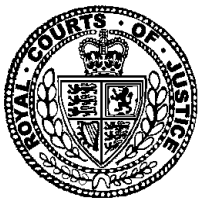

Neutral Citation Number: [2021] EWHC 1201 (QB)

Case Nos: See Appendix 1

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2021

**Before** :

**THE HONOURABLE MR JUSTICE NICKLIN**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **(1) London Borough of Barking and Dagenham**<br>**(2) Other Local Authorities**<br>**(see Appendix 1)** | **Claimants** |
| **- and -** | |
| **(1) Persons Unknown**<br>**(2) Other named Defendants**<br>**(see Appendix 1)** | **Defendants** |
| **- and -** | |
| **(1) London Gypsies and Travellers**<br>**(2) Friends, Families and Travellers**<br>**(3) National Federation of Gypsy Liaison Groups** | **Interveners** |

- - - - - - - - - - - - - - - - - - - - -

**Caroline Bolton and Natalie Pratt** (instructed by **Sharpe Pritchard LLP and LB Barking & Dagenham Legal Services**) for the **1st, 6th, 11th, 16th, 26th, 28th, 33rd and 34th Claimants**
**Ranjt Bhose QC and Steven Woolf** (instructed by **South London Legal Partnership**) for the **7th and 12th Claimants**
**Steven Woolf** (instructed by **LB Ealing Legal Services and Reigate & Banstead BC**) for the **4th and 27th Claimants**
**Ranjt Bhose QC and Sarah Salmon** (instructed by **HB Public Law**) for the **8th Claimant**
**Nigel Giffin QC and Simon Birks** (instructed by **Walsall MBC Legal Services**) for the **35th Claimant**
**Mark Anderson QC and Michelle Caney** (instructed by **Wolverhampton CC Legal Services**) for the **36th Claimant**
**Marc Willers QC, Tessa Buchanan and Owen Greenhall** (instructed by **Community Law Partnership**) for the **Interveners**
**Sarah Wilkinson** (instructed by **Attorney General**) as **Advocate to the Court**

Hearing dates: 27-28 January 2021

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**Covid-19 Protocol: This judgment was handed down by the judges remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.**

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# Approved Judgment

**The Honourable Mr Justice Nicklin :**

1. This judgment is divided into the following sections:


| Section | | Paragraphs |
|---|---|---|
| **A.** | **Introduction** | [2] – [7] |
| **B.** | **The changing legal landscape** | [8] – [25] |
| (1) | *Cameron -v- London Victoria Insurance Co Ltd* | [10] – [11] |
| (2) | *LB Bromley -v- Persons Unknown* | [12] – [19] |
| (3) | *Canada Goose UK Retail Ltd -v- Persons Unknown* | [20] – [25] |
| **C.** | **The Cohort Claims** | [26] – [113] |
| (1) | Assembling the Cohort Claims and their features | [26] – [30] |
| (2) | Service of the Claim Form on "Persons Unknown" | [31] – [48] |
| (3) | Description of "Persons Unknown" in the Claim Form and CPR 8.2A | [49] – [52] |
| (4) | The bases of the civil claims | [53] – [78] |
| | (a) s.222 Local Government Act 1972 | [55] – [60] |
| | (b) s.187B Town & Country Planning Act 1990 | [61] – [63] |
| | (c) s.1 Anti-social Behaviour, Crime and Policing Act 2014 | [64] – [70] |
| | (d) s.130 Highways Act 1980 | [71] – [73] |
| | (e) ss.61 and 77-79 Criminal Justice and Public Order Act 1994 | [74] – [77] |
| | (f) Trespass | [78] |
| (5) | Powers of Arrest attached to injunction orders | [79] – [82] |
| (6) | Use of the Interim Applications Court of the Queen's Bench Division | [83] – [85] |
| (7) | Failure to progress claims after the grant of an interim injunction | [86] – [101] |
| (8) | Particular Cohort Claims: | [102] – [111] |
| | (a) Harlow District Council & Essex County Council | [102] – [104] |

| | | |
|---|---|---|
| | (b) London Borough of Enfield | [105] – [107] |
| | (c) Canterbury City Council | [108] – [111] |
| (9) | Case Management Hearing: 17 December 2020 – Identification of issues of principle to be determined | [112] – [113] |
| **D.** | **An overview and summary of conclusions** | [114] – [126] |
| **E.** | **Issue 1: Jurisdiction over Final Orders** | [127] – [148] |
| (1) | Submissions | [127] – [134] |
| (2) | Decision | [135] – [148] |
| **F.** | **Issue 2: Final orders against Newcomers and *contra mundum* orders** | [149] – [238] |
| (1) | Do injunctions in the Cohort Claims bind newcomers? | [150] – [186] |
| | (a) Submissions | [151] – [160] |
| | (b) Decision | [161] – [186] |
| (2) | Can the Court grant a Traveller Injunction *contra mundum*? | [190] – [237] |
| | (a) The injunction granted to Wolverhampton CC | [191] – [207] |
| | (b) Submissions | [208] – [223] |
| | (c) Decision | [224] – [238] |
| **G.** | **Issue 3: Ascertaining the parties to the Final Order** | [239] – [241] |
| (1) | Submissions | [239] |
| (2) | Decision | [240] – [241] |
| **H.** | **Issue 4: The 'conundrum' of interim relief** | [242] – [243] |
| **J.** | **Consequences and Next steps** | [244] – [248] |

## A: Introduction

2. In cases before the Court, injunctions have been granted to local authorities that have targeted, principally, unauthorised encampments on land. Although some have named individual defendants, most injunctions have been granted against "Persons Unknown" with varying descriptions.

3. The background to the claims brought by the local authorities and the scope of the injunctions that had been granted was described by Coulson LJ in ***Bromley London Borough Council -v- Persons Unknown*** **[2020] EWCA Civ 12**; **[2020] PTSR 1043** ("***LB Bromley***").

> [1] This is an appeal against the refusal by the High Court to grant what the judge called "a de facto borough-wide prohibition of encampment and upon entry/occupation ... in relation to all accessible public spaces in Bromley except cemeteries and highways". Although the stated target of the injunction was "persons unknown", it was common ground that the injunction was aimed squarely at the gipsy and traveller community. The points arising from the appeal itself are of relatively narrow compass, but all parties were anxious that, in the light of the recent spate of similar cases, this court should provide some guidance as to how local authorities might address this issue in future.
>
> [2] Numerous similar injunctions have been granted by the High Court in recent years and months. We refer to a number of those judgments below. One common feature of those cases was that the gipsy and traveller community was not represented before the court at either the interim or final hearing. Although that did not stop the judges concerned looking very carefully at the orders which they were being asked to make, I do not doubt that, in an adversarial system, there can be no substitute for reasoned submissions from those against whom an injunction is directed.
>
> [3] This, therefore, was the first case involving an injunction in which the gipsy and traveller community were represented before the High Court. As a result of their success in discharging the interim injunction, it is also the first such case to be argued out at appellate level…"

4. In [4] to [14], Coulson LJ set out the background and history of applications by local authorities and the grant of injunctions against "Persons Unknown" prohibiting unauthorised occupation or use of land ("Traveller Injunctions"). Often, although not exclusively, such injunctions were granted in respect of all public spaces within the relevant local authority area. The Court of Appeal noted a "*long-standing and serious shortage*" of sites for Gypsies and Travellers which threatened their traditional nomadic lifestyle that was part of the Gypsy and Traveller tradition and culture. At the date of the Court of Appeal's decision, there were no transit sites to cater for the needs of the Gypsy and Traveller community in the London Borough of Bromley, or anywhere else in Greater London. The nearest site was a transit site at South Mimms in Hertfordshire. This lack of adequate resource led to increasing incidents of unauthorised occupation and use of land. Coulson LJ noted that there was a reasonably direct correlation between the lack of adequate transit sites and unauthorised occupation and use of land. In 2015, one local authority – Harlow DC (see further [102]-[104] below) – sought and obtained a borough-wide injunction to prevent this unauthorised use and occupation of land.

The perceived success of this injunction led to a surge in applications for Traveller Injunctions by other local authorities. Coulson LJ explained:

> [10] In the South East, the recent spate of wide-ranging injunctions has been aimed at the gipsy and traveller community. This process began in 2015 with ***Harlow District Council -v- Stokes*** **[2015] EWHC 953 (QB)**. The prohibition on encampments in that borough, and the subsequent perception that the injunction had been effective, led to a large number of similar injunctions in 2017–2019. Most of these injunctions, such as the injunction granted in the recent case of ***Kingston upon Thames London Borough Council v Persons Unknown*** **[2019] EWHC 1903 (QB)**, as well as the interim injunction granted in this case, did not identify any named defendants. The second and fourth interveners in this case all obtained similar injunctions following what were uncontested hearings.
>
> [11] It appears that, in total, there are now 38 of these injunctions in place nationwide. It would be unrealistic to think that their widespread use has not led to something of a feeding frenzy in this contentious area of local authority responsibility. First, these injunctions have had the effect of forcing the gipsy and traveller community out of those boroughs which have obtained injunctions, thereby imposing a greater strain on the resources of those boroughs or councils which have not yet applied for such an order. Secondly, they have created an understandable concern amongst those local authorities who have not yet obtained such injunctions to seek them forthwith.

5. The history of these Traveller Injunctions shows how they have developed. They started out targeting actual trespass on land by named individuals. Typically, the local authority would name, as defendants to the proceedings, those who could be identified, and would additionally seek relief against "Persons Unknown", being those who were alleged also to be unlawfully occupying land but whose identity was not known. Before long, however, most local authorities started to take a different approach. Claims were not brought against named individuals. Instead, they were brought simply against "Persons Unknown", using a variety of descriptions (and sometimes no description at all). A further significant change was that Traveller Injunctions were granted in cases on the basis of threatened, rather than actual, unauthorised use or occupation of land. Traveller Injunctions were granted typically for periods of 3 years, although there are examples of longer periods. In a short time, injunctions previously granted against identified trespassers based on evidence of historic trespass had been transformed into *quia timet* injunctions to prohibit threatened unlawful encampment on land by anyone.

6. This judgment addresses some issues of principle that have arisen as to the legal basis for and scope of these Traveller Injunctions. The central issue to be determined is whether a "final injunction" granted against "Persons Unknown" is subject to the principle that final injunctions bind only the parties to the proceedings. The Court of Appeal in ***Canada Goose UK Retail Ltd -v- Persons Unknown*** **[2020] 1 WLR 2802** held that it did. The local authorities in the claims before me contend that it should not.

7. Before I come to the issues that require determination, I need to set out the development of the law affecting Traveller Injunctions and to describe and explain the features of the claims in which they have been granted.

## B: The Changing Legal Landscape

8. Since the first Traveller Injunction was granted in 2015, there have been significant developments in the law, principally at appellate level. These decisions concentrate on two aspects: claims and injunctions against "Persons Unknown", and specific considerations in relation to extensive (sometimes borough-wide) Traveller Injunctions and their potential adversely to affect the Article 8 rights of Gypsies and Travellers.

9. Chronologically, the key cases are ***Cameron -v-Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** (Supreme Court, 20 February 2019); ***Ineos Upstream Ltd -v-Persons Unknown*** **[2019] 4 WLR 100** (Court of Appeal, 3 April 2019); ***Bromley LBC -v- Persons Unknown*** **[2020] PTSR 1043** (Court of Appeal, 21 January 2020); ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29** (Court of Appeal, 23 January 2020); and ***Canada Goose UK Retail Ltd -v-Persons Unknown*** **[2020] 1 WLR 2802** (Court of Appeal, 5 March 2020). Of those, ***Cameron***, ***LB Bromley*** and ***Canada Goose*** have the greatest impact upon the grant of Traveller Injunctions.

### (1) *Cameron -v- Liverpool Victoria Insurance*

10. In ***Cameron***, the Claimant had brought a claim following a road traffic collision. She had been unable to identify the driver of the other vehicle, but she sought to bring her claim against "*the person unknown driving [the other vehicle] who collided with [the claimant's vehicle]*". There was no prospect of identifying the other driver, but a judgment against him/her would enable the claimant to make a claim under s.151 Road Traffic Act 1988. The District Judge refused to allow the claim. The Court of Appeal allowed the claimant's appeal and held that it was consistent with the CPR, and the policy of the Road Traffic Act 1988, for proceedings to be brought against the unnamed driver, in order that the insurer could be made liable under s.151.

11. The Supreme Court allowed the appeal and held that it was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the Court without having such notice of the proceedings as to enable him to be heard. It was not legitimate to issue (or amend) a Claim Form to bring a claim against an unnamed defendant if it was conceptually impossible to bring the claim to his/her attention. Lord Sumption gave the judgment of the Court. Extracting the key principles from [8]-[26] ("the *Cameron* principles"):

*The importance of service of the originating process:*

(1) 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. In ***Jacobson -v- Frachon*** **(1927) 138 LT 386, 392**, Atkin LJ described the principles of natural justice as follows:

> "Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other

> litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court."

(2) Service of originating process is central to the domestic litigation process and was required long before statutory rules of procedure were introduced following the Judicature Acts of 1873. Different modes of service were permitted, but each had the common object of bringing the proceedings to the attention of the defendant.

(3) CPR 6.15 does not, in terms, include an express requirement that the method authorised should be likely to bring the proceedings to the person's notice, but "*service*" is defined in the indicative glossary of the Civil Procedure Rules as "*steps required by rules of court to bring documents used in court proceedings to a person's attention*".

(4) However, the whole purpose of service is to inform the defendant of the contents of the Claim Form and the nature of the claimant's case: ***Abela -v- Baadarani* [2013] 1 WLR 2043** [37] *per* Lord Clarke. Subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant.

(5) CPR 6.16 enables the court to dispense with service of a Claim Form, but it is difficult to envisage the circumstances in which it would be right to dispense with service in circumstances where there was no reason to believe that the defendant was aware of the proceedings. To do so would expose the defendant to a default judgment without having had the opportunity to be heard or otherwise to defend his/her interests.

*Proceedings against "Persons Unknown"*

(6) A Claim Form may be issued against a named defendant even though, at the time, it is not known where, how or indeed whether s/he can be served. The legitimacy of issuing a Claim Form against an unnamed defendant can properly be tested by asking whether it is conceptually (not just practically) possible to serve it.

(7) The court generally acts *in personam*. An action is completely constituted when the Claim Form is *issued*, but it is not until the Claim Form is *served* that the defendant becomes subject to the court's jurisdiction: ***Barton -v- Wright Hassall LLP* [2018] 1 WLR 1119** [8].

(8) Where it is possible to locate or communicate with the anonymous defendant, and to identify him as the person described in the Claim Form, then it is possible to serve the Claim Form, if necessary, by alternative service under CPR 6.15 (e.g. in ***Brett Wilson LLP -v- Persons Unknown* [2016] 4 WLR 69** alternative service of the Claim Form was effected by e-mail to a website which had published the defamatory material and in trespass cases, CPR 55.6 permits service on the anonymous trespassers by attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found).

(9) Nevertheless, the general rule remains that proceedings may not be brought against unnamed parties. Apart from representative actions under CPR 19.6, the only express provision of the CPR that permits claims against an unnamed defendant is CPR 55.3(4), which allows a claim for possession of land to be brought against trespassers whose names are unknown. There are also certain specific statutory exceptions to broadly the same effect, e.g. proceedings for an injunction to restrain "*any actual or apprehended breach of planning controls*" under s.187B Town and Country Planning Act 1990.

(10) The court has permitted actions, and made orders, against unnamed wrongdoers where the identities of some of the alleged wrongdoers were known. They could be sued both personally and as representing unidentified associates, e.g. copyright piracy claims: ***EMI Records Ltd -v- Kudhail*** **[1985] FSR 36**.

(11) A wider jurisdiction permitting claims against persons unknown was first recognised in ***Bloomsbury Publishing Group plc -v- News Group Newspapers Ltd*** **[2003] 1 WLR 1633**. Copies of the latest book in the Harry Potter series had been stolen from printers before publication and offered to the press by unnamed persons. Sir Andrew Morritt V-C held that a person could be sued by a description, provided that the description was "*sufficiently certain as to identify both those who are included and those who are not*": [21].

(12) There are therefore two distinct categories of case in which the defendant cannot be named: (1) anonymous defendants who are identifiable but whose names are unknown, e.g. squatters who are identifiable by their location, although they cannot be named ("Category 1"); and (2) defendants who are not only anonymous but cannot even be identified, e.g. most hit-and-run drivers ("Category 2"). The distinction is that in Category 1 the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the Claim Form, whereas in Category 2 it is not.

(13) In some cases, *quia timet* injunctions have been granted against "Persons Unknown", where the defendants could be identified only as those persons who might in future commit the relevant acts. However, the grant of interim relief before the proceedings have been served (or even issued) is the exercise of an emergency jurisdiction and is both provisional and strictly conditional.

(14) In proceedings against "Persons Unknown" where the court grants an interim injunction to restrain specified acts, the terms of that injunction may mean that a person can become both a defendant and a person to whom the injunction was addressed by doing one of the prohibited acts: ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658** [32].

(15) Defining an unknown person by reference to something that he has done in the past does not identify anyone. It is impossible to know whether any particular person is the one referred to and there is no way of bringing the proceedings to his/her attention. The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but also to the fact that it is not known who the defendant is. The problem is conceptual, and not just practical. It is not enough that the wrongdoer him/herself knows who s/he is.

## (2) *LB Bromley -v- Persons Unknown*

12. ***LB Bromley*** was the first occasion on which the Court of Appeal considered Traveller Injunctions. At first instance, the case was also the first occasion on which the Court had given a reasoned judgment, refusing a Traveller Injunction, after adversarial submissions ([2019] EWHC 1675 (QB)). The Court of Appeal identified judgments in eight other cases at first instance in which Traveller Injunctions were granted, but in which only the local authority had been represented: [38]. As noted by the Court of Appeal, a hallmark of litigation against "Persons Unknown" is the absence of any person opposing the claim. As will appear from this judgment, a legal system based on an adversarial model is vulnerable to failure or error where only one party participates in the proceedings.

13. The Court of Appeal dismissed the local authority's appeal against the refusal to grant an injunction prohibiting trespass on land by "Persons Unknown". Applying the principles set out in ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100**, the Court held:

    (1) that the requirements necessary for the grant of a *quia timet* injunction against "Persons Unknown" were that [29]:

        (a) there had to be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;

        (b) it was impossible to name the persons who were likely to commit the tort unless restrained;

        (c) it was possible to give effective notice of the injunction and for the method of such notice to be set out in the order;

        (d) the terms of the injunction had to correspond to the threatened tort and not to be so wide that they prohibited lawful conduct;

        (e) the terms of the injunction had to be sufficiently clear and precise as to enable persons potentially affected to know what they could not do; and

        (f) the injunction should have clear geographical and temporal limits;

    (2) that, as a matter of procedural fairness, a court should always be cautious when considering granting injunctions against persons unknown, particularly on a final basis, in circumstances where they were not there to put their side of the case [34]; and

    (3) that the nature and extent of the likely harm which the claimant had to show in order to obtain a Traveller Injunction was that of irreparable harm [35].

14. In respect of *quia timet* injunctions to prevent likely trespass, Coulson LJ cited (in [36]) the decision of the Supreme Court in ***Secretary of State for the Environment, Food and Rural Affairs -v- Meier*** **[2009] 1 WLR 828**. That case concerned trespass by a group of Travellers of parts of woodland owned by the Forestry Commission. The claim raised the rather technical issue of whether a possession order could be granted in

relation to land that was not presently occupied by trespassing Travellers, who on the evidence, if evicted from that camp, would simply move to another part of the same woodland. The Supreme Court held that, however desirable it might be to fashion or develop a remedy to meet the practical problem that arose in the case, in a possession claim against trespassers, an order for possession of land not presently occupied by the trespassers could not be justified. Nevertheless, the Court could, in addition to granting a possession order in respect of the land presently occupied by the Travellers, also grant an injunction to prohibit further threatened acts of trespass by the Travellers on other parts of the woodland. Baroness Hale's judgment included the following statement of principle:

> [40] … Provided that an order can be specifically tailored against known individuals who have already intruded upon the claimant's land, are threatening to do so again, and have been given a proper opportunity to contest the order, I see no reason in principle why it should not be so developed…"

15. In [40]-[48], Coulson LJ considered the Article 8 rights of the Gypsy and Traveller community. In particular, he identified the following principles established by the decisions of ECtHR in ***Chapman -v- United Kingdom* (2001) 33 EHRR 18**; ***Connors -v- United Kingdom* (2004) 40 EHRR 9**; ***Yordanova -v- Bulgaria* (25446/06, 24 April 2012)**; ***Buckland -v- United Kingdom* (2012) 56 EHRR 16**; ***Winterstein -v- France* (27013/07, 17 October 2013)**:

(1) The occupation of a caravan by a member of the Gypsy and Traveller community was an "*integral part of … ethnic identity*" and measures affecting the stationing of caravans and/or his/her removal from the site interfered with his/her Article 8 rights not only because it interfered with her home, but also because it affected his/her ability to maintain her identity as a Gypsy/Traveller: ***Chapman*** [73]; ***Connors*** [68]; ***Winterstein*** [142].

(2) There was an emerging international consensus amongst Council of Europe states recognising the special needs of minority communities and an obligation to protect their security, identity and lifestyle: ***Chapman*** [93].

(3) Members of the Gypsy and Traveller community were in a vulnerable position as a minority. In consequence, "*special consideration should be given to their needs and their different lifestyle*" and, to that extent, there was a positive obligation on states to facilitate the Gypsy way of life: ***Chapman*** [96]; ***Connors*** [84]; ***Yordanova*** [129]. The underprivileged status of the community "*must be a weighty factor in considering approaches to dealing with their unlawful settlement and, if their removal is necessary, in deciding on its timing, modalities, and, if possible, arrangements for alternative shelter*": ***Yordanova*** [133].

(4) Although it was legitimate for the authorities to seek to regain possession of land from persons who did not have a right to occupy it, orders should not be enforced without regard to the consequences upon the Gypsy and Traveller residents or without the securing of alternative shelter for the community: ***Yordanova*** [111] and [126].

(5) The authorities should consider approaches specifically tailored to the needs of the Gypsy and Traveller community: ***Yordanova*** [128].

(6) The fact that a home had been established unlawfully was highly relevant: ***Chapman*** [102].

(7) If no alternative accommodation is available, the interference was more serious than where such accommodation is available: ***Chapman*** [103].

(8) If the person was rendered homeless by the particular decision under challenge, then "*particularly weighty reasons of public interest*" were required by way of justification with the Article 8 rights: ***Connors*** [86].

(9) The mere fact that anti-social behaviour occurred on local authority Gypsy and Traveller sites could not, in itself, justify a summary power of eviction: ***Connors*** [89].

(10) Individuals affected by a planning enforcement notice ought to have a full and fair opportunity to put any relevant material before the decision-maker before enforcement action was taken: ***Chapman*** [106].

(11) Judicial review was not a satisfactory safeguard as it did not establish the facts and because there was no means of testing the individual proportionality of the decision to evict: ***Connors*** [92] and [95]. The loss of a home is the most extreme form of interference with the right to respect for the home under Article 8. Any person at risk of an interference of this magnitude should, in principle, be able to have the proportionality of the measure determined by an independent tribunal, notwithstanding that, under domestic law, his right to occupation has come to an end: ***Buckland*** [65].

16. The relevant statutory provisions and government guidance were identified in [49]-[56], including:

(1) the recognition of Romany Gypsies and Irish Travellers as separate ethnic minorities under the Equality Act 2010, engaging the public sector equality duty under s.149: [49]-[53];

(2) the Department for the Environment Circular 18/94 "*Gypsy Sites Policy and Unauthorised Camping*", which provided that "*it is a matter for local discretion whether it is appropriate to evict an unauthorised gipsy encampment*"; that where there are no authorised sites but an unauthorised encampment is not causing a level of nuisance which cannot be effectively controlled, the authorities should consider providing basic services; that local authorities should try and identify possible emergency stopping places as close as possible to the transit routes used by Gypsies where Gypsy families would be allowed to camp for short periods; that, where Gypsies are unlawfully camped, it is for the local authority to take any necessary steps to ensure that the encampment "*does not constitute a hazard to public health*"; and that "*local authorities should not use their powers to evict gipsies needlessly … local [authorities] should use their powers in a humane and compassionate way*": [54];

(3) the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, which provided that local authorities needed to consider "*whether enforcement is absolutely necessary*": [55]; and

(4) the Department for Communities and Local Government *Guidance on Managing Unauthorised Camping*, published in May 2006, which stressed the importance of striking the balance between "*the needs of all parties*": [56].

17. At first instance, the Judge had been satisfied that the six requirements from ***Ineos*** (see [13(1)] above) were met, but she had refused the injunction on the basis that the relief sought was not proportionate. Upholding the Judge's refusal of the injunction, Coulson LJ held that the Judge had been rightly concerned about the width of the injunction being sought and was entitled to have regard, on the issue of the proportionality of the injunction sought, to:

(1) the absence of any substantial evidence of past criminality;

(2) the absence of any transit or other alternative sites;

(3) the cumulative effect of other injunctions that had been granted in other local authority areas;

(4) the local authority's failure to comply with its public sector equality duty having regard to the absence of an equality impact assessment and lack of proper engagement with the Gypsy and Traveller community; and

(5) the extent of the injunction that was sought, both in terms of duration (five years) and land covered (borough-wide).

18. In the final section of his judgment, Coulson LJ set out the following important "*Wider Guidance*":

> [100] I consider that there is an inescapable tension between the article 8 rights of the gipsy and traveller community (as stated in such clear terms by the European case law summarised at [44]-[48] above), and the common law of trespass. The obvious solution is the provision of more designated transit sites for the gipsy and traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.
>
> [101] This tension also manifests itself in much of the guidance documentation to which I have referred at [54]-[56] above. <u>That guidance presupposes that there will be unlawful encampments, and does not suggest, save as a last resort, that such encampments should be closed down, unless there are specific reasons for so doing. There is no hint in the guidance that it is or could be a satisfactory solution to seek a wide injunction of the sort in issue in this case: indeed, on one view, much of that guidance would be irrelevant if the answer was a borough-wide prohibition on entry or encampment.</u>

[102] It therefore follows that local authorities must regularly engage with the gipsy and traveller community (and/or, in the Greater London area, the first intervener). Through a process of dialogue and communication, and following the copious guidance set out above, it should be possible for the need for this kind of injunction to be avoided altogether. "Negotiated stopping" is just one of many ways referred to in the English case law in which this might be achieved.

[103] If a local authority considers that a *quia timet* injunction may be the only way forward, then it will still be of the utmost importance to seek to engage with the gipsy and traveller community before seeking any such order if time and circumstances permit. Welfare assessments should be carried out, particularly in relation to children. An up-to-date EIA will always be important because the impact on the gipsy and traveller community will vary from borough to borough and area to area. In my view, if the appropriate communications, and assessments (like the EIA) are not properly demonstrated, then the local authority may expect to find its application refused.

[104] Three particular considerations should be at the forefront of a local authority's mind when considering whether a *quia timet* injunction should be sought against persons unknown, and where the proposed injunction is directed towards the gipsy and traveller community:

(a) Injunctions against persons unknown are exceptional measures because they tend to avoid the protections of adversarial litigation and article 6 of the Convention.

(b) In order for proportionality (or an equilibrium) to be met in these cases, it is important that local authorities understand and respect the gipsy and traveller community's culture, traditions and practices, in so far as those factors are capable of being realised in accordance with the rule of law. That will normally require some positive action on the part of the authority to consider the circumstances in which the article 8 rights of the members of those communities are "lived rights" i.e. are capable of being realised.

(c) The vulnerability and protected status of the gipsy and traveller community, as well as the integral role that the nomadic lifestyle plays as part of their ethnic identities, will be given weight in any assessment as to the proportionality of an injunction or eviction measure.

(d) The equitable doctrine of "clean hands" may require local authorities to demonstrate that they have complied with their general obligations to provide sufficient accommodation and transit sites for the gipsy and traveller community.

(e) Common sense requires the court, when carrying out the proportionality exercise, to have careful regard to the cumulative effect of other injunctions granted against the gipsy and traveller community.

[105] In my view, borough-wide injunctions are inherently problematic. They give the gipsy and traveller community no room for manoeuvre. They are much

more likely to be refused by the court as a result (as happened here). The solution in *Wolverhampton* [2018] EWHC 3777, which identified particularly vulnerable sites but did not include all the sites owned by the council, seems to me to be a much more proportionate answer. I do not accept that this automatically means that the remaining sites will be the subject of unauthorised encampment, as Mr Kimblin suggested, but even if that happens, it is likely to be a better solution than a potentially discriminatory blanket ban.

[106] The same is true of the duration of the injunction. Again, in the *Wolverhampton* case, the injunction was limited to a period of one year after which there was a review. That again seems to me to be sensible. I consider that it is - without more - potentially fatal to any application for a local authority to seek a combination of a borough-wide injunction and a duration of a period as long as five years.

[107] Credible evidence of criminal conduct in the past, and/or of likely risks to health and safety, are important if a local authority wishes to obtain a wide injunction. In my view, the injunctions in the *Harlow* cases were explicable on the grounds of criminality and the grave risks to health and safety. Injunctions which are designed to prevent entry and encampment only, and without evidence of such matters, should be correspondingly more difficult to obtain.

[108] Whilst I do not accept the written submissions produced on behalf of the third intervener, to the general effect that this kind of injunction should never be granted, the following summary of the points noted above may be a useful guide:

(a) When injunction orders are sought against the gipsy and traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the gipsy and traveller community is to have effective protection under article 8 and the Equality Act 2010.

(b) If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.

(c) The submission that the gipsy and traveller community can "go elsewhere" or occupy private land is not a sufficient response, particularly when an injunction is imposed in circumstances where multiple nearby authorities are taking similar action.

(d) There should be a proper engagement with the gipsy and traveller community and an assessment of the impact an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of a substantive EIA, so far as the needs of the affected community can be identified, should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.

> (e) Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing.
>
> [109] Finally, it must be recognised that the cases referred to above make plain that the gipsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act 2010, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.

19. The underlined sections emphasise that, as the Article 8 rights of Gypsies and Travellers are engaged by Traveller Injunctions, the court must carefully consider the necessity for any order and the proportionality of the terms of the injunction that is sought by the local authority.

