities at the Haven and Tower sites would cause grave and irreparable harm; (ii) trespassing on the sites could lead to highly dangerous outcomes,

> especially given the presence on the sites of flammable liquids; and (iii) the blocking of entrances could lead to business interruption and large scale cost to the Claimant's businesses. He concluded that given the sorts of sums involved and the practicality of obtaining damages, the latter would not be an adequate remedy.
>
> 134 Johnson J accepted at [34] that the Defendants' conduct with respect to the petrol stations gives rise to potential health and safety risks and if those risks materialise they could not adequately be remedied by way of an award of damages. He took into account the fact that there is no evidence that the Defendants have the financial means to satisfy an award of damages, such that it is "very possible that any award of damages would not, practically, be enforceable."
>
> 135 The evidence before me shows that all of these considerations remain valid.
>
> 136 There is also an element to which the losses at the Haven and Tower sites may be impossible to quantify, though like Johnson J at [33], I do not find the Claimants' argument to similar effect with respect to the petrol stations persuasive.
>
> 137 However, for the other reasons set out at [133]-[135] above I am satisfied that damages would not be an adequate remedy for the Claimants."

173. I have separately and independently assessed the situation in respect of damages. I accept the submission of Ms Stacey that essentially "nothing has changed". I also note that Hill J's analysis was adopted by Cotter J at para 51.

174. I endorse the finding of Johnson J that the losses at Haven and Tower may be impossible to quantify, although I agree with Hill J that this is not the same for the petrol stations claim. That said, the potential harm through serious injury has the capacity to be irreversible. The cross-undertakings in damages offered by the claimants, I am satisfied, would be an adequate remedy for any future Convention breach caused by the operation of the injunctions. There is no doubt that the claimants have the resources to meet any award due.

175. Overall, I am satisfied that this requirement has been met.

8(a) Whether the defendants are identified in the claim forms and the injunctions by reference to their conduct.

176. As to PUs, I am satisfied that the claim forms and the subsequent injunctions identify any person falling into that category with the requisite clarity and proportionality. Geographical boundaries, where relevant, have been identified. Evidence before the court about the efficacy of the identification process is gleaned from the fact that in the petrol stations claim a large number of named individuals were joined to the claim when the matter came before Soole J. I am satisfied that this requirement has been met.

8(b) Whether PUs are capable of being identified and served

177. As explained, this process has been successfully conducted on an interim basis. As Ms Oldfield points out in her statement, the claimants have been liaising with relevant police forces and individuals have previously been identified and served. Shell undertakes to continue this approach: if any PUs are identified, Shell will serve them and make an application to join them to the claim as soon as reasonably practicable. In the meantime, there are provisions in the draft order for alternative service, a connected requirement I will come to.

178. The court finds that requirement 8(b) is met.

9 (a) Whether the terms of the injunctions are sufficiently clear and precise

179. The claimants seek final orders on terms that are substantially and materially identical to those previously sought by Shell and approved and granted by this court. That this was not a rote or routine approval process can be seen from the meticulous way in which Hill J examined the terms and directed changes to the geographical limits. Aside from that, she approved the terms of the injunctions at paras 154-56 in this way:

> "154. In my judgment the wording of all three injunctions is in clear and simple language, save for two caveats with respect to the petrol stations injunction: (i) some wording should be inserted before clauses 3.4-3.6 to reflect that the acts are only prohibited if they cause damage (such wording being clear on the face of the Tower and Haven injunctions but not on the petrol stations one); and (ii) clause 3.7 should be removed as it duplicates paragraph 4.
>
> 155. In respect of the petrol stations injunction, as Johnson J noted at [46], it is usually desirable that such terms should, so far as possible, be based on objective conduct rather than subjective intention. However, for the reasons he gives, the element of subjective intention in paragraph 2 ("with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station") is necessary because of the nature of the tort of conspiracy to injure and to avoid the language being wider than is necessary or proportionate (noting the sweet wrapper example he gave at [21]).
>
> 156. I do not accept Mr Simblet's contention that the "encouragement" provisions are unduly vague: they are clearly defined as being linked with the underlying acts and are intended to ensure that the injunctions are effective. To the extent that they capture lawful activity, they are proportionate as explained under sub-issue (10) below."

180. The terms of the injunctions were also approved by Cotter J at para 55. I have independently scrutinised each draft order and conclude that the terms bear the qualities of clarity and precision.

9(b) Whether the injunctions only prohibit lawful conduct where no other proportionate means to protect claimant's rights

181. All three draft orders specify in terms that lawful protest is exempted. Hill J held at para 153:

> "153. Each injunction contains an order making clear that it is not intended to prohibit behaviour which is otherwise lawful. To the extent that it does, the same is a proportionate means of protecting the Claimant's rights for the reasons given under sub-issue (10) below."

182. I have considered the question of proportionality in the *Ziegler* analysis, and as part of the four-element analysis have considered whether the measure sought is the least interference with the Convention rights of the defendants consistent with achieving the legitimate aim of preventing future material breach of the claimants' civil law rights. I have found that this was the case. Overall, I find that requirement 9(b) is met.

10 Whether there is correspondence between terms of injunction and threatened tort

183. I have carefully considered each of the torts relied upon and compared the terms of each injunction to them. To that end, I prepared a table of the prime elements of each of the torts that the claimants rely on and have compared those elements with the acts to be prohibited under the draft orders. There is a clear and mirroring correspondence between the torts and the injunction terms. This issue has been previously considered by the court, with Hill J finding the necessary correspondence at paras 151-53 and Cotter J endorsing that conclusion after his consideration at para 54.

184. The issue of whether the injunction sought in the petrol stations claim corresponds to the tort of conspiracy to injure was litigated before Hill J. She ruled at para 151:

> "151. The acts prohibited in the petrol stations injunction reflect those in the petrol stations injunction necessarily amount to conduct that constitutes the tort of conspiracy to injure, provided that the injunction is read in full in the way described by Johnson J at [26 above]. This means that the concerns raised in Mr Simblet's submission to the effect that clause 3.4 ("affixing any object or person") would prohibit placing leaflets or signs on any objects on or in a Shell petrol station and his similar concerns about clauses 3.5 and 3.6 ("erecting any structure in, on or against any part of" or "painting or depositing or writing in any substance on any part of" a Shell petrol station) are to some degree mitigated by the fact that such activities are only prohibited by the injunction if they are (i) such that they damage the petrol station; (ii) done in agreement with others; and (iii) done with the intention of disrupting the sale or supply of fuel. These are similar to the "sweet wrapper" example given by Johnson J at [26] above: the prohibited acts in paragraph 3 need to be read in conjunction with the definition of Defendants. When that is done, it can be seen that they mirror the torts underlying the overarching tort of conspiracy to injure."

