

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

B E T W E E N : -

HANSON QUARRY PRODUCTS EUROPE LIMITED
(t/a Heidelberg Materials UK)

Claimant

and

- 1) **PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT ON ANY PART OF THE CRAIG YR HESG QUARRY**
- 2) **PERSONS UNKNOWN DELIBERATELY OBSTRUCTING AND/OR INTERFERING WITH THE FREE MOVEMENT OF VEHICLES, EQUIPMENT OR PERSONS ACCESSING OR EGRESSING FROM THE CRAIG YR HESG QUARRY**
- 3) **PERSONS UNKNOWN INTERFERING WITH SIGNS, FENCES OR GATES ON THE PERIMETER OF OR WITHIN THE CRAIG YR HESG QUARRY**

Defendants

CLAIMANT'S SKELETON ARGUMENT
For interim injunction hearing 5 June 2024

References

HB/X – page X of the Hearing Bundle
JJR1/X – paragraph X Witness Statement of John Julian Radcliffe dated 20 May 2024 [HB/26]
JJR2/X – paragraph X Second Witness Statement of John Julian Radcliffe dated 31 May 2024 [HB/148]
AB/X – page X of the Authorities Bundle

Preliminary

Suggested pre-reading (t/e: 1 hour):

1. Claimant's skeleton argument
2. Witness Statement of Mr Radcliffe [HB/26] ("**Radcliffe 1**")
3. Second Witness Statement of Mr Radcliffe [HB/148] ("**Radcliffe 2**")
4. Order of Mrs Justice Heather Williams dated 20 May 2024 [HB/16] ("**May Order**")
5. Draft Order [HB/268]
6. Note of Hearing [HB/10]

Hearing time estimate: 1.5 - 2 hours

Introduction

1. This is the return date hearing for the May Order, which was granted on an urgent without notice basis by Heather Williams J following a hearing on 20 May 2024. The Claimant seeks a continuation of the May Order. This is sought to protect the Claimant's quarry, Craig Yr Hesk Quarry

(“**Quarry**”) from persons unknown who it fears will trespass on the Quarry and/or obstructing the Claimant’s access to and from the Quarry and/or obstruct vehicles on the main road to the Quarry (“**Protestors**”). The interim injunction sought is to last for a period of 12 months until 5 June 2023 at 23:59 unless extended, varied or discharged.

2. The Claimant is Hanson Quarry Products Europe Limited, which trades as Heidelberg Materials UK. It owns the Quarry as set out in Radcliffe 1 at [JJR1/6, HB/27]. A plan of the Claimant’s land is at Schedule A of the May Order [HB/24].
3. The Quarry is a nationally important source of premium quality blue pennant sandstone which is used for road surfacing. The Quarry’s materials are used in a wide range of industries and disruption of the supply could have wide ranging economic impacts which could impact the general public [JJR1/7, HB/27].

Background to the May Order

4. In June 2022, the Claimant was granted planning permission to extend operations at the Quarry by Welsh Ministers [JJR1/8, HB/28]. That decision was opposed by local people, and there have been entirely lawful protests directed against the Quarry [JJR1/15, HB/15].
5. However, over the last few months, the protests against the Quarry moved away from democratic means to “direct action” seeking to compel the Quarry to cease operations by causing economic harm. The Claimant faced unlawful trespass on the Quarry (“**Trespass**”) and had the entrance to the Quarry from the public highway blocked by a fluctuating and changing body of persons unknown (“**Obstruction**”, together with the Trespass the “**Protests**”) [JJR1/17, HB/30]. As a result of that activity, the large goods vehicle (“**LGV**”) fleet necessary for the Claimant’s business has been delayed with significant financial consequences and intolerable risks to health and safety [JJR1/22 – 34, HB/32].
6. Radcliffe 1 explains the background and business of the Claimant, describes the Protests and their Impact, and focusses on the recent Protest events which led to the urgent without notice application. The Court noted in particular the Schedule of Incidents exhibited at [HB/48], which set out the 33 days of Protest activity since 19 February 2024.
7. Given the impact of the Protests, their apparent escalation, and the increasing risks arising from the Claimant moving towards full operations at the Quarry [JJR1/22, HB/31], injunctive relief was sought on an urgent basis against persons unknown as the Claimant had no knowledge of when the next Protest was planned or who would take part in the Protests.