**(3)** ***Canada Goose UK Retail Limited -v- Persons Unknown***

20. The third important decision bearing upon the limits of litigation against "Persons Unknown" is the Court of Appeal decision in ***Canada Goose***.

21. The claimants operated a retail store in central London selling clothing and other items made of animal fur and down. This had made it a target of protests by those opposed to the sale of fur and animal products. From its opening, the store had become a focus of demonstrations outside (and occasionally, inside) the premises. The Claimants obtained a without notice interim injunction against "Persons Unknown", who were the protesters, on various grounds including alleged harassment, trespass and/or nuisance. After a period of about a year, in which the proceedings were stayed, the Claimant applied for summary judgment against the defendants. At first instance ([2020] 1 WLR 417), the application for summary judgment was refused and the injunction was discharged. The Court found:

    (1) the Claim Form had not been validly served on the "Persons Unknown" defendants: [138]. There had not been personal service on the "Persons Unknown" Defendants, and no order for alternative service had been made by the Court: [140];

    (2) in any event, it was impossible to grant summary judgment against the class of "Persons Unknown" because it included within it both wrongdoers and people who had not committed any tort: [146]; and

    (3) the grant of a final injunction would not bind newcomers, i.e. people who later fell within the definition of "Persons Unknown" by committing the prohibited acts but only after judgment had been granted: [157]-[159].

22. The claimants' appeal to the Court of Appeal was dismissed. As to service of the Claim Form on "Persons Unknown", the Court emphasised the procedural importance of proper service of the Claim Form being effective in bringing the proceedings to the attention of the defendants to the claim:

> [45] … The legal context for considering this point is the importance of service of proceedings in the delivery of justice. As Lord Sumption, with whom the other justices of the Supreme Court agreed, said in ***Cameron*** [14], 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 (at [17]): "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."
>
> [46] Lord Sumption, having observed (at [20]) that CPR r6.3 considerably broadens the permissible methods of service, said that the object of all of them was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain the contents of the proceedings or was reasonably likely to enable him to do so within any relevant period of time. He went on to say (at [21]) with reference to the provision for alternative service in CPR r 6.15, that:
>
> > "subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant."

23. In relation to the grant of interim injunctions against "Persons Unknown", and following the Court of Appeal decision in ***Ineos***, the Court accepted that, in principle, an interim *quia timet* injunction could be granted against newcomers, i.e. persons who had not committed any of the prohibited acts at the time when the injunction was granted: [72]. Following further consideration of ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29**, and building upon ***Cameron***, the Court of Appeal identified the following principles which governed the grant of interim relief against "Persons Unknown": [82] ("the *Canada Goose* principles"):

> "(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…"

24. However, the Court held that injunctions granted by final order against "Persons Unknown" could bind only those who were parties to the proceedings at the date of the grant of the order, not newcomers:

[89] A final injunction cannot be granted in a protestor case against "persons unknown" who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the "persons unknown" and who have not been served with the claim form. There are some very limited circumstances, such as in ***Venables -v- News Group Newspapers Ltd*** **[2001] Fam 430**, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: ***Attorney General -v- Times Newspapers Ltd (No.3)*** **[1992] 1 AC 191, 224**. That is consistent with the fundamental principle in ***Cameron*** [17] that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.

[90] In Canada Goose's written skeleton argument for the appeal, it was submitted that ***Vastint Leeds BV -v- Persons Unknown*** **[2019] 4 WLR 2** (Marcus Smith J) is authority to the contrary. Leaving aside that ***Vastint*** is a first instance decision, in which only the claimant was represented and which is not binding on us, that case was decided before, and so took no account of, the Court of Appeal's decision in ***Ineos*** and the decision of the Supreme Court in ***Cameron***. Furthermore, there was no reference in ***Vastint*** to the confirmation in ***Attorney General -v- Times Newspapers (No.3)*** of the usual principle that a final injunction operates only between the parties to the proceedings.

> [91] That does not mean to say that there is no scope for making "persons unknown" subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's Category 1 in ***Cameron***, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at [159]) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in ***Birmingham City Council -v- Afsar*** **[2019] 4 WLR 168** [132].
>
> [92] In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose [counsel for Canada Goose] submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to ***Ineos***, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.

25. Finally, the Court of Appeal warned of the limits as to what could be achieved by civil litigation against "Persons Unknown" [93]:

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

## C: The Cohort Claims

### (1) Assembling the Cohort Claims and their features

26. Appendix 1 to this judgment contains a table setting out the 38 claims in which Traveller Injunctions are known to have been granted ("the Cohort Claims"). The table lists the claims and, in respect of each claim, identifies the claimants and defendants, provides key information about the history of the claim and the current status of the claim (including whether there is any subsisting injunction, interim or final).

27. The Cohort Claims were gathered together, to be managed by a single judge, in October 2020. From mid-2020, applications had been made in some of the Cohort Claims to extend and/or vary Traveller Injunctions that were coming to the end of the period for which they had been originally granted. Following a hearing in one of these claims – that brought by LB Enfield – in September 2020 ([2020] EWHC 2717 (QB) (see further [105]-[107] below), the issues raised suggested that there was a need for a review of the entire Cohort.

28. In consequence, on 16 October 2020, with the concurrence of the President of the Queen's Bench Division and Mr Justice Stewart, the Judge in charge of the Civil List in the Queen's Bench Division, an order was made in each of the Cohort Claims fixing a case management hearing in December 2020. Actions that had been commenced in District Registries or in the County Court were transferred to the Royal Courts of Justice. Basic information about each claim was collected by requiring completion of a questionnaire. The Order explained the Court's approach:

> "(A) The recent hearing in the ***Enfield*** case has led to the identification of issues that are likely to arise in other cases involving the grant of local authority wide injunctions to prohibit trespass on land granted against Persons Unknown who have typically, but not exclusively, been defined as Gypsies or Travellers ("Traveller Injunction"). The issues concern existing injunctions that have previously been granted (in most cases for several years) as well as applications for new or renewed injunctions of this type. The principles upon which such injunctions are granted have been subject to review in a series of cases: ***Cameron -v-Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471**; ***Boyd -v-Ineos Upstream Ltd*** **[2019] 4 WLR 100**; ***Bromley LBC -v-Persons Unknown*** **[2020] PTSR 1043**; ***Cuadrilla Bowland Ltd -v-Persons Unknown*** **[2020] 4 WLR 29**; and ***Canada Goose UK Retail Ltd -v-Persons Unknown*** **[2020] 1 WLR 2802**.
>
> (B) The Court has identified the [Cohort Claims] as claims in which Traveller Injunctions may have been granted in the past. The Court has held, in the ***Enfield*** case [32], that a local authority which has, in the past, obtained a Traveller Injunction is under a duty to restore the claim before the court if it becomes aware that there exist grounds upon which there is a realistic prospect that the injunction would be modified or discharged by the Court. This includes grounds that arise as a result of a change in the legal principles that apply. Any local authority not identified in [the Cohort Claims] which has been granted a Traveller Injunction should provide the details to the Clerk to Mr Justice Nicklin.

> (C) It is likely that common issues will arise between the ***Enfield*** case and [the Cohort Claims] (and any other cases in which a Traveller Injunction has been granted). The Court wants to manage the resolution of any common issues in an effective and proportionate manner. The Order provides (a) for transfer of [the Cohort Claims] to the Queen's Bench Division of the High Court at the Royal Courts of Justice; (b) for completion of a Questionnaire to gather information about the [Cohort Claims]; and (c) a Case Management Hearing on 17 December 2020 which will enable the Court to identify the extent of common issues and determine the best way of resolving them.
>
> (D) Prior to formulation of any common issues, the Court's first objective is to identify those local authorities with existing Traveller Injunctions who wish to maintain such injunctions (possibly with modification), and those who wish to discontinue their claims and/or discharge the current Traveller Injunction granted in their favour."

29. In the remaining part of this section of the judgment, I shall set out and describe common features typical in the Cohort Claims and the orders that have been sought and granted in them, under the broad headings:

    (1) service of the Claim Form on "Persons Unknown";

    (2) description of "Persons Unknown" in the Claim Form and CPR 8.2A;

    (3) the bases of the civil claims;

    (4) powers of arrest attached to injunction orders;

    (5) use of the Interim Applications Court of the Queen's Bench Division; and

    (6) failure to progress claims after the grant of an interim injunction.

30. I will also summarise the fate of three Cohort Claims which returned to Court during 2020 following an application by the relevant local authority to extend (sometimes with modifications) the Traveller Injunction that it had been originally granted. Consideration of these three claims – Harlow DC, LB Enfield and Canterbury CC – identified flaws in the approach and ultimately led to the formal gathering of the Cohort Claims for further investigation/management and the Case Management Hearing on 17 December 2020.

## (2) Service of the Claim Form on Persons Unknown

31. Service of the Claim Form is the act by which the defendant is subjected to the court's jurisdiction in civil proceedings in England & Wales: ***Barton -v- Wright Hassall LLP*** **[2018] 1 WLR 1119** [8] *per* Lord Sumption. Whilst the Court may grant interim relief against a defendant before the Claim Form has been served (and, in cases of particular urgency, even before the Claim Form has been issued), that is an emergency jurisdiction which is "*both provisional and strictly conditional*": ***Cameron -v- Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** [14] *per* Lord Sumption.

32. In relation to service of the Claim Form on "Persons Unknown", whilst there may be difficulties in effecting personal service of a Claim Form under CPR 6.5 on "Persons

Unknown", an identifiable but anonymous defendant can be served with the Claim Form, if necessary, by alternative service under CPR 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the Claim Form: ***Cameron*** [15].

33. CPR 6.15 provides:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
>
> (3) An application for an order under this rule –
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice.
>
> (4) An order under this rule must specify –
>
> (a) the method or place of service;
>
> (b) the date on which the claim form is deemed served; and
>
> (c) the period for –
>
> (i) filing an acknowledgment of service;
>
> (ii) filing an admission; or
>
> (iii) filing a defence."

34. Reflecting the 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, an order for alternative service of the Claim Form can only be made where the Court is satisfied, on evidence, that the proposed method of alternative service "*can reasonably be expected to bring the proceedings to the attention of the defendant*": ***Cameron*** [21].

35. In none of the Cohort Claims was the Claim Form personally served upon "Persons Unknown" or an order made, exceptionally, dispensing with service of the Claim Form under CPR 6.16. The Cohort Claims can therefore be divided into three groups:

(1) claims in which no application or order was made for alternative service of the Claim Form pursuant to CPR 6.15;

(2) claims in which an order, purporting to authorise alternative service of the Claim Form on "Persons Unknown" has been made, but no application was made (or supported by evidence) and the order fails to comply with CPR 6.15(4); and

(3) claims in which, following an application by the relevant local authority, orders were made granting permission to serve the Claim Form upon "Persons Unknown" by alternative means.

36. In respect of the claims in the first category, the failure to serve the Claim Form on "Persons Unknown" meant, simply, that they had not been made defendants to the relevant claim. In respect of each claim in this category, the period for service of the Claim Form under CPR 7.5 had long since expired. As noted in ***LB Enfield -v- Persons Unknown*** **[2020] EWHC 2717 (QB)** [24], the consequence of failing to serve the Claim Form (or to obtain an order under CPR 6.15 for alternative service) is "*pretty stark*":

> "… The failure to serve the Defendants in this case means that the Interim and Final orders were made in this case without jurisdiction over any Defendant. The period of validity of the original Claim Form has long since expired: CPR 7.5. For the last three years, therefore, an injunction has been posted at up to 130 sites, directed at Persons Unknown, prohibiting certain conduct, on pain of committal for breach, when jurisdiction had not been established over any individual Defendant because of the failure validly to serve the Claim Form."

37. In total, 14 local authorities failed validly to serve the Claim Form or to obtain an order for alternative service; they were: LB Bromley (2nd Claimant); LB Croydon (3rd Claimant); RB Greenwich (5th Claimant); LB Merton (10th Claimant); LB Sutton (13th Claimant); LB Waltham Forest (14th Claimant); Canterbury CC (20th Claimant); Central Bedfordshire Council (21st Claimant); Elmbridge BC (22nd Claimant); Epsom & Ewell BC (23rd Claimant); Hertsmere BC (25th Claimant); Rugby BC (29th Claimant); Solihull MBC (32nd Claimant); and LB Enfield (36th Claimant). The injunctions granted in these claims have been discharged by the Court between October-December 2020 and most of the claims have also been dismissed (in most instances, as a result of an application made by the local authority itself to discharge the injunction).

38. In respect of the second category, purported orders for alternative service of the Claim Form were made in 11 claims, but the relevant order fails to comply with CPR 6.15(4) and, in most cases, there was no Application Notice (or evidence in support) seeking an order for alternative service of the Claim Form. They were: LB Ealing (4th Claimant); LB Hillingdon (7th Claimant); LB Hounslow (8th Claimant); RB Kingston-upon-Thames (9th Claimant); LB Richmond-upon-Thames (12th Claimant); LB Wandsworth (15th Claimant); Birmingham CC (18th Claimant); Boston BC and Lincolnshire CC (19th Claimants); Reigate and Banstead BC (27th Claimant); Runnymede BC (30th Claimant); and Buckinghamshire Council (formerly Wycombe DC) (37th Claimant). Since the case management of the Cohort Claims has commenced, some of these local authorities have issued Applications seeking relief under CPR 3.10 in respect of defects in the orders for alternative service. If necessary, those Applications will be resolved later as part of the continued management of the Cohort Claims. However, injunctions granted in the claims brought by RB Kingston-upon-Thames, LB Wandsworth, Birmingham CC, Runnymede BC and Buckinghamshire Council have been discharged (either as a result of an application made by the local authority itself or as a result of the relevant claimant failing to comply with an unless order) and the claim dismissed.

39. In total, since October 2020, the Court has discharged the injunctions in 19 cases, i.e. half the Cohort Claims. In these cases, there were fundamental failures properly to serve the Claim Form or to obtain valid orders for alternative service on Persons Unknown. I have not attempted to ascertain the total number of sites that were covered by the Traveller Injunctions in these 19 cases, but they easily reach into the thousands.

40. Even in the third category of case – where applications were made for orders for alternative service of the Claim Form on "Persons Unknown" – there are grounds for concern about whether, in light of the clear statements of principle from ***Cameron***, such orders were properly granted.

41. An example of the order, typically made in these claims following an application, is that made in the claim brought by LB Barking & Dagenham.

    (1) The Application Notice, dated 9 March 2017, sought "*an order for alternative service as per attached draft order*".

    (2) A witness statement in support of the application was provided by Adam Rulewski, dated 6 March 2017. In relation to the application for an order for alternative service against "Persons Unknown", Mr Rulewski stated:

> "The Claimants also seek an Order that the Claims and Application shall be deemed served on Persons Unknown by serving a copy of the Claim Form, Application Notice and Draft Order on all 140 sites identified in Schedule 2 of this Order by affixing them in a prominent place on the Land with a notice to Persons Unknown that a copy of the supporting evidence can be obtained from Barking Town Hall, Town Hall Square, 1 Clockhouse Avenue, Barking IG11 7LU and by contacting LBBD Legal Services on [telephone number given]."

    (3) The application for an order for alternative service of the Claim Form on "Persons Unknown" was granted on 9 March 2017 – the same day the Claim Form was issued – in the following terms:

> "5. The claim forms and application shall be deemed served on Persons Unknown… pursuant to CPR Part 6.14, 6.15, 6.27 and 6.27 (sic) by serving a copy (as opposed to an original) of the claim form, application notice and draft order on all 140 sites identified in Schedule 2 of this Order by affixing them in a prominent place on the Land with a notice to Persons Unknown that a copy of the supporting evidence can be obtained from the Council offices [details given].
>
> 6. The Defendants shall acknowledge service of the claim form 21 days after the date of deemed service and file any written evidence in support of the Defence by the same date."

42. The order for alternative service in LB Barking & Dagenham's claim was technically defective; it did not state the date on which the Claim Form was deemed to be served on Persons Unknown (CPR 6.15(4)(b)). It was impossible, therefore, to identify the date for compliance under Paragraph 6. No doubt this was an oversight, but it is consistent with a theme that has emerged on investigation of the Cohort Claims: a lack of consideration of the fundamental question whether the proposed method of

alternative service of the Claim Form on "Persons Unknown" could be reasonably expected to bring the proceedings to the attention of those who it was sought to make defendants to the civil claim.

43. My impression is that, insofar as service of the Claim Form on Persons Unknown was considered at all in the Cohort Claims, it was done perfunctorily. Mr Rulewski's witness statement, for example, did not address why an order for alternative service of the Claim Form was justified or appropriate, or the basis on which the Court could be satisfied that the method of alternative service was likely to be an effective way of bringing the proceedings to the attention of the defendants. In fairness, Mr Rulewski prepared his witness statement, and the application for alternative service, before the Supreme Court's decision in ***Cameron***. He did not have the benefit of the decision's focus upon the need to demonstrate that the proposed method of alternative service could reasonably be expected to bring the proceedings to the attention of the "Persons Unknown" the local authority was attempting to make defendants to the claim.

44. Nevertheless, had Mr Rulewski asked himself, for example, *when* the Claim Form was likely to come to the attention of the "Persons Unknown" defendants, he might perhaps have identified the artificiality and unreality of the method he was proposing as being likely to bring the proceedings to the attention to anyone other than those presently in occupation at any of the injunction sites.

45. I recognise that the method of service he proposed reflected the well-established regime for possession claims against unknown trespassers (CPR 55.6). And there can be no real doubt that, in a claim against alleged trespassers in present occupation whose names are not known, displaying prominently the Claim Form (or copies of it), on or around the various sites in respect of which an injunction was to be sought, can usually be expected to bring the proceedings to the attention of the defendants. However, the whole point of Traveller Injunctions was to bind persons who turned up at the land only after the injunction had been granted. In respect of that category of defendant, posting copies of the Claim Form at the various sites was not likely to be an effective means of bringing the proceedings to their attention. To take an obvious example, displaying copies of the Claim Form at the Dagenham Road Car Park (or at any of the other sites covered by the injunction granted to LB Barking & Dagenham) was not likely to bring the proceedings to the attention of a family of Travellers in Rochdale. The first such a family was likely to discover about the proceedings, that had led to an injunction being granted against them, was when they subsequently pitched their caravan for an overnight stay in the Dagenham Road Car Park.

46. It may well be that the importance of this aspect of the decision in ***Cameron*** on claims against "Persons Unknown" has not been fully appreciated in the Cohort Claims. However, since the Supreme Court decision in ***Cameron*** the point has been authoritatively determined. In a claim against "Persons Unknown", the method of alternative service of the Claim Form that the Court permits must be one that can reasonably be expected to bring the proceedings to the notice of *all* of those who fall within the definition of "Persons Unknown". Without that safeguard, there is an obvious risk that the method of alternative service will not be effective in bringing the proceedings to a (perhaps significant) number of those in a broadly defined class of "Persons Unknown". By dint of the alternative service order, they would be deemed to have been served, when in fact they have not (a point that becomes important when the Court comes to consider granting final relief against "Persons Unknown"). Such an

outcome offends the fundamental principle of justice that each person who is made subject to the jurisdiction of the court had sufficient notice of the proceedings to enable him to be heard (see *Cameron* principles (1) and (4) (see [11] above)).

47. The unfortunate history of service of the Claim Form on "Persons Unknown" defendants (or lack of it) in the Cohort Claims demonstrates very clearly that the Court must adopt a vigilant and more rigorous process when considering applications under CPR 6.15 for alternative service of the Claim Form on "Persons Unknown". If the requirements of ***Cameron*** cannot be met, permission for alternative service should be refused. Such applications are typically, if not inevitably, made *ex parte*, so advocates presenting such applications will be under a duty to ensure that the Court is fully aware of all relevant authorities and any arguments that could be raised by the absent party. In practical terms, the advocate will be expected to demonstrate, by evidence filed in compliance with CPR 6.15(3)(a), how the proposed method of alternative service on the Person(s) Unknown can reasonably be expected to bring the proceedings to the attention of *all* of those who are sought to be made defendant(s). The greater and more ambitious the width of the definition of "Persons Unknown" in the Claim Form correspondingly the more difficult it is likely to be to satisfy the requirements for an order for alternative service.

48. Save in respect of the exceptional category of claims brought *contra mundum*, it is difficult to conceive of circumstances in which a Court would be prepared to grant an order dispensing with the requirement to serve the Claim Form upon "Persons Unknown" under CPR 6.16 (*Cameron* principle (5)). Consequently, if the Court refuses an order, under CPR 6.15, for alternative service of the Claim Form against "Persons Unknown", the jurisdiction of the Court cannot be established over the "Persons Unknown" defendants. Without having established jurisdiction, there will be no viable civil claim against them. With no civil claim, there can be no question of granting (or maintaining) interim injunctive relief against "Persons Unknown". (I deal below (see [167]-[173]) with the argument – based on ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658** – that a person can become a defendant to proceedings when they commit the act prohibited by the injunction order).

**(3) Description of "Persons Unknown" in the Claim Form and CPR 8.2A**

49. Since the advent of the CPR, civil proceedings brought against "Persons Unknown" have always required that the description of the "Persons Unknown" defendants in the Claim Form be "*sufficiently certain as to identify both those who are included and those who are not*": ***Bloomsbury Publishing plc -v- News Group Newspapers Ltd*** **[2003] 1 WLR 1633** [19]-[21]; and "Persons Unknown" must be described "*by reference to… conduct which is alleged to be unlawful*" ***Canada Goose*** [82(2)] ("the Description Requirement"). In ***Birmingham City Council -v- Afsar*** **[2020] EWHC 864 (QB)**, Warby J held that the failure properly to describe "Persons Unknown" in the Claim Form was a "*fundamental defect*", adding, "*a person given notice of the proceedings, [cannot] fairly be expected to work their way through the body of a lengthy statement of case to work out whether they are a target of the claim*": [21(2)].

50. CPR Part 8.2A(1) and Practice Direction 8A impose further specific requirements in respect of certain categories of claim brought against "Persons Unknown". Paragraph 20 applies to claims and applications made under s.187B Town & County Planning Act

1990 (set out in Appendix 2 and discussed further in [61]-[63] below). The relevant sub-paragraphs provide:

> "20.2 An injunction may be granted under [s.187B] against a person whose identity is unknown to the applicant.
>
> 20.3 In this paragraph, an injunction refers to an injunction under [s.187B] and 'the defendant' is the person against whom the injunction is sought.
>
> 20.4 In the claim form, the applicant must describe the defendant by reference to –
>
> (1) a photograph;
>
> (2) a thing belonging to or in the possession of the defendant; or
>
> (3) any other evidence.
>
> 20.5 The description of the defendant under paragraph 20.4 must be sufficiently clear to enable the defendant to be served with the proceedings.
>
> (The court has power under Part 6 to dispense with service or make an order permitting service by an alternative method or at an alternative place).
>
> 20.6 The application must be accompanied by a witness statement. The witness statement must state –
>
> (1) that the applicant was unable to ascertain the defendant's identity within the time reasonably available to him;
>
> (2) the steps taken by him to ascertain the defendant's identity;
>
> (3) the means by which the defendant has been described in the claim form; and
>
> (4) that the description is the best the applicant is able to provide.
>
> 20.7 When the court issues the claim form it will –
>
> (1) fix a date for the hearing; and
>
> (2) prepare a notice of the hearing date for each party.
>
> 20.8 The claim form must be served not less than 21 days before the hearing date.
>
> 20.9 Where the claimant serves the claim form, he must serve notice of the hearing date at the same time, unless the hearing date is specified in the claim form.
>
> (CPR rules 3.1(2) (a) and (b) provide for the court to extend or shorten the time for compliance with any rule or practice direction, and to adjourn or bring forward a hearing)

20.10 The court may on the hearing date –

(1) proceed to hear the case and dispose of the claim; or

(2) give case management directions."

The requirements imposed by §§20.4-20.6 are of potential significance to the issues I have to decide (see further [63] below).

51. In the Cohort Claims there are repeated examples of claims brought against "Persons Unknown" which breach the Description Requirement. In Appendix 1, the column marked "Defendants" sets out how the "Persons Unknown" were described in the Claim Form (if at all). Where a description was given, few comply with the requirement that the "Persons Unknown" must be defined in the Claim Form by reference to conduct alleged to be unlawful (*Canada Goose* principle (2) – see [23] above). For example, several Claim Forms identify "Persons Unknown" as "*Persons Unknown occupying land*". Such a description would embrace every householder in England & Wales. In several Cohort Claims, there are also concerning examples of the description given of "Persons Unknown" in the injunction order being different from that in the Claim Form, without any amendment being sought to the description in the Claim Form. For example:

(1) In the claim brought by Basingstoke & Deane BC and Hampshire CC (16th Claimants), the Claim Form was issued against "Persons Unknown (owner and/or occupiers of land at various addresses set out in the attached Schedule)". The underlined words were added to the Claim Form by amendment. However, both the interim and final injunctions were directed simply at "Persons Unknown" (without any description).

(2) In the claim brought by Thurrock Council (34th Claimant), the Claim Form was issued against "Persons Unknown" (without description). The interim injunction was granted on 3 September 2019, "*pending the final injunction hearing*" against "*Persons Unknown forming unauthorised encampments within the borough of Thurrock*". There is no final injunction as no steps were taken to progress the claim to a final hearing following the grant of the interim injunction.

52. Finally, in respect of the Claim Forms in the Cohort Claims which did not name any individual defendant, and were therefore brought simply against "Persons Unknown", there is scant evidence of compliance with Practice Direction 8A, particularly §§20.4 to 20.6. This is so even though, excluding Walsall, every one of the Cohort Claimants based the claim (at least in part) upon s.187B.

**(4) The bases of the civil claims against "Persons Unknown"**

53. The local authorities have variously relied upon the following statutory powers/torts when applying for Traveller Injunctions:

(1) all claimants relied upon s.222 Local Government Act 1972 ("s.222") and s.187B Town and Country Planning Act 1990 ("s.187B");

(2) the 1st, 11th, 35th and 36th Claimants relied upon s.1 Anti-Social Behaviour, Crime and Policing Act 2014 ("s.1 ASBCPA") (albeit that relief was not granted under this section in the claim brought by the 36th Claimants – see [67] below);

(3) the 36th Claimant relied upon s.130 Highways Act 1980 ("s.130"); s.27 Police and Justice Act 2006; s.37 Supreme Court Act 1981 and trespass; and

(4) the 16th Claimant relies upon ss.61 and 77 Criminal Justice and Public Order Act 2014.

These statutory provisions are set out in Appendix 2 to this judgment.

54. Only actions for trespass or brought under s.1 ASBCPA constitute tortious causes of action capable of being tried between the claimants and any defendants. In Wolverhampton's claim, unusually for a Part 8 claim, Particulars of Claim were served which included a claim in trespass (see further [191]-[207] below).

*(a) s.222 Local Government Act 1972*

55. s.222 does not create any substantive cause of action. It simply confers standing upon local authorities to bring (or defend) legal proceedings, which, in respect of proceedings brought to enforce public rights, had previously vested only in the Attorney General: ***Birmingham City Council -v- Shafi*** **[2009] 1 WLR 1961** [22]-[24].

56. A local authority can apply for a civil injunction to restrain breaches of the criminal law: ***Stoke on Trent City Council -v- B&Q Retail Limited*** **[1984] AC 754**. In ***City of London Corporation -v- Bovis Construction Limited*** **[1992] 3 All ER 697**, a civil injunction had been granted to the local authority to restrain noise nuisance by the defendant. The local authority had issued 18 summonses against the defendant alleging breaches of s.60 Control of Pollution Act 1974. Bingham LJ set out the basis on which such jurisdiction was to be exercised. He noted that the jurisdiction to grant a civil injunction in support of the criminal law was "*exceptional and one of great delicacy to be exercised with great caution*" (714b, applying ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435, 481, 491, 500, 521**). He said that the "*guiding principles*" were (714g-j):

> "(1) … the jurisdiction is to be invoked and exercised exceptionally and with great caution: see [***Gouriet***];
>
> (2) … there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see the ***Stoke-on-Trent*** case at 767B, 776C, and ***Wychavon District Council -v- Midland Enterprises (Special Events) Ltd*** **[1987] 86 LGR 83**, **87**;
>
> (3) … the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them: see ***Wychavon*** at page 89."

57. Upholding the grant of an injunction, Bingham LJ explained, by reference to the facts of the case (715c-e):

> "… The conduct which the local authority seek to restrain is conduct which would have been actionable (if not at the suit of the local authority) in the absence of any statute. Even if the conduct were not criminal, it would probably be unlawful. The contrast with the planning and Sunday trading cases is obvious. I see no reason for the court pedantically to insist on proof of deliberate and flagrant breaches of the criminal law when, as here, there is clear evidence of persistent and serious conduct which may well amount to contravention of the criminal law and which may, at this interlocutory stage, be regarded as showing a public and private nuisance. It is quite plain that the service of the notice and the threat of prosecution have proved quite ineffective to protect the residents.
>
> The local authority have issued 18 summonses but, even if convictions are obtained, the delay before the hearing will deprive the residents of Petticoat Square of any but (at best) minimal benefit. The local authority are charged with a power – and perhaps a corresponding duty – to protect their interests if their interests in the present case were left without protection. In my view the deputy judge was entitled to grant an injunction and was right to do so."

58. s.222 empowers local authorities to seek injunctive relief to restrain a public nuisance "*which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects*": ***Attorney-General -v- PYA Quarries Ltd*** **[1957] 2 QB 169, 184** *per* Romer LJ. Mr Bhose QC submitted that the case law demonstrates that s.222 provides a valuable and potentially powerful means by which a local authority can seek to ensure compliance with matters of public law, which all citizens have to obey for their mutual benefit. He referred to the judgment of Lawton LJ in the ***B&Q*** case in the Court of Appeal:

> "… [it is] in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local authority to decide." (emphasis added)

59. The underlined words are consistent with the principle that s.222 confers a status on the local authority to bring proceedings in its own name rather than granting any independent cause of action. Although not completely free from doubt, the balance of authority supports the view that, when bringing proceedings under s.222, the local authority must be able to establish a legal or equitable right in support of its claim and any application for an injunction (see discussion in §2-526(e)(5) *Encyclopaedia of Local Government Law*, Sweet & Maxwell). Whatever its limits, it is clear that s.222 does not provide a free-standing right to bring a claim simply on the grounds that the relief sought is "*expedient for the promotion or protection of the interests of the inhabitants of their area*": see ***Worcestershire County Council -v- Tongue*** **[2004] Ch 236** [30]-[32], [35] *per* Peter Gibson LJ.