185. Nothing has changed since this analysis and no point was taken before me. I find that requirement 10 is satisfied.

11 Whether there is a clear and justifiable geographical limit

186. This matter was reviewed by Cotter J at para 56:

> "56. As for geographical and temporal limits, the extent of the Haven and Tower injunctions are made clear by the plans appended to them. In respect of the petrol stations injunctions, this matter was revised by Hill J, and again I am satisfied that the form of order is appropriate."

187. The geographical scope of the Haven and Tower injunctions are precisely set out in the plans attached to the draft orders. The extent of these protected areas makes evident sense and is plainly justifiable. For example, in respect of Tower, it does not – and critically has not – prevented ongoing and regular protests in the vicinity of the building complex as set out in the filed chronology.

188. As to petrol stations, as indicated, Hill J refined the geographical extent. The reason was that on objection from the defendants, the court agreed that there needed to be greater clarity about the scope of injunction not to impinge on the public highway. The terms endorsed by Hill J, were also approved by Cotter J at para 56. The finding of Hill J, endorsed by Cotter J, makes evident sense and is justifiable, being logically connected to and proportionate to the need to protect the sites. No point was taken about this factor or the draft orders, reflective of their necessity and proportionality.

189. I find that this requirement is met.

12 Clear and justifiable temporal limit

190. The application in respect of each injunction is for a duration of 5 years. I questioned Ms Stacey about why such a period was necessary, notwithstanding that it had been granted in other protest cases (such as by Ritchie J in *Valero*), the court wanting to be independently satisfied. She made two submissions. First, that several environmental groups have made demands of the Government that the extraction of fossil fuels ends by 2030. Mr Eilering notes in his statement at paras 2.8-2.9:

> "2.8 it is clear to me that there is still a very real risk that without the protection of the Injunction Orders, protest activity would very likely return to the levels of unlawful activity previously experienced.
>
> 2.9 For example, I am aware of an article in which Just Stop Oil were quoted saying "*whilst governments are allowing oil corporations to run amok destroying our communities, the actions of individuals mean very little. Failure to defend the people they represent will mean Just Stop Oil supporters, along with citizens from Austria, Canada, Norway, the Netherlands and Switzerland will join in resistance this summer, if their own governments do not take a meaningful action*." Pages 279-286 of **Exhibit PE1**."

191. He fears that their activist campaigns are highly likely to continue until the extraction of fossil fuels ends. Second, Ms Stacey points to the costs of refiling and reissuing these claims. The petrol stations claim, for example, covers 1000 petrol stations across the

jurisdiction. It involves a very significant undertaking to implement the necessary warning signs at the sites. In all these circumstances, it is proportionate to grant a 5-year period in the order because of another vital consideration: there is built into the structure of the orders an annual review along with provision to vary or set aside. Should therefore there be a significant or material change, the grant of the injunctions or any of them can be actively and promptly revisited. I find myself in a position analogous to Ritchie J, who held at para 75:

> "Temporal limits - duration
>
> 75. I have carefully considered whether 5 years is an appropriate duration for this quasi- final injunction. The undertakings expire in August 2026 and I have thought carefully about whether the injunction should match that duration. However, in the light of the threats of some of the 4 Organisations on the longevity of their campaigns and the continued actions elsewhere in the UK, the express aim of causing financial waste to the police force and the Claimants and the total lack of engagement in dialogue with the Claimants throughout the proceedings, I do not consider it reasonable to put the Claimants to the further expense of re-issuing for a further injunction in 2 years 7 months' time. I have seen no evidence suggesting that those connected with the 4 organisations will abandon or tire of their desire for direct tortious action causing disruption, danger and economic damage with a view to forcing Government to cease or prevent oil exploration and extraction."

192. It should be noted that the "4 organisations" are JSO, XR, Youth Climate Swarm and Insulate Britain. I find that this requirement is satisfied.

13 Service

193. It is essential that all practical steps are taken to notify defendants and potential defendants. The Supreme Court addressed this point in *Wolverhampton* from para 226:

> *"*226 We recognise that it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on its land. That is the basis on which we have proceeded. On the other hand, in the interests of procedural fairness, we consider that any local authority intending to make an application of this kind must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application (see para *167*(ii) above). This should be done in sufficient time before the application is heard to allow those persons (or those representing them or their interests) to make focused submissions as to whether it is appropriate for an injunction to be granted and, if it is, as to the terms and conditions of any such relief.
>
> 227 Here the following further points may also be relevant. First, local authorities have now developed ways to give effective notice of the grant of such injunctions to those likely to be affected by them, and they do so by the use of notices attached to the land and in other ways as we describe in the next section of this

> judgment. These same methods, appropriately modified, could be used to give notice of the application itself.
>
> …
>
> 228 Secondly, we see merit in requiring any local authority making an application of this kind to explain to the court what steps it has taken to give notice of the application to persons likely to be affected by it or to have a proper interest in it, and of all responses it has received.
>
> 229 These are all matters for the judges hearing these applications to consider in light of the particular circumstances of the cases before them, and in this way to allow an appropriate practice to develop."