8. The May Order was granted on 20 May 2024 and sealed on 21 May 2024. Paragraph 4 of the May Order required that the Claimant serve the Claim Documents (the Claim Form; Particulars of Claim; the application for an interim injunction dated 20 May 2024; Radcliffe 1; the note of this hearing, notice of the return date hearing, and the May Order as follows:

- a. The Claimant shall affix sealed copies of the Claim Documents in transparent envelopes in two prominent and conspicuous locations on the stone walls on both sides of the Access close to the public highway (marked “Quarry Entrance” on the Plan at Schedule A);
- b. The Claimant shall position at least four signs at conspicuous locations along the Quarry boundary fence which are at least 1m x 1m advertising the existence of this Order;
- c. The Claimant shall send electronic copies of the Claim Documents in PDF form to savecraigyrhesg_properties@outlook.com and to ddraig@savecraigyrhesg.com; and
- d. The Claimant shall upload electronic copies of the Claim Documents in PDF form to an electronic folder on the Claimant’s website and shall include the link to that website page and the Claimant’s solicitor’s contact details on each of the aforesaid signs. The current website address is:

<https://www.communities.heidelbergmaterials.co.uk/en/sites/craig-yr-hesg-quarrycommunity-page/court-documents> or
<http://www.heidelbergmaterials.co.uk/cyhquarrydocuments>.

If that website address changes for any reason, there will be a note on this webpage indicating the new website address.

9. The Claimant has complied with those steps. This is set out in detail in Radcliffe 2, and within the two Certificates of Service dated 29 May 2024 and 31 May 2024 [HB/229 and HB/232].

10. Two matters to draw to the Court’s attention in respect of service:

- a. there were complaints from members of the local community that the evidence exhibited to Radcliffe 1 included names of people who were members of a community Facebook group and photos of people attending the Protests. Particular criticism was made of the inclusion of photos of minors. The Claim Documents were taken down by unknown third parties after they had been served in accordance with the May Order. Although not required to do so as a condition of service, the Claimant replaced the order with redacted versions of the Claim Documents. This is addressed further in this skeleton argument.
- b. the Court Office did not issue notice of hearing for this return date hearing. As a result, the Claimant was unable to serve that notice, and to the extent relief from sanctions is required, it makes that application. The Claimant does not consider that the lack of formal notice is

prejudicial to any party as the return date, time and location is set out on the face of the May Order at paragraph 12.

Matters since the urgent without notice hearing

11. Since service of the May Order, there have been no further incidents of protest on or around the Quarry that would be prohibited by that Order.
12. The Claimant submits that this is evidence of the May Order being successful. As set out in Radcliffe 2 [JJR2/10 – 19, HB/10], it is plain that the existence and terms of the May Order have been appropriately disseminated, there is general knowledge of the May Order in the local community, and persons unknown have obeyed the Court. That is all to the good.
13. However, the Court will also note the different and anonymous threats made by unknown individuals directly to the Claimant referred to in Radcliffe 2 [JJR/10 and 20, HB/150] which amount to threats to block vehicles on the road away from the access to the Quarry. The Claimant considers that these threats are real and imminent given the history of the Protests. Whilst it is arguable that obstructing LGVs away from the Access may be a breach of the injunction in any event, the Claimant seeks to introduce a further category of person unknown and prohibited behaviour to anticipate the threatened unlawful behaviour. The submission made in that regard is that no one has any right to interfere and obstruct vehicles on the B4273, and each of the potential issues regarding health and safety, risk and harm, in respect of the Quarry Access apply equally if vehicles are held up on the B4273.
14. In accordance with the undertakings given to the Court on 20 May 2024, the Claimant filed the claim form [HB/135] and particulars of claim [HB/140] in these proceedings on 22 May 2024. The claim has been issued and the sealed claim form and particulars of claim served in accordance with the May Order.