60. Mr Bhose QC has pointed to the decision of Johnson J in ***London Borough of Hackney -v- Persons Unknown*** **[2020] EWHC 3049** as an example of an interim injunction granted to a local authority to restrain public nuisance by "Persons Unknown" under s.222.

*(b) s.187B Town & Country Planning Act 1990*

61. As s.187B(1) makes clear, the relevant cause of action in relation to any application for an injunction is an alleged breach of the duty to comply with planning controls in s.57(1), which provides that planning permission be obtained for the carrying out of any development of land as defined in s.55; ***South Buckinghamshire District Council -v- Porter*** **[2003] 2 AC 558** [11] *per* Lord Bingham.

62. s.187B itself does not, therefore, provide a cause of action. Rather, s.187B(1) provides *locus standi* for a local authority to apply for an injunction for actual or apprehended breach of planning controls required by s.57(1). s.187B(3) enables rules of Court to provide for injunctions to be granted against individuals the identity of whom is unknown.

63. In ***Cameron***, Lord Sumption referred to s.187B, and also to CPR 8.2A (see [50] above). He suggested that no such practice direction had been made. Whatever the position in ***Cameron***, insofar as concerns the Cohort Claims, Practice Direction 8A had been issued and, in paragraph 20, it set out requirements for various claims brought to obtain injunctions in respect of "*environmental harm or unlicensed activities*", including claims under s.187B: §20.1(1) (see [50] above). Importantly, §§20.4 to 20.6 of PD 8A clearly envisage that proceedings will be brought against, and the Claim Form served upon, *existing* known defendants, who can be described even if they cannot presently be named. The terms of PD 8A provide no support for a regime of granting injunctions against "Persons Unknown" under s.187B which will bind newcomers. Indeed, it would be impossible to comply with §20.4, in particular, in respect of a claim which sought to include newcomers in the definition of "Persons Unknown".

*(c) s.1 Anti-Social Behaviour, Crime and Policing Act 2014*

64. s.1 ASBCPA does create a cause of action - with an injunctive remedy - against persons engaging in anti-social behaviour as defined in s.2. The conditions of liability are set out in ss.1(2)-(3), including the standard of proof to be applied by the court. s.4 enables a Court to attach a power of arrest to an injunction if the conditions in s.4(1) are met (see further [79]-[81] below). s.5(1) provides that an application for an injunction under s.1 may be made only by specified bodies (which include a local authority: s.5(1)(a)). Applications can be made without notice being given to the respondent: s.6(1).

65. Rules of Court have been made under s.18 ASBCPA in CPR Part 65, Section VIII. CPR 65.43 provides (so far as material):

> "(1) An application for an injunction under … Part 1 of the 2014 Act is subject to the Part 8 procedure as modified by this rule and Practice Direction 65.
>
> (2) The application –
>
> (a) must be made by a claim form in accordance with Practice Direction 65;
>
> (b) may be made at any County Court hearing centre; and
>
> (c) must be supported by a witness statement which must be filed with the claim form

(2A) If the application –

(a) is on notice; and

(b) is made at a County Court hearing centre which does not serve the address where

(i) the defendant resides or carries on business; or

(ii) the claimant resides or carries on business,

the application will be issued by the County Court hearing centre where the application is made and sent to the hearing centre serving the address at (b)(i) or (ii), as appropriate…

(3) The claim form must state -

(a) the matters required by rule 8.2; and

(b) the terms of the injunctions applied for.

(4) An application under this rule may be made without notice and where such an application without notice is made –

(a1) the application may –

(i) be made at any County Court hearing centre;

(ii) be heard at the hearing centre where the application is made;

(iii) at any stage of the proceedings, be transferred by the court to-

(aa) the hearing centre which serves the address where the defendant resides or where the conduct complained of occurred; or

(bb) another hearing centre as the court considers appropriate;

(a) the witness statement in support of the application must state the reasons why notice has not been given; and

(b) the following rules do not apply –

(i) 8.3;

(ii) 8.4;

(iii) 8.5(2) to (6);

(iv) 8.6(1);

(v) 8.7; and

(vi) 8.8.

(5) In every application made on notice, the application notice must be served, together with a copy of the witness statement, by the claimant on the defendant personally.

(6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file acknowledgement of service under 8.3, and in such case –

(a) the claimant must serve the application notice and witness statement on the defendant not less than 2 days before the hearing; and

(b) the defendant may take part in the hearing whether or not the defendant has filed an acknowledgement of service."

66. Practice Direction 65, provides (so far as material)

"**Issuing the Claim**

1.1 (1) An application for an injunction under… Part 1 of the 2014 Act must be made by Form N16A and for the purposes of applying Practice Direction 8A to applications under … Section VIII of Part 65, Form N16A shall be treated as the Part 8 claim form.

(2) An application on notice under [rule 65.43] will be issued by the County Court hearing centre where the claim is made but will then be sent to the County Court hearing centre which serves the address where the defendant resides or the conduct complained of occurred…"

Form N16A is the general form of application for an injunction. For present purposes, the form requires the full name of the person against whom the injunction is sought to be stated along with the names and addresses of all persons upon whom it is intended to serve the application. Applications under s.1 ASBCPA are not included in the actions which may be commenced under CPR Part 8 without naming a defendant: CPR Part 8.2A and Practice Direction 8A.

67. In the claim brought by Wolverhampton, Jefford J refused to grant an injunction on the basis of s.1 ASBCPA ([2018] EWHC 3777 (QB)). She considered that the s.1 envisaged the grant of an injunction to restrain anti-social behaviour by an identified individual, not "Persons Unknown": [2]. With respect, I agree with that conclusion. Part 1 of the Act (and the relevant provisions of the CPR) envisages a claim being made against an individual identified respondent and an injunction being used as part of targeted measures against anti-social behaviour committed by that respondent:

(1) s.1(1) provides a jurisdictional threshold: an injunction can only be granted against someone who is aged 10 or over.

(2) The court can grant an injunction under s.1 if two conditions are met:

a) s.1(2) requires the court to be satisfied on the balance of probabilities that "the respondent" has engaged in or threatens to engage in anti-social behaviour; and

b) s.1(3) requires that the court considers it is just and convenient to grant the injunction "*for the purpose of preventing the respondent from engaging in anti-social behaviour*"

Assessment of whether these conditions are met can only be done by the court focusing on the alleged conduct of the particular respondent and whether the terms of the injunction are likely to prevent the respondent from engaging in anti-social behaviour.

(3) Different courts have jurisdiction to make the injunction depending upon the age of the respondent. s.1(8) provides that the application for an injunction has to be made to a Youth Court if the respondent is under the age of 18 (and the appeal route is to the Crown Court in such cases: s.15), otherwise, in respect of those aged 18 and above the Act provides that the application is to be made to "*the High Court or the County Court*": s.1(8)(b). (Note, however, s.1(8)(b) is expressly made "*subject to any rules of court*" made under s.18(2). The relevant provisions of the CPR made under the section direct that the application must be made to the County Court.)

(4) s.14 imposes requirements to consult the local youth offending team about any application for an injunction that is made if the respondent is under the age of 18 when the application is made.

(5) s.1(4)(b) permits the court to impose positive requirements upon the respondent, but if such requirements are imposed, the injunction must specify who is to be responsible for supervising compliance with the requirement: s.3(1); and the court must have evidence about their suitability and enforceability: s.3(2). It is the duty of the person responsible for supervising compliance with the requirements imposed by the court to make the necessary arrangements in connection with the requirements and to promote the respondent's compliance with the relevant requirements. If the supervising person considers that the respondent has complied with (or failed to comply with) the relevant requirements, s/he must inform the person who applied for the injunction and the chief officer of police. A respondent subject to a requirement included in an injunction under s.1 is required to keep in touch with the supervising officer and notify that person of any change of address.

68. Whether or not a court could grant an injunction, under s.1 ASBCPA, against a person whose name was not known, but who could be identified, is a point that would require further argument. Whilst I can see force in the argument, for example, that it would be difficult to conduct any meaningful consultation with the local youth offending team if the respondent cannot be identified by name, it is not a point I need to determine. What, in my judgment, is clear is that the scope for wide-ranging "Persons Unknown" injunctions which bind newcomers (or are made *contra mundum*) under s.1 ASBCPA, particularly where they are targeting not individuals but particular forms of activity, are very difficult to justify as either being consistent with the structure of the Act or permitted under the CPR:

(1) The Act itself does not contain an express provision enabling injunctions under Part 1 of the Act to be granted against "Persons Unknown" or *contra mundum*. Furthermore, Part 4 of the same Act (ss.59-75) conveys powers upon local

authorities to tackle certain forms of anti-social behaviour by means of Public Spaces Protection Orders ("PSPOs"). I accept Mr Willers QC's submission, on behalf of the Interveners, that Part 4 of the Act enables the local authority to tackle general anti-social behaviour by making PSPOs. Part 1 contains measures to be targeted at individuals.

(2) Unlike the authorisation under CPR 8.2A and Practice Direction 8A §20 to commence proceedings under s.187B against "Persons Unknown", the CPR do not authorise proceedings to be brought against "Persons Unknown" under s.1 ASBCPA.

(3) Insofar as the local authority seeks an injunction under s.1 ASBCPA the terms of which are intended to bind newcomers, then I cannot presently see how the local authority could satisfy the requirement, ultimately, to give notice to the respondent(s) and personally serve a copy of the application notice and witness statement in support: CPR 65.43(5). Whilst both the Act and the CPR permit without notice applications, the relief that can be granted without notice is limited to an interim injunction: s.6. The claim could only be progressed to a final hearing by serving the application upon the respondent(s). As the N16A Application Notice is treated as the Claim Form (PD63 §1.1(1)), the principles governing service of the Claim Form would apply.

69. None of the local authorities has made oral submissions seeking to support the grant of Traveller Injunctions under s.1 ASBCPA. Ms Bolton and Mr Giffin QC represented the three local authorities who had been granted an injunction on grounds that included s.1 ASBCPA: LB Barking & Dagenham (1st Claimant) and LB Redbridge (11th Claimant). However, they did not advance any oral arguments seeking to support the grant of the injunctions on this basis.

70. I should perhaps here mention ***Sharif -v- Birmingham City Council*** **[2020] EWCA Civ 1488** (see further [177]-[180] below). It is clear from the Court of Appeal's decision that the local authority had not made its application for an injunction pursuant to s.1 ASBCPA, but under s.222 to restrain breaches of the criminal law. For present purposes, as the decision (a) did not concern an injunction granted under s.1 ASBCPA; and (b) specifically left undecided the ***Canada Goose*** point about civil injunctions granted against "Persons Unknown" and whether they can bind "newcomers", I do not consider that it assists the claimants in the Cohort Claims. Specifically, it does not assist on whether injunctions against "Persons Unknown" or *contra mundum* can be made under s.1 ASBCPA and it is not authority for the proposition that the Court can make civil *contra mundum* orders under s.222; the injunction was expressly granted against "Persons Unknown".

*(d) s.130 Highways Act 1980*

71. Only Wolverhampton has relied upon s.130 as a basis for the injunction it obtained, and Mr Anderson QC has not sought to argue that s.130 is an important underpinning of the injunction that was granted. I accept the submissions of the Interveners and Ms Wilkinson that s.130 does not itself create a cause of action. The relevant cause of action is an alleged public nuisance caused by the obstruction of the free passage of the public along the highway. Section 130 imposes a number of duties on highway authorities to assert and protect the right of the public to that unobstructed and

unhindered free passage along the highway and it gives them *locus standi* to bring or defend proceedings in performance of those duties, including applications for an injunction using its locus under s.222 in an appropriate case. Local authorities also have further powers under the Highways Act 1980 to deal with obstructions to the highway in ss.137ZA(4) and s.149.

72. In reality, however, an alleged public nuisance arising from an obstruction of the highway is an unpromising basis for a civil injunction against "Persons Unknown" (or *contra mundum* order), for the reasons explained by Longmore LJ in ***Ineos*** [40]:

> "… the concept of 'unreasonably' obstructing the highway is not susceptible of advance definition. It is, of course, the law that for an obstruction of the highway to be unlawful it must be an unreasonable obstruction (see ***Director of Public Prosecutions -v- Jones (Margaret)*** **[1999] 2 AC 240**), but that is a question of fact and degree that can only be assessed in an actual situation and not in advance. A person faced with such an injunction may well be chilled into not obstructing the highway at all."

73. Mr Willers QC is right when he submitted that the Court would not grant an injunction *contra mundum* to prevent *all* encampments on a highway because it is impossible for the court to be satisfied, in advance, that *all* encampments would represent a public nuisance. It is one thing for a court to grant an injunction against a large encampment which currently is blocking traffic on a road (even assuming that the police have been unable to resolve the issue using their own powers), but it is another for the court prospectively to grant an injunction against the whole world prohibiting a single caravan stopping on the carriageway which does not impede the passage of other road users. An injunction that prohibits both, without discrimination, is wrong in principle, even before the Court makes an assessment, as it must, of the extent of the interference with the Article 8 rights of Gypsies and Travellers that the grant of such an injunction would represent and the proportionality and necessity for any such interference.

*(e) ss.61 and 77-79 Criminal Justice and Public Order Act 1994*

74. Section 61 provides that, where a senior police officer present at the scene reasonably believes (a) that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period; (b) that reasonable steps have been taken by or on behalf of the occupier to ask them to leave; and (c) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or that those persons have between them six or more vehicles on the land, the officer may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land. A failure to comply with the direction of the police officer is an offence punishable with up to 3 months' imprisonment.

75. Section 61 therefore does not create a cause of action but instead gives the police power to direct trespassers on land to leave and to remove their property.

76. Section 77 provides a power for a local authority to direct unauthorised campers to leave the land; s.78 provides a power for local authorities to apply for orders from the magistrates' court for the removal of persons and their vehicles unlawfully on land; and

s.79 prescribes the requirements for service of directions and orders made under ss.77 and 78.

77. Basingstoke & Deane BC and Hampshire CC (16th Claimant) is the only remaining local authority that has purported to rely on these statutory provisions in support of its civil claim against "Persons Unknown". In the Claim Form in its action, the local authority stated: "*The Claimants seeks* (sic) *to restrain the repeated breaches of directions to leave the land, served pursuant to s.61 and 77 Criminal Justice and Public Order Act 1994.*" Ultimately, the injunction orders were stated to be made pursuant to s.222 and s.187B. None of the provisions in ss.61 and 77-79 of CJPOA creates a cause of action triable between the local authorities and the alleged defendants in respect of the actual and threatened trespasses in the present cases. The statutory provisions confer enforcement powers for local authorities. They do not contain or provide any *locus standi* to a local authority to seek injunctive relief.

*(f) Trespass*

78. Trespass is a common law tort consisting of any unjustifiable intrusion by one person upon land in the possession of another. It does not require proof of damage to be actionable. At common law, the local authority has *locus standi* to bring claims in trespass in respect of both land it owns in its own right and public spaces within its borough. Mr Bhose QC submits that where the Cohort Claims rely upon trespass as the cause of action, the local authority is bringing the claim on behalf of and for the benefit of the public to enforce their rights.

## (5) Powers of arrest attached to injunction orders

79. In 23 Cohort Claims, the injunctions granted against "Persons Unknown" contained a power of arrest pursuant to s.27 Police and Justice Act 2006 and/or s.4 ASBCPA. These are unusual provisions that require clear and separate consideration and justification before being included in a civil injunction against identified defendants. Adding a power of arrest in an injunction against "Persons Unknown", where the definition of the defendants includes newcomers, presents real difficulties in satisfying the relevant statutory requirements and rules of court.

80. CPR 65.9 provides (so far as material):

> (1) An application under… section 27(3) of the 2006 Act for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by -
>
> (a) the claim form; or
>
> …
>
> (d) application under Part 23.
>
> (2) Every application must be supported by written evidence.
>
> (3) Every application made on notice must be served personally, together with a copy of the written evidence, by the local authority on the person against whom the injunction is sought not less than 2 days before the hearing.

81. It may be that there was evidence justifying the inclusion of a power of arrest against named individuals in injunctions granted in the Cohort Claims. However, it is difficult to see how a Court can be satisfied, on evidence, under s.27 Police and Justice Act 2006 and/or s.4 ASBCPA, that unidentified people, who have not yet even been present on the land, threaten conduct which consists of or includes the use or threatened use of violence, or that their actions present a significant risk of harm to others, sufficient to justify a power of arrest. There is also the issue of compliance with CPR 65.9(3). In the Cohort Claims, where a power of arrest was attached to the injunction order directed at "Persons Unknown", a person who simply parked his/her caravan overnight on land subject to the injunction was immediately liable to arrest. If the Court had simply granted an injunction against the hypothetical trespassing caravan owner in Dagenham Road Car Park (see [45] above), absent some very unusual feature in the evidence, the Court simply would not have had jurisdiction to attach a power of arrest as the conditions of s.27(3) and/or s.4(1) would not have been met.

82. I have found two instances in the Cohort Claims where the Court addressed specifically whether a power of arrest should be attached to an injunction against "Persons Unknown" in the Cohort cases are in the claims brought by LB Hillingdon (7th Claimant) and Rugby BC (29th Claimant).

*LB Hillingdon*

(1) In LB Hillingdon, Stewart J refused to attach a power of arrest to the interim injunction he granted on 29 March 2019 because the requirements of s.27(3) Police and Justice Act 2006 were not met.

*Rugby Borough Council*

(2) In Rugby BC, the Claim Form dated 22 August 2018, extraordinarily, was issued against six persons identified only by surname and a 7th Defendant "Persons Unknown", who were neither described nor identified (in breach of the Description Requirement – see [49] above). No order for alternative service of the Claim Form on "Persons Unknown" was sought or granted. An injunction, "*until further order*", was granted at the first hearing on 31 August 2018. A power of arrest was attached to the order under s.27 Police and Justice Act 2006. In a witness statement, dated 18 November 2020, the Legal Officer of Rugby BC, stated that she had represented the Council at the hearing at Nuneaton County Court on 31 August 2018. She had not prepared a skeleton argument, but she exhibited a copy of the "*advocacy notes*" she had prepared for the hearing. No judgment was given and no record or notes of the hearing are available. The advocacy notes indicate that the local authority relied upon the grant of an injunction to LB Bromley in similar terms. The notes make no reference to the power of arrest that was being sought, whether against the named defendants or "Persons Unknown", or the grounds upon which the council contended that such an order was justified by reference to the requirements of s.27(3).

(3) On 15 April 2020, the council applied to renew the power of arrest that had been granted under the original injunction order. On 3 June 2020, Deputy District Judge Leong at Nuneaton County Court refused the application, without a hearing. The Judge noted, succinctly:

> "The first 6 Defendants have not breached order since 2018/2019. In effect Rugby Borough Council are asking for an arrest power in relation to persons unknown (7th Defendant). That is not appropriate, nor are [the requirements] under s.27(3) Police and Justice Act 2006 met."

(4) The council did not renew the application to extend the power of arrest. As a result of a failure to comply with an unless order, dated 4 November 2020, the injunction order against "Persons Unknown" of 31 August 2018 was discharged. Upon further application by the council on 18 November 2020, the injunction granted against the named defendants in the order of 31 August 2018 was also discharged and the claim was dismissed.

**(6) Use of the Interim Applications Court of the Queen's Bench Division ("Court 37")**

83. Applications for interim injunctions are subject to the provisions of CPR Part 25 and Practice Direction 25A. The key procedural requirements are:

(1) the Application Notice must state the order sought and the date, time and place of the hearing: PD25A §2.1;

(2) subject to any order abridging time under CPR 23.7(4), the Application Notice and evidence in support must be served as soon as practicable after issue and in any event not less than three days before the court is due to hear the application: PD25A §2.2;

(3) except in cases where secrecy is essential, in any urgent application or application made without giving the required period of notice, the applicant should take steps to notify the respondent informally of the application: PD25A §4.3(3);

(4) the application must be supported by evidence and, where an application is made without notice to the respondent, the evidence must state why notice was not given: CPR 25.3(2), CPR 25.3(3), PD25A §§3.2 and 3.4;

(5) unless the court otherwise orders, any order for an injunction, made without notice to any other party, must contain a return date for a further hearing: PD25A §5.1(3); and

(6) an order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order: PD25A §5.4.

84. In a large number of claims (but not all of them), applications for interim injunctions were brought before the interim applications Judge of the Queen's Bench Division (or brought using equivalent procedures in District Registries or the County Court) ("Court 37"). Notwithstanding the procedural requirements I have identified, in most cases, no notice of the Application was given to the respondents, "Persons Unknown", whether by the placing of notice on the land in respect of which the injunction was sought or otherwise; the Claim Form was issued on the date on which the interim injunction application was made; and inevitably, the time the Court had to consider the application was very limited. Frequently, no skeleton argument was provided to the court.

85. In my judgment, the use of the urgent applications procedure, in Court 37, was almost always unjustified. Indeed, on 29 March 2019, Stewart J, the Judge in Charge of the Civil List of the Queen's Bench Division, told Counsel, who had applied for an injunction on an urgent basis in one of the Cohort Cases, that applications for this type of injunction should not be made in Court 37 unless there was "*real urgency*". Nevertheless, the same Counsel appeared, again in Court 37, on two further occasions seeking an interim injunction in Cohort Claims on 10 May 2019 and 12 June 2019. I am not presently satisfied that there was any real urgency that justified the applications being made in Court 37 on these subsequent occasions. The evidence in support of the application made on 12 June 2019 certainly does not demonstrate that there was any present unlawful activity or any credible immediate threat of any so as to justify making an application to Court 37. The transcript of the hearing on 10 May 2019 supports a similar conclusion.

**(7) Failure to progress claims after the grant of an interim injunction**

86. Another risk inherent in claims made against "Persons Unknown" is that, unless a defendant is identified (or comes forward), the claim can easily become dormant, if the claimant permits it to. Traveller Injunctions represent an interference with the Article 8 rights of members of the Gypsy and Traveller communities (for the reasons explained by the Court of Appeal in ***LB Bromley***). The wider the scope of the injunction, the greater the extent of the interference with the Article 8 rights. Any failure to prosecute a claim in which an interim injunction has been granted is a matter of serious concern.

87. It has been recognised, in other types of claim brought against "Persons Unknown", that a failure to progress a claim where an interim injunction has been granted can amount to an abuse of process.

88. Interim non-disclosure orders, granted in cases of alleged breach of confidence or misuse of private information, is another area in which proceedings are occasionally brought against "Persons Unknown", typically because the identity of the person threatening to disclose the information is not known to the claimant. An interim non-disclosure injunction directly and immediately interferes with the Article 10 right of the individuals(s) restrained, but it also has the potential to bind third parties who have knowledge of the order under the ***Spycatcher*** principle (see further discussion below in [184]-[185]), representing a further interference with the Article 10 rights of third parties.

89. It was recognised in several cases, in which an interim non-disclosure injunction had been granted, that there was potential for claims against "Persons Unknown" being allowed by claimants to become dormant when no defendant was identified or came forward. If that happened, the interim injunction became practically a permanent injunction restraining third parties by reason of the ***Spycatcher*** principle.

(1) In ***X -v- Persons Unknown*** **[2007] EMLR 10**, Eady J observed:

> [77] … if a claimant is content to sit back and make no attempt at all to serve the defendant against whom an injunction has been obtained, with the order or the evidence on which it was based, then the tail will be wagging the dog. The ***Spycatcher*** doctrine has been acknowledged by the Court of Appeal and the House of Lords over

> the past 20 years because it is recognised that third parties should not knowingly frustrate orders of the court whether made *inter partes* or *contra mundum*: see, e.g. ***Attorney General -v- Punch Ltd*** **[2003] 1 AC 1046** [32]. The primary relief will usually have been obtained against a party who, it is anticipated, will otherwise infringe the claimant's rights. It is not desirable that this remedy should be sought as matter of formality, while depending primarily on the ancillary ***Spycatcher*** doctrine - salutary though it is.
>
> [78] Some effort should be made to trace and serve the primary wrongdoer. If appropriate, advantage can be taken of the provisions of [the CPR] for service by an alternative method (formerly "substituted service"). Otherwise, the litigation will go to sleep indefinitely, which is hardly consistent with the policy underlying the CPR, and what is supposed to be a temporary holding injunction becomes a substitute for a full and fair adjudication."

(2) In ***Terry (formerly LNS) -v- Persons Unknown*** **[2010] EMLR 16** [20], Tugendhat J summarised the unsatisfactory position where a claim had been brought against a person, who could not be identified by the claimant, who was threatening to disclose private information and photographs to a newspaper:

> "The overall likely effect of the order sought appeared to me to be as follows. The applicant was likely to notify a limited number of media third parties promptly. After the hearing that was done, as set out below. If it were not intended to do that, there would be no point in the court making the order (since it is admitted the respondent has not been identified). In my view, on the information now before me, the applicant is unlikely ever to serve the Claim Form on any respondent. Journalists do not normally reveal their sources and can rarely be obliged to do so: ***Financial Times Ltd -v- United Kingdom*** **[2010] EMLR 21**. As that case showed, even leak enquiries conducted with the resources of a major corporation, backed up by specialist investigators, commonly fail to identify the source of a leak. But that will not trouble the applicant. There is no provision for a return date. Since service on the respondent is unlikely, it follows that no trial is likely to be held. Unless a third party is prepared to take the risk in costs of applying to vary this order, this interim application is likely to be the only occasion on which the matter comes before the court. The real target of this application is the media third parties who are not respondents. The only third parties who will ever hear of the proceedings are those whom the applicant chooses to notify. According to the terms of the draft order, no one else will have any means of discovering that an order has been made at all. The third parties who will be notified will be told nothing by the applicant about the grounds for the claim, or any possible defence to it. If they want to know more, they will be at risk as to costs in making an application to the court. In short, the effect of the interim order sought is likely to be that of a permanent injunction (without any trial) binding upon any person to whom LNS chooses to give notice that the order exists."

90. The remedy to prevent actions becoming dormant in this way was to make directions that ensured the claimant progressed the claim. In ***Terry***, Tugendhat J noted that CPR PD 25A §5.1(3) required that, where an interim injunction had been granted without

notice to the defendant(s), the order must provide for a return date for a further hearing. That return date, the Judge noted, served two important functions in relation to claims brought against "Persons Unknown" the second of which was [136]:

> "… it [enables] the court to monitor the progress of any attempts to find a respondent and to serve him. As Eady J noted in ***X -v- Persons Unknown*** [78], it is not consistent with the CPR for litigation to be commenced and for the subsequent steps required of claimant to be deferred indefinitely to suit the interests of the claimant. CPR 1 provides that cases are to be dealt with expeditiously and fairly, and that the court has a duty to manage the case, including by fixing timetables and otherwise controlling the progress of the case, and giving directions to ensure that the trial of a case proceeds quickly and efficiently. If the Claim Form cannot be served expeditiously, then the action will be at risk of dismissal. Or a substitute defendant who can be served may be added by amendment."

91. In the ***Practice Guidance (Interim Non-Disclosure Orders)*** **[2012] 1 WLR 1003**, under a heading "*Active Case Management*", the Master of the Rolls gave further guidance:

> "Where an interim non-disclosure order… is made, and return dates are adjourned for valid reasons on one or more occasions, or it is apparent, for whatever reason, that a trial is unlikely to take place between the parties to proceedings, the court should either dismiss the substantive action, proceed to summary judgment, enter judgment by consent, substitute or add an alternative defendant, or direct that the claim and trial proceed in the absence of a third party (***XJA -v- News Group Newspapers*** **[2010] EWHC 3174 (QB)** [13]; ***Gray -v- UVW*** **[2010] EWHC 2367 (QB)** [37]; ***Terry*** [134]-[136])."

92. In ***Kerner -v- WX*** **[2015] EWHC 178 (QB)**, as a condition of being granted an interim injunction to restrain harassment of her and her son by "Persons Unknown", the claimant was required to give an undertaking that she would use all reasonable endeavours to attempt to identify the "Persons Unknown". Reflecting the ***Practice Guidance***, Warby J also required the claimant to give an undertaking that, if she had been unable to identify the "Persons Unknown" within three months of grant of the injunction, she would apply to a Judge for directions as to the further conduct of the action. The Judge explained:

> [7] [The ***Practice Guidance***] relates to actions involving interim non-disclosure orders which affect the Convention right to freedom of expression. Active case management in accordance with this guidance is of particular importance in cases of that kind. The injunctions in this case do not include non-disclosure provisions. However, they do relate to the activities of individuals who are involved with the news media and some at least of the principles that apply in non-disclosure cases are applicable on that account. It is in any event inconsistent with modern litigation principles for the court to allow an interim orders to remain in place with the case otherwise "going to sleep".
>
> [8] Active case management in such actions is only practicable if the action is brought before the court to enable such management to take place. Unless

> an order is made or an undertaking is given that ensures the case will be brought back, the risk exists that it will simply lie dormant.
>
> [9] I express no view at this stage as to what might be appropriate means of disposing of this claim if the defendants or one of them cannot be traced and served. That issue can be addressed if and when the need arises. What would not be appropriate, however, is to leave an interim order in force in perpetuity.

93. A similar order to prevent the action simply becoming dormant following the grant of an interim injunction against Persons Unknown was made in ***LJY -v- Persons Unknown*** **[2018] EMLR 19**; and in ***GYH -v- Persons Unknown*** **[2017] EWHC 3360 (QB)**, Warby J again gave directions to ensure the action was properly progressed after the grant of an interim injunction:

> [44] … A return date for the injunction application is provided for in the usual way. The draft order then provides that if the claimant is able to identify the defendant or a viable means of contacting him, "then she shall serve the claim form, this order and any other documents in these proceedings on the defendant as soon as reasonably practicable by email or text message". If she is unable to do this within 28 days, then "the filing of the Claim Form at Court on 1 December 2017 shall be deemed good service pursuant to CPR 6.15(2) and the claimant shall either (a) apply at the return date … for default judgment and/or final determination of the claim; or alternatively (b) discontinue the proceedings."
>
> [45] The claimant will need to give an undertaking to (continue to) use her best endeavours to trace and serve the defendant: cf. ***Kerner -v- WX***. Subject to that, and provided that the return date is set not less than 7 days beyond the expiry of the 28-day period for service, this regime seems satisfactory."