194. This is precisely what has happened in the claims before me. The court has original evidence and updating evidence from Ms Alison Oldfield on behalf of Shell to explain the numerous steps that have been taken (her tenth statement is dated 24 September 2024; the court has considered all of them). For example, in the draft order in respect of the petrol stations claim, it is stated that:

> 9 "Pursuant to CPR 6.15 and 6.27 and CPR 81.4(c) and (d), service of this Order (with the addresses in the Third Schedule and the social media addresses redacted) shall be validly effected on the First Defendant and any other non-parties as follows:
>
> a. the Claimant shall use all reasonable endeavours to arrange to affix and retain Warning Notices at each Shell Petrol Station by either Method A or Method B, as set out below:
>
> Method A
>
> Warning notices, no smaller than A4 in size, shall be affixed:
>
> (a) at each entrance onto each Shell Petrol Station
>
> (b) on every upright steel structure forming part of the canopy infrastructure under which the fuel pumps are located within each Shell Petrol Station forecourt
>
> (c) at the entry door to every retail establishment within any Shell Petrol Station
>
> Method B
>
> Warning notices no smaller than A4 in size shall be affixed:
>
> (a) at each entrance onto the forecourt of each Shell Petrol Station

(b) at a prominent location on at least one stanchion (forming part of the steel canopy infrastructure) per set/row of fuel pumps (also known as an island) located within the forecourt of each Shell Petrol Station

b. Procuring that a Warning Notice is uploaded to www.shell.co.uk;

c. Sending an email to each of the addresses set out in the Second Schedule of this Order providing a link to and, specifically notifying them that a copy of this Order is available at, https://www.noticespublic.com/

d. Uploading a copy of this Order to https://www.noticespublic.com/

e. Sending a link to www.noticespublic.com data site where this Order is uploaded to any person or their solicitor who has previously requested a copy of documents in these proceedings from the Claimant or its solicitors, either by post or email (as was requested by that person)."

195. CPR Part 6 requires "good reason" to justify such alternative service steps. Where there are PUs, doing what can reasonably be done to publicise the prohibitions generally to potential future protesters is required. Similar efforts apply to the general public. It will not do if people are not given fair warning. The point of alternative service methods is, as stated in *Canada Goose* at para 82, to take such steps as can be reasonably expected to bring the proceedings to the attention of people who may be affected by the restrictions in future. To that end, the claimants have filed evidence of the extensive steps they have taken to meet this requirement in the three claims. The efforts mirror what was approved by Johnson, Hill and Cotter JJ. As put by Hill J at para 201-04:

> 201 "The alternative means of service proposed for the order in the Tower claim are (i) affixing warning notices to and around the Tower which (a) warn of the existence and general nature of the order, and of the consequences of breaching it; (b) indicate when it was last reviewed and when it will be reviewed in the future; (c) indicate that any person affected by it may apply for it to be varied or discharged; (d) identify a point of contact and contact details from which copies of the order may be requested; and (e) identify http://www.noticespublic.com/ as the website address at which copies of the order may be viewed and downloaded; (ii) uploading a copy of the notice to http://www.noticespublic.com/; (iii) emailing a copy of the notice to a series of emails relating to the main protest groups listed in the schedule of the order; and (iv) sending a copy of the notice to any person who has previously requested a copy of documents in the proceedings.
> 202 The alternative means of service proposed for the order in the Haven claim are (i)-(iii) above.
> 203 The alternative means of service proposed for the order in the petrol stations claim are (i)-(iv) above. The interim orders which I made on 28 April 2023 mirrored the terms of Johnson J's order and provided for the notices to be affixed by use of conspicuous notices in prescribed locations in the petrol stations, in alternative locations in the stations, depending on the physical layout and configuration of the stations.
> 204 The alternative means of service proposed for the amended claim form and any ancillary documents in the petrol stations claim are (ii)-(iv) above."

196. The alternative service methods previously used remain relevant and the court authorises their continued use. This includes service through notification through social media accounts where necessary. The claimants' filed evidence on this point has not been disputed by the defendants and I accept it. The balance of fairness is maintained because any person committed for possible future breach can make the argument that the service provisions have operated in a way that was ineffective and unfair in her or his case (see *Secretary of State for Transport v Cuciurean* [2020] EWHC 2614 (Ch) at para 63(9)).

197. I find requirement 13 satisfied.

14 Right to set aside or vary

198. This right has been explicitly included in all draft orders and will form part of any final orders granted. I find this requirement met.

15 Review

199. The duty to keep an injunction under review is equally applicable to final injunctions as it is to interim injunctions (*Barking* at para 77). Indeed, in *Barking* at para 105 the court stated that even where final orders are granted "it is good practice to provide for periodic review". As already indicated, an annual review is included in the draft orders and will form part of any final orders granted. I find this requirement met. In her evidence and updating evidence, Ms Oldfield explains how the claimants continue to keep the necessity for the injunctions under anxious review. I have no reason not to accept that evidence, nor was it disputed.

§XII. OVERALL CONCLUSION

200. I have carefully considered each of the three claims separately. The applications do not stand or fall together. They are, I emphasise, separate applications in separate claims being managed and heard together for administrative convenience. In each claim, the requirements ("the 15 factors") identified in *Valero*, summarising *Canada Goose* and *Wolverhampton*, have been met and this is highly significant in the exercise of the court's equitable discretion. In such matters, a court will grant injunctions on the assumption that they will be effective and obeyed. This point was made by the Supreme Court in *Wolverhampton* at para 141, where Lord Reed said:

> "In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal

> for contempt: see para 129 above, and the cases there cited, with which we agree."

201. As to Mr Laurie's concern that parallel proceedings in both the criminal courts and the civil jurisdiction "trap" him, it is vital to note that the distinct proceedings are directed at different matters. The Crown Court at Winchester, through the historic device of a jury of the defendants' peers, will decide whether Ms Ireland and Mr Laurie broke the criminal law during their protest at the service station at Cobham in August 2022. About that important question, nothing determined in this judgment has any relevance. This court respects the sacrosanct province of the British jury and its right to make its own decision. The injunctions sought here are exclusively aimed at prohibiting future breaches of the lawful rights possessed by Shell. Justice must be blind; it does not have sides. It must respect the rights of all parties coming before the court, and the court's duty where they clash is to strike the fair balance, ensuring that any necessary interference with the Convention rights of a defendant is proportionate. These final orders achieve that. They are anticipatory injunctions, with the objective of prohibiting future unlawful breaches of the claimants' rights. The right and fair balance is struck by ensuring that lawful protest is not prohibited, and indeed I observe that such lawful protests have continued with great regularity near to the Shell Tower in London. The "way out" of the trap that Mr Laurie perceives himself to be in is, as Ms Stacey submits, to give the undertaking that other defendants have given, and thereby promise that he will not engage in the specified unlawful acts in future. He does not wish to do that. Neither does Ms Ireland. That is their right. But nothing in these final injunctions prohibits their engaging in future protest that is lawful.