This Application

15. At the without notice hearing, Heather Williams J was satisfied that [HB/10]:
 - a. There was at least a serious question to be tried;
 - b. Damages were not an adequate remedy;
 - c. As to the balance of convenience:
 - i. There was a real and imminent risk of trespass and nuisance from the Protests;
 - ii. Articles 10 and 11 bestow no right to be on private land in respect of trespass, and only apply “potentially” in respect of nuisance; and
 - iii. The interference with the rights of other road users had to be considered.

16. On that basis, the learned judge made the May Order, noting that the Claimant had given full and frank disclosure in her Ladyship's view. For completeness, this skeleton repeats and extends the submissions made to Heather Williams J.
17. The potential losses from the Protests to the Claimant's turnover at full operations are approximately £55,000 a day. Moreover, the Court's protection is needed to mitigate a significant and increasing health and safety risk. As a result of the Obstruction, the number of LGVs queuing on the public highway outside the Quarry increased considerably. As Radcliffe 1 set out, there are/will be 14.5 LGV movements an hour into and out of the Quarry. The significance of a potential 10 minutes delay to each LGV is obvious. There is a further risk caused by LGVs delivering explosives to the Quarry.
18. There is nowhere for those LGVs to wait, or indeed turn around, safely. As a result, members of the public using the public highways seeking to manoeuvre around the waiting LGVs were putting themselves at risk. Similarly, members of the public on the footpaths alongside the public highway were at risk from manoeuvring vehicles. The Claimant's evidence is that there have been near misses, and a road traffic incident, and it is only a matter of time before there is a serious accident. Further, in seeking to block the LGVs, the Protestors are putting themselves at significant risk of serious harm.
19. As a result of the May Order, those significant costs and risks have not materialised since 20 May 2024. It is for this reason that the Claimant seeks to extend the May Order: it appears to have been successful.

Cause of action

20. In this application, the Claimant seeks an interim injunction on a very tailored and specific basis to prevent a very specific unlawful activity.
21. The Claimant's causes of action are in trespass and nuisance. Briefly:
 - a. The Claimant owns the Quarry, and no one is permitted without consent to enter the Quarry. Any person without permission who goes onto the Claimant's land with permission is a trespasser.
 - b. The Claimant has a right to enter and leave the Quarry on the public highway without unlawful interruption and obstruction.

22. Trespass: a landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on his land: Snell's Equity (34th Edition) at [18-012].
23. Public nuisance: an act which inflicts damage, injury or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of operation. It may, however, affect some to a greater extent than others.
24. Private nuisance: 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: *West v Sharp* [1999] 79 P&CR 327, 332.
25. 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 at [13] [AB/165], and can be an unlawful interference with one or more of the claimant's rights of way over land privately owned by a third party: *Gale on Easements*, 13-01.
26. In *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), Morgan J held at [44] [AB/235] that (i) whether an obstruction amounts to a nuisance is a question of fact; (ii) an obstruction may be so inappreciable or so temporary so as not to amount to a nuisance; (iii) generally, it is a nuisance to interfere with any part of the highway; and (d) 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.

Interim Injunction

27. The test for an interim injunction is well-known (*American Cyanamid Co v Ethicon Ltd* [1975] AC 396). It requires that there be at least a serious question to be tried and then refers to the adequacy of damages for either party and the balance of justice (or convenience).
28. The threshold for obtaining an injunction is normally lower where wrongs have already been committed by the defendant: *Secretary of State for Transport v Persons Unknown* [2019] EWHC 1437 (Ch) [AB/191].
29. In relation to the test to be applied for precautionary injunctions, in *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), Morgan J held at [88] [AB/247] that:

“The general test to be applied by a court faced with an application for a quia timet injunction at trial is quite clear. The court must be satisfied that the risk of an infringement of the claimant's rights causing loss and damage is both imminent and real. The position was

described in *London Borough of Islington v Elliott* [2012] EWCA Civ 56, per Patten LJ at 29, as follows:

“29 The court has an undoubted jurisdiction to grant injunctive relief on a *quia timet* basis when that is necessary in order to prevent a threatened or apprehended act of nuisance. But because this kind of relief ordinarily involves an interference with the rights and property of the defendant and may (as in this case) take a mandatory form requiring positive action and expenditure, the practice of the court has necessarily been to proceed with caution and to require to be satisfied that the risk of actual damage occurring is both imminent and real. That is particularly so when, as in this case, the injunction sought is a permanent injunction at trial rather than an interlocutory order granted on *American Cyanamid* principles having regard to the balance of convenience. A permanent injunction can only be granted if the claimant has proved at the trial that there will be an actual infringement of his rights unless the injunction is granted.”