94. The precise directions that are necessary to ensure the proper prosecution of the claim will depend on the circumstances of the case. The defendant(s) in ***GYH*** fell into Category 1 in Lord Sumption's analysis in ***Cameron*** (see [11(12)] above): anonymous defendants who are identifiable (and can be communicated with) but whose names are unknown. The defendant(s) in ***Kerner*** fell into Category 2: not only anonymous but could not, at that stage, even be identified.

95. As these cases demonstrate, albeit in a different area of law, directions can and should be made by the Court that ensure that, in claims brought against "Persons Unknown" in which interim injunctions are granted, the Court retains active supervision of the proceedings (see further [248] below). At the return date, the Court can investigate whether the claimant has established jurisdiction over any defendant by serving the Claim Form, which may include, where justified, by an order permitting a method of alternative service. If the claimant has failed to serve the Claim Form, any interim injunction is liable to be discharged and the claim dismissed (see further [46]-[48] above).

96. It is a striking feature of the Cohort Claims that in most cases in which an interim injunction was granted, no date was fixed for a further hearing (arguably in breach of PD25A §5.1(3)). In consequence, it was entirely up to the relevant local authority to take the initiative to move the claim forward. A significant number of claims have just ground to a halt after the interim injunction was granted. For example,

(1) in the claim brought by Rochdale MBC (28th Claimant), on 9 February 2018, an interim injunction was granted, without notice and "*until further order*", against absent defendants, including "Persons Unknown" (the interim injunction was subsequently discharged against two named defendants on 6 February 2019);

(2) in the claim brought by Nuneaton and Bedworth BC and Warwickshire CC (26th Claimants), on 19 March 2019, an interim injunction "*until further order*" was granted against absent defendants, including "Persons Unknown", expressly "*pending the final injunction hearing*"; and

(3) in the claim brought by Thurrock Council (34th Claimant), on 3 September 2019 an interim injunction was granted against absent defendants, including "Persons Unknown", again expressly "*pending the final injunction hearing*".

97. In all three of these claims, a power of arrest was attached to the injunction and no return date or date for the final hearing of the claim was provided. The relevant claimants took no further steps to progress the claims to a final hearing. Apart from the discharge application made by two named defendants in the Rochdale claim, the next development in each case was my order of 16 October 2020, assembling the Cohort Claims. It is necessarily a matter of conjecture how long it would have been before each of these local authorities would have taken any steps to progress the claim to a final hearing had it not been for the Court's intervention on 16 October 2020.

98. Overall, in a significant number of Cohort Claims the relevant local authority appears to have failed to progress the claim to a final hearing after having been granted an interim injunction. In addition to the three claims identified in [96] above, claims in which there appears, prima facie, to have been a failure properly to prosecute the claim after the grant of the interim injunction include: LB Havering (6th Claimant); LB Hillingdon (7th Claimant); LB Hounslow (8th Claimant); LB Richmond-upon-Thames (12th Claimant); Boston BC & Lincolnshire CC (19th Claimant); and Buckinghamshire Council (37th Claimant).

99. Periods of delay in prosecuting claims after the Court of Appeal handed down judgment in ***LB Bromley*** on 21 January 2020, and ***Canada Goose*** on 3 March 2020 are potentially more serious still. In combination, the effect of the decisions in ***Cameron***, ***LB Bromley*** and ***Canada Goose*** on the Traveller Injunctions obtained by local authorities was significant. It called into question the very basis on which many, if not the majority, of these injunctions had been granted and their terms. During March 2020, the First Intervener sent letters to most local authorities in the Cohort Claims specifically raising the appropriateness of the injunctions that had been granted in Cohort Claims in the light of the Court of Appeal decision in ***LB Bromley***. In the closing paragraphs of the letter, each local authority was asked to confirm that it would "*urgently reconsider the injunction [it had] in place*" and expressed the view that the injunction should be withdrawn. However, not a single local authority, which had been granted such an injunction, took steps that were effective in ensuring that the claims were listed for further hearing so that the Court could consider the impact of the ***LB Bromley*** and ***Canada Goose*** decisions. So far as the Court is aware, they continued to enforce the injunction that they had been granted. That was so despite the fact that several Cohort Claims, in which interim injunctions had been granted, had been adjourned *specifically*

on the ground that it was necessary to await the outcome of the Court of Appeal decision in ***LB Bromley*** before the claims could be progressed.

100. In fairness, I should record that some local authorities have filed evidence explaining that they were under considerable strain responding to the pandemic. LB Hillingdon has explained that it had obtained a hearing fixed for 7 May 2020, but this hearing was subsequently vacated, due to the pandemic, following a request by the local authority on 15 April 2020. LB Hounslow has explained that, whilst it has been considering the impact of ***LB Bromley***, it has permitted an encampment to remain for periods from 23 March to 31 May 2020 and then from 5 June to 18 August 2020, due to the pandemic.

101. Nevertheless, local authorities which had been granted interim Traveller Injunctions and failed to take steps promptly to restore the claims seem to me to be open to potential criticism for having failed to do so. In ***LB Enfield***, I held that a party who had (i) obtained an injunction against Persons Unknown *ex parte*, and (ii) become aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, was under a duty to restore the case within a reasonable period to the court for reconsideration: [2020] EWHC 2717 (QB) [32]. In the absence of any effective respondent who could take the initiative to seek the Court's reconsideration of whether, in the light of the decisions of ***LB Bromley*** and ***Canada Goose***, the injunction should be maintained in the terms in which it had been granted, or at all, injunctions potentially vulnerable to challenge on similar grounds continued in full force. The only reason that the Court has had an opportunity to reconsider any of these orders is because some local authorities, whose injunctions were approaching the end of the period for which they had been granted, made applications to the Court to "extend" them. Although I recognise that the pandemic has placed very unusual strains on the resources of local authorities, it did not, apparently, prevent several local authorities from applying to "extend" Traveller Injunctions that they had previously been granted.

## (8) Particular Cohort Claims

*(a) Harlow District Council and Essex County Council (24th Claimants)*

102. As noted by the Court of Appeal in ***LB Bromley*** [10], the prototype of the "Persons Unknown" Traveller Injunction, targeting Gypsies and Travellers, was granted in 2015 to Harlow DC and Essex CC. An interim injunction was granted on 3 March 2015, followed by a final injunction on 16 December 2015. It was granted against 35 named defendants, but also against "Persons Unknown" (without any description of them). It was a borough-wide injunction in respect of Harlow DC.

103. On 26 May 2017, the two local authorities applied to "vary" the final injunction; they sought to extend the period of the injunction by a further three years and to add further named defendants to the claim. The application was granted on 14 June 2017. The judgment does not address the jurisdictional basis on which a "final injunction" could be "extended", or further defendants added to the claim, but a revised injunction was granted until 20 June 2020 and further named defendants were added to the claim.

104. On 8 June 2020, the local authorities made a further application to "extend" the "final injunction" for a further two years. The Application came before Tipples J on 10 July

2020. Perhaps understandably, the Judge questioned whether the Court had jurisdiction to extend a final injunction. The Claimants withdrew their application. In consequence, the local authority's injunction lapsed on 20 June 2020. No further similar claim has been issued, or Traveller Injunction sought, by Harlow DC and/or Essex CC.

*(b) London Borough of Enfield (38th Claimant)*

105. The London Borough of Enfield was granted a borough-wide interim injunction on 21 July 2017. The Claim Form was issued that same day simply naming the defendants as "Persons Unknown" (in breach of the Description Requirement – see [49] above). The injunction application was made to Court 37. A final injunction in similar terms was granted on 4 October 2017 for a period of three years. No respondent attended the hearings, and the orders were made without opposition. LB Enfield did not apply for, and was not granted, any order permitting service of the Claim Form by alternative means.

106. On 22 September 2020, little more than 10 days before the injunction was due to expire, LB Enfield issued an Application Notice seeking to amend the description of the defendants in the Claim Form and to extend the "final injunction" it had been granted. The application came before me, as the Judge in Court 37, on 29 September 2020. No notice had been given of the application to any defendants/respondents and there was no urgency (save that generated by delay on the local authority's part). Apart from the issue of whether the Court had any jurisdiction to amend the description of defendants or to extend an injunction that had been granted as a final order, more fundamentally it was apparent that LB Enfield had not served the Claim Form on any defendant and it had not obtained an order for alternative service under CPR 6.15. Confronted with these difficulties, Counsel for LB Enfield withdrew the application to amend the Claim Form and extend the injunction.

107. Nevertheless, on 30 September 2020, LB Enfield issued a further Application Notice seeking an order under CPR 6.15(2) retrospectively validating the steps LB Enfield had taken to bring the original Claim Form to the attention of the defendants. I refused that application on 2 October 2020: [2020] EWHC 2717 (QB). Separately, LB Enfield issued a fresh Part 8 Claim Form substantially seeking a final injunction in terms that they had sought as variation of the original injunction against two categories of "Persons Unknown", in summary to restrain unlawful encampments on land and fly-tipping. The council's application for an interim injunction against the latter category was also refused on 2 October 2020. The claim was adjourned, and directions given for a final hearing of the fresh Part 8 claim. Subsequently, on 11 January 2021, LB Enfield discontinued its second claim.

*(c) Canterbury City Council (20th Claimant)*

108. Canterbury CC had applied for, and was granted, an interim injunction, on 10 April 2019, to prevent encampment on any of 82 sites within the city. The application was made in Court 37. The Claim Form, naming the defendants as "Persons Unknown" (with no description in breach of the Description Requirement – see [49] above), was also issued on 10 April 2019. As noted in the judgment I gave in the claim on 30 October 2020 ([2020] EWHC 3153 (QB) [16]), there was no urgency (the Council had been contemplating making the application for at least three weeks), no notice was given to the respondents, the evidence in support contained no explanation why no notice of the

application had been given to the respondents (as required by CPR Part 25 APD §3.4), no skeleton argument was provided to the Court and no note of the hearing could be provided. The injunction order contained no provision regarding service of the Application Notice on the Defendants. As was later to prove important, the Council had also not applied for any Order permitting the Claim Form to be served by alternative means under CPR 6.15. The evidence in support of the injunction application did not address the issue of service of the Claim Form at all.

109. The matter returned to Court on 3 June 2019. The Council asked the Court to make a final order against "Persons Unknown" substantially in the terms of the interim injunction. A final injunction was granted, but only for 1 year, not the 3 years sought by the Council. The Council did not address the issue of service of the Claim Form and the 4-month period within which to serve it upon the defendants expired at midnight on 10 August 2019. No order for alternative service had been sought or made and no application had been made to extend the period within which to serve the Claim Form.

110. On 23 June 2020, Canterbury CC issued an Application Notice seeking to "*renew the order for injunction… which is due to expire, but on a narrower basis than previously for a period of two years*". The application initially came before the Court on 30 July 2020. Thornton J expressed concerns about several aspects of the application. She gave permission to amend the name of the defendants to comply with the requirement to identify "Persons Unknown" by reference to conduct which is alleged to be unlawful, but otherwise adjourned the application to be fixed in October 2020. The injunction was extended until that further hearing.

111. The hearing was fixed for 30 October 2020. Shortly before the hearing, Canterbury CC indicated that it wished to withdraw its application to renew/extend its injunction. Recognising that it had failed to serve the Claim Form on "Persons Unknown", or to obtain an order for alternative service, it proposed that the injunction order should be discharged, and its claim dismissed. I made the order that the claimant sought. The judgment identifies a series of failures in relation to the claim: [2020] EWHC 3153 (QB).

**(9) Case Management Hearing: 17 December 2020 – Identification of the issues of principle to be determined**

112. By the time of the Case Management Hearing on 17 December 2020, the remaining active local authorities had largely grouped themselves, and were represented, as they were at the hearing on 27-28 January 2021. Permission to intervene was granted to the three organisations that represent the interests of the Gypsy and Traveller communities. Largely by agreement, the following issues of principle were identified to be determined at the hearing on 27-28 January 2021:

    (1) Whether the Court has the power – either generally under CPR 3.1(7) or otherwise, or specifically having regard to the particular terms of the relevant order – to case manage the proceedings and/or to vary or discharge injunctions that have previously been granted by final order? ("The First Issue: Jurisdiction over Final Orders")

    (2) Whether the Court has jurisdiction, and/or whether it is correct in principle, generally or in any relevant category of claim, to grant a claimant local authority

final injunctive relief either against "Persons Unknown" who are not, by the date of the hearing of the application for a final injunction, persons whom the law regards as parties to the proceedings, and/or on a *contra mundum* basis? ("The Second Issue: Final Orders against Newcomers or *Contra Mundum* Orders")

(3) In the event that the Court finds that it does not have jurisdiction to grant a final injunction in the circumstances set out in (2) above, whether:

(a) it is possible to identify the Defendants in the category of persons unknown who were parties to the proceedings at the date the final order was granted and are bound by it; and

(b) insofar as the final injunction binds newcomers, it should be discharged.

("The Third Issue: Ascertaining the parties to the Final Order")

(4) If there is no jurisdiction to grant such final injunctive relief in all or any of the cases identified above, in what circumstances (if any) should the Court be prepared to grant interim injunctive relief against "Persons Unknown" Defendants in such a claim, in a form in which final relief would not be granted? ("The Fourth Issue: the Conundrum of Interim Relief")

The labelling of the issues is mine, following the hearing and reflecting the way the arguments developed.

113. At the request of the Court, the Attorney General instructed an advocate to the Court to make written and oral submissions on the issues to be decided by the Court. Sarah Wilkinson, who had appeared as advocate to the Court in the Court of Appeal in the ***Canada Goose*** case was counsel instructed by the Attorney General. I should record the Court's gratitude for the clarity of Ms Wilkinson's oral and written submissions, and indeed those of all Counsel instructed in the case. The issues to be determined at the 2-day hearing were complex and detailed. Time was allocated fairly and economically. I am extremely grateful for the cooperative way in which Counsel, their instructing solicitors and parties have approached this hearing and the necessary preparations for it.

## D: An overview and summary of conclusions

114. Before embarking on consideration of the detailed submissions on each of the issues of principle, it is useful to have a summary of the position of each of the main groups and my conclusions (for the reasons explained in detail in the following paragraphs).

*Issue 1: Jurisdiction over Final Orders*

115. Ms Bolton's group of local authorities was the only group who argued that the Court has no jurisdiction to revisit the terms of the final injunctions that were granted to LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants).

116. Apart from Walsall MBC and Sandwell MBC (35th Claimants) ("Walsall") and Wolverhampton CC (36th Claimant) ("Wolverhampton"), every other local authority

with a subsisting injunction has an interim injunction. It is common ground that, in respect of interim injunctions, the Court retains jurisdiction over both the claim and any injunction that has been granted.

117. The terms of the injunction orders made in Walsall and Wolverhampton are unusual in the Cohort Claims. Wolverhampton, uniquely in the remaining cases, has an order the terms of which are truly *contra mundum* (see further [191]-[207] below). Although Walsall's order has some characteristics that suggest it is a "final" injunction (albeit containing a permission to apply), Wolverhampton's injunction is not easy to categorise in terms of an "interim" or "final" order, as those terms are conventionally understood in *inter partes* civil litigation (see [207] below). Wolverhampton's order has, since it was originally granted, expressly provided for review hearings. There have been two such reviews. On each occasion the injunction has been continued. If *contra mundum* orders of this type and scope are permissible (a point that arises for determination under the Second Issue), then the Wolverhampton model avoids many of the pitfalls and difficulties – particularly proper identification and description of the "Persons Unknown" and service of the Claim Form – that have been encountered in the other Cohort Claims.

118. Contrary to Ms Bolton's arguments, it is an essential part of the submissions of both Walsall and Wolverhampton that, whether the orders are called "interim" or "final" and whether directed at "Persons Unknown" or *contra mundum*, the Court must retain jurisdiction over the injunction orders prohibiting trespass or breach of planning control. Both submit that, to be effective, the injunction orders must bind newcomers and they recognise that, if that is so, then the Court must retain jurisdiction over the terms of the order so as to be able to modify or discharge the injunction in the light of changing circumstances.

119. The Interveners contend that the Court does generally retain jurisdiction over the injunctions that have been granted as part of a "final order" but that, in any event, the Court need not resolve this issue because each of the injunction orders in the relevant claims contains specific express provisions which permit the terms of the injunction to be reconsidered by the Court, by expressly providing that the relevant order is to continue "*until further order*" and/or by inclusion of a paragraph granting permission to apply to vary or discharge the injunction to "*the Defendants or anyone notified of this order*".

120. I have rejected Ms Bolton's arguments and conclude that the Court does retain jurisdiction to consider the terms of the final injunctions in the claims brought by LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC. The Court has jurisdiction over these "final" injunctions because their terms (a) expressly provide for the continuing jurisdiction of the Court; and, in any event (b) apply to "newcomers" who were not parties to the proceedings when the relevant order was granted.

*Issue 2: Final Orders against Newcomers or Contra Mundum Orders*

121. This is the central issue. All the local authorities contend that, to be effective, injunctions to prohibit trespass and/or breach of planning control, must bind newcomers. They argue that injunctions of this type do not fall within the principle – from ***Attorney General -v- Times Newspapers Ltd (No.3)*** **[1992] 1 AC 191, 224**

("*Spycatcher*") and endorsed by the Court of Appeal in ***Canada Goose*** [89]-[90] – that a final injunction operates only between the parties to the proceedings. They contend that ***Canada Goose*** is limited to "protester" cases and that various statutory provisions permit local authorities, acting in the public interest and/or for the public good, to obtain injunctions that do bind newcomers. Reliance is placed, variously, upon s.222 Local Government Act 1972, s.187B Town & Country Planning Act 1990, s.1 Anti-social Behaviour, Crime and Policing Act 2014, s.130 Highways Act 1980 and ss.77-79 Criminal Justice and Public Order Act 1994.

122. As noted above, Wolverhampton goes further. It argues that injunctions against "Persons Unknown" are artificial. Local authorities wanting to restrain actual or threatened trespass or breach of planning control should be entitled to seek orders *contra mundum*.

123. The Interveners and Ms Wilkinson submit that Traveller Injunctions are subject to the principle that final orders bind the parties to the claim at the date of the order and *contra mundum* orders are available only in a very limited category of case which does not include the type of injunctions sought and obtained by the local authorities in the Cohort Claims.

124. I have rejected the local authorities' submissions. The Traveller Injunctions granted in the Cohort Claims:

(1) are subject to the principle – from ***Spycatcher*** and endorsed by the Court of Appeal in ***Canada Goose*** – that a final injunction operates only between the parties to the proceedings; and

(2) do not fall into the exceptional category of civil injunction that can be granted *contra mundum*.

*Issue 3: Ascertaining the parties to the Final Order*

125. If the answer to the second issue is that Traveller Injunctions made by final order bind only the parties at the date of the order, then the next issue is whether the relevant local authority can identify anyone in the category of "Persons Unknown" at the time the final order was granted. If it can, then the final injunction order binds each person who can be identified. If not, then the final injunction granted against "Persons Unknown" binds nobody. Some local authorities believe that they may be able to identify people who were parties to the proceedings falling within the definition of "Persons Unknown" at the date on which the final order was granted in their case.

*Issue 4: The 'conundrum' of interim relief*

126. This issue has, in fact, resolved itself as a result of consideration of, primarily, Issue 2.

## E: Issue 1: Jurisdiction over Final Orders

### (1) Submissions

127. Ms Bolton's argument is that a first instance Court has no (or very limited) jurisdiction to revisit or reconsider an injunction that has been granted by way of final order disposing of a claim.

(1) The general principle concerning injunctions granted by final orders are the same as for any final order, namely that "*[t]he interests of justice, and of litigants generally, require that a final order remains such unless proper grounds for appeal exist*": ***Roult -v- North West Strategic Health Authority*** **[2010] 1 WLR 487**.

(2) Once judgment has been given in a claim, the cause of action upon which it was based is merged in the judgment and its place is taken by the rights created by the judgment: ***Terry -v- BCS Corporate Acceptance Ltd*** **[2018] EWCA Civ 2422** [56]; ***Virgin Atlantic Airways Limited -v- Zodiac Seats UK Limited*** **[2014] AC 160** [17].

(3) A court of first instance cannot case manage a claim after final judgment, as there is no claim to manage: ***Terry*** [54].

(4) Even a material change in circumstances, or a misstatement of the facts, would not be sufficient to justify varying or revoking a final Order*:* ***Terry*** [75].

(5) Even if a final order contains a provision granting permission to apply, the judgment is no less final. Permission to apply does not permit a court to disturb, or case manage a final order, and only permits the Court to consider an application properly made by a party who has standing to make such an application, and only within the terms of the permission to apply.

(6) The court does not have the power generally to disturb a final order, save for the limited exceptions provided for under CPR 40.9, and to deal with any matters properly to be dealt with under a provision granting permission to apply.

128. Ms Bolton submits that, in cases where final orders have been made, the Court has no case management powers and, specifically, the Court cannot vary or discharge these orders pursuant to CPR 3.1(7).

(1) The power in CPR 3.1(7) does not extend to final orders: ***Roult*** [15]. To hold to the contrary would undermine the principle of finality.

(2) Further or alternatively, the power at CPR 3.1(7) does not extend to final injunction orders as such orders are not made pursuant to the CPR. The orders were made pursuant to s.37 Senior Courts Act 1981, s.187B and s.222 (and, in the case of the London Borough of Barking & Dagenham and the London Borough of Redbridge, s.1 ASBCPA). Accordingly, the power to revoke or vary under CPR 3.1(7) does not arise in relation to these orders. Any power to vary or discharge must be found elsewhere: ***DEG-Deutsche Investitions-und Entwicklungsgesellschaft mbH -v- Koshy*** **[2005] 1 WLR 2434** ("***Koshy***").

129. Ms Bolton argues that provision within an order for permission to apply does not prevent it from being a final order: ***Serious Organised Crime Agency -v- O'Docherty*** **[2013] EWCA Civ 518** [28], [82] and [83]). The scope of what may be considered by the court on any application to vary or discharge is limited by "*fundamental principles of the finality of court orders and the requirements of legal certainty*": ***O'Docherty*** [83].

130. A change of law does not permit reconsideration of an order under a permission to apply contained in a final order: ***O'Docherty*** [20] and [68]-[71]; ***Cadder -v- HM Advocate General for Scotland*** **[2010] UKSC 43**.

131. Finally, Ms Bolton contends that the permission to apply provisions contained in the final orders granted to LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants) do not give the Court power unilaterally to disturb these final orders. An application must be made by a party who is directly affected by the Order and no such application has been made: ***O'Docherty*** [83].

132. Ms Wilkinson addressed this point last in her written submissions. She did so because she contended, I consider correctly, a proper understanding of the jurisdiction of the Court to reconsider injunctions granted against "Persons Unknown" does engage wider considerations of the nature of the relief that the Court has granted.

133. Ms Wilkinson agreed, broadly, with Ms Bolton's submission that a permission to apply provision in a final order does not permit a party to reargue the merits. She disagreed with the submission that a change of law cannot be relied upon as a change of circumstances that might justify a reconsideration under a permission to apply. She referred to §24-050 in *Gee on Commercial Injunctions* (7th edition), which contains the following summary:

> "… When a final injunction is granted following adjudication of the substantive claim the defendant who seeks discharge or variation of that injunction cannot be allowed to reopen the underlying merits and to reargue the case for the injunction on the merits, unless there has been some special element, such as misleading the court to procure the injunction, or abuse of the process in procuring the injunction, or a material unforeseen change in circumstances, or that there has been a material change in the law (***Advent Capital Plc -v- Ellinas Imports-Exports*** **[2005] 2 Lloyd's Rep 607** [63]-[74]). The remedy otherwise is by appeal. The words "liberty to apply" inserted into a final injunction do not permit a rearguing of the merits or an application based on matters which were foreseeable at the time the injunction was granted (***Co-operative Insurance Society Ltd -v- Argyll Stores Holdings Ltd*** **[1998] AC 1, 18A-C** *per* Lord Hoffmann.) Their ambit is a matter of interpretation of the order and depends upon the wording of the final order and the circumstances which existed at the time the order was made. Where it is desired to reserve the power to vary an injunction by references to certain foreseeable matters which might arise subsequently, clear wording should be inserted reserving this power. CPR r.3.1(7) provides that a power under the Rules to make an order includes a power to vary or revoke an order. However this does not detract from the general principle that the merits of a case are to be adjudicated upon once and once only, and that relitigation of those merits once adjudicated upon finally, is not permitted (***Thevarajah -v- Riordan*** **[2016] 1 WLR 76**)

134. Finally, Ms Wilkinson submitted that ***Koshy*** was not authority for the broad proposition, advanced by Ms Bolton, that CPR 3.1(7) cannot be a source of jurisdiction for the Court to reconsider the terms of an injunction granted by way of final order. The reason why reliance could not be placed on CPR 3.1(7) in ***Koshy*** was because the original order had been made under the Rules of the Supreme Court, rather than the Civil Procedure Rules. Ms Wilkinson argued that all injunctions are made under

s.37 Supreme Court Act 1981 (or other express statutory provisions), but they were nevertheless made under CPR 40.

## (2) Decision

135. Ms Bolton's submissions represent the orthodox position where a final judgment is granted in conventional civil litigation between identifiable parties. The requirements of finality in litigation underpin the principles that she has identified. The analysis begins to break down once the attempt is made to apply these principles to litigation where the defendants are "Persons Unknown". It remains conceptually sound if applied to "Persons Unknown" where the defendants are identifiable at the point at which judgment is granted; they are defendants to the claim and bound by the order. Their rights to apply to vary or discharge the order will probably be as limited as the rights that would have been available to a named defendant.

136. However, it is legally unsound to attempt to impose concepts of "finality" against "Persons Unknown" who are newcomers and who only later discover that they fall within the definition of "Persons Unknown" and after judgment has been granted. It is quite obvious that the permission to apply provisions in the orders granted to LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC were included precisely because it was recognised that it would be fundamentally unjust not to afford to such newcomers the opportunity to ask the Court to reconsider the terms of the order. A simple review of the terms of these three orders demonstrates how inappropriate and unfair it would be to apply any notion of "finality" so as to oust the jurisdiction of the Court to reconsider the terms of the injunction.

137. The operative parts of the injunction order in the three cases were in the same terms (even with similar same spelling and grammar errors). In respect of the relevant "Land", "Persons Unknown" were prohibited from:

> "(1) Setting up an encampment on any Land identified on the attached map and list of sites without written permission from the local planning authority, or planning permission granted by the planning inspector.
>
> (2) … entering and/or occupying any part of the Land identified on the attached map and list of sites for residential purposes (temporary or otherwise) including the occupation of caravans/mobile homes, storage of vehicles, caravans and residential paraphernalia
>
> (3) … bringing onto the Land or stationing on the Land any caravans/mobile homes other than when driving through the London Borough of Barking and Dagenham or in compliance with the parking orders regulating the use of car parts (sic) or with express permission from the owners of the Land.
>
> (4) deposit (sic) or cause to be deposited, controlled waste in or on the Land unless a waste management license (sic) or environmental permit is in force and the deposit is in accordance with the license (sic) or permit."

138. The orders in the claims brought by LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC were directed at "Persons Unknown". In the claim brought by LB Barking & Dagenham, in the Claim Form, the "Persons Unknown" were defined as "*Persons Unknown being members of the traveller community who <u>have</u>*

*unlawfully encamped within the borough of Barking and Dagenham*" (emphasis added), i.e. those who had *in the past* set up encampments. In the LB Redbridge claim, the 70th Defendants "Persons Unknown" were described in the injunction order as "*Persons Unknown forming unauthorised encampments within the London Borough of Redbridge*" (the Claim Form had defined "Persons Unknown" as "*Persons Unknown forming or intending to form unauthorised encampments in the London Borough of Redbridge*"), by contrast people who *in the future* would set up encampments. The orders in the cases of LB Redbridge and Basingstoke & Deane BC and Hampshire CC even contained, exceptionally, a power of arrest, requiring the arresting officer to bring any person found to be in breach of the order before the Court within 24 hours of his/her arrest.

139. No doubt recognising that the injunction order was intended to bind people who had had no notice of the proceedings, each order contained an express permission to apply in the following terms:

> "The Defendants may each of them (or anyone notified of this Order) apply to the Court on 72 hours written notice to the Court and the Claimant to vary or discharge this Order (or so much of as if (sic) it affects that person)."

140. The three orders share the following common features:

(1) The geographical areas made subject of each injunction were wide-ranging and practically borough-wide. For members of the Gypsy and Traveller community (but not limited to them), the injunctions represented a total ban on stationing a caravan or other vehicle on the defined Land for any period. If a person, with knowledge of the injunction, stayed overnight in a caravan at one of the locations, without permission, s/he was liable to be in contempt of court even if the stay caused no damage or other inconvenience. For the two orders that included power of arrest, it also rendered the individual liable to arrest.

(2) The orders granted to LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC, were granted against "Persons Unknown" without any description of them. Even at the time these orders were granted, this form of injunction was not in accordance with the Description Requirement (see [49] above). For this reason, at least, an injunction would not now be granted against "Persons Unknown" in the terms that they were granted to LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC. The lack of description of "Persons Unknown", coupled with the width of the terms of the injunction, also meant that, for all practical purposes, the relevant injunction was made *contra mundum*. There is no way of identifying (other than the named defendants) who was a defendant at the grant of the final order, but (as was the clear intention) it certainly applied to newcomers once they had notice of its terms.

(3) All three injunctions were intended to bind newcomers. Even in the case of LB Redbridge, where there was some attempt to describe the "Persons Unknown" defendants, the injunction was not limited to those who had, by 23 November 2018, formed an unauthorised encampment on the relevant land.

(4) Despite being "final orders" all three injunctions contained express permission to apply, and two were expressly made subject to "further order" of the Court.