202. Should they protest lawfully and in conformity with the Aarhus Convention, acts of penalisation, persecution or harassment would undoubtedly be matters of grave concern to the Special Rapporteur. In pursuance of the mandate, the Rapporteur is authorised to take "measures" such as public statements and raising the matter with the relevant government. If there were no satisfactory governmental response, the issue can be referred to the Aarhus Convention Compliance Committee. This is a mechanism now recognised on the international plane. The Compliance Committee can request the member state to submit a Plan of (remedial) Action. Should a domestic court be tasked with exercising its discretion confirmed by section 37 of the SCA 1981, recognition of United Kingdom's Aarhus Convention obligations would plainly be relevant to the assessment of incorporated substantive rights such as those under the ECHR. I have little difficulty in reaching that conclusion in a similar way to the Supreme Court in *SG*.

203. In *Finch*, the Supreme Court set down in unsparing terms the "virtual certainty" that oil extracted from the ground "will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming." These are unquestionably issues of generational and inter-generational significance. It is not part of this court's function to quell, suppress or deter legitimate debate about these vital matters, nor to prohibit genuine and lawful protest lawfully conducted by genuinely concerned and sincere citizens. But the lawful rights of others which are recognised by the law cannot be ignored in this equation. This is the balance that the granting of these final orders strikes. The question of infringing the rights of others out of necessity was considered by the Court of Appeal in *Monsanto PLC v Tilly & Ors*. [2000] Env LR 313 ("*Monsanto*"; and see *Clerk & Lindsell on Torts* (24th ed.) at para 18-58). In *Monsanto*, Mummery LJ said at 339:

> "Public confidence in the legal system and in the rule of law would be undermined if the courts refused to enforce the law on the ground that defendants, who wished to establish the validity of beliefs sincerely and genuinely held, were entitled to rely on the public interest to justify wrongs to the property of others who did not share their point of view. It is extremely improbable that a reasonable man would regard the [necessity] defence proposed as an acceptable reason for the unauthorised presence of anyone, public official or fellow citizen, on his property or on the property of anyone else.
>
> On the other hand, the unavailability of public interest as a justification for trespass does not in any way curtail or prejudice the exercise by the defendants of their undoubted right in a democratic society to use to the full all lawful means at their disposal to achieve the[ir] aims and objects … Supporters can peacefully and effectively pursue those aims and gain publicity and public support for them in many different ways without the need to commit unlawful acts of trespass."

204. Here starkly is the issue posed by these protests and indeed these claims: what is justifiable in a functioning democracy when the actions of genuinely concerned citizens interfere with the rights of others who wish to go about their business or wish to exercise their property rights in peace? In this, the court does not take sides about the policy and political debate; it applies the law. In *Wolverhampton* at para 170-71, the Supreme Court stated that it was relevant to the court's discretion to consider whether other "non-judicial" remedies lie open to the claimants. In those gypsy/traveller injunction cases, for example, it was relevant to consider whether local byelaws could be passed by the local authority. Here, however, the claimants have no such powers open to them. They have turned to the court for protection of their substantive rights under the law. The remedy of an equitable injunction has been sought because, as Lord Reed said in *Wolverhampton* at para 238(iii)(a):

> "equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue."

205. It is vital to return to the basis of these claims. The claimants are not inviting the court to determine whether trespass to land or private or public nuisance has been proved. The question is vitally different. These are applications for anticipatory or precautionary injunctions. The question is simply whether there is a real and imminent risk of future direct action by the defendants or PUs that carries with it the strong probability that the claimants' rights under civil law will be breached. It is on that exclusive and focused basis that the court exercises its discretion confirmed by section 37 of the SCA 1981 to grant the final orders sought as satisfying the just and convenient test – the true and paramount test.

206. Regular review is built into the very structure of the orders to ensure that changing circumstances do not "outflank or outlast" (*Wolverhampton*, para 167(iv)) the compelling need that resulted in the grant, as is the liberty for defendants to apply to vary or set aside. These are essential safeguards and checks and balances. Ultimately, as the Supreme Court remarked in *Wolverhampton* at para 18, the High Court when exercising its equitable discretion in respect of injunctions

> "possesses the power, and bears the responsibility, to act so as to maintain the rule of law."

207. It is this high responsibility that this court must give effect to in these three claims.

§XIII. DISPOSAL

208. Therefore, on the issues the court was invited to determine:

(1) Whether to grant final orders in each of the three claims:

a. Claim 1 (Haven): final order **GRANTED**;

b. Claim 2 (Tower): final order **GRANTED**;

c. Claim 3 (petrol stations): final order **GRANTED**.

(2) Whether the duration of the final orders should be 5 years: **GRANTED**.

(3) Whether alternative service orders should be granted: **GRANTED**.

(4) Whether to grant the application to remove the third defendant from Claim 3 (petrol stations) and consequently amend the claim form and particulars of claim to reflect the strike out: **GRANTED**.

209. As noted, the claimant in Claim 3 does not seek its costs against the defendants. If there is any other consequential application, it should be notified to the court accompanied by a draft order and skeleton by 4pm, five working days after electronic publication of the judgment. The other parties are granted 3 working days to respond. The applicant(s) granted one further day for a short reply after that. The court will consider whether it can determine the application on the papers. If not, a hearing will be directed.

210. I intend for this judgment to be handed down electronically and published to the National Archives.

ANNEX A

Defendants in Claim 3

Persons Unknown
First Defendant

Louis McKechnie
Second Defendant

XXX XXX
(Struck out on order of court following undertaking)
Third Defendant

Callum Goode
Fourth Defendant

Christopher Ford
Fifth Defendant

Sean Jordan
(also known as Sean Irish, John Jordan,
John Michael Jordan and Sean O'Rourke)
Sixth Defendant

Emma Ireland
Seventh Defendant

Charles Philip Laurie
Eighth Defendant

Michael Edward Davies
also previously known as Michael Edward Jones
Ninth Defendant