30. Morgan J continued at [91] to state that the *American Cyanamid* test was applicable in precautionary injunction cases, and that the court was bound to apply section 12(3) of the Human Rights Act 1998 and ask what order the court would be likely to make at a trial of the claim. The learned judge concluded at [142] that as he found it likely that the court following trial would grant a permanent injunction to restrain the interferences with the Claimants legal rights, the normal response of a court would be to grant similar interim relief “without further ado.”
31. In the present case, there is undoubtedly a serious issue to be tried: the cause of action is in trespass and nuisance, and the threatened acts correspond to that cause of action.
32. In relation to the adequacy of damages, given the nature and impact of the continuing unlawful Protests, damages would be an inadequate remedy and in any event are very unlikely to be recovered and/or compensate for the considerable total losses suffered. Furthermore, the danger of much of the Protests (to the Protestors and others) further indicates the effects of this conduct cannot be adequately remedied through damages.
33. The Court must have regard to the balance of convenience, and appropriate weight to be had to the Defendants’ Article 10 and 11 rights (freedom of expression and assembly) ‘in the round’ if such rights apply to the factual situation here. The balance of convenience here is particularly stark:
 - a. As addressed below, Article 10 and 11 are not violated;
 - b. There is only loss to a Defendant is if they are prevented from doing what they wish on the public highway. There is no right to exceed the grant of a right of way. In this case, such prevention is in the Defendant’s best interests;
 - c. The rights of other members of the public seeking to use the public highway also fall into the balance.

34. The risk of actual damage is imminent and real. It is already occurring and is set out in the evidence of Mr Radcliffe. The harm, particularly the health and safety risk, cannot be compensated in damages.
35. The balance of convenience lies in allowing the Claimant to continue its lawful business until trial. The countervailing consideration is that the Defendants will lose their right to continue the Obstruction. That is an important point: there is no loss to the Defendants, other than the ability to protest in a certain way. The Defendants remain quite able to protest in other, lawful ways.
36. Although reference is made to trial, the Claimant is mindful of the Supreme Court's clarification of this jurisdiction in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 [AB/2]. The reality is that there is unlikely to be a trial in these proceedings.
37. Although explicitly focussed on Traveller injunctions, the Supreme Court confirmed at [167] [AB/57] that:
- “...there is no immovable 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...”
38. The Supreme Court made plain that such injunctions should only be granted (in brief summary) where:
- a. There is an evidenced compelling need to protect civil rights;
 - b. There is procedural protection for the rights of affected newcomers and “[t]his 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...; 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”
 - c. Applicants have a “most stringent form of disclosure duty”;
 - d. The injunctions must be constrained territorially and temporally so that “they neither outflank not outlast the compelling circumstances relied upon”; and
 - e. On the facts, granting the injunction is “just and convenient”.
39. *Wolverhampton* makes plain that (i) persons unknown injunctions form their own category; (ii) a cause of action can be/is unnecessary; (iii) it is not necessary to name everyone in a persons unknown injunction: and (iv) it is artificial to view a persons unknown injunction as something “holding the ring” to trial – the proceedings are not at an end until the injunction is discharged. Key paragraphs in the reasoning are as follows:

“[43] An injunction against newcomers purports to restrain the conduct of 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...[but] 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.

...[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.

...[106] [The Court of Appeal] 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 infringing it...

[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...

...137 The court also observed at para 92 that “[a]n interim injunction is temporary relief intended to hold the position until trial”, and that “[o]nce 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 (eg 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..."