141. In my judgment, the inclusion of such a permission to apply in a final order is an implicit recognition that the relevant proceedings were not likely to have been brought to the attention of all of those who fell within the definition of the Persons Unknown defendants. The permission to apply was a necessary – but belated – safeguard to prevent unfairness to such unnotified defendants. As Mr Anderson QC submitted, between the relevant claimant and the newcomers, there could be no *res judicata*. That is clearly correct. For such newcomers, an application to the Court to vary or discharge the injunction order would not be an attempt at re-litigation; for them it would be the first opportunity to be heard and to ask the Court to consider their own circumstances.

142. But the implications go further. The express recognition by the claimant, and the Court, that there existed a group of unidentified defendants who were never made aware of the proceedings and, in respect of whom fairness required a permission to apply be provided, calls into question whether the order for alternative service was correctly granted in the first place; and, with it, the whole foundation of the jurisdiction over the defendants for the reasons explained in ***Cameron***. This is just one of the problems when an order sought against "Persons Unknown" seeks to capture newcomers.

143. To an extent, the debate about the particular provisions granting permission to apply in these three cases is something of a distraction. Even had such provisions not been included in the final injunction orders, it is tolerably clear that such newcomers, not having been parties to the litigation at the time when the order was granted, would have been able to apply to the Court to vary or discharge the injunction, as it affected them, under CPR 40.9. Ms Wilkinson is correct to submit that the exercise by the Court of any jurisdiction to set aside or vary an injunction granted by final order is, in cases against "Persons Unknown", dependent upon the nature of the judgment that the Court has actually granted.

144. I can deal with Ms Bolton's final point – that the Court can act only in response to an application to vary/discharge – relatively shortly. During her submissions, I pressed Ms Bolton as to how far her argument went. I posited the example of a group of 1,000 individuals who fell within the category of persons unknown, but who were newcomers in the sense that they had not set up an encampment on any of the parts of the land covered by the injunction until after the grant of the final order. Assuming for the purposes of this argument that the final injunction bound them as newcomers, Ms Bolton's submission was that, as the order was "final", the Court could do nothing about the injunction of its own initiative. The Court could only act in response to an application to vary or discharge made by one or more of the 1,000 newcomers. Further, even if one newcomer's application to discharge the order were successful, the Court could only discharge the injunction in respect of the single person who had made the application; the injunction would continue to bind the other 999.

145. The case of ***O'Docherty*** provides no support for this stark submission of judicial impotence. It is authority for the proposition that, in conventional *inter partes* litigation, a permission to apply in a final order does not permit an application to be made to vary or discharge an order based upon a subsequent change in interpretation of the law. This principle is premised on the recognition that, following an *inter partes* determination

on the merits, the court has made its decision and granted an order in consequence. A party cannot have a second bite at the cherry (at least at first instance) under the guise of a permission to apply. Newcomers to the litigation brought by LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC, by exercising the right given to them under the permission to apply, would be having their first cherry bite. It is simply impossible to apply concepts of "merger" of cause of action upon judgment in circumstances when the claim is brought against a class of "Persons Unknown" only some of whom (if any) are even capable of being identified at the point at which judgment is entered.

146. In my judgment, it is a fundamental requirement of justice that, where an injunction has been granted by the Court, whether interim or final, that has the potential to bind people who have not had the opportunity to be heard before the order was granted, the Court must retain jurisdiction to set aside or vary that order, whether on application by the person affected or, if necessary, on its own initiative. I reject Ms Bolton's jurisdictional argument that, once a Court has granted an injunction by final order, the Court cannot exercise the power granted under CPR 3.1(7). In the case of final orders, there are, for good reason, well-established and significant limits on the Court's use of CPR 3.1(7) to revisit orders (reflecting and respecting the principle of finality to litigation), but the jurisdiction is not extinguished by a final order. The authority of ***Roult*** does not support Ms Bolton's submission. On the contrary, it recognises the continuing role of CPR 3.1(7) in instances where there are "*continuing orders which may call for revocation or variation as they continue*": [15] *per* Hughes LJ.

147. I prefer, and accept, Ms Wilkinson's submission that final orders are granted by the Court under CPR Part 40 and, consequently, CPR 3.1(7) continues to apply. By the same token, the Court retains jurisdiction to act of its own initiative to vary or discharge a "final order" under CPR 3.3. Taking the example of the group of 1,000 newcomers, the Court can act to vary or discharge the injunction made against the whole group of 1,000 whether in response to an application by one member of the group, or even of its own motion. The Court will not stand idly by and allow an injunction to be enforced (*a fortiori*, with the power of arrest) against persons who had no opportunity to be heard when the injunction was granted in circumstances where the Court is satisfied that the injunction should be varied or discharged.

148. Of course, the issue of whether the Court would need to have a jurisdiction to vary or discharge an injunction made by final order that binds newcomers leads on to the next issue for determination: whether final orders can bind newcomers.

## F: Issue 2: Final orders against Newcomers or *contra mundum* orders

149. This is the central issue that arises in the Cohort Claims. Can a court grant an injunction, by way of final order against "Persons Unknown", the effect of which is to bind people who were not parties to the litigation at the date on which the order was granted (the so-called "newcomers")? Although a final injunction has been granted only in a minority of the Cohort Claims (see [115] above), those local authorities that have been granted interim injunctions recognise that, if a final injunction against "Persons Unknown" does not bind newcomers, these injunctions will not achieve what the local authorities hoped they would. If the Court rules that final orders cannot bind non-parties, then I need to consider whether a *contra mundum* injunction order, like

that granted in the Wolverhampton case, can properly be granted. If so, that may potentially achieve what the "Persons Unknown" injunctions could not.

## (1) Do final injunctions in the Cohort Claims bind newcomers?

150. The immediate issue that confronts the local authorities is the Court of Appeal's decision in ***Canada Goose*** [89]-[90] which established that a final injunction against "Persons Unknown" binds only those who are parties to the proceedings at the date of the grant of the final order, not newcomers (see [24] above).

### (a) Submissions

151. Ms Bolton and Mr Bhose QC argue that the principle from ***Canada Goose*** does not apply to the type of litigation brought by the local authorities in the Cohort Claims. They submit that the claims are brought by the local authorities pursuant to statutory powers conferred by s.222 and s.187B. These sections confer powers upon a local authority to bring legal proceedings, and to seek injunctive relief, to restrain actual or threatened wrongs. The claims brought in the Cohort Claims were brought not to vindicate civil wrongs committed (or threatened) against the local authority itself as a private entity but against the wrongs to the public by unauthorised encampments on land.

152. Ms Bolton argued that, in respect of s.187B:

(1) an injunction pursuant to section 187B is capable of binding newcomers: ***South Cambridgeshire DC -v- Gammell*** [29], [31], [33]; ***Cameron*** [9] and [15];

(2) service of a Claim Form and order on a newcomer served with a statutory injunction is capable of being sufficient where it is placed in a prominent position on the land that is to be caught by the injunction: ***Mid Bedfordshire DC -v- Brown*** **[2005] 1 WLR 1460** [25]-[28]; ***Gammell*** at [29], [33]; ***Cameron*** [9], [15];

(3) the newcomer will become a party to the proceedings when they do an act which brings them within the definition of defendants in the particular case: ***Mid Bedfordshire -v- Brown*** [25]-[28]; ***Gammell*** [33];

(4) the newcomer will be in breach of an injunction where they act in breach of the terms of the Order, with knowledge of the order, before seeking to set it aside: ***Mid Bedfordshire*** [25]-[28]; ***Gammell*** [33]; and

(5) the order itself should indicate the correct way in which to challenge the injunction, by containing an express provision giving the newcomer permission to apply: ***Gammell*** [25].

153. Ms Bolton, Mr Bhose QC and Mr Giffin QC submitted that the decision of the Court of Appeal in ***Canada Goose*** that a final injunction binds only the parties at the date of judgment is either (a) limited to protester cases, and does not extend to Traveller Injunctions obtained by local authorities in exercise of their statutory powers; or (b) *obiter dicta* and should be distinguished or not followed.

154. Mr Bhose QC advanced four arguments as to why ***Canada Goose*** should be distinguished:

(1) ***Canada Goose*** was a protest case in which Articles 10 and 11 were engaged. At the start of its judgment, the Court framed the appeal as concerning "*the way in which, and the extent to which, civil proceedings for injunctive relief against 'persons unknown' can be used to restrict public protests*" [1]. The procedural guidelines it gave in relation to interim relief were said to be applicable in "*protester cases like the present one*" [82]. Then, when the Court was considering final relief in [89] it qualified what was said by referring to "*protestor case against "persons unknown'*"" and to "*protestor actions*", before noting that the appellant's "*problem*" was that it was seeking to invoke the court's civil jurisdiction as a means of controlling "*ongoing public demonstrations*" [93]. Had the Court intended [89]-[95] to have any broader effect than in "protest" cases, it would not have framed its judgment in these terms, in particular the phrases of limitation in [89].

(2) Second, like ***Ineos*** and ***Caudrilla***, it was a case where a private claimant was seeking to protect its own commercial interests against interference with its private law rights against newcomers. Here, by contrast, the claims are brought by public authorities for the public good and the Court of Appeal heard no argument as to whether different principles apply in claims such as these. Mr Bhose QC accepts that the Court did hold ([91]) that, in ***Birmingham CC -v- Afsar*** [132], Warby J was correct to "*take the same line*" as had been taken in ***Canada Goose*** at first instance. ***Afsar*** was a case brought by a local authority, seeking to restrain a protest outside a school, in which reliance was placed, *inter alia*, on s.222 and s.130. However, Mr Bhose QC argues it is not clear from Warby J's judgment what argument was advanced on the point. The Judge said (having referred to the reasoning in ***Canada Goose*** as "*persuasive*") that it seemed to him, "*subject to any further argument*", that a final injunction could not be made against newcomers. In addition, there is no consideration in Warby J's judgment as to whether the principles for the grant of final relief are different in claims brought in reliance on those statutory provisions. In these circumstances it cannot be said that the arguments made by the Claimant in the instant claim are closed-off by the Court of Appeal's short-form treatment of ***Afsar***.

(3) There is nothing in the judgment to call into question, or qualify, the Court of Appeal's judgment the previous month in ***LB Bromley***. In that case, the only judgment was given by Coulson LJ who was then part of the constitution which delivered the judgment of the court in ***Canada Goose***. ***LB Bromley*** was similar to the Cohort Claims in that injunctive relief was sought on a *quia timet* basis to restrain the unauthorised occupation and/or deposit of waste on land owned and managed by the local authority. The judge granted final injunctions in respect of fly-tipping and waste against "persons unknown", i.e. newcomers ([2019] EWHC 1675 (QB)). However, none of the "Persons Unknown" attended. London and Gypsy Travellers intervened, by counsel, but it was no part of their argument that final injunctions should not be granted to restrain this form of behaviour [16]. Nor was any argument addressed to whether a final injunction could be granted because of the *in personam* principle. The appeal in

> ***LB Bromley*** was by the local authority against the refusal to grant final injunctions relating to residential encampment. There was no respondent's notice against the injunctions that had been granted. It is right to note that Coulson LJ did refer to the *in personam* principle [33], although ***Cameron*** was not referred to. Nevertheless, Coulson LJ did not go on to say that final injunctions cannot in fact be granted against newcomers. Mr Bhose QC argues that Coulson LJ's comments in [34] suggest that he considered they could be, and he rejected Liberty's submission that injunctions of this type should *never* be granted: [108]. Had the Court in ***Canada Goose*** meant [89] to apply also to claims such as those made by LB Bromley, and in which it had offered guidance just the previous month, it would have explained this. It did not.

(4) Fourth, it is clear from ***Sharif***, that the Court of Appeal does not regard ***Canada Goose*** as necessarily applying to injunctions under s.222. No issue was taken by the appellant in relation to the newcomer point. If ***Canada Goose*** at [89] has universal application in claims for injunctions against newcomers, the court in ***Sharif*** would have been bound so to hold.

Alternatively, Mr Bhose QC (and Mr Anderson QC for Wolverhampton) reserved the argument that, on this point, ***Canada Goose*** was wrongly decided.

155. Mr Giffin QC developed an argument that if a final injunction binds only the parties to the claim at the date of the order, then it leads to many unsatisfactory consequences. He submitted that, if this principle were correct, then its application and effect had apparently been overlooked by the Courts in ***Meier***, ***Cameron*** and ***LB Bromley*** and he pointed to the apparent endorsement of the availability of such injunctions by Lord Sumption in ***Cameron*** [15] and Coulson LJ in ***LB Bromley*** [34]. He also referred to my observations in the ***LB Enfield*** case ([2020] EWHC 2717 (QB)), when I refused to grant an interim injunction to restrain fly-tipping by "Persons Unknown":

> [41] The difficulty is this: even if I were to grant an interim injunction in terms that were proportionate and targeted at the type of fly tipping that I have described, there would be no real prospect of serving the injunction order. No-one is presently occupying any of the land and carrying out fly-tipping on it. The Claimant seeks orders for alternative service of the Claim Form and any injunction. But, even assuming that such orders were made, the court would shortly thereafter move to consider what final relief should be granted. In a typical Persons Unknown claim like this, no Acknowledgement of Service is filed and there is no attendance by, or representation of, any defendant at the final hearing. In this case, for example, the Interim Order was granted on 21 July 2017 and the Final Order at a hearing on 4 October 2017, i.e. less than three months between initial and final hearings.
>
> [42] The point can be demonstrated in this way. Assume that the Court were to make a final order in the terms sought by the Claimant against Persons Unknown. It would not provide any real protection to the Claimant because, in all probability, the Claimant would not be able to demonstrate whether any individual person had become a defendant to the claim. If no one can be identified as a defendant, the final order binds no-one. ***Canada Goose*** establishes that final injunctions against "Persons Unknown" do not bind newcomers. The consequence is that a hypothetical fly tipper who turned up at any of the ninety-six sites in respect of which the Court had made the final

order would not actually be restrained by the injunction: s/he is not bound as an original defendant to the claim and s/he is not bound as a newcomer.

[43] The result would be most unsatisfactory: barring some unusual development in the case, any interim injunction the Court granted would be more effective and more extensive in its terms than any final order the court could grant. As there is unlikely to be much by way of development between the grant of the interim and final order in this case, this raises the question as to whether the court ought to grant any interim relief at all. This arises because, unlike ***Canada Goose***, at the date of grant of any interim injunction, no people exist in the category of Persons Unknown.

[44] In terms of practical reality, the only way that the London Borough of Enfield could achieve what it seeks to do, is to have a rolling programme of applications for interim orders. As soon as a final order was granted it would become worthless against "newcomers". To continue effective injunctive relief against "newcomers" the Council would have to commence fresh proceedings and seek a new interim order. That would be litigation without end. It presents a real challenge to the conventional understanding of adversarial civil litigation as it is conducted in this jurisdiction.

156. Mr Giffin QC's simple submission is that a programme of rolling interim injunctions – required because a final injunction would be practically worthless – would be anomalous and absurd. On the facts of Walsall's own case, some 14 caravans and their occupiers came onto the specified sites in breach of the interim injunction and before the final injunction was granted. Those occupiers (although still not known by name) were party to the proceedings and therefore "identifiable" before the date of the final order. If the effect of ***Canada Goose*** is that a final injunction could be granted against those 14 or so persons as "Persons Unknown", but not against anyone else, there is no logical reason why the final injunction should not bind those who come onto the land after the order is made. The quality of their wrongdoing is no different and the impact on the claimant is no different; yet, Mr Giffin QC submits, the legal result is said to be radically different.

157. He argues that the position of the "newcomers" is safeguarded by their having permission to apply. What is the problem, he asks, about the newcomers being bound by the injunction if they choose not to take advantage of the permission to apply? Maintaining such a sharp distinction between those who do the prohibited act – and therefore become a defendant to the claim – before or after the date of the final order will serve as a perverse incentive to claimants not to use their best efforts to bring cases to trial speedily. He suggests that, if final orders bind only the parties to the proceedings, the result will be that local authorities will adopt the expedient of immediately applying for a further interim injunction as soon as a final order is granted. If that were not permitted, then he argues that "*the whole* **Bloomsbury Publishing** *and* **Ineos** *jurisdiction would in effect have disappeared, save in a small proportion of unusual cases*". Alternatively, local authorities will adopt the procedure that was utilised prior to ***Bloomsbury Publishing*** of identifying one defendant and then seeking an order under CPR 19.6 making him/her a representative defendant for a wider class.

158. Ms Wilkinson submitted that the answer to Issue 2 is that, whilst the court does have the power to grant orders against "Persons Unknown", it is wrong in principle to grant

final injunctions that bind newcomers and that there is no justification in the present cases for extending the exceptional *contra mundum* jurisdiction to such orders.

159. She argued that some of the conceptual difficulties arise because the local authorities' submissions tend to treat a final injunction as a freestanding remedy flowing from the court's undoubted power to prohibit an apprehended breach of a right, rather than as a remedy granted as a result of the determination of rights between the parties, as ***Cameron*** and ***Canada Goose*** made clear.

160. Ms Wilkinson drew the Court's attention to one further way in which a final Traveller Injunction might bind non-parties: a claim against a representative defendant under CPR 19.6. That rule enables the court to permit a claim to be maintained against a defendant as a representative of a group of others who have the "*same interest in a claim*". Representative actions do offer an important safeguard. CPR 19.6(4)(b) only permits an order to be enforced against a person who is not a party to the claim with the permission of the Court. I do not consider, however, that a representative claim is a viable option by which to obtain a Traveller Injunction. The class of person that the local authorities are seeking to target is so large that it would be impossible to suggest that each member of the class had the same interest in the claim (even applying a liberal approach to what amounts to the "same interest"). The circumstances of different members of the Gypsy and Traveller communities would vary significantly, and although members of these communities are the principal target of the Traveller Injunctions, they are not the only ones who would be bound by its terms. None of the local authority claimants in the Cohort Claims has sought to bring a claim against a representative defendant. Mr Giffin QC in his submissions noted that HHJ Pelling QC rejected the representative defendant option in ***Cuadrilla -v- Persons Unknown*** **(unreported QB, 11 July 2018)**.

**(b) Decision**

161. The Court undoubtedly has *the power* to grant an injunction that binds non-parties to proceedings. For the High Court, that jurisdiction comes from s.37 Senior Courts Act 1981: ***South Carolina Insurance Co -v- Assurantiue Maatschappij 'De Zeven Provincien' NV*** **[1987] AC 24, 39-40** *per* Lord Brandon and **44** *per* Lord Goff; ***Mercedes Benz -v- Leiduck*** **[1996] AC 284, 308** *per* Lord Nicholls; ***Broadmoor Special Hospital Authority -v- Robinson*** **[2000] QB 775** [20]-[21] *per* Lord Woolf; ***In re BBC*** **[2010] 1 AC 145** [57] *per* Lord Brown. The power extends, exceptionally, to making *contra mundum* injunction orders: ***Venables -v- News Group Newspapers Ltd*** **[2001] Fam 430**.

162. As to the circumstances in which the Court will exercise this power to grant relief by way of injunction, Ms Wikinson has, in my judgment, identified the correct starting point: recognition of the fundamental difference between interim and final injunctions.

(1) Interim injunctions were described by Lord Diplock in ***Siskina (Owners of cargo lately laden on board) -v- Distos Compania Naviera SA (The Siskina)*** **[1979] AC 210, 256** as intended to protect the *status quo* pending a final determination of the merits of the claim:

> "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing

> cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction to the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the *status quo* pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

(2) *Snell's Equity* (34th edition) (at §18-02) describes a final injunction in these terms:

> "A perpetual (or final) injunction can only be granted after the court has been able to adjudicate upon the matter. A perpetual injunction is so called because it is granted at the final determination of the parties' rights and not because it will necessarily operate forever. For instance, a perpetual injunction may be granted so as to continue only during the currency of a lease. By contrast an interlocutory (or interim) injunction is granted before the trial of an action; its object is to keep matters in *status quo* until the question at issue between the parties can be determined." (emphasis added)

163. When the Court grants a final injunction, it is (or is part of) the *remedy* to which the Court considers the claimant has demonstrated an entitlement, in respect of those against whom judgment is granted ("the Trial Defendants"), based upon a cause of action or other entitlement following either a trial on the merits or other judgment in his/her favour (for example default or summary judgment). An interim injunction is a provisional protective measure, usually granted at an early stage in the proceedings pending resolution of the claim.

164. In appropriate cases, an interim injunction can be granted before the issue of a Claim Form. However, the emergency jurisdiction to grant such orders is provisional and strictly conditional: ***Cameron*** [14]. It is provisional, in the sense that it is an interim order designed to protect the *status quo*, and conditional because the claimant must, thereafter, serve the Claim Form on the defendant in order to establish the Court's jurisdiction to determine the claimant's claim against the defendant. If a claimant fails to serve the Claim Form on the defendant, jurisdiction will not have been established and any interim injunction will be refused or is liable to be discharged (see [46]-[48] above).

165. The defendants to a civil claim, against whom an interim injunction has been granted, may not, ultimately, be persons against whom a final injunction is granted as a Trial Defendant. The claimant may fail to establish liability in respect of a particular defendant, or, in respect of those against whom liability is established, the court may refuse to grant an injunction as part of the final relief. Before final judgment, the defendants to the claim may also fluctuate; defendants may be added or removed.

166. These principles also apply equally to proceedings which are brought against (or include) "Persons Unknown". The Claim Form must be served on "Persons Unknown". Ordinarily, that will require an order for alternative service under CPR 6.15. If the claimant cannot obtain an order for alternative service – because no method can be devised that can reasonably be expected to bring the proceedings to the attention of all of those identified as the "Persons Unknown" – and the Court does not

dispense with service of the Claim Form – then the Court's jurisdiction cannot be established over the "Persons Unknown". In that event, there will be no viable civil claim and there will be no question of any injunction being granted, whether interim or final.

167. It is now well-established that the Court can grant an interim injunction against "Persons Unknown" which will bind all of those who fall within the description of the "Persons Unknown" in the interim injunction order. That may include people who only fall within the definition of Persons Unknown as a result of doing some act after the grant of the interim injunction: ***Cameron*** [15]; ***Ineos*** [30]; ***Canada Goose*** [66]. The key decision underpinning this principle is ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658**. It is upon this authority that Ms Bolton advanced her submission (see [152(3)] above) that the newcomer becomes a party to the underlying proceedings when they do an act which brings them within the definition of the defendants to the claim ("the *Gammell* principle").

168. At the interim injunction stage, there is no conceptual difficulty with the *Gammell* principle. At that point, the Court has not determined the liability of the Trial Defendants or made any final order against them. ***Gammell*** was a case of breach of an interim injunction. The local authority had brought a claim, pursuant to s.187B, against some 18 individuals but also against "Persons Unknown" who were described in the Claim Form (as amended) as:

> "Persons unknown (being persons other than [the named defendants]) causing or permitting hardcore to be deposited and/or to station caravans, mobile homes or other forms of residential accommodation to be stationed, or existing caravans on land to be occupied at Victoria View, Smithy Fen, Cottenham, Cambridge"

169. At first instance, the Judge refused to grant an interim injunction against "Persons Unknown" on the grounds that he lacked jurisdiction to do so. His decision was reversed by the Court of Appeal ([2004] EWCA Civ 1280) and, on 17 September 2004, the Court of Appeal granted an interim injunction in the following terms:

> "Persons unknown [other than the named defendants] causing or permitting hardcore to be deposited other than for agricultural purposes on land known as plots 1-11, Victoria View… caravans, mobile homes or other forms of residential accommodation to be stationed other than for agricultural purposes on the said land; or existing caravans, mobile homes or other forms of residential accommodation on the said land to be occupied other than for agricultural purposes."

170. Subsequently, on 20 April 2005, an individual, "KG", moved on to plot 10 with her caravan. The terms of the interim injunction were communicated to KG on 21 April 2005 and so, from that point, she was in breach of the interim injunction. At first instance, KG was found guilty of contempt of court. The Court of Appeal dismissed her appeal ([2006] 1 WLR 658), finding [32]:

> "…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."

171. KG became a defendant to the proceedings, whilst they were still at an interim stage, because she did an act – stationing her caravan on plot 10 – which placed her in the definition of "Persons Unknown" in the interim injunction order. By so doing, she became an individual who fell within the description of defendants to the claim. She was also identified by name, but the result would have been the same had "KG" not been identifiable by name, but by photograph. Critically, however, she was capable of being identified as having become someone who, by her actions, had come within the definition of "Persons Unknown" in the interim injunction. Had a final injunction subsequently been granted in the ***Gammell*** case, then KG would have been bound by it because she was, by that point, identifiable as a party to the claim.

172. As has been recognised in subsequent authorities, there can be no objection to the operation of the *Gammell* principle at the interim stage. Providing the Court's jurisdiction has been established over a defendant by service of the Claim Form (whether a named defendant or a "Person Unknown" in respect of whom service of the Claim Form can be effected by an alternative service order), then there is jurisdiction to grant an interim injunction in terms which will apply not only to those who have already carried out the allegedly wrongful acts but also newcomers who may commit the wrongful acts in the future. Similarly, at the interim stage, there is no objection, in principle, to adding further defendants to the claim, even if that is done in the dynamic way endorsed by the *Gammell* principle.

173. However, ***Gammell*** is not authority for the proposition that a person can become a defendant to proceedings, after a final injunction is granted, by doing an act which brings him within the definition of "Persons Unknown" in that order if s/he was not a party when the final injunction was granted. ***Mid Bedfordshire -v- Brown*** adds nothing to ***Gammell*** on this point.

174. To have jurisdiction over the Trial Defendants, the Claim Form has to have been served on the Trial Defendants (whether personally or pursuant to an order for alternative service). An order made by way of final judgment results either from default on the part of a properly served defendant, or of the court's adjudication of the merits of the claimant's claim against the Trial Defendants (whether by way of summary judgment or judgment after trial). If at the date of the judgment, there remain Trial Defendants that the claimant still cannot *name*, relief granted against these "Persons Unknown" nevertheless requires them to be *identified*. It is fundamental to our process of civil litigation that the Court cannot grant a final order against someone who is not party to the claim. A Court cannot, at a trial, adjudicate whether a claimant has established an entitlement to a remedy against a defendant unless it is possible to identify who that defendant is and whether the claimant has demonstrated, by evidence, that s/he has committed some act that entitles the claimant to relief (see ***Canada Goose*** at first instance [146], [155]-[162]). Fundamentally, a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently *become* one. As the Court of Appeal noted in ***Canada Goose*** [92]:

> "The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end."

175. I reject the submissions that Traveller Injunctions are not subject to these fundamental rules of civil litigation or that the principle from ***Canada Goose*** is limited only to 'protester' cases, or cases involving private litigation. The principles enunciated by the

Court of Appeal in ***Canada Goose*** (drawn from the Supreme Court decision in ***Cameron***) are of universal application to civil litigation in this jurisdiction. Local authorities, bringing litigation for the public good, may be afforded certain privileges, for example that, generally, they are excused from the requirement to give a cross-undertaking in damages when seeking an interim injunction, but otherwise they are subject to the same rules that apply to all litigants who pursue civil claims.

176. Nothing in s.222, s.187B, or s.1 ASBCPA (or any of the authorities) suggests that Parliament has granted to local authorities, exceptionally, the ability to obtain final injunctions in civil proceedings against "Persons Unknown" which apply to and bind newcomers. Given that, in my judgment, the granting of such a power would represent a radical (and unprecedented) departure from the principles of civil litigation in this jurisdiction, one would have expected to see such a power granted by express words. There is no hint of such a power in the legislation. On the contrary, as already noted, s.222 does not provide any cause of action (see [55] above); the procedural rules that apply to s.187B positively appear to rule out commencing proceedings against "Persons Unknown" who cannot be identified by the means required in Practice Direction §20.4, still less obtaining final relief against newcomers (see [63] above); and my analysis of s.1 ASBCPA had led me to conclude that it cannot be used as a basis for a "Persons Unknown" injunction and specifically not one made by way of final order (see [67]-[68] above). Warby J was correct to apply the *Canada Goose* principles when refusing a final order against "Persons Unknown" in ***Afsar***, and this authority supports the conclusion that the argument that local authorities are in some privileged position to obtain final orders that bind newcomers must be rejected.

177. I also reject Mr Bhose QC's submissions as to the effect of ***Sharif -v- Birmingham City Council*** **[2020] EWCA Civ 1488**. In that case, the local authority had obtained an injunction against "Persons Unknown", on 3 October 2016, to prohibit 'street cruising' throughout its local authority area for a period of three years (subsequently, on 22 October 2019, the injunction was extended until 1 October 2022). "Street-cruising" was defined in a schedule to the order and is set out in [3] of the Court of Appeal decision. The key facts of the case are as follows:

(1) On 27 September 2018, the council served an Application Notice on Mr Sharif seeking his committal for contempt of court. It was alleged that he had breached the terms of the injunction by participating in a 'street cruise' in the prohibited area and had caused danger to other road users by dangerously racing his vehicle against another. He had been arrested and had applied to discharge the injunction.

(2) On 24 May 2019, the application to discharge was refused. Mr Sharif appealed. In summary, he argued that where Parliament has provided a remedy and procedure in the form of PSPOs to combat anti-social behaviour, the Court should give effect to Parliament's intention and injunctive relief should be granted only in very rare circumstances. In support of this argument he relied, principally, on ***Birmingham City Council -v- Shafi*** **[2009] 1 WLR 1961**.

178. In the final paragraph of his judgment, Bean LJ said this, under the heading "*The grant of injunction against 'Persons Unknown'*":

> [44] No point was taken in the court below about whether the original grant of the injunction against persons unknown and the provision for service by advertisements and prominent local notices was open to challenge. Since the order was first made, this question has been considered (though not in relation to an injunction of the same type) in this court in ***Ineos*** and ***Canada Goose***. It may have to be considered again in any future case about injunction to restrain anti-social behaviour by persons unknown. I simply record that we were told by [counsel for the local authority] that the "persons unknown" issue was the reason why Birmingham did not apply for an anti-social behaviour injunction under s.1 of the 2014 Act.

179. As noted, the local authority had not made its application an injunction pursuant to s.1 ASBCPA, but under s.222 to restrain breaches of the criminal law. The appeal was argued on the ground that the Court should not make an injunction in the terms granted where the local authority could have applied for a PSPO; an argument that was rightly rejected on the basis of previous authorities including ***Birmingham City Council -v- James*** **[2014] 1 WLR 23**.