Tessa-Marie Burns
(also known as Tez Burns)
Tenth Defendant

Simon Reding
Eleventh Defendant

Kate Bramfit
Twelfth Defendant

Margaret Reid
Thirteenth Defendant

David Nixon

Fourteenth Defendant

Samuel Holland

Fifteenth Defendant

Annex B

Procedural history

Date	Event
3 April 2022	Haven protests
6-20 April 2022	Tower protests
28 April 2022	Initial petrol stations protests
5 May 2022	Bennathan J grants Haven and Tower interim injunctions
20 May 2022	Johnson J continues Haven and Tower interim injunctions
24 August 2022	JSO petrol station protest at Cobham services
26 August 2022	JSO petrol stations protest at Acton Vale and Acton Park
23 May 2023	Hill J grants petrol stations injunction and continues Haven and Tower and Petrol injunctions
15 March 2024	Soole J review (joinder and case management directions)
24 April 2024	Cotter J review and interim injunctions continued
7 May 2024	Mr Laurie's defence filed
16 May 2024	Ms Ireland's defence filed
16 October 2024	Mr Laurie's witness statement and skeleton argument

16 October 2024	Claimants' skeleton argument
17 October 2024	Ms Ireland's witness statement and skeleton argument
17 October 2024	Mr Laurie's skeleton argument
22-23 October 2024	Substantive hearing

Annex C

Materials

Item	**Pages**
Core hearing bundle Previous service bundle	1-413 414-7234
Miscellaneous bundle	7235-7766
Authorities bundle	636
Additional authorities bundle	166
Claimants' skeleton	31
Ms Ireland's skeleton	7
Mr Laurie's skeleton	10

Annex D

Draft undertaking (Claim 3)

Form of Undertaking

Shell U.K. Oil Products Limited V Persons Unknown (etc) and others with the claim number: QB-2022-001420 (the "Petrol Stations Injunction")

I promise to the Court that, whilst the Petrol Stations Injunction remains in force (including for the avoidance of doubt where it is continued at a renewal hearing or final hearing and in each case as amended by further order of the Court), I will not engage in the following conduct:

a) Directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt or to a building within the Shell Petrol Station;

b) Causing damage to any part of a Shell Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;

c) Operating or disabling any switch or other device in or on a Shell Petrol Station so as to interrupt the supply of fuel from that Shell Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Shell Petrol Station; and

d) Causing damage to any part of a Shell Petrol Station, whether by:

   i. Affixing or locking myself, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station.

   ii. Erecting any structure in, on or against any part of a Shell Petrol Station.

   iii. spraying, painting, pouring, depositing or writing in any substance on to any part of a Shell Petrol Station.

e) I confirm I will not carry out such activities myself, by means of another person doing so on my behalf, or on my instructions with my encouragement or assistance.

I confirm that I understand what is covered by the promises which I have given and also that if I break any of my promises to the Court I may be fined, my assets may be seized or I may be sent to prison for contempt of Court.

Signed …….

Name ……

Dated ……..

Case No: KB-2022-001142

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2024] EWHC 1015 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 20 February 2024

BEFORE:

MRS JUSTICE FARBEY

BETWEEN:

EXOLUM PIPELINE SYSTEM LIMITED & ORS

Claimant

- and -

PERSONS UNKNOWN

Defendant

MR T MORSHEAD, KC appeared on behalf of the Claimant
The Defendants did not appear and were not represented

JUDGMENT
-------- (Approved)---------

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Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

MRS JUSTICE FARBEY:

1. This is a review of the order of Bennathan J made on 29 April 2022. It is the second review. The claimants seek the continuation of the injunction with a further review in around 18 months' time.

2. The background is as follows. The claimants are importers, exporters and distributors of oil and chemical products. In order to carry out their business, they own and operate bulk liquid storage terminals in the United Kingdom. By a claim issued under CPR Part 8 on 11 April 2022, the claimants sought an injunction against persons unknown in relation to activities at seven of their terminals in England. The target of the injunction was and remains environmental protesters.

3. The claimant's injunction application followed a protest at and in the vicinity of the terminal at Grays. According to the evidence filed by the claimants, on 1 April 2022, protesters climbed on top of tankers they had stopped on the access road to the Grays site. Some of the protester chained or glued themselves to fuel tankers. Fuel tanker tyres were let down. By the next morning, the protesters had dug a tunnel under an access road, and some of the protesters were in the tunnel.

4. There was some further protester activity on 5 April 2022 of a lesser sort. According to the evidence, on 10 April 2022, protesters gained access to the Grays site by climbing over the boundary fence using ladders. They gained access to areas classed as hazardous under health and safety regulations because they may contain an explosive atmosphere. The protesters had with them mobile phones, which posed a risk of ignition and are therefore prohibited from being on the site. They glued themselves to each other or chained themselves to infrastructure. The protests continued through 11 April 2022. There were further protests at Grays on 13 and 15 April 2022.

5. I have seen copies of social media postings by Just Stop Oil on 10 and 11 April 2022, which publicise some of the activities at Grays. It is plain from the social media posts that the protesters were expressing their political beliefs. For example, one post says:

> "The youth have been holding Grays oil depot for over 24 hours. Young people have had enough of the UK Government's criminal inaction on the climate crisis, which is ultimately going to shorten the lives of so many young people in our society."

6. The claimants were concerned that disruptive and dangerous activity would spread to their other sites and so sought relief in this court. The kind of injunction that the claimants sought has come to be known as a "newcomer" injunction because its terms operate against persons who at the time of the injunction were neither defendants nor identifiable and are described on the injunction simply as "persons unknown" (see *Wolverhampton City Council and Others v London Gypsies and Travellers and Others* [2023] UKSC 47, [2024] 2 WLR 45).

7. By order dated 6 April 2022, Johnson J granted an interim injunction prohibiting persons unknown, as further described in two different ways in the title of the order, from doing a number of things. On the return date, Bennathan J granted injunctive relief, albeit that he reduced the number and scope of the prohibitions within the injunction. He made a separate non-party disclosure order against various Chief Constables in order that anyone arrested in the course of protesting at or in the vicinity of the claimants' terminals would have their details passed by the police to the claimants with a view to naming them as defendants in the claim.

8. On 23 January 2023, Soole J reviewed Bennathan J's order. Mr Morshead KC appeared on behalf of the claimants. No one else appeared. Soole J was satisfied that the injunction should not be discontinued. He ordered that it should be reviewed again in February 2024. That is how the matter comes before me today.