40. As persons unknown may remain without notice, the Claimant's duty of full and frank disclosure continues, it is appropriate to draw the following points to the Court's attention which may tend against the grant of the application. The Claimant considers that it may be argued that:

- a. The Protests are *de minimis*;
- b. The Protestors have a right to protest under Articles 10 and 11 ECHR.
- c. The Obstruction is lawful/on public highway land;
- d. The Trespass is in response to a general concern in respect of wildlife crimes/criminal activity/breach of planning control on the Quarry.
- e. The harm may be compensated.
- f. The injunction is unnecessary as there are criminal offences which might apply, and the police have not arrested anyone for the Protests (noting that the arrest which has been made did not relate directly to the Protests).
- g. Issues may be taken with the persons unknown jurisdiction, the prohibited conduct, the description of the defendants, and/or the proposed alternative service provisions.

41. The Claimant's submissions on those arguments are as follows.

42. First, the effect of the Protests is not *de minimis*. The Claimant's evidence is that there is significant economic damage which has been and may be caused to the Claimant's lawful business. In essence, the purpose of the Protests is to seek to damage the Claimant's business such that it is unable to continue operations at the Quarry. If the Protests truly were *de minimis*, it is submitted that it would be pointless for the Protestors to continue their actions.

43. Even if, as the Claimant does not accept, the Protests are short term in nature or only involve a small proportion of the Claimant's land, the cumulative impacts of several minor acts can be, and are, extraordinarily significant in effect. In particular, even a short obstruction has a material impact on the health and safety of the Claimant's staff, the Protestors and other road users.

44. Second, the Protests may pray in aid their human rights to expression and assembly under Articles 10 and 11, which are addressed above. Reference would be made to the approach of the Supreme Court in *DPP v Ziegler* [2021] UKSC 23 [AB/99]. That case makes clear that interference with such convention rights must be balanced against the rights of other members of the public to use an area of land (in that case, a common). Here, as has been set out, the balance of rights would be between unauthorised user of a public highway for the purpose of protesting, against the Claimant's A1P1 rights.

45. The Divisional Court addressed this context in respect of Article 10 and 11 in *DPP v Cuciurean* [2022] EWHC 736 (Admin) at [45] [AB/89]:

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.

46. The ratio of *DPP v Cuciurean* is that there is no "freedom of forum" to protest. The Divisional Court held:

76... a protest which is carried out for the purposes of disrupting or obstructing the lawful activities of other parties, does not lie at the core of articles 10 and 11, even if carried out on a highway or other publicly accessible land. Furthermore, it is established that serious disruption may amount to reprehensible conduct, so that articles 10 and 11 are not violated. The intimidation, obstruction or disruption to which section 68 applies is not criminalised unless it also involves a trespass and interference with A1P1. On this ground alone, any reliance upon articles 10 and 11 (assuming they are engaged) must be towards the periphery of those freedoms.

77... 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. There is no basis for

supposing that section 68 has had the effect of preventing the effective exercise of freedoms of expression and assembly.

47. Third, as has been set out, there is no freedom of forum. The Obstruction goes beyond ordinary permitted user of the public highway. Delaying traffic for c. 10 minutes at a time is not passing or repassing; it is protesting. It goes beyond the grant, and is hence a trespass against the landowner. The nuisance element of the Claimant's case set out above explains why the Obstruction is not lawful.
48. Fourth, in relation to defences to trespass, genuine and *bona fide* concerns on the part of Protestors do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede* [63]. Such matters have been considered in numerous other similar cases, including the HS2 injunction litigation (per Andrews J (as she then was) in *Secretary of State for Transport and HS2 v Persons Unknown* [2020] EWHC 671 (Ch) at [35] and [42] [AB/275] where the learned judge noted there was no right to undertake these forms of direct action protest, even if the motives were to protect the environment.
49. Fifth, the Claimant is driven to accept that the economic harm may be compensated, but given the very significant losses the Claimant will experience from continued unlawful Protest, it is not realistic to expect that any Protestor will be able to compensate those losses. Moreover, there are unquantifiable losses such as business reputation and particularly health and safety risks which mean that the harm cannot be compensated.
50. Sixth, there is no principle that civil remedies are not appropriate even where criminal proceedings may be brought.
51. Seventh, the Claimant considers that the potential argument as regards the drafting of the Order, the service provisions and the descriptions contained with the proposed Order need full explanation as follows.