180. The short point in answer to Mr Bhose QC's submissions on ***Sharif*** is that the appeal did not consider the point about whether final injunctions granted against "Persons Unknown" can bind newcomers; indeed, the Court specifically left open the point for decision in later cases. Likewise, insofar as any support can be found in ***LB Bromley*** for the contention that Traveller Injunction granted by final order can bind newcomers, the simple point is the Court of Appeal was not in that case considering the point that I have to decide.

181. ***LB Hackney -v- Persons Unknown*** **[2020] EWHC 3049** was an application for an interim injunction in which Johnson J was satisfied the *Canada Goose* principles were met. It will remain to be seen whether the local authority claimant in that case will, by the time of the final hearing of the claim, have identified (by name or other description) any individuals who are defendants to the claim at the point at which the Court comes to consider what, if any, final relief should be granted.

182. The submissions of Mr Bhose QC indirectly, and those of Mr Anderson QC (and probably Mr Giffin QC) directly, sought a form of remedy that is not *in personam* but *in rem*; the ability to bring a claim and seek relief not against particular individuals, but to prohibit certain conduct generally (whoever engages in it). However, the authorities make clear that civil litigation in this jurisdiction is (with the particular exception of a narrow category of *contra mundum* orders) limited to the former: ***Iveson -v- Harris*** **(1802) 7 Ves. Jun. 251, 256–7** *per* Lord Eldon: ***Spycatcher*** 224A-B, *per* Lord Oliver; ***Attorney General -v- Newspaper Publishing plc*** **[1988] Ch 333, 369**, *per* Sir John Donaldson MR; ***Environment Secretary -v- Meier*** **[2009] 1 WLR 2780** [6] *per* Lord Rodger; ***Cameron*** [14] *per* Lord Sumption; ***Canada Goose*** [89] *per* Coulson LJ. The latter is a form of quasi-legislation, not litigation (see the discussion in Berryman, *Recent developments in the Law of Equitable Remedies: What Canada can do for you* (2002) 33 VUWLR 51, 61 and further [230] below).

183. In civil proceedings, the Court's processes are limited to considering the evidence and submissions of the parties (and anyone likely to be affected by the grant of an injunction). That adversarial process has certain inherent weaknesses, particularly so where, as the Cohort Claims demonstrate, litigation against "Persons Unknown" is

likely to be wholly one-sided and not adversarial at all. In ***LB Bromley***, Coulson LJ explained:

> [31] It is, however, appropriate to add something about procedural fairness, because that has arisen starkly in this and the other cases involving the gipsy and traveller community.
>
> [32] Article 6 of the Convention provides: "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
>
> [33] This is reflective of a principle of English law that civil litigation is adversarial: "English civil courts act *in personam*. They adjudicate disputes between the parties to an action and make orders against those parties only." (***Attorney General -v- Newspaper Publishing plc*** **[1988] Ch 333, 369C** *per* Sir John Donaldson MR.) This allows disputes to be decided fairly: a defendant is served with a claim, obtains disclosure of the evidence against them, and can substantially present their case before the court (***Jacobson -v- Frachon*** **(1927) 138 LT 386, 393** *per* Atkins LJ). This allows arguments to be fully tested.
>
> [34] The principle that the court should hear both sides of the argument is therefore an elementary rule of procedural fairness. This has the consequence that a court should always be cautious when considering granting injunctions against persons unknown, particularly on a final basis, in circumstances where they are not there to put their side of the case."

184. Although certain interim injunctions, granted in civil claims, can effectively prohibit certain conduct by non-parties, who have notice of its terms, under the ***Spycatcher*** principle, the fundamental principle remains that injunction orders do not bind third parties. Lord Nicholls explained in ***Attorney General -v- Punch Ltd*** **[2003] 1 AC 1046** [4]:

> "… It is a contempt of court by a third party, with the intention of impeding or prejudicing the administration of justice by the court in an action between two other parties, himself to do the acts which the injunction restrains the defendant in that action from committing if the acts done have some significant and adverse affect on the administration of justice in that action: see Lord Brandon of Oakbrook in ***Spycatcher*** 203D, 206G-H, and, for the latter part, Lord Bingham of Cornhill CJ in ***Attorney General -v- Newspaper Publishing plc*** **[1997] 1 WLR 926, 936**. Lord Phillips MR **[2001] QB 1028** [87] neatly identified the rationale of this form of contempt:
>
> > 'The contempt is committed not because the third party is in breach of the order – the order does not bind the third party. The contempt is committed because the purpose of the judge in making the order is intentionally frustrated with the consequence that the conduct of the trial is disrupted.'

185. The paradigm example of an interim injunction to which the ***Spycatcher*** principle applies is an interim non-disclosure order to prohibit publication of certain information. In ***Spycatcher*** itself, Lord Brandon (206A-C) identified an interim injunction to prohibit trespass as one that did *not* engage the principle. An interim injunction to

prohibit trespass on A's land by B would not prohibit trespass on the same by C, even if s/he had knowledge of the terms of the injunction that had been granted against B.

186. I reject Mr Giffin QC's arguments based on absurdity or perverse incentives. The concerns I expressed in the *ex-tempore* judgment in ***LB Enfield*** (see [155] above) do not, with the benefit of further consideration and on proper analysis, actually arise. Application of the *Canada Goose* principles will not lead to, or permit, a "rolling programme" of interim injunctions.

(1) First, on a proper application of the guidance from ***Ineos*** and ***Canada Goose***, a court would not grant an interim injunction against "Persons Unknown" unless it is satisfied that there exist people who, even if they cannot be named, are capable of being identified and served with the proceedings, if necessary, by an order for alternative service such as can reasonably be expected to bring the proceedings to their attention: ***Canada Goose*** [82(1)].

(2) Second, if a claimant is not able to serve the Claim Form upon the "Persons Unknown" defendants by a means of alternative service that the Court is satisfied can reasonably be expected to bring the proceedings to their attention, there will be no civil claim in which to grant or maintain an injunction. The claimant will simply not have established jurisdiction over the "Persons Unknown": see [46]-[48] and [164]-[166] above.

(3) Third, an interim injunction will only be granted against "Persons Unknown" if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief: ***Canada Goose*** [82(3)]. If the evidence in support of an interim injunction application only demonstrated a general risk that there might, at some point, be an unauthorised encampment on land by some unspecified person, the court would simply refuse the injunction. If the evidence does disclose a real and imminent threat of a tort being committed to justify a *quia timet* interim injunction against "Persons Unknown", the claimant will then have the period between then and the final hearing to identify the "Persons Unknown" defendants. Any final order, if granted, will bind only those identified parties as defendants.

187. In my judgment, once a final injunction is seen as a remedy flowing from the final determination of rights between the claimant and the Trial Defendants, rather than a remedy between the claimant and anyone who might ever infringe that right in the future, the importance of identification of the Trial Defendants becomes much clearer. As identified above, the final injunction in the cases brought by LB Barking & Dagenham (1st Claimant) and Basingstoke & Deane BC and Hampshire CC (16th Claimants) was sought and granted against "Persons Unknown" without further description. That is tantamount to a remedy *contra mundum*, was justified by evidence of actions of only a minority, to protect a right that has been, and is only likely to be, infringed by a few. More importantly, an order against "Persons Unknown", without further description, makes it impossible to identify the Trial Defendant(s); to assess, on the evidence, whether they have committed (or threatened) any wrongdoing justifying the grant of any remedy; or even for the Court to know whether they have been served with the Claim Form and thus brought within the jurisdiction of the Court.

188. Whilst, as recognised both in ***Cameron*** and ***Canada Goose***, there is a legitimate role for interim injunctions against "Persons Unknown", such remedies are conditional and are granted to protect the *status quo* pending determination of the parties' rights at a trial: ***Canada Goose*** [92].

189. In cases where a claimant wishes to bring a claim against defendants who are (or include) "Persons Unknown", then an interim injunction can be granted where the evidence demonstrates actual or threatened commission of a tort or other civil wrong by the "Persons Unknown". In the period between grant of any interim injunction and subsequent trial, the claimant must identify either by name or other method the persons against whom s/he seeks a final judgment. If a judgment is granted against the defendants, it will be against the defendants who can be named or identified by description even if some of them may be, at the date of the judgment, anonymous. They have to be identified sufficiently to enable the Court to consider whether the claimant is entitled to any remedy against them by way of final order. Consistent with the analysis in ***Cameron***, however, the final judgment cannot be granted against Category 2 defendants: defendants who are not only anonymous, but cannot be identified.

## (2) Can the Court grant a Traveller Injunction *contra mundum*?

190. In the light of my decision that Traveller Injunctions are subject to the principle that a final injunction only binds the parties to the action at the date of the order, I must consider whether the Court can grant similar relief, not against "Persons Unknown" but *contra mundum*.

### (a) The injunction granted to Wolverhampton CC

191. As already noted (see [117] above), in the Cohort Claims, Wolverhampton (36th Claimant) has been granted what, on its face, is a *contra mundum* injunction order. I should set out some of the history of this claim and the orders that have been made.

192. The Claim form was issued on 29 June 2018. Under Defendant, the Claim Form simply stated, "Persons Unknown". Under "details of claim", the council stated the following:

> "1. By this claim, the Claimant seeks to restrain unauthorised encampments from being set up by Persons Unknown on 60 sites in Wolverhampton which have been identified as being vulnerable to such encampments.
>
> 2. The Claimant seeks the following relief:
>
> (i) an injunction order;
>
> (ii) a power of arrest;
>
> (iii) declaratory relief;
>
> (iv) further or other relief;
>
> (v) costs.

3. The claim is brought pursuant to the following statutory provisions:

   (i) Section 222 of the Local Government Act 1972;

   (ii) Section 130 of the Highways Act 1972;

   (iii) Section 187B of the Town and Country Planning Act 1990

   (iv) Section 1 and 4 of the Anti-social Behaviour, Crime and Policing Act 2014;

   (v) Section 37 of the Senior Courts Act 1981; and/or

   (vi) Section 27 of the Police and Justice Act 2006

4. The Claimant has taken steps to ascertain the Defendant's (sic) identity but has been unable to obtain sufficient details to enable them to name individual defendants for the reasons set out in paragraph 37 of the Witness Statement of Shaun Walker dated 31 May 2018. The claim is therefore brought against Persons Unknown.

5. For the purposes of this claim, the Defendant is described as: "any person who enters and/or attempts to enter onto land in Wolverhampton for the purpose of setting up an unauthorised encampment and/or occupies and/or attempts to occupy any such land as part of an unauthorised encampment whether temporary or otherwise…"

193. Although issued under Part 8, Wolverhampton filed Particulars of Claim dated 28 June 2018. In it, particulars were given of alleged unauthorised encampments which had been set up by "Persons Unknown" since 2015; and incidents of anti-social behaviour alleged to have been committed by "Persons Unknown". The Particulars of Claim contained details of the alleged impact of the activities complained of on business, community, Wolverhampton CC and West Midlands Police. Under a heading, "*risk of displacement*", the council stated:

> "When an encampment is moved on, this frequently has the effect of displacing the problem as another encampment is set up elsewhere in Wolverhampton, whilst the Claimant is left to clear up the previous site and take steps to deal with the new one. The Claimant therefore becomes involved in an expensive game of 'cat and mouse' as the travellers simply move to a new site when they are evicted from their original site. The Claimant has also experienced displacement from other local authority areas, some of whom have been granted an injunction in relation to unauthorised encampments."

194. In support of the claim for an injunction, the Particulars of Claim averred:

> "Unless restrained… there is a significant likelihood that Persons Unknown will continue setting up unauthorised encampments in Wolverhampton.
>
> …
>
> For the reasons particularised above, the Claimant respectfully invites the Court to find that it is just and convenient and to exercise its discretion under section 37(1)

> of the Senior Courts Act 1981 to grant an injunction in the terms of the draft injunction which accompanies the application, or alternatively in such terms as the Court thinks fit
>
> The Claimant further invites the Court to attach a power of arrest to the injunction pursuant to section 27 of the Police and Justice Act 2006 and/or section 4 of the Anti-social Behaviour, Crime and Policing Act 2014 as the anti-social conduct has involved the use or threat of violence and/or poses a significant risk of harm to other persons." (emphasis added)

195. In respect of "Persons Unknown", the council stated:

> "The Claimant has attempted to ascertain the identity of the individuals who have trespassed upon land in order to set up unauthorised encampments but the Claimant has been unable to obtain sufficient details to enable them to name the individual defendants. Officers of the Claimant seek to obtain details when an unauthorised encampment occurs, but the people who are present are very reluctant to disclose their true identity.
>
> The Claimant has no way of ascertaining whether any details which are given are true or false as it is generally the intention of those present to frustrate the process so that they can remain on the land for as long as possible. When details are provided, this is frequently preceded by an individual asking an earlier caravan what name they gave. The Claimant can have no confidence that the details given are correct. There is further the risk of mistaken identity if a name were to be relied upon which is inaccurate. In any event, no address is provided due to their nomadic way of life. In the circumstances, it has been necessary to seek the injunction against Persons Unknown".

196. Also on 28 June 2018, Wolverhampton issued an Application Notice seeking an order for alternative service of the Claim Form pursuant to CPR 6.15. An order under CPR 6.15 was made on 6 July 2018, permitting service of the Claim Form on "Persons Unknown" by (a) making available on the Council's website ("the Website Page") copies of the Notice of Hearing, Part 8 Claim Form, Particulars of Claim, Injunction Application and draft injunction order and power of arrest; (b) posting on Twitter and Facebook a link to the website page with the documents; (c) issuing a press release to the Council's standard media contacts; (d) placing an editorial in the Wolverhampton edition of the *Express and Star* newspaper; (e) uploading a video to YouTube and the Council's website providing details of the application; and (f) posting the Notice of Hearing and a document outlining the nature of the application for the injunction with a link to the Website Page.

197. It is not necessary to consider whether this order for alternative service could reasonably be expected to bring the proceedings to the attention of those whom it was sought to make defendants to the claim. However, it is clear, from the documents filed by Wolverhampton in support of their claim and application, that there was a fundamental underlying tension or contradiction between the historic acts of "Persons Unknown", who were identifiable even if they could not be named, relied upon to support the claim, and the terms of the injunction, which were directed prospectively at anyone who in the future might set up an encampment in Wolverhampton (i.e. newcomers). The term "Persons Unknown" therefore covered two very distinct groups: historic wrongdoers and newcomers. Outside the area of "Persons Unknown" injunctions the inadequacy of

proof of historic wrongdoing by A as a justification for a *quia timet* injunction against B would be immediately apparent. Further, whatever might be said about the likelihood of the alternative service methods utilised by the council bringing the proceedings to the attention of the historic wrongdoers (in respect of acts alleged to have taken place up to 3 years previously), there could be no reasonable expectation that they would bring the proceedings to the attention of all of the newcomers (for the reasons explained in [45] above).

198. The claim came before Jefford J on 2 October 2018. Ms Caney, who represented Wolverhampton at the hearing, had provided a skeleton argument. A transcript of the hearing has been obtained. There was no attendance by or representation of the Defendants. The claim was presented, both in the skeleton argument and in the submissions to the Court, as a conventional *inter partes* claim against "Persons Unknown", not as a *contra mundum* injunction. The skeleton argument referred specifically to ***Bloomsbury Publishing*** and several of the Cohort Claims in which "Persons Unknown" injunctions had by that stage been granted. There was no reference to or consideration of ***Venables*** or any other *contra mundum* authorities. Reference was made to the service of the Claim Form by alternative means and the failure by the defendants to file an acknowledgement of service. Yet, the injunction that the council was asking the Court to make, and which was ultimately granted, was in terms a *contra mundum* injunction; "*IT IS FORBIDDEN for anyone…*" to set up encampments at the 60 sites. It is also plain from Jefford J's judgment ([2]) that she understood that she was exercising the jurisdiction to grant an injunction against "Persons Unknown", not making an order *contra mundum*.

199. Ms Caney's skeleton argument did refer to Practice Direction 8A §20. She submitted that the Practice Direction confirmed "*that an injunction may be granted under s.187B Town & Country Planning Act 1990 against a person whose identity is unknown to the Claimant*". However, Ms Caney did not deal, either in her skeleton argument or at the hearing, with §§20.4 to 20.6 of the Practice Direction (set out in [50] above). Had she done so, the fact that the claim was being brought against two distinct categories of "Persons Unknown" – historic wrongdoers and newcomers – would likely have become apparent. On the basis of the *pleaded* claim against historic wrongdoers, there was every reason to believe that the council *could* have complied with PD 8A §20.4 by describing the historic wrongdoers, for example by a photograph or other evidence (see further [204] below). The pleaded claim explained reasons why the Council could not provide the names of the historic wrongdoers (or lacked confidence in the accuracy of any names that it had been given). That did not explain why the simple expedient of photographing the alleged wrongdoers was not practicable as a method of identifying those who were sought to be made defendants to the claim. Crucially, had attention been paid to PD 8A §20.5, focus would have been drawn to the need to describe the "Persons Unknown" defendants "*sufficiently clearly to enable the defendant to be served with the proceedings*". As the definition of "Person Unknown" in Paragraph 5 of the Claim Form and in the injunction was directed exclusively at newcomers, there were very real obstacles to the council being able to satisfy the requirements of the Practice Direction.

200. The injunction was granted for a period of 3 years (with a power of arrest under s.27 Police and Criminal Justice Act 2006), "*unless before then it is revoked or varied by further order of the Court*", but the Judge directed that a review hearing should take

place after a year. The injunction was granted pursuant to s.187B and s.130, but not s.1 ASBCPA (see [2] of the judgment). A point that particularly concerned the Judge was the absence of any transit site provision by Wolverhampton. As the Judge noted in argument, one potential consequence of the grant of a Traveller Injunction to a local authority was the risk that it substantially removed the impetus to provide a transit site. She therefore expressly provided that, before the review hearing, the council was to provide a witness statement setting out the progress with regard to the proposed transit site.

201. The first review hearing took place on 5 December 2019. The Council applied to vary the injunction to remove four sites and to add three new sites, but otherwise sought the continuation of the injunction in the terms in which it had originally been granted. Ms Caney again represented the council at the review hearing and provided a skeleton argument. Evidence was filed by the Council. In summary, although work had been carried out to try and establish a transit site, none had been provided. The Court was told that "*a development plan [to provide one] is in place to move forward as quickly as possible*" and that the Claimant "*remains committed and resolutely determined to establishing a suitable transit site*".

202. By order of 5 December 2019, the injunction was amended as sought by the council and extended (with the same power of arrest) until 5 December 2021, "*unless before then it is revoked or varied by further order of the court*", with a further review hearing to take place in July 2020.

203. The second review hearing took place on 20 July 2020. Ms Caney represented the council and provided a skeleton argument. On this occasion, although no defendants attended or were represented, the Court did receive written submissions from Chris Johnson, of the Community Law Partnership on behalf of the National Federation of Gypsy Liaison Groups (the Third Intervener in these proceedings). The transit site had still not opened. Planning permission had been granted for the site, but it was limited to 13 caravans and available only to Travellers who had been evicted from unauthorised encampments within the administrative area of Wolverhampton. Ms Caney's skeleton addressed the Court of Appeal decision in ***LB Bromley***.

204. In his submissions, Mr Johnson argued that Wolverhampton could not demonstrate compliance with all of the requirements of ***LB Bromley***. Mr Johnson noted that the Court of Appeal in ***LB Bromley*** had considered ([39(b)]) that the "*positive evidence*" in respect of the planned transit site had had a "*major impact*" on Jefford J's original decision to grant the injunction. Further, the Council's evidence in support of the original application for the injunction had suggested that the injunction was part of a "*dual strategy*", the other part of which was provision of a transit site, which had still not materialised. In relation to the action against "Persons Unknown" Mr Johnson submitted:

> "It is not clear why the Travellers against whom allegations of nuisance and anti-social behaviour are made cannot be identified (e.g. by use of vehicle registration details) and named in the proceedings. There are a large number of photographs in the original Trial Bundle which show fly-tipping and depositing of waste. Whilst we accept that there is evidence of such criminality linked to some unauthorised encampments, we would point out that it is well known that others may take advantage of the existence of unauthorised encampment by fly-tipping near the

> encampment on the basis that the occupants of the encampment will get the blame."

205. Finally, Mr Johnson referred in his written submissions to ***Canada Goose*** in support of his argument that the injunction obtained by Wolverhampton, even if justifiable, could only bind those who were parties to the proceedings (i.e. those who were encamped on the relevant land at the date of the final order).

206. Martin Spencer J continued the injunction order. Whilst he expressed concern about the planning conditions attached to the transit site, which meant that it offered no practical solution to the issues faced by the Gypsy and Traveller communities, he was satisfied that there were other transit sites available in the West Midlands and that the injunction was in accordance with the "*letter and spirit*" of the decision in ***LB Bromley***. The Judge did not deal with ***Canada Goose*** in his judgment (although, during argument, he stated the Wolverhampton claim and ***Canada Goose*** "*are not equivalent*") and no point was raised about the *contra mundum* issue.

207. There was some discussion, at the hearing before me, as to whether Wolverhampton's injunction is an interim or final order. In his skeleton argument, Mr Anderson QC suggested that the order of 2 October 2018 was a final order. The Interveners submitted likewise. Ms Wilkinson expressed doubt as to this because there had been no interim injunction, but that is not necessarily determinative. A final injunction can be granted in a claim even if no interim injunction has been granted. On this point, and applying the principles set out in [161] above, my conclusion is that Wolverhampton's injunction is a final order. The order was not granted to protect the *status quo* pending a final determination. It was granted ostensibly following a determination of Wolverhampton's claim. It was not a perpetual injunction - it was granted for 3 years – and the court required a review. Certainly, Martin Spencer J regarded Jefford J as having determined the claim (see [2020] EWHC 2280 (QB) [20]) and no further reviews have been ordered. No final hearing has been listed. As matters stand, therefore, unless varied or discharged by the court in the meantime, Wolverhampton has a subsisting *contra mundum* injunction (with power of arrest) made by final order until 5 December 2021 prohibiting any encampment at the 60 or so sites identified in the 5 December 2019 order.

**(b) Submissions**

208. Mr Anderson QC, on behalf of Wolverhampton, has argued that the *contra mundum* order granted to his client is a pragmatic, sensible and effective solution to the problem of unlawful encampments. He submits that the court has jurisdiction to grant a *contra mundum* Traveller Injunctions and that such an injunction was justified in Wolverhampton's case.

209. Mr Anderson QC accepted that, when Wolverhampton's claim was commenced, there was no ongoing trespass, and the council did not seek any remedy in respect of past acts of trespass. The claim was brought *quia timet*; to protect against the threat of wrongdoing. He argues that the situation confronted by Wolverhampton was quintessentially one justifying injunctive relief. Mr Anderson QC relies on the evidence filed in the proceedings to demonstrate that prior to the grant of the injunction, the inhabitants of Wolverhampton were suffering from escalating unauthorised encampments, up to 39 incidents by 2 October 2018. The land affected included

highways, public open spaces, playing fields, business parks, industrial estates, public and private car parks and development land. There were instances where damage was caused to gain access to the land. The immediate impact was to inhibit the use of the areas by those who were otherwise entitled to use and enjoy the land. He submitted that the evidence demonstrated anti-social behaviour regularly associated with encampments, comprising abuse, noise, nuisance, threats of violence and intimidation. The absence of toilet facilities caused a public health nuisance. Encampments on the highway caused risks to the safety of the public and waste was regularly left behind, resulting in substantial clean-up costs. The total cost to Wolverhampton of dealing with the encampments in 2016 and 2017 (and excluding costs to the police service) was estimated to be £250,000. Mr Anderson QC defended the grant of the injunction and warned that the Court "*should be highly reluctant to deny the people of Wolverhampton its protection*".

210. Mr Anderson QC argued that the Courts have always had the power to grant injunctions *contra mundum* in appropriate cases: ***Venables***; ***OPQ -v- BJM* [2011] EWHC 1059**. The modern foundation of the jurisdiction is s.37 Senior Courts Act 1981. Mr Anderson QC recognises that the Court of Appeal in ***Canada Goose*** stated [89]:

> "… There are some very limited circumstances, such as in ***Venables -v- News Group Newspapers Ltd* [2001] Fam 430**, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category…"

211. He contends, however, that it is wrong to suggest that there is any "*usual principle*" that *contra mundum* orders are not granted. He suggests that the injunction orders granted in all the Cohort Claims are, in fact, *contra mundum* orders, albeit he concedes that "*not all of the 38 were granted for adequate reason and with adequate safeguards, and some have been discharged already*". He nevertheless submits, stirringly:

> "… those which were granted for adequate reason and with adequate safeguards should not be thrown out for imagined legal incompetence which has the effect of extracting the teeth from several statutory provisions."

212. Wolverhampton accepts that it is a fundamental principle of natural 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: ***Cameron*** [17]. And, on a practical level, the absence of a defendant can make the entire judicial process, which is supposed to be adversarial, one-sided: injunctions are more likely to be granted in the absence of a defendant and, in such absence, there is no prospect of an appeal.

213. Nevertheless, Mr Anderson QC argues that the principle – that both sides must be heard – should not be a bar to an injunction against persons defined by reference to their future conduct, and who therefore do not exist at the time at which the order is made. There are some cases where the claimant cannot obtain justice if such persons cannot be sued: ***Ineos*** [29]. He submits that the absence of a defendant is not a conceptual problem. ***Ineos*** and ***Canada Goose*** show that there is no difficulty in a person being bound by an injunction without having been personally served with the Claim Form nor with the application for an injunction nor even with the injunction itself. In the Wolverhampton case, no one was personally served with the Claim Form but that does not matter so long as fair notice was devised, which, he submits, it was.

214. Mr Anderson QC referred to Baroness Hale's observation in ***Meier*** [25]:

> "… 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. So the questions are: what is the right to be protected? And what is the appropriate remedy to fit it?"

215. He argues that the Court of Appeal in ***LB Bromley***, expressly referred to Wolverhampton's case and approved the approach taken by Jefford J (see [39(b)], [70], [105] and [106]). In particular, Coulson LJ observed (at [70]) that the approach of identifying specific sites, coupled with the proposal for a transit site, was *"in accordance with the ECtHR authorities"* detailed at [44]-[48] of his judgment. He further observed ([105]) that the solution of identifying particularly vulnerable sites in Wolverhampton was a more proportionate answer to a borough-wide order. The provision for a review after 12 months was also considered sensible ([106]). These "*important safety valves*" were, he submits, absent in ***LB Bromley***.

216. Mr Anderson QC argues that, in Wolverhampton's case, Jefford J was correct to grant *contra mundum* relief because it was a reasonable and proportionate way of protecting the inhabitants of Wolverhampton against the situation described in her judgment: [3]-[8].

217. Although not an order that was granted, in terms, to any of her clients, Ms Bolton also supports Mr Anderson QC's contention that the Court can grant *contra mundum* orders under s.222 "*where there is evidence of a widespread impact on the Article 8 rights of the inhabitants of [the local authority]'s area*". Environmental harm and harm to the well-being of the inhabitants of a local area is capable of infringing Article 8 rights: ***Lopez Ostra -v- Spain*** **(1995) 20 EHRR 277**; as can harm to mental and physical health: ***OPQ -v- BJM*** [19]; ***X (formerly Bell) -v- O'Brien*** **[2003] EMLR 37** [22].

218. Mr Bhose QC similarly argues that the court has jurisdiction under s.37 Senior Courts Act 1981 to grant final relief on a *contra mundum* basis: ***Ambrosiadou -v- Coward*** **[2013] EWHC 58 (QB)** [13]; extending particularly to cases where local authorities are proceeding to restrain breaches of the criminal law, the commission of public nuisance, or to uphold public rights and privileges over land owned by them.

219. Mr Giffin QC also argues that the Court has jurisdiction to grant *contra mundum* injunctions. True *contra mundum* orders undoubtedly infringe the principle of natural justice that a person should not be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: ***Cameron*** [17]. Consequently, Mr Giffin QC submitted – on the basis of ***Venables*** [98]-[100] – *contra mundum* orders were limited to cases in which justice cannot be achieved, or fundamental rights (including in particular Convention rights) cannot be protected, in any other way.

220. Mr Willers QC on behalf of the Interveners submits that the court has jurisdiction to grant *contra mundum* injunction orders: ***Venables***. Whatever its origins, the modern basis of statutory jurisdiction is s.6 Human Rights Act 1998: ***RXG -v- Ministry of Justice*** **[2020] QB 703** [24]. However, the claimants in the Cohort Claims cannot

invoke this jurisdiction because they cannot meet the criteria. A *contra mundum* Traveller Injunction is almost by definition disproportionate; it does not discriminate between a large encampment causing massive disruption, damage and nuisance, and a single caravan peacefully parked overnight in a local authority car park. Where, as recognised in ***LB Bromley***, the Article 8 rights of the Gypsy and Traveller communities are affected by the grant of such Traveller injunctions, the Court has to consider the necessity for and proportionality of the interference that a Traveller Injunction represents.

221. On the point of whether the local authorities can demonstrate that it is necessary for the Court to grant *contra mundum* injunctions, Mr Willers QC relied upon guidance published in March 2015: "*Dealing with illegal and unauthorised encampments*". This Guidance noted that it was "*primarily aimed at public authorities*", and identified what were described as "*extensive powers*" available to local authorities, including: stop notices (and temporary stop notices), under ss.171E and 183 Town & Country Planning Act 1990; licensing controls of caravan sites under the Caravan Sites and Control of Development Act 1960; possession orders (including interim possession orders, where available) against trespassers under CPR Part 55; local byelaws made under s.235 Local Government Act 1972 (including the ability to attach powers of seizure and retention of property in connection with any breach of a byelaw under s.150(2) Police Reform and Social Responsibility Act 2011); directions pursuant to s.77 Criminal Justice and Public Order Act 1994 (see further [76] below); various provisions of the Highways Act 1980 to deal with obstructions of this highway causing a nuisance; planning contravention notices under s.171C Town & Country Planning Act 1990; and enforcement notices under s.172 Town & Country Planning Act 1990. The guide also identified powers that the police could exercise to tackle unauthorised encampments.