9. Soole J's order imposed various procedural requirements on the claimants, which were intended to bring the proceedings and this second review to the notice of those who might wish to resist the continuation of the injunction. I am satisfied on the evidence before me that those procedural requirements have been met. The court is not aware of any person who wishes to argue that Bennathan J's order should be discontinued. Like Soole J, I have heard from Mr Morshead, and no one else has appeared.

10. Soole J was provided with updating evidence of developments since Bennathan J's order. Among other things, there was evidence before Soole J that despite the injunction there was further disruptive and dangerous activity at Grays on 23 August 2022, when five protesters gained entry. On 3 May 2022, less than four days after the injunction was made, protesters went to the Clydebank site of Exolum Storage Limited and took actions similar to those taken at Grays.

11. I have likewise been provided with evidence of developments since Soole J's review. These developments are set out in the fourth witness statement of Mark O'Neill, who has since last year been promoted to being the North West Europe Operations and Maintenance Lead at Exolum International (UK) Limited. He confirms that service and maintenance of the injunction signage around the terminals has continued. Additional security measures have been put in place to make access to the terminals more difficult for the defendants. These measures are intended to ensure the safety of the claimants' staff and visitors as well as the defendants and other members of the public who may be in the vicinity of the terminals.

12. Mr O'Neill says that the claimants continue to provide assistance to the police in relation to the prosecution of protesters in respect of the protest activity at Grays terminal in April 2022. For example, Mr O'Neill has given evidence to the Magistrates' Court when needed. The claimants wish to use the third-party disclosure order to add named defendants to the injunction order in the event that sufficient evidence can be obtained to do so.

13. Mr O'Neill confirms that the email address advertised on the injunction signs continues to be monitored for enquiries in respect of the injunction. A request for copies of the claim documents referred to in the injunction order was made in July 2023, but there

have been no emails or other forms of communication objecting to the injunction. There has been no further disruption at any of the terminals that are subject to the injunction since the 2023 order.

14. Mr O'Neill describes the importance of maintaining the injunction in the following terms:

> "38. I believe that the injunction has been an effective deterrent to further protest activity, and the fact that there has not been such activity at the terminals since the 2023 order also supports this belief.
>
> 39. Given the fact that Just Stop Oil appear committed to further protest activity until their objective is reached, I consider that it is important for the injunction to continue.
>
> 40. The claimants also remain committed to protecting the terminals by all legal means possible, by the additional security measures, assisting the police with prosecutions, and seeking to continue the injunction at the review hearing."

15. In his submissions, Mr Morshead emphasises that the Scottish protest shows that the protesters are well organised and have sought to disrupt the claimant's business where it is not protected by the injunction.

16. Since the last review in this case, the Supreme Court has given its judgment in the *Wolverhampton* case. In his judgment in that case, with which the other members of the court agreed, Lord Reed observed at paragraph 167(iv) that newcomer injunctions are "constrained by territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon" for their making.

17. At paragraph 235, Lord Reed cautioned against treating as prescriptive in other contexts (such as protester cases) the principles about newcomer injunctions in traveller cases. He went on to state that, in protester cases, the judge must be satisfied that there is a "compelling need" for the order. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the principles explained by the court.

18. In the context of newcomer traveller injunctions, Lord Reed referred at paragraph 237 to the prospect of appropriate and early review. I do not regard that reference as limited to traveller injunctions in the sense that reviews cannot or should not take place in other cases. I agree with Mr Morshead that it remains good practice to provide for a periodic review even when a final order is made (see *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13, [2022] 2 WLR 946, paragraph 108, per Sir Geoffrey Vos MR, with whom the other members of the court agreed).

19. In his helpful written and oral submissions, Mr Morshead submits that the Supreme Court's judgment in the *Wolverhampton* case has clarified the conceptual framework to be applied to the making of newcomer injunctions. The judgment is notable for its shift from the approach in *American Cyanamid Co v Ethicon* [1975] AC 396 to the consideration of a new kind of injunction requiring a different approach. In such cases, the primary question is: what is needed for the court to intervene in cases where the practical reality is that the persons unknown are not likely to be present in court?

20. Mr Morshead submits that there are two principal considerations that arise from the *Wolverhampton* case. First, the court will only grant relief if there is a compelling need, sufficiently demonstrated by the evidence, in order to protect the claimant's rights (*Wolverhampton* paragraph 167(i)). Mr Morshead properly accepts that is a high threshold and is indeed a higher test than the balance of convenience under *American Cyanamid*. He submits that the threshold is to be flexibly applied on a case-specific basis. There may be a compelling need for the court to order injunctive relief in relation to a small risk of future disruption if the consequences of the risk materialising are serious. Conversely, if the harm that the claimants anticipate is very slight, the court may consider that there is no compelling need for an injunction, even if the risk of the harm materialising is great. Convention rights of putative protesters will always be considered (*Wolverhampton*, paragraph 167(ii)) and it is open to the court to conclude that Convention rights must prevail in circumstances where the interference caused by the injunction would be disproportionate.

21. Mr Morshead submits that the court may in the absence of any named defendants protect the rights of protesters in two ways. First, it may impose strict procedural requirements of notice of the injunction and any review, which may enable anyone affected to apply to the court for the injunction to be discharged or varied. Secondly, the court will consider the evidence that is before it and, in the absence of any defendant, may probe the claimant to satisfy itself that the duties of the court and the duties of a party appearing without an opponent are discharged.

22. Even if that approach is wrong, Mr Morshead submits that, in any event, I need not and should not at this stage apply the various familiar limbs of the full *American Cyanamid* test as if this were a fresh application for an injunction. That exercise has already been conducted on other occasions. He submits that for present purposes it is sufficient and proportionate for me to consider whether there has been a change of circumstances since the last review.

23. He accepts that I will need to balance the legal rights of the claimants against the rights of free speech (Article 10 of the Convention) and free assembly (Article 11 of the Convention) of the putative protesters. He makes the point that Johnson J and Bennathan J gave full weight to Article 10 and Article 11 rights. He submits that the evidence of continuing disruptive protests by climate change activists in various parts of England demonstrates a continued need for the injunction in the terms that have been ordered. However, in the circumstances of this case, he submits that it is difficult to conceive how any application of *American Cyanamid* would impose any higher threshold than the test of compelling need.