Persons unknown

52. Wolverhampton confirms that the guidance from *Canada Goose* at [82] remains applicable:

“Building on *Cameron* and the *Ineos* requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protester cases like the present one:

(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are

capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".

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

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

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

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

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

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

53. In respect of (1), the Claimant has sought to take a balanced approach and will undertake to name persons unknown. At the present stage, the Claimant is unable to name any individual who has or will take part in the Protests. That was so at the without notice stage, and, since the May Order has been successful it remains the case: as there have been no further Protests, the Claimant remains unable to identify any individual who should be named. In the Claimant's respectful submission that is a good thing as there are considerable legal consequences for a defendant who becomes named to an injunction – most notably in costs exposure.

54. In respect of requirements (2) to (7) of *Canada Goose*, the Claimant submits these are, in relation to defendants identified as 'persons unknown', met in this case:

- a. The identification of persons unknown meets the requirements of (2). It is sufficiently precise to identify the relevant defendants as it targets their conduct.
- b. As to (3), torts have already been committed in respect of the Trespass and Obstruction. There is a sufficient risk of torts being committed to justify precautionary relief for the purposes of (3).

- c. Those to be subject to the interim injunction are those falling within the definitions of the Defendants from time to time, and as per the draft Orders, and will be served by means of alternative service. (4) is thus satisfied.
- d. The concern in the guidance at (5) is not acute in the case of Trespass and Obstruction, where defining the unlawful conduct is straightforward – including in respect of the public highway for the reasons set out. (5) is therefore satisfied.
- e. (6) is similarly satisfied: the prohibited conduct and description of persons unknown uses non-technical language, and is clear in its scope and application.
- f. The geographical limit required in (7) is also straightforward in this case; it is simply the Quarry. The requirement for a temporal limit is also satisfied here, since the draft order has a sunset clause of 5 June 2025. If the Claimant wishes to continue the protection of the injunction, it will need to make an application before 5 June 2025.

55. Finally, the Court's attention is drawn to section 12 of the Human Rights Act 1998. It provides:-

“(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied – (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.”

56. The relief sought will arguably affect the Defendants' rights to freedom of expression and assembly in respect of nuisance.

57. The question, for provision of notice, is whether all practicable steps have been taken to notify “the person” against whom relief is sought. Given that relief is against persons unknown, the Claimant submits that the steps taken to serve the Claim Documents are the only practicable steps which the Claimant could take to notify the respondents.

58. The Claimant has to demonstrate that it is likely that they would obtain the relief it seeks at trial. For the reasons set out, the Claimant submits that this test is met.

Service

59. The Claimant cannot presently name the any potential defendant. It does know any potential defendant's address. As has been noted, the number of Protestors fluctuates, and the Claimant cannot be sure (a) how many Protestors there are; or (b) which Protestors will take part in any given Protest.
60. The inability to personally serve immediately, means that without alternative service, the Claimant will be forced to endure further Trespass and Obstruction before any personal service can take place: the only way for the Claimant to personally serve will be to hand out physical copies of the Order to any Protestor taking part in the Protests. In effect, that would give a Protestor a "free go", which, if the Court is persuaded by the Claimant's evidence, implies that the harm, particularly the health and safety risks would be allowed the realise at least once, which ought not to be acceptable.
61. The reality is that the Claimant is very unlikely to bring committal proceedings in respect of the single breach of the Order, and the draft Order contains a provision that the Claimant will try to effect personal service on any Protestor, albeit that is expressed as an intention, rather than a mandatory requirement of service.
62. The Claimant therefore seeks an order that the Order be served by an alternative method pursuant to CPR 6.27 (in addition to continuing to attempt personal service where possible). The essential requirement for any form of alternative service is that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant.
63. The proposed alternative service provisions are to place hard copy documents in areas where the Protestors are or have been operating, particularly at the walls which are on either side of the Claimant's access road where the Protesters carry out the Obstruction. There will be electronic versions of the Order and documents in the proceedings available online and the address of that website will be advertised on signs on the Quarry land.
64. Given the Claimant's assessment that the majority of the Protestors are local people, it is submitted that the suggested methods are highly likely to bring the Order to the attention of the Defendants. Indeed, the references to the May Order set out in Radcliffe 2, and the effectiveness of the May Order to date suggest that the Court can be sure that the alternative service method employed for the Claim Documents has been effective, and there is no reason to suppose that repeating those same methods for any Order the Court now makes will not be equally as effective.