222. Insofar as reliance was placed on the permission to apply provisions that were included in the Wolverhampton injunction (and generally), Mr Willers QC submitted that this did not make up for the disproportionate impact of the injunction order. He argued that it was fanciful to suggest that a family of Travellers who arrived at a location to find that an injunction is in place prohibiting them from stopping there would lodge an application to the High Court asking for the injunction to be varied.

223. In agreement with the Interveners' submissions, Ms Wilkinson contended that the *Venables* jurisdiction to grant *contra mundum* orders was to give effect to the positive obligation placed upon the Court to take steps to give effect to Convention rights; principally Articles 2, 3 and 8. Ms Wilkinson noted that none of the claimants in the claims before the Court had indicated in their Claim Forms that any issue under the Human Rights Act 1998 arises. She submitted that this was plainly not tenable. At the very least, the Article 8 and 14 rights of Gypsies and Travellers are engaged. Ms Bolton's clients, she noted, appeared to acknowledge only the Article 8 rights of the inhabitants of the relevant local authority area.

### (c) Decision

224. In my judgment, in civil proceedings, s.37 Senior Courts Act 1981 confers jurisdiction on the Court to grant *contra mundum* injunction orders: ***In re BBC*** **[2010] 1 AC 145** [57]. However, the circumstances in which the Court will exercise this jurisdiction are very limited, and are practically restricted to cases where the *contra mundum* order is the only way to protect an engaged Convention right and where a refusal to grant the

injunction would put the Court in breach of s.6 Human Rights Act 1998: ***In re S*** **[2005] 2 AC 593** [23]; ***OPQ -v- BJM*** [18]; ***RXG*** [24]. This self-denying limit on the grant of *contra mundum* orders recognises and gives effect to a fundamental principle of justice, explained by the Court of Appeal in ***Canada Goose*** [89]:

> "… that a final injunction operates only between the parties to the proceedings: ***Attorney General -v- Times Newspapers Ltd (No.3)*** **[1992] 1 AC 191, 224**. That is consistent with the fundamental principle in ***Cameron*** [17] that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."

225. As the Divisional Court noted in ***RXG*** [33], the "*Venables* jurisdiction" to grant *contra mundum* injunctions had been exercised on only three further occasions after ***Venables***. Since the decision in ***RXG***, (and excluding the orders made in the Cohort Claims) I am aware of one further claim in which a court has granted a *contra mundum* injunction: ***D & F -v- Persons Unknown*** **[2021] EWHC 157 (QB)**. The Court of Appeal in ***Canada Goose*** correctly described the circumstances in which *contra mundum* orders are granted as "*very limited*" [89].

226. The submissions made by Counsel for the local authorities urging development of the law to fashion a civil remedy to the problem of unauthorised encampments on land are superficially attractive and powerfully argued. Rightly, they give pause for thought. Mr Anderson QC refers to Baroness Hale's call to action, "*ubi ius, ibi remedium*" (see [214] above) to encourage the Court to expand the reach of the civil law. However, in the very passage he cited, there is the following important check: "*provided that there is proper procedural protection for those against whom the remedy may be granted*" (see to similar effect also Baroness Hale's observations in [40] quoted in [14]).

227. Mr Willers QC countered that there are clear limits to how creative the Court can be in pursuit of a remedy for a wrong. One of those limits is the position where a party's rights are infringed by an unidentifiable wrongdoer. That is precisely what happened in ***Cameron***. There was no dispute that Ms Cameron had been injured by the negligence of another, but because she could not identify that other, the Court could not assist her. It made no difference that this deprived her of a remedy. Mr Willers QC argued that this neatly demonstrates the limits to the maxim quoted by Baroness Hale. He argues that it was responding to this siren call that led the majority in the Court of Appeal in ***Cameron*** into error: finding jurisdiction when there was none (see [7] *per* Lord Sumption).

228. Mr Willers QC, in his submissions, also encapsulated the danger of not respecting the proper limits to civil litigation:

> "The civil courts determine disputes between parties. They uphold rights but they do so within the context of *inter partes* disputes. The Court's role as arbiter – rather than inquisitor – is why the system is adversarial… The proceedings brought by these Claimants are of a qualitatively different nature to the *inter partes* arguments the Court is designed to decide. These proceedings are not, and are not intended by the Claimants to be, a determination of a dispute. Rather, they are intended to confer on the Claimants a new power enabling them to police public disorder using the Court's enforcement mechanisms. This is not an appropriate use of civil litigation. The purpose of the Court's enforcement powers is to give effect to its

> own judgments. They are not designed as a general control on wide-ranging anti-social behaviour over large geographical areas. Moreover, it puts the Court – whose role is to determine disputes – in an invidious position, because it makes a process which is designed to be adversarial inherently one-sided. This is contrary to the principles outlined by Lord Sumption in ***Cameron*** [17]".

229. Broadly, I accept that submission subject to the following point. As recognised by the Court of Appeal in ***Canada Goose*** and ***Ineos*** the Court does have a legitimate role, at an interim injunction stage, and in an appropriate case, in granting civil injunctions against "Persons Unknown" which may have the effect of temporarily subjecting "newcomers" to the Court's jurisdiction and coercive orders, and even to restrain otherwise lawful activity. However, the Court will only grant such interim remedies where the claimant demonstrates that they are necessary and there is "*no other proportionate means of protecting the claimant's rights*": ***Canada Goose*** [82(5)]. An interim injunction in those terms is a temporary measure and must be time limited: [82(7)]. The claimant must identify defendants to the claim and then advance the proceedings to a final hearing at which the Court will determine the dispute between the parties. An interim injunction that, as an unavoidable consequence, places restrictions upon strangers to the litigation and/or limits lawful activity can be tolerated only for as long as is strictly necessary to progress the claim to a final hearing; *a fortiori* if the injunction interferes with Convention rights. As the Court of Appeal explained in ***Canada Goose*** [92]:

> "An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also 'persons unknown' who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end."

230. If these established principles and the limits they impose on civil litigation are not observed, the Court risks moving from its proper role in adjudicating upon disputes between parties into, effectively, legislating to prohibit behaviour generally by use of a combination of injunctions and the Court's powers of enforcement. There may be good arguments – and Mr Anderson QC's submissions made points that could have been made by all of the Cohort Claimants – as to why such behaviour ought to be prohibited, but it is not the job of the Court, through civil injunctions granted *contra mundum*, to venture into that territory. Stepping back, the injunction that Wolverhampton was granted, with a power of arrest attached, effectively achieved the criminalisation of trespass on the 60 or so sites covered by the injunction. In a democracy, legislation is the exclusive province of elected representatives. A court operating in an adversarial system of civil litigation simply does not have procedures that are well-suited or designed to prohibit, by injunction, conduct generally. Parliament has required that local authorities seeking PSPOs must carry out consultation before making/extending/varying a PSPO: s.72(3) ASBCPA. Leaving aside the constitutional objections based on separation of powers, the Court has no way of carrying out any sort of consultation as part of determining a civil claim for an injunction. As the Court of Appeal noted in ***Canada Goose*** [93], "*the civil justice process is a far blunter*

*instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it*".

231. Respecting those boundaries, the grant of *contra mundum* injunctions is strictly limited to circumstances where the Court is compelled to act. The cases in which *contra mundum* orders have been granted demonstrate that they are instances where, having considered the evidence, the Court is left with only one option: to grant the injunction. The fundamental principle that persons to be restrained by an order of the court made in civil proceedings must be served with proceedings and given an opportunity to be heard, in this exceptional category of case, has to yield to more important considerations. The clearest examples are cases in which the Court was satisfied, on evidence, that if the injunction were not granted there would be a real and immediate risk of serious physical harm or death. At that point, Articles 2 and/or 3 of the Convention are engaged, and there is no question of that risk being balanced against any other Convention rights (for example Article 10): ***RXG*** [35(v)]. In other cases – like ***RXG*** itself – the evidence, whilst not demonstrating a threat at a level engaging Articles 2 and/or 3, establishes that, without an injunction, there will be a serious interference with the applicant's Article 8 right. As Article 8 is a qualified right, the Court would have to resolve any conflict with other engaged Convention rights using the now well-established parallel analysis: ***Re S*** [17]:

> "First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

232. When considering whether to grant a *contra mundum* order in these exceptional cases, the Court will always strive, so far as circumstances permit, to enable representations to be made and considered before an order is made. Typically, they also include provisions to enable the orders to be reconsidered. But, unlike other civil proceedings, there is no requirement for there to be a defendant to the proceedings; the order is sought and, if the claim is successful, granted *contra mundum.*

233. Can the local authorities demonstrate that Traveller Injunctions fall into the exceptional category where the court is compelled to act by way of *contra mundum* injunction? In my judgment, the answer is plainly no. There is no doubt that Traveller Injunctions engage the Article 8 rights of Gypsies and Travellers: ***LB Bromley*** (see [15] above). Insofar as the remaining local authorities in the Cohort Claims, now raise an argument that the relief sought also engages the Article 8 rights of denizens of its area, then the Court would be required to perform the required parallel analysis when considering whether to grant an injunction and, if so, in what terms. The Court's task in doing so was explained by Sir Mark Potter P in ***A Local Authority -v- W*** **[2006] 1 FLR 1** [53]:

> "… The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific

> rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out…"

234. The submissions made by the remaining local authorities in support of Traveller Injunctions might be thought to be paradigmatic examples of "*rival generalities*". Indeed, the whole structure of "Persons Unknown" litigation, and *a fortiori* claims for injunctions *contra mundum*, because there is no focus on individuals, means that Court can only carry out any assessment based on rival generalities. Worse, it is an assessment that risks a significant element of in-built prejudice. On the basis of evidence of the worst examples of historic wrongdoing by some, unidentified persons, the Court is asked to impose an injunction to restrain future conduct of unidentified (and unlimited) newcomers, including those who were not guilty of any of the acts of wrongdoing relied upon to support the injunction application. If the Court cannot identify the individuals who will be restrained by the injunction, it cannot begin to assess the particular circumstances of each person to be restrained, whether an injunction is necessary in that person's case and whether the terms of the injunction are proportionate (see ***LB Bromley*** [104]). It is difficult to see how the claimant would begin to demonstrate the required evidence of "*irreparable harm*" if it cannot identify the persons who it claimed would cause it (see [13(3)] above). Put shortly, it is impossible to carry out the required parallel analysis of and intense focus upon the engaged rights. In ***LB Bromley*** the Court of Appeal expressed concern that closing down unlawful encampments on land and moving on Gypsies and Travellers must be regarded as a last resort: [101]. Prospectively making a *contra mundum* injunction prohibiting all encampments is arguably worse.

235. Members of the Gypsy and Traveller communities are generally entitled to have the proportionality of measures affecting their Article 8 rights considered by an independent tribunal (see [15(10)-(11)] above). I do not consider that the availability of a permission to apply to challenge a final injunction order after it has been granted (particularly where the likelihood of it being exercised is illusory, for the reasons articulated by Mr Willers QC ([222] above)) is an adequate substitute for proper consideration of the proportionality of the order before it is granted. Whatever a court might exceptionally be prepared to grant, on an emergency basis by way of interim injunction, it could not countenance granting an injunction in such broad terms by way of final *contra mundum* order.

236. To illustrate this, I would return to the hypothetical example of the Traveller family pitching their caravan overnight at the Dagenham Road Car Park (see [45] above). If LB Barking & Dagenham applied for an injunction against the Traveller family to require them to vacate the site, the Court would be able to carry out a meaningful parallel analysis of engaged rights. It could assess the necessity for, and proportionality, of an injunction, for example, by considering the circumstances of the Traveller family, the evidence of availability of other sites where the caravan could be pitched, the impact of any injunction on the Article 8 rights of the Traveller family, any evidence that the family had previously caused damage or engaged in anti-social or other criminal behaviour, any evidence of adverse impact or harm that would be caused by the family staying overnight in the car park and any Article 8 rights of nearby residents. Perhaps most importantly, in the adversarial process, the Traveller family would have the opportunity to make submissions to the Court as to whether an order should be made and, if so, in what terms. The result of that analysis could well lead to the refusal of an injunction, or to the Traveller family being given a period of time before they were

required to move on. In reality, and consistent with the guidance issued to local authorities (see [16] and [221] above), a short-lived "encampment", that was not likely to cause damage or nuisance, would be unlikely to lead to an application for an injunction in the first place. However, if a *contra mundum* injunction had already been granted, the Traveller family would discover, on arrival at Dagenham Road Car Park, that the Court has already pre-judged their circumstances and granted an injunction (with a power of arrest attached) prohibiting them from pitching up even for a single night.

237. It cannot be argued by the local authorities that a *contra mundum* order is the only way in which they can tackle the problem of unauthorised encampments that cause the sort of damage and harm upon which Wolverhampton relied. As noted (see [221] above), local authorities already possess what have been described as "*extensive powers*" to tackle unauthorised encampments and the harm associated with them. In some of the evidence filed by the local authorities in the Cohort Claims, complaints are made that some of these remedies are not as effective (and/or are more expensive) than civil injunctions. This evidence falls a very long way short of demonstrating that *contra mundum* civil injunctions are the only way of preventing the harm caused by unauthorised encampments: ***LB Bromley*** [109]. For the reasons already mentioned, civil injunctions may have a role to play in tackling unauthorised encampments, but, as targeted measures, where justified by evidence, against actual wrongdoers (or those who present a real and imminent threat of wrongdoing), in proceedings in which those to be made subject to the Court's jurisdiction have an opportunity to be heard.

238. In my judgment, for the reasons I have given, Traveller Injunctions granted in the Cohort Claims do not fall into the exceptional category that permits the Court to grant a *contra mundum* injunction.

## G: Issue 3 – Ascertaining the parties to the Final Order

### (1) Submissions

239. In summary, the parties made the following submissions on this issue:

(1) Mr Bhose QC has not advanced any submissions on this issue as he represents local authorities that have only interim injunctions.

(2) Mr Giffin QC, for Walsall, has indicated that his local authority would be able to identify a limited number of people who have become defendants to the proceedings prior to the grant of the final order in its claim on 21 October 2016. Otherwise, he accepts that (if Issue 2 is decided as I have done) the injunction order should be discharged against "newcomers".

(3) Mr Anderson QC limited his submissions to Issue 2.

(4) Ms Bolton stated that the local authorities that she represents who were granted final orders (LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants)) may be able to identify individuals who were parties to the proceedings before the date of the final order. Ms Bolton makes the fair point, which is borne out by the practice demonstrated in the claims brought by her

local authorities, that her clients did undertake significant work to identify as many defendants by name as they were able before the claim was issued: 64 named defendants in LB Barking & Dagenham's claim; 100 named defendants in LB Redbridge's claim; and 115 named defendants in Basingstoke & Deane BC and Hampshire CC's claim. The three local authorities had not ascertained, at the date of the hearing before me, whether they would be able to demonstrate that there were any further persons under the definition of "Persons Unknown" who had by the date of the relevant final order become defendants to the claim. Ms Bolton suggested that the three local authorities affected should be given time to consider their position on this issue.

(5) Mr Willers QC submitted for the Interveners that insofar as any final order made in the Cohort Claims binds or purports to bind newcomers then it should be discharged.

(6) Ms Wilkinson submitted that the Court of Appeal in ***Canada Goose*** had given guidance as to what steps should be taken following the grant of an interim injunction against "Persons Unknown" to identify the persons who are (or are to be made) parties to the action before the grant of any final order.

## (2) Decision

240. In my judgment, Ms Wilkinson has correctly identified that the Court, in ***Canada Goose***, has not only established the principle that final injunctions bind only the parties to the proceedings, including in claims brought against "Persons Unknown" but also given guidance as to the steps to be taken between the grant of any interim injunction and the final resolution of the claim at trial or earlier determination. During that period, the claimant must take steps to identify each of the wrongdoers in the category of "Persons Unknown", either by name or other description that enables his/her identification: see ***Canada Goose*** [91]-[92]. These principles were followed by Warby J in ***Birmingham City Council -v- Afsar*** **[2020] EWHC 864 (QB)** [22].

241. It is a relatively straightforward exercise, now, to apply these principles to the Cohort Claims in which final orders have been granted against "Persons Unknown". The injunctions will be discharged against newcomers. I will give the affected local authorities a limited period to identify, if they can, any individuals whom they contend were parties to the proceedings under the relevant definition of "Persons Unknown" (if the definition of "Persons Unknown" complies with the Description Requirement) at the time that the final order was granted. In fairness to those people, and in order to achieve certainty, it seems to me that any such individuals that are bound by the final injunction by this route should, where practicable, be specifically advised of this fact. This will enable them to decide whether they wish to challenge the injunction order made against them.

## H: Issue 4 – The 'conundrum' of interim relief

242. This issue arose in the context of the second claim brought by LB Enfield, which, before the claim was discontinued, was a point that had troubled me when LB Enfield had applied for interim relief against "fly-tippers" (see [2020] EWHC 2717 (QB) [41]-[44] quoted in [155] above).

243. The resolution of Issue 2 has led me to conclude that, on analysis, there is no 'conundrum'. The answer is contained in the Court of Appeal's decision in ***Canada Goose*** [92] and a proper application of the *Canada Goose* principle and the principles relating to orders for alternative service of the Claim Form. If these are followed, there is no real likelihood of any 'rolling programme' of applications for interim injunctions, for the reasons I have explained (see [186] above).

## J: Consequences and Next steps

244. In respect of the remaining Cohort Claims, subject to further submissions at a hearing to be fixed, the following orders appear to be consequent on the judgment:

(1) subject to (2), injunction orders against "Persons Unknown" in the claims brought by (a) LB Barking & Dagenham; (b) LB Redbridge; (c) Basingstoke & Deane BC and Hampshire CC; (d) Walsall MBC; and (e) Wolverhampton CC will be discharged;

(2) I will grant (a) LB Barking & Dagenham; (b) LB Redbridge; (c) Basingstoke & Deane BC and Hampshire CC; and (d) Walsall MBC a short period in which to identify, if they can, any defendants in the category of "Persons Unknown" who can be demonstrated to have been a defendant to the proceedings prior to the grant of the final order in the relevant claim; and

(3) in the remaining Cohort Claims, where interim injunctions have been granted, the relevant local authority will have 7 days from the date of this judgment to consider whether they wish to proceed with or discontinue their claim against "Persons Unknown". If they opt to proceed, I will give directions that will lead to the prompt identification of the "Persons Unknown" defendants and bring these claims speedily to a final hearing. As I have noted (see [96]-[101] above), many of the Cohort Claims have not been prosecuted with due expedition towards a final hearing. As an interim injunction currently remains in force in these claims, there must be no further delay.

245. I am also minded to discharge any power of arrest that has been granted in the remaining interim injunctions against "Persons Unknown". The parties have not had an opportunity to make submissions on this point. They will be able to do so at the hearing which will be fixed to consider consequential orders.

246. As set out in more detail above, my overall consideration of the Cohort Claims has led me to conclude that there are grounds to suspect that, in a significant number of applications for interim injunctions, there were material and serious breaches of the procedural requirements and the procedures of the Court (and Court 37 in particular) have been abused. As I have already noted, a significant number of the Cohort Claims were allowed to go to sleep following the grant of an interim injunction, and no local authority, which had been granted a Traveller Injunction, returned the claims to Court for reconsideration following the decisions of ***LB Bromley*** and ***Canada Goose***. This judgment is not the place to go into these matters further, but I will ensure, so far as possible, that they will be properly investigated.

247. Looking to the future, the experience in the Cohort Claims demonstrates that the Court needs to adopt measures to ensure that "Persons Unknown" injunctions (and powers of

arrest) are only granted in appropriate cases and are subject to proper safeguards. In her written submissions, Ms Wilkinson submitted that the Court could adopt procedures, similar to those that have been adopted in cases where non-disclosure injunctions have been sought (see [88]-[94] above), to ensure that cases are properly case managed, not allowed to become dormant and that active steps are taken by the claimant to name (or at least to identify) the defendants who are within the category of "Persons Unknown" and against whom a final remedy is sought.

248. Based on the procedure that is now established for claims for interim non-disclosure orders, and reflecting the existing authorities, I consider that claims against "Persons Unknown" should be subject to the following safeguards:

(1) The "Persons Unknown" must be described in the Claim Form (or other originating process) (a) with sufficient certainty to identify those who are defendants to the claim and those who are not; and (b) by reference to conduct which is alleged to be unlawful: see [49] above.

(2) Where they apply, the Claim Form must comply with the requirements of CPR 8.2A(1) and Practice Direction 8A.

(3) The "Persons Unknown" defendants identified in the Claim Form are, by definition, people who have not been identified at the time of commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. "Persons Unknown", against whom relief is sought, must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary, by alternative service of the Claim Form: *Canada Goose* principle (1).

(4) Any application for permission to serve the Claim Form on "Persons Unknown" must comply with CPR 6.15(3) and the claimant must demonstrate, by evidence, that the proposed method of alternative service is such as can reasonably be expected to bring the proceedings to the attention to all of those in the category of "Persons Unknown" sought to be made defendants to the proceedings: *Cameron* principle (4); and any order under CPR 6.15 must comply with CPR 6.15(4).

(5) Applications for interim injunctions against "Persons Unknown" must comply with the requirements of Practice Direction 25A (see [83] above) and, unless justified by urgency, must be fixed for hearing and a skeleton argument provided.

(6) At the hearing of an application for an interim injunction against "Persons Unknown" the applicant should be expected to explain why it has not been possible to name individual defendants to the claim in the Claim Form and why proceedings need to be pursued against "Persons Unknown".

(7) An interim injunction will only be granted *quia timet* if the applicant demonstrates, by evidence, that there is a sufficiently real and imminent risk of a tort being committed by the respondents: *Canada Goose* principle (3).

(8) If an interim injunction is granted:

a) the claimant should provide an undertaking to the Court to use its best endeavours to identify the "Persons Unknown" whether by name or other identifying information (e.g. photograph) and serve them personally with the Claim Form;

b) the terms of the injunction must comply with *Canada Goose* principles (5) to (7);

c) the Court must be satisfied that the inclusion of any power of arrest is justified by evidence demonstrating that the relevant statutory test is met; and

d) the Court in its order should fix a date on which the Court will consider the claim and injunction application further ("the Further Hearing"). What period is allowed before the Further Hearing is fixed will depend on the particular circumstances, but I would suggest it should not be more than 1 month from the date of the interim order, and in many cases a shorter period would be appropriate.

(9) At the Further Hearing, the claimant should provide evidence of the efforts to identify the "Persons Unknown" and make any application to amend the Claim Form to add named defendants. The Court should give directions requiring the claimant, with a defined period:

a) if the "Persons Unknown" have not been identified sufficiently that they fall with Category 1 "Persons Unknown", to apply to discharge the interim injunction against "Persons Unknown" and discontinue the claim under CPR 38.2(2)(a);

b) otherwise, as against the Category 1 "Persons Unknown" defendants to apply for (i) default judgment; or (ii) summary judgment; or (iii) a date to be fixed for the final hearing of the claim,

and, in default of compliance, that the claim be struck out and the interim injunction against "Persons Unknown" discharged.

(10) Assuming that the claimant has demonstrated an entitlement to relief against a party to the claim, in respect of any final order that is granted against "Persons Unknown" (whether by default judgment, summary judgment or after a final hearing), unless falling in the exceptional category where a *contra mundum* order is justified, the order:

a) can only be made against parties to the proceedings: those named defendants, or those who fall into Category 1 of "Persons Unknown", who have been served with the Claim Form;

b) must clearly identify by description the Category 1 "Persons Unknown" defendants that are bound by the order; and

c) must not be drafted in terms that would capture newcomers, i.e. persons who are not parties when the order is granted: ***Canada Goose*** [91]-[92].

## Appendix 1: List of Actions

| | Claimant(s) & Claim No. and Current Status | Defendants (as described in Claim Form) | Key History of the Claim: |
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| | | | |
| 1. | **LB Barking and Dagenham**<br><br>QB-2017-006899<br>(HQ17X00849)<br><br>**Current status:** Final injunction in force against Persons Unknown until further order | (1) Tommy Stokes<br>(2)-(64) other named Defendants<br>(65) Persons Unknown being members of the traveller community who have unlawfully encamped within the borough of Barking and Dagenham | Claim Form issued on 10 March 2017.<br>Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 10 March 2017.<br>Interim injunction granted on 29 March 2017<br>Final injunction granted on 30 October 2017 "until further order" against 23 named defendants and "Persons Unknown". The final injunction contains a permission to apply to the Defendants or "anyone notified of this Order" to vary or discharge on 72 hours' written notice. |
| 2. | **LB Bromley**<br><br>QB-2018-003485<br>(HQ18X02920)<br><br>**Current status**: Claim dismissed and injunction(s) discharged. | Persons Unknown | Interim injunction (without notice) granted on 15 August 2018 against "Persons Unknown Occupying Land and/or Depositing Waste".<br>Claim Form issued on 15 August 2018 not served during its period of validity.<br>No order for alternative service of Claim Form.<br>Final injunction granted on 24 May 2019 against "Persons Unknown Depositing Waste or Fly-Tipping" until 15 May 2022.<br>21 January 2020: Court of Appeal dismisses Claimant's appeal against Order of 24 May 2019 ([2020] PTSR 1043)<br>On application by the Claimant, injunction discharged and action dismissed on 9 November 2020. |
| 3. | **LB Croydon**<br><br>QB-2018-003395<br>(HQ18X03041)<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | Persons Unknown | Interim injunction (without notice) granted on 18 July 2018 against "Persons Unknown Occupying Land and/or Depositing Waste" with power of arrest.<br>Claim Form issued on 24 August 2018 not served during its period of validity.<br>No order for alternative service of Claim Form.<br>Final injunction granted on 17 October 2018 until 16 October 2021<br>On application by the Claimant, injunction discharged and action dismissed on 10 November 2020. |

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| 4. | **LB Ealing**<br><br>QB-2019-001696<br><br>**Current status:** Interim injunction in force against Persons Unknown. | (1) Persons Unknown occupying land<br>(2) Persons Unknown depositing waste or fly-tipping | Interim injunction (without notice) granted on 10 May 2019 with power of arrest.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued 10 May 2019.<br>15 July 2019: Claim adjourned pending decision of the Court of Appeal in LB Bromley case. |
| 5. | **RB Greenwich**<br><br>QB-2018-003037 (HQ18X04086)<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | Persons Unknown | Interim injunction (without notice) granted on 19 December 2017.<br>Claim Form issued on 19 December 2017 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 19 March 2018 until 18 March 2021.<br>On application by the Claimant, injunction discharged and action dismissed on 13 November 2020. |
| 6. | **LB Havering**<br><br>QB-2019-002737<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) William Stokes<br>(2)-(105) other named Defendants<br>(106) Persons Unknown | Claim form issued on 31 July 2019.<br>Order for alternative service by affixing copy of the Claim Form at each site, dated 31 July 2019.<br>Interim injunction granted on 11 September 2019 "pending the final injunction hearing" with power of arrest. |
| 7. | **LB Hillingdon**<br><br>QB-2019-001138<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Persons Unknown occupying land<br>(2) Persons Unknown depositing waste or fly-tipping on land | Interim injunction (without notice) granted on 29 March 2019. Power of arrest refused by Stewart J.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 29 March 2019. |

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| | | | Order of 17 June 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley. |
| 8. | **LB Hounslow**<br><br>QB-2019-002113<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Persons Unknown occupying land<br>(2) Persons Unknown depositing waste or fly-tipping on land | Interim injunction (without notice) granted on 12 June 2019 with power of arrest.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 12 June 2019<br>Order of 3 October 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley. |
| 9. | **RB Kingston-upon-Thames**<br><br>QB-2019-000150<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste or flytipping on land | Interim injunction (without notice) granted on 15 January 2019 with power of arrest.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 15 Jan 2019.<br>Final injunction granted on 15 April 2019 until 14 April 2022.<br>On application by the Claimant, injunction discharged and action dismissed on 10 November 2020. |
| 10. | **LB Merton**<br><br>QB-2018-000452<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | (1) Persons Unknown occupying land<br>(2) Persons Unknown depositing waste on land | Interim injunction (without notice) granted on 12 December 2018 with power of arrest.<br>Claim Form issued on 12 December 2018 not served during its period of validity.<br>No order for alternative service of Claim Form.<br>Final injunction granted on 13 March 2019 until 13 March 2022. |

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|---|---|---|---|
| | | | On application by the Claimant, injunction discharged and action dismissed on 10 November 2020. |
| 11. | **LB Redbridge**<br><br>QB-2018-003983<br>(HQ18X01522)<br><br>**Current status:** Final injunction in force against Persons Unknown until 21 November 2021 | (1) Martin Stokes<br>(2)-(100) other named Defendants<br>(101) Persons Unknown forming or intending to form unauthorised encampments in the London Borough of Redbridge | Claim Form issued on 26 April 2018.<br>Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 26 April 2018.<br>Interim injunction granted against 70 named Defendants and Persons Unknown on 4 June 2018 with power of arrest.<br>Final injunction granted on 12 November 2018 until 21 November 2021 against 69 named Defendants and Persons Unknown. The final injunction contains a permission to apply to the Defendants "and anyone notified of this Order" to vary or discharge on 72 hours' written notice. |
| 12. | **LB Richmond-upon-Thames**<br><br>QB-2019-000777<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste or flytipping on land | Interim injunction (without notice) granted on 6 March 2019.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 6 March 2019.<br>Order of 10 May 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley. |
| 13. | **LB Sutton**<br><br>QB-2018-003487<br>(HQ18X02913)<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | Persons Unknown occupying land and/or depositing waste on land | Interim injunction (without notice) granted on 14 August 2018 and continued on 24 August 2018. Both contain powers of arrest.<br>Claim Form issued on 14 August 2018 not served during its period of validity. No order for alternative service of Claim Form.<br>Final injunction granted on 7 November 2018 until 7 November 2021 with power of arrest.<br>On application by the Claimant, injunction discharged and action dismissed on 10 November 2020. |