24. I agree with Mr Morshead. I have kept firmly in mind the high public interest in the right to express beliefs and to engage in legitimate public protest. If the *American Cyanamid* principles apply, I accept that there is and remains a good arguable case for relief and that damages are not an adequate remedy. I see no reason at this juncture to take a different view to Soole J in these regards.

25. I accept that the test of balance of convenience would add nothing to the test of compelling need. If the test of compelling need is met, then on the facts of this case the full panoply of the *American Cyanamid* requirements is met.

26. I am prepared to accept that, unless restrained, there is at least some risk, and probably a high risk, that some activity would resume at some point within an imminent period. There is at least some risk, and probably a high risk, that if protest activities were to take place at the claimants' sites there would be damage. There would not only be damage to property but also a risk to life and limb. The protesters would not know which tankers were full of explosive material and which were empty. They would not know whether even an empty tanker was clean or retained residual inflammable material. They would not know which parts of the claimants' infrastructure were dangerous and which were safe. In dangerous parts of the site, they may not know that the use of mobile phones, which has been an integral part of some of the protests in order to publicise the activities on social media, is a danger to life.

27. In terms of the court's duty to protect the protesters' Convention rights, the claimants have complied with the steps set down by the court to bring the injunction and today's hearing to the attention of those who may want the injunction discontinued. The court has sought to protect the right to protest through the full use of its case management powers.

28. The review is not a rubber stamp but has involved the court probing counsel as to its concerns for the purpose of ensuring that the continuation of the injunction is proportionate and that its duration is no longer than is necessary.

29. I have been provided with no reason to discontinue or vary the order made by Bennathan J. On the other hand, it is notable, as I have said, that the evidence is that the protesters breached the Grays perimeter, went onto its property and acted in a dangerous way that could have led to an explosion with risk to property and ultimately with risk to life and limb. There is, in my judgment, a compelling need for the order to be continued.

30. I will order that the injunction is to continue in force until the next review. I am concerned that a review period of 18 months may lead to drift. The next review will be listed on the first available date after 20 February 2025. There will be notice requirements as set out in the draft order supplied by the claimants.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

(This judgment has been approved by the judge)

Neutral Citation Number: [2025] EWHC 207 (KB)

Case No: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

MRS JUSTICE HILL DBE

- -

Between :

(1) VALERO ENERGY LTD
(2) VALERO LOGISTICS UK LTD
(3) VALERO PEMBROKESHIRE OIL TERMINAL LTD — **Claimant**

- and -

Defendant

(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION' OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE SWARM' (ALSO KNOWN AS YOUTH SWARM) MOVEMENTS ENTER OR REMAIN WITHOUT THE CONSENT OF THE FIRST CLAIMANT UPON ANY OF THE 8 SITES

(2) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION' OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE SWARM' (ALSO KNOWN AS YOUTH SWARM) MOVEMENTS CAUSE BLOCKADES, OBSTRUCTIONS OF TRAFFIC AND INTERFERE WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, EMPLOYEES, LICENSEES, INVITEES WITH OR WITHOUT VEHICLES AND EQUIPMENT TO, FROM,

OVER AND ACROSS THE ROADS IN THE VICINITY OF THE 8 SITES

(3) MRS ALICE BRENCHER AND 16 OTHERS

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Katharine Holland KC and **Yaaser Vanderman** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Claimant**
The **Defendants** did not attend and were not represented

Hearing date: 24 January 2025
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Approved Judgment

This judgment was handed down remotely at 12:00pm on 3rd February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill DBE:

Introduction

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group. They own or have a right to possession of a series of sites in England and Wales which include oil refineries and terminals, defined for the purposes of this litigation as the "8 Sites".

2. The Defendants are Persons Unknown connected with Just Stop Oil, Extinction Rebellion, Insulate Britain and Youth Climate Swarm (defined as the "4 Organisations") who (i) trespass or stay on the 8 Sites; (ii) block access to the 8 Sites or otherwise interfere with the access to the sites by the Claimants, their servants, agents, licensees or invitees; and (iii) who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.

3. On 26 January 2024, Ritchie J granted the Claimants a final injunction against the Defendants to last 5 years, for the detailed reasons he gave in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134.

4. Ritchie J's order, amended under the slip rule on 5 February 2024, made provision for the injunction to be reviewed once a year, no later than the anniversary of the 26 January 2024 order, or as close to that date as was convenient to the court.

5. By an application notice dated 21 November 2024, the Claimants sought a review hearing. The application was argued by the Claimants' counsel at a hearing before me on 24 January 2025. None of the Defendants attended or were represented at the hearing.

The factual background

6. Ritchie J set out the factual background in detail in his judgment at [1]-[45].

7. In summary, between 1 and 7 April 2022 a number of environmental activists undertook direct action at the Kingsbury Terminal (one of the 8 Sites: see Ritchie J's judgment at [4]) and on the adjoining access roads. This led to approximately 48 individuals being arrested by the Warwickshire Police at and around that site. Further protest activity took place at and around the Kingsbury Terminal between 9 and 15 April 2022, leading to around 38 arrests.

8. This conduct was part of a nationwide campaign. Similar direct action occurred at a number of other oil terminals and refineries as well as associated sites. These actions were combined with statements demonstrating a commitment to disrupt indefinitely the oil industry until the Defendants' demands were met.

9. As a result, injunctions were granted to a number of other entities involved in the energy industry. Since these injunctions have been granted, the direct action has largely ceased. Instead, environmental activists have turned their attention to other related targets which are not protected by injunctions.

10. The Claimants brought this claim to avoid the potentially very serious health and safety and environmental consequences of the Defendants' actions, as well as other serious consequences for the public. They relied on witness statements from, among others, David Blackhouse (European regional security manager for Valero International Security), David McLoughlin (a director employed by the Valero Group responsible for directing operations and logistics across all of the 8 Sites) and Emma Pinkerton (one of their solicitors). Ritchie J accepted all the evidence provided by the Claimants: see his judgment at [22], [25]-[44] and [46]-[37].

Service issues

11. The third witness statement of Jessica Hurle dated 29 February 2024 explained how Ritchie J's order had been served.

12. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, the order was served by the Claimants using the alternative methods set out in the order. In respect of those named Defendants for whom the Claimants did have a postal address, the order was served pursuant to the usual methods set out in CPR Part 6.