Complaints regarding service of the Order

65. The Court will note the complaints made by members of local community in respect of the service of the without notice application in Radcliffe 2, which are captured in an email from Ms Vodden dated 28 May 2024 [HB/251].
66. While the Claimant understands the concerns expressed, it was required to serve the Claim Documents in accordance with the May Order. Redaction generally was canvassed with the Court and the Court was satisfied with the Claimant's proposed redactions. The tension in this case is that *Canada Goose* and later authorities direct that every effort is made to identify and put potential defendants on notice, and in a persons unknown case such as the instant case, it is plain that people attending lawful protests and engaging with a Facebook group supporting the Protests are potential defendants.
67. Should the Court wish to explore the issues further, the Claimant will make submissions in respect of data protection in the context of litigation. However, as the concerns expressed relate mostly to the Claim Documents, and it is not proposed to include Mr Radcliffe's witness statements as appendices to any Order made on notice, the Claimant does not consider that the same issues will arise. As has been noted, the Claimant served the Claim Documents in accordance with the May Order, and has since redacted further in the face of public concerns.

The Draft Order

68. The Draft Order is straightforward. So far as applicable to an interim order made on a without notice basis, it responds to the protections and limits confirmed by the Supreme Court in *Wolverhampton*.
69. The headnote defines the Defendants by their prohibited conduct, and matches the prohibited behaviour. The Third Defendant is an addition for this return date hearing. As has been submitted, the Claimant has identified a real and imminent threat of obstruction on the route into the Quarry.
70. Paragraph 1 defines terms.
71. Paragraph 2 sets out the terms of the Order, and states clearly that the long-stop date is 5 June 2025. It does not depend on intention but relates to actions which amount to the tort of trespass or nuisance. Paragraph 2(c) is an additional prohibition which corresponds to the Third Defendant.
72. Paragraphs 3 is intended to assist potential defendants in explaining what matters are outside the scope of the prohibitions in paragraph 2. Paragraph 3(c) is an additional point of clarification which addresses the confusion expressed by some members of the local community who were concerned that the May Order prevented the use of permissive paths in and around the Quarry. As the use of a

permissive path (for the purpose for which it is granted) is by definition with the consent of the Claimant it may be thought that paragraph 3(c) is extraneous drafting. However, the Claimant is conscious that many local people are not legally trained and submits that this is a useful clarification.

73. Paragraphs 5 and 6 confirm that the Court is satisfied with the Claimant's discharge of the service requirements and its undertakings. The Claimant has already explained that it has been unable to serve notice of hearing for the reason set out.
74. Paragraph 6 - 10 set out the steps the Claimant will take to bring the Order to the attention of the Defendants. Paragraph 10 in particular makes provision for the Claimant to take all reasonably practicable steps to effect personal service when possible.
75. Paragraphs 11 – 12 provide for the ability and procedure for the Defendants, or any other person affected, to apply to the Court to vary or discharge the order, and to be joined to the proceedings.
76. Paragraph 13 provides the Claimant with permission to apply to extend or vary the Order, or to ask the Court for further directions.
77. Paragraph 14 reserves costs.
78. Paragraph 15 provides the Claimant's solicitors' contact details.
79. Appended to the draft Order are:
 - a. guidance notes to assist Defendants;
 - b. at Schedule A, the Plan of the Quarry;
 - c. at Schedule B, the usual undertakings that a Claimant in these proceedings should offer the Court.

Conclusion

80. Subject to any modifications the Court considers appropriate, the Claimant respectfully asks that the Court make the Order in the terms sought.

MICHAEL FRY
Francis Taylor Building

3 June 2024