13. The First and Second Defendants were deemed served on 15 February 2024. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 9 February 2024. Those named Defendants in respect of whom the Claimants did have a postal address were served between 10 and 14 February 2024.

14. The sixth witness statement of Anthea Adair dated 15 January 2025 described how the documents relating to the review application (namely the application notice and supporting evidence and the hearing notice, together with a cover letter confirming where various documents could be found) were served.

15. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, these documents were served by the Claimants using the alternative methods set out in the order of Master Cook dated 7 June 2023. In respect of those named Defendants for whom the Claimants did have a postal address, they were served pursuant to the usual methods set out in CPR Part 6.

16. The First and Second Defendants were deemed served on 9 January 2025. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 7 January 2025. Those named Defendants in respect of whom the Claimants did have a postal address were served between 3 and 9 January 2025.

17. Ritchie J ordered that the hearing bundle for a review hearing must be served not less than 7 days before the review hearing. The order of Master Eastman sealed on 1 December 2023 provided alternative methods for serving the hearing bundles.

18. The hearing bundle for this review hearing was served and filed on 16 January 2025. There was a question mark over whether it had, in fact, been filed 2 minutes late. Out of an abundance of caution the Claimants filed an application for relief from sanctions dated 22 January 2025. This was supported by the seventh witness statement of Anthea Adair of the same date.

19. For the reasons given in an *ex tempore* judgment at the start of the hearing, to the extent that the Claimants required relief from sanctions I granted it. I did so, in summary, because, applying the well-known test in *Denton and ors v TH White Ltd and ors* [2014] EWCA Civ 906, [2014] WLR 3926 at [40], this was neither a serious nor significant failure; it occurred due to some technical issues with the uploading process due to the size of the bundle; and it had not caused any prejudice to the Defendants or impacted on the litigation.

The legal framework

20. In *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45 at [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.
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> 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."

The evidence, submissions and decision

24. In support of the application the Claimants relied on the evidence filed to date, set out in some detail in Ritchie J's judgment, as well as updating evidence in the form of the sixth witness statement of Mr Blackhouse dated 20 November 2024 ("DB6") and the sixth witness statement of Ms Pinkerton dated 19 November 2024 ("EP6").

25. Ritchie J made the following finding as to the level of risk on the basis of the evidence available to him on 26 January 2024:

> "64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs [Unknown Persons] will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations".

26. He went on to find that the Defendants did not have a realistic defence to the claim; that the balance of convenience and justice weighed in favour of granting the final injunction to the Claimants; and that damages would not be an adequate remedy for the Claimants: [65]-[70].

27. He was also satisfied that the various procedural requirements set out in the case law were satisfied by the injunction proposed: [71]-[78].

28. I take these findings as my starting point, in accordance with the legal framework summarised above.

29. The updating evidence served in support of the review application, which I accept, makes clear that there exists a continued threat of trespass and nuisance at the 8 Sites.

30. Mr Blackhouse provided further evidence of the continuing threat, vulnerability and risks, in particular at paragraphs 4.1-5.4 of DB6. For example, he referred to the fact that from his regular meetings with the police and local resilience forums in the areas where the Claimants have assets, his understanding is that the threat remains the same. He also referred to information received from the National Police Coordination Centre to the effect that the threat level remains the same.

31. As Ms Pinkerton explained in paragraphs 5.1-5.7 of EP6, none of the Defendants have contacted the Claimants to say that they no longer intend to carry out direct action at the Sites. There have also been many instances of direct action by environmental activists, notably Just Stop Oil and Extinction Rebellion, across the country in relation to the energy industry. This included a nationwide campaign planned and orchestrated by Just Stop Oil to carry out direct action at airports in the summer of 2024. Statements have continued to be made about the need for direct action and related conduct in respect of fossil fuel extraction and production.

32. Ms Pinkerton highlighted that courts have continued to grant or renew injunctions on the basis of the same continuing threat: see, for example, *Shell v Persons Unknown* [2024] EWHC 3130 (KB) at [101]-[113], where on 5 December 2024 Dexter Dias J held that that there remained a real and imminent risk of direct action by the named Defendants and Persons Unknown in relation to Shell's Haven oil refinery and other sites.

33. In light of this evidence, I accept the Claimants' submission that nothing material has changed in the evidence since Ritchie J made his order. In particular, as explained above, there remains a continued threat of direct action at the 8 Sites. This is supported by the fact that, as far as the Claimants are aware, no injunction originally granted to an energy company as a result of the direct action in April 2022 has been discharged on the basis of a finding that the level of threat has diminished

34. The evidence suggests that direct action at the 8 Sites has diminished. However the courts have repeatedly held in this context that evidence of this kind is not evidence that the threat has dissipated; rather, it is evidence that the injunctions have had their intended effect: see, for example, Ritchie J's judgment in this case at [64] and *Shell* at [111]-[112].

35. There has been no material change in the case law since Ritchie J's judgment.

36. As to new legislation, Ritchie J considered the new offences in the Public Order Act 2023 before making the order: see his judgment at [66]. In any event, courts have repeatedly accepted that these offences do not materially alter the position or serve to diminish the threat of continued action: see, for example, *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), at [24] and [28] (Ritchie J); *North Warwickshire Borough Council v Persons Unknown* [2024] EWHC 2254 (KB) at [88] (HHJ Emma Kelly, sitting as a Judge of the High Court); and *TfL* at [37]-[38] and [58]–[67] (Morris J).

37. In accordance with her duty of disclosure Ms Holland KC drew my attention to the fact that in *Shell*, Dexter Dias J observed that the new legislation is a "material change". However, he went on to hold that it remains "evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell"; and that the mere existence of the new offences in and of themselves could not affect the analysis on risk of continued threat: [132] and [140].

Conclusion

38. I have reviewed and used as my starting point the findings Ritchie J made and the evidence that was before him, as he made "a full determination of the issue of risk and the balance of interests" (*TfL* at [55]).

39. Having considered the updating evidence and more recent legal developments, I am satisfied that nothing material has changed. The risk still exists as before and the Claimants remain rightly and justifiably fearful of unlawful attacks. Procedural and legal rigour has been "observed and fulfilled" (*HS2* at [32]).

40. For all these reasons, I approve the draft order sought by the Claimants. Ritchie J's order will remain in effect, to be reviewed again in one year.