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| 14. | **LB Waltham Forest**<br><br>QB-2017-005691<br>(HQ17X03769)<br><br>**Current status:** Claim dismissed and injunction(s) discharged. | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste or flytipping on the land | Interim injunction (without notice) granted on 16 October 2017.<br>Claim Form issued on 16 October 2017 not served during its period of validity. No order for alternative service of the Claim Form.<br>Final injunction granted on 23 February 2018 against "Persons Unknown Occupying the Land (as defined in the Order)" until 12 January 2021.<br>On application by the Claimant, injunction discharged and action dismissed on 11 November 2020. |
| 15. | **LB Wandsworth**<br><br>QB-2019-000778<br><br>**Current status:** Interim injunction discharged and claim struck out. | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste or flytipping on the land | Interim injunction (without notice) granted on 6 March 2019.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 6 March 2019.<br>Order of 2 June 2020 discharged the interim injunction order and adjourned the claim generally with permission to restore. If no request to restore the claim was made by 25 November 2020, the Claim to be stuck out.<br><br>No request to restore was received and so claim struck out. |
| 16. | **(1) Basingstoke and Deane Borough Council**<br>**(2) Hampshire County Council**<br><br>QB-2018-003748<br>(HQ18X02304)<br><br>**Current status:** Final injunction in force against Persons Unknown until 3 April 2024 or further order | (1) Henry Loveridge<br>(2)-(115) other named Defendants<br>(116) Persons Unknown (owner and/or occupiers of land at various addresses set out in the attached Schedule) | Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 28 June 2018.<br>Claim Form issued 2 July 2018.<br>Interim injunction granted on 30 July 2018 with power of arrest.<br>Final injunction granted on 26 April 2019 "until 3 April 2024 or further order" against 115 named defendants and "Persons Unknown" with power of arrest. The final injunction contains a permission to apply to the Defendants or "anyone notified of this Order" to vary or discharge on 72 hours' written notice. |

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| 17. | **(1) Basildon Borough Council**<br>**(2) Essex County Council**<br><br>QB-2017-005724<br>(HQ17X03732)<br><br>**Current status:** Interim injunction discharged and claim discontinued. | (1) Dennis Ainey<br>(2)-(45) other named Defendants<br>(46) Persons Unknown | Order for alternative service on persons unknown by affixing copy of the Claim Form at each site, 9 October 2017.<br>Claim Form issued 12 October 2017.<br>Interim injunction granted on 6 November 2017.<br>On application by the Claimant, interim injunction discharged on 18 November 2020 and Claimant given permission to discontinue claim.<br>Claim discontinued on 4 December 2020. |
| 18. | **Birmingham City Council**<br><br>QB-2020-003833<br>(formerly Birmingham District Registry D90BM148-149)<br><br>**Current status:** Final injunction discharged. | Persons Unknown | Claim Form issued on 5 July 2017.<br>Final injunction (without notice) granted on 5 July 2017 with power of arrest.<br>Order extended time for service of the Claim Form to 14 July 2019.<br>Order dated 27 September 2017 varying the final injunction.<br>Order dated 3 July 2019 extending and varying the final injunction and extending the period to serve the Claim Form to 1 July 2021.<br>On application by the Claimant, the final injunction discharged on 1 December 2020. |
| 19. | **(1) Boston Borough Council**<br>**(2) Lincolnshire County Council**<br><br>QB-2020-003835<br>(formerly Birmingham District Registry E90BM073)<br><br>**Current status:** Interim injunction discharged and claim dismissed. | Persons Unknown | Interim injunction (without notice) granted on 3 April 2019.<br>The order contains purported order for alternative service of the Claim Form by affixing Claim Form at each site, but no Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). The claim was "adjourned generally with liberty to restore".<br>Claim Form issued on 3 April 2019.<br>On application by the claimants, the interim injunction discharged and claim dismissed on 13 November 2020. |
| 20. | **Canterbury City Council**<br><br>QB-2019-001304<br><br>**Current status:** Final injunction discharged and claim dismissed. | Persons Unknown | Interim injunction (without notice) granted on 10 April 2019 against "Persons Unknown occupying land".<br>Claim Form issued on 10 April 2019 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 3 June 2019 against "Persons Unknown Occupying |

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| | | | the sites listed in this Order" until 3 June 2020.<br>Application by the Claimant to extend the final injunction withdrawn on 28 October 2020.<br>Interim and final injunction orders discharged and claim dismissed on 30 October 2020: [2020] EWHC 3153 (QB) |
| 21. | **Central Bedfordshire**<br><br>QB-2020-003858<br>(formerly Bedford District Registry E01LU344)<br><br>**Current status:** Final injunction lapsed on 5 October 2020 and no application made to extend or renew. | (1) Levi Parker<br>(2)-(22) other named Defendants<br>(23) Persons Unknown entering or remaining without planning consent on those parcels of land coloured in Schedule 2 of the draft order. | Unclear when the Claim Form was issued, but not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final Injunction (without notice) granted against Persons Unknown with power of arrest from 5 October 2018 until 5 October 2020. |
| 22. | **Elmbridge Borough Council**<br><br>QB-2018-003423<br>(HQ18X02948)<br><br>**Current status:** Final injunction discharged and claim dismissed. | Persons Unknown occupying land and/or depositing waste on land | Interim injunction (without notice) granted on 16 August 2018 with power of arrest.<br>Claim Form issued on 16 August 2018 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 8 November 2018 until 8 November 2021 with power of arrest.<br>On application by the claimant, final injunction discharged and claim dismissed on 11 November 2020. |
| 23. | **Epsom and Ewell Borough Council**<br><br>QB-2018-000383<br><br>**Current status:** Final injunction discharged and claim dismissed. | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste on land | Interim injunction (without notice) granted on 7 December 2018 with power of arrest.<br>Claim Form issued on 7 December 2018 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 20 May 2019 against "(1) Persons Unknown occupying the land as part of an encampment of ten (10) vehicles or more (2) Persons Unknown depositing waste and fly-tipping on the land (as defined in the Order" until 15 May 2022 with power of arrest.<br>On application by the claimant, final injunction discharged and claim dismissed on 10 November 2020. |

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| 24. | **(1) Harlow District Council**<br>**(2) Essex County Council**<br><br>QB-2015-002380<br>(HQ15X00825)<br><br>**Current status:** Injunction lapsed on 14 June 2020 and application to extend final injunction withdrawn on 10 July 2020. | (1) Michael Stokes<br>(2)-(53) other named Defendants<br>(54) Persons Unknown | Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 20 February 2015.<br>Interim injunction granted on 3 March 2015.<br>Final injunction granted on 16 December 2015 against 35 named defendants and Persons Unknown until 15 June 2017.<br>Order of 14 June 2017 extending the final injunction until 14 June 2020.<br>Application by the Claimant, issued on 8 June 2020 to extend further the final injunction, withdrawn on 10 July 2020 at a hearing before Tipples J. |
| 25. | **Hertsmere Borough Council**<br><br>QB-2018-000333<br><br>**Current status:** Final injunction discharged and claim dismissed. | Persons Unknown occupying land and/or depositing waste on land | Interim injunction (without notice) granted on 5 December 2018 with power of arrest.<br>Claim Form issued on 5 December 2018 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 17 January 2019 against (1) Persons Unknown occupying land (2) Persons Unknown depositing waste on land until 17 January 2022 with power of arrest.<br>On application by the claimant, final injunction discharged and claim dismissed on 13 November 2020. |
| 26. | **(1) Nuneaton and Bedworth Borough Council**<br>**(2) Warwickshire County Council**<br><br>QB-2019-000616<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Thomas Corcoran<br>(2)-(53) other named Defendants<br>(54) Persons Unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth | Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 22 February 2019.<br>Claim Form issued 22 February 2019.<br>Interim injunction granted on 19 March 2019 with power of arrest.<br>No steps taken by the Claimant to bring the claim to a final hearing. |
| 27. | **Reigate and Banstead Borough Council**<br><br>QB-2019-002297<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Persons Unknown possessing or occupying land<br>(2) Persons Unknown depositing waste or fly-tipping on land | Interim injunction (without notice) granted on 25 June 2019 with power of arrest.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking |

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| | | | order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued on 25 June 2019.<br>Order of 25 November 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley. |
| 28. | **Rochdale Metropolitan Borough Council**<br><br>QB-2017-005202<br>(HQ17X04668)<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Shane Heron<br>(2)-(89) other named Defendants<br>(90) Persons Unknown (being members of the travelling community who have unlawfully encamped within the borough of Rochdale) | Claim form issued 21 December 2017.<br>Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 22 December 2017.<br>Interim injunction granted on 9 February 2018 with power of arrest.<br>No steps taken by the Claimant to bring the claim to a final hearing. |
| 29. | **Rugby Borough Council**<br><br>QB-2020-003852<br>(formerly Nuneaton County Court E00NU379)<br><br>**Current status:** Final injunction discharged and claim dismissed. | (1) McDonough (surname only)<br>(2)-(6) other Defendants identified by surname only<br>(7) Persons Unknown | Claim Form issued 22 August 2018 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction (without notice) granted on 31 August 2018 against Persons Unknown "until further order" with power of arrest.<br>Application to renew power of arrest refused on 4 June 2020.<br>As a result of the Claimant's failure to comply with an unless Order dated 4 November 2020, the injunction order against Persons Unknown was discharged on 13 November 2020.<br>On application by the Claimant, injunction order against the First to Sixth Defendants discharged and claim dismissed on 20 November 2020. |
| 30. | **Runnymede Borough Council**<br><br>QB-2017-006165<br>(HQ17X02485)<br><br>**Current status:** Final injunction against Persons Unknown discharged. | (1) Callum Wooding<br>(2)-(23) other named Defendants<br>(24) Persons Unknown (Occupiers of land at Thorpe Green Open Space, Egham, Surrey, TW20 8QL and other areas of land within Runnymede Borough Council) | Interim injunction (without notice) granted on 14 July 2019 against "Persons Unknown (occupiers of land at Thorpe Green open space, Egham, Surrey TW20 8QL and other areas of land within Runnymede Borough Council as identified in the Schedules to this Order and shown on the plan attached to this Order)".<br>The order contains purported order for alternative service of the Claim Form by affixing Claim Form at each site, but no Application Notice was issued seeking order for alternative service of Claim |

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| | | | Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued 14 July 2017.<br>Final injunction granted on 22 September 2017 against "Persons Unknown (Occupiers of Land as defined within this Order as identified in the Schedules to this order and shown on the plan attached to this Order)". Order contains no end date, but provides permission to apply to vary/discharge.<br>On application by the claimant, final injunction against Persons Unknown discharged on 9 December 2020. |
| 31. | **Sandwell Metropolitan Borough Council**<br><br>QB-2020-003841<br>(formerly Birmingham District Registry D90BM116)<br><br>**Current status:** Injunction against Persons Unknown discharged. | (1) John Cassidy<br>(2)-(14) other named Defendants<br>(15) Persons Unknown | Claim Form issued 26 May 2017.<br>Order for alternative service dated 26 May 2017 deeming service of the Claim Form on "Persons Unknown" after it has been served on the First Defendant.<br>Injunction (without notice) granted against Persons Unknown on 6 June 2017 until 6 June 2018 (unclear whether interim or final).<br>Further injunction granted on 5 June 2018 against Persons Unknown until 6 June 2023 with power of arrest.<br>On application by the claimant, injunction against Persons Unknown discharged on 27 November 2020. |
| 32. | **Solihull Metropolitan Borough Council**<br><br>QB-2020-003848<br>(formerly Birmingham District Registry E90BM026)<br><br>**Current status:** Injunction against Persons Unknown discharged. | (1) John Cassidy<br>(2)-(14) other named Defendants<br>(15) Persons Unknown | Claim Form issued 5 February 2018.<br>No order for alternative service of the Claim Form upon Persons Unknown.<br>Injunction (without notice) granted against Persons Unknown on 13 March 2018 until 13 March 2021 (unclear whether interim or final).<br>As a result of the Claimant's failure to comply with an unless Order dated 6 November 2020, the injunction order against Persons Unknown was discharged on 20 November 2020. |
| 33. | **Test Valley Borough Council**<br><br>QB-2020-002112<br><br>**Current status:** Interim injunction in force against Persons Unknown | (1) Albert Bowers<br>(2)-(89) other named Defendants<br>(90) Persons Unknown forming unauthorised encampments within the borough of Test Valley | Claim Form issued 18 June 2020.<br>Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 18 June 2020.<br>Interim injunction granted on 28 July 2020 with power of arrest. |
| 34. | **Thurrock Council** | (1) Martin Stokes | Claim Form issued 31 July 2019 |

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| | QB-2019-002738<br><br>**Current status:** Interim injunction in force against Persons Unknown | (2)-(107) other named Defendants<br>(108) Persons Unknown | Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 31 July 2019.<br>Interim injunction granted on 3 September 2019 with power of arrest.<br>No steps taken by the Claimant to bring the claim to a final hearing. |
| 35. | **Walsall Metropolitan Borough Council**<br><br>QB-2020-003850<br>(formerly Walsall County Court C00WJ967)<br><br>**Current status:** Final injunction in force against Persons Unknown | (1) Brenda Bridges<br>(2)-(18) other named Defendants<br>(19) Persons Unknown | No separate Claim Form issued. The Claimant states that the claim was brought using the modified Part 8 procedure provided by CPR Part 65.43 for applications for injunctions under Anti-Social Behaviour, Crime and Policing Act 2014 (see judgment [65]-[66]).<br>Interim injunction (without notice) granted on 23 September 2016. The order of 23 September 2016 includes: "service of the proceedings may be effected by displaying the notice of application together with the written evidence on the land edged red on the map annexed to this order". If this is an order for alternative service, then it does not comply with CPR 6.15(4).<br>Final injunction granted on 21 October 2016 until "further order of the Court." |
| 36. | **Wolverhampton City Council**<br><br>QB-2020-003838<br>(formerly Birmingham District Registry E90BM139)<br><br>**Current status:** Contra mundum injunction in force prohibiting encampments within the boundaries of 59 sites | Persons Unknown | Claim Form issued 29 June 2018.<br>Order for alternative service on persons unknown, by various methods and affixing a notice of hearing of the Claimant's Application for an injunction and directions how to inspect documents.<br>Injunction granted on 2 October 2018 ([2018] EWHC 3777 (QB)). The injunction is contra mundum, but in places refers to "the Defendants". It contains a power of arrest. The judgment considers the principles governing injunctions against "persons unknown" (see [2]) but does not address whether the Court has the jurisdiction to grant a contra mundum order. The order provided for a review hearing to take place on the first available date after 1 October 2019.<br>Further injunction order granted on 5 December 2019, again contra mundum and with power of arrest. The order provided for a further review hearing to take place on 20 July 2020. |

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| | | | Hearing on 20 July 2020 which led to an order of 29 July 2020 continuing the injunction ([2020] EWHC 2280 (QB)). |
| 37. | **Buckinghamshire Council (formerly) Wycombe District Council**<br><br>QB-2019-002783<br><br>**Current status:** Interim injunction discharged and claim dismissed. | (1) Persons Unknown occupying land<br>(2) Persons Unknown depositing waste or fly-tipping on land | Interim injunction (without notice) granted on 2 August 2019 with power of arrest.<br>The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4).<br>Claim Form issued 2 August 2019.<br>Order of 10 December 2019 adjourning the final hearing of the claim until the determination of the appeal in LB Bromley.<br>On application by the Claimant, interim injunction discharged and claim dismissed on 12 November 2020. |
| 38. | **LB Enfield**<br><br>QB-2017-006080 (HQ17X02619) (1st Claim)<br><br>QB-2020-003471 (2nd Claim)<br><br>**Current status:** No injunction in force against persons unknown. 2nd Claim discontinued on 11 January 2021. | 1st Claim: Persons Unknown<br><br>2nd Claim:<br><br>(1) Persons Unknown who enter and/or occupy any of the locations listed in this order ("the locations") for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphanelia (sic)<br>(2) Persons Unknown who enter and/or occupy any of the locations listed in this order ("the locations") for the purposes of fly-tipping or discarding waste including entering with caravans, mobile homes, pick-up trucks, vans or lorries and any associated vehicles | 1st Claim: Interim injunction (without notice) granted on 21 July 2017.<br>Claim Form issued on 21 July 2017 not served during its period of validity.<br>No order for alternative service of the Claim Form.<br>Final injunction granted on 4 October 2017 until 3 October 2020.<br>Application by the Claimant to extend final injunction and to amend the Claim Form withdrawn on 28 September 2020.<br>Application by the Claimant for an order for alternative service of the Claim for under CPR 6.15(2) (validation of steps already taken) refused on 2 October 2020: [2020] EWHC 2717 (QB).<br><br>2nd Claim: Claim Form issued 5 October 2020.<br>Interim injunction application against second Defendant refused on 2 October 2020.<br>Hearing of Part 8 Claim fixed for 27-28 January 2021.<br>Notice of Discontinuance filed on 11 January 2021. |

## **Appendix 2: Statutory provisions** (in chronological order)

## **Local Government Act 1972**:

### **222. Power of local authorities to prosecute or defend legal proceedings.**

(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and

(b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.

## Highways Act 1980:

### 130. Protection of public rights

(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

(3) Without prejudice to subsections (1) and (2) above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—

(a) the highways for which they are the highway authority, and

(b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.

(4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

(6) If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or

(b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.

(7) Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.

…

### 137. Penalty for wilful obstruction.

(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

**137ZA. Power to order offender to remove obstruction.**

(1) Where a person is convicted of an offence under section 137 above in respect of the obstruction of a highway and it appears to the court that—

(a) the obstruction is continuing, and

(b) it is in that person's power to remove the cause of the obstruction,

the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) If a person fails without reasonable excuse to comply with an order under subsection (1) above, he is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding one-twentieth of the greater of £5,000 or level 4 on the standard scale for each day on which the offence is so continued.

(4) Where, after a person is convicted of an offence under subsection (3) above, the highway authority for the highway concerned exercise any power to remove the cause of the obstruction, they may recover from that person the amount of any expenses reasonably incurred by them in, or in connection with, doing so.

(5) A person against whom an order is made under subsection (1) above is not liable under section 137 above in respect of the obstruction concerned—

(a) during the period fixed under that subsection or any extension under subsection (2) above, or

(b) during any period fixed under section 311(1) below by a court before whom he is convicted of an offence under subsection (3) above in respect of the order.

…

**149. Removal of things so deposited on highways as to be a nuisance etc.**

(1) If any thing is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates' court for a removal and disposal order under this section.

(2) If the highway authority for any highway have reasonable grounds for considering—

(a) that any thing unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and

(b) that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates' court under this section,

the authority may remove the thing forthwith.

(3) The highway authority by whom a thing is removed in pursuance of subsection (2) above may either—

(a) recover from the person by whom it was deposited on the highway, or from any person claiming to be entitled to it, any expenses reasonably incurred by the authority in removing it, or

(b) make a complaint to a magistrates' court for a disposal order under this section.

(4) A magistrates' court may, on a complaint made under this section, make an order authorising the complainant authority—

(a) either to remove the thing in question and dispose of it or, as the case may be, to dispose of the thing in question, and

(b) after payment out of any proceeds arising from the disposal of the expenses incurred in the removal and disposal, to apply the balance, if any, of the proceeds to the maintenance of highways maintainable at the public expense by them.

(5) If the thing in question is not of sufficient value to defray the expenses of removing it, the complainant authority may recover from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by them in removing it.

(6) A magistrates' court composed of a single justice may hear a complaint under this section.

## Town & Country Planning Act 1990:

### 187B. Injunctions restraining breaches of planning control

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1), the court may grant such injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section "the court" means the High Court or the county court.

## Criminal Justice and Public Order Act 1994

### 61. Power to remove trespassers on land.

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

…

(6) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it—

(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and

(b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not—

(a) require action by more than one occupier; or

(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section—

"common land" means—

(a) land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006; and

(b) land to which Part 1 of that Act does not apply and which is subject to rights of common as defined in that Act;

"commoner" means a person with rights of common as defined in section 22 of the Commons Registration Act 1965;

"land" does not include—

(a) buildings other than—

(i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988… or

(ii) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;

(b) land forming part of—

(i) a highway unless it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000]or is a cycle track under the Highways Act 1980 or the Cycle Tracks Act 1984; …

"the local authority", in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;

"occupier" (and in subsection (8) "the other occupier") means—

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him…

"property", in relation to damage to property on land, means—

(a) in England and Wales, property within the meaning of section 10(1) of the Criminal Damage Act 1971…

and "damage" includes the deposit of any substance capable of polluting the land;

"trespass" means, in the application of this section—

(a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land…

"trespassing" and "trespasser" shall be construed accordingly;

"vehicle" includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

**77. Power of local authority to direct unauthorised campers to leave land**

(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area -

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him -

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or

(b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

**78. Orders for removal of persons and their vehicles unlawfully on land**

(1) A magistrates' court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority's area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.

(6) Section 55(2) of the Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

**79. Provisions as to directions under s.77 and orders under s.78.**

(1) The following provisions apply in relation to the service of notice of a direction under section 77 and of a summons under section 78, referred to in those provisions as a ”relevant document”.

(2) Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) A local authority shall take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in a manner designed to ensure that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document shall be given by the local authority to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, the authority is unable to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land shall be entitled to appear and to be heard in the proceedings.

(5) Section 77(6) applies also for the interpretation of this section.

## Police and Justice Act 2006:

### 27.Injunctions in local authority proceedings: power of arrest and remand

(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.

(5) After making an arrest under subsection (4) the constable must as soon as is reasonably practicable inform the local authority.

(6) Where a person is arrested under subsection (4)—

(a) he shall be brought before the court within the period of 24 hours beginning at the time of his arrest, and

(b) if the matter is not then disposed of forthwith, the court may remand him.

(7) For the purposes of subsection (6), when calculating the period of 24 hours referred to in paragraph (a) of that subsection, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(8) Schedule 10 applies in relation to the power to remand under subsection (6).

(9) If the court has reason to consider that a medical report will be required, the power to remand a person under subsection (6) may be exercised for the purpose of enabling a medical examination and report to be made.

(10) If such a power is so exercised the adjournment shall not be in force—

(a) for more than three weeks at a time in a case where the court remands the accused person in custody, or

(b) for more than four weeks at a time in any other case.

(11) If there is reason to suspect that a person who has been arrested under subsection (4) is suffering from mental disorder within the meaning of the Mental Health Act

1983 the court shall have the same power to make an order under section 35 of that Act (remand for report on accused's mental condition) as the Crown Court has under that section in the case of an accused person within the meaning of that section.

(12) For the purposes of this section—

(a) "harm" includes serious ill-treatment or abuse (whether physical or not);

(b) "local authority" has the same meaning as in section 222 of the Local Government Act 1972 (c. 70);

(c) "the court" means the High Court or the county court and includes—

(i) in relation to the High Court, a judge of that court, and

(ii) in relation to the county court, a judge of that court.

## Anti-Social Behaviour, Crime and Policing Act 2014:

### 1. Power to grant injunctions

(1) A court may grant an injunction under this section against a person aged 10 or over ("the respondent") if two conditions are met.

(2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.

(3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

(4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour—

(a) prohibit the respondent from doing anything described in the injunction;

(b) require the respondent to do anything described in the injunction.

(5) Prohibitions and requirements in an injunction under this section must, so far as practicable, be such as to avoid—

(a) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;

(b) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.

(6) An injunction under this section must—

(a) specify the period for which it has effect, or

(b) state that it has effect until further order.

In the case of an injunction granted before the respondent has reached the age of 18, a period must be specified and it must be no more than 12 months.

(7) An injunction under this section may specify periods for which particular prohibitions or requirements have effect.

(8) An application for an injunction under this section must be made to—

(a) a youth court, in the case of a respondent aged under 18;

(b) the High Court or the county court, in any other case.

Paragraph (b) is subject to any rules of court made under section 18(2).

### 2. Meaning of "anti-social behaviour"

(1) In this Part "anti-social behaviour" means—

(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,

(b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or

(c) conduct capable of causing housing-related nuisance or annoyance to any person.

(2) Subsection (1)(b) applies only where the injunction under section 1 is applied for by—

(a) a housing provider,

(b) a local authority, or

(c) a chief officer of police.

(3) In subsection (1)(c) "housing-related" means directly or indirectly relating to the housing management functions of—

(a) a housing provider, or

(b) a local authority.

(4) For the purposes of subsection (3) the housing management functions of a housing provider or a local authority include—

(a) functions conferred by or under an enactment;

(b) the powers and duties of the housing provider or local authority as the holder of an estate or interest in housing accommodation.

**3. Requirements included in injunctions**

(1) An injunction under section 1 that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

(2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

(a) the individual to be specified under subsection (1), if an individual is to be specified;

(b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

(3) Before including two or more requirements, the court must consider their compatibility with each other.

(4) It is the duty of a person specified under subsection (1)—

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the "relevant requirements");

(b) to promote the respondent's compliance with the relevant requirements;

(c) if the person considers that the respondent—

(i) has complied with all the relevant requirements, or

(ii) has failed to comply with a relevant requirement,

to inform the person who applied for the injunction and the appropriate chief officer of police.

(5) In subsection (4)(c) "the appropriate chief officer of police" means—

(a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the respondent lives, or

(b) if it appears to that person that the respondent lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

(6) A respondent subject to a requirement included in an injunction under section 1 must—

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;

(b) notify the person of any change of address.

These obligations have effect as requirements of the injunction.

**4. Power of arrest**

(1) A court granting an injunction under section 1 may attach a power of arrest to a prohibition or requirement of the injunction if the court thinks that—

(a) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or

(b) there is a significant risk of harm to other persons from the respondent.

"Requirement" here does not include one that has the effect of requiring the respondent to participate in particular activities.

(2) If the court attaches a power of arrest, the injunction may specify a period for which the power is to have effect which is shorter than that of the prohibition or requirement to which it relates.

**5. Applications for injunctions**

(1) An injunction under section 1 may be granted only on the application of—

(a) a local authority,

(b) a housing provider,

(c) the chief officer of police for a police area,

(d) the chief constable of the British Transport Police Force,

(e) Transport for London,

(ea) Transport for Greater Manchester,

(f) the Environment Agency,

(g) the Natural Resources Body for Wales,

(h) the Secretary of State exercising security management functions, or a Special Health Authority exercising security management functions on the direction of the Secretary of State, or

(i) the Welsh Ministers exercising security management functions, or a person or body exercising security management functions on the direction of the Welsh Ministers or under arrangements made between the Welsh Ministers and that person or body.

(2) In subsection (1) "security management functions" means—

(a) the Secretary of State's security management functions within the meaning given by section 195(3) of the National Health Service Act 2006;

(b) the functions of the Welsh Ministers corresponding to those functions.

(3) A housing provider may make an application only if the application concerns anti-social behaviour that directly or indirectly relates to or affects its housing management functions.

(4) For the purposes of subsection (3) the housing management functions of a housing provider include—

(a) functions conferred by or under an enactment;

(b) the powers and duties of the housing provider as the holder of an estate or interest in housing accommodation.

(5) The Secretary of State may by order—

(a) amend this section;

(b) amend section 20 in relation to expressions used in this section.

**6. Applications without notice**

(1) An application for an injunction under section 1 may be made without notice being given to the respondent.

(2) If an application is made without notice the court must either—

(a) adjourn the proceedings and grant an interim injunction (see section 7), or

(b) adjourn the proceedings without granting an interim injunction, or

(c) dismiss the application.

**7. Interim injunctions**

(1) This section applies where the court adjourns the hearing of an application (whether made with notice or without) for an injunction under section 1.

(2) The court may grant an injunction under that section lasting until the final hearing of the application or until further order (an "interim injunction") if the court thinks it just to do so.

(3) An interim injunction made at a hearing of which the respondent was not given notice may not have the effect of requiring the respondent to participate in particular activities.

(4) Subject to that, the court has the same powers (including powers under section 4) whether or not the injunction is an interim injunction.

…

**14. Requirements to consult etc**

(1) A person applying for an injunction under section 1 must before doing so—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 when the application is made;

(b) inform any other body or individual the applicant thinks appropriate of the application.

This subsection does not apply to a without-notice application.

(2) Where the court adjourns a without-notice application, before the date of the first on-notice hearing the applicant must—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 on that date;

(b) inform any other body or individual the applicant thinks appropriate of the application.

(3) A person applying for variation or discharge of an injunction under section 1 granted on that person's application must before doing so—

(a) consult the local youth offending team about the application for variation or discharge, if the respondent will be aged under 18 when that application is made;

(b) inform any other body or individual the applicant thinks appropriate of that application.

(4) In this section—

"local youth offending team" means—

(a) the youth offending team in whose area it appears to the applicant that the respondent lives, or

(b) if it appears to the applicant that the respondent lives in more than one such area, whichever one or more of the relevant youth offending teams the applicant thinks it appropriate to consult;

"on-notice hearing" means a hearing of which notice has been given to the applicant and the respondent in accordance with rules of court;

"without-notice application" means an application made without notice under section 6.

…

**18. Rules of court**

(1) Rules of court may provide that an appeal from a decision of the High Court, the county court or a youth court—

(a) to dismiss an application for an injunction under section 1 made without notice being given to the respondent, or

(b) to refuse to grant an interim injunction when adjourning proceedings following such an application,

may be made without notice being given to the respondent.

(2) Rules of court may provide for a youth court to give permission for an application for an injunction under section 1 against a person aged 18 or over to be made to the youth court if—

(a) an application to the youth court has been made, or is to be made, for an injunction under that section against a person aged under 18, and

(b) the youth court thinks that it would be in the interests of justice for the applications to be heard together.

(3) In relation to a respondent attaining the age of 18 after proceedings under this Part have begun, rules of court may—

(a) provide for the transfer of the proceedings from the youth court to the High Court or the county court;

(b) prescribe circumstances in which the proceedings may or must remain in the youth court.

**19. Guidance**

(1) The Secretary of State may issue guidance to persons entitled to apply for injunctions under section 1 (see section 5) about the exercise of their functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

**20. Interpretation etc**

(1) In this Part—

"anti-social behaviour" has the meaning given by section 2;

"harm" includes serious ill-treatment or abuse, whether physical or not;

"housing accommodation" includes—

(a) flats, lodging-houses and hostels;

(b) any yard, garden, outhouses and appurtenances belonging to the accommodation or usually enjoyed with it;

(c) any common areas used in connection with the accommodation;

"housing provider" means—

(a) a housing trust, within the meaning given by section 2 of the Housing Associations Act 1985, that is a charity;

(b) a housing action trust established under section 62 of the Housing Act 1988;

(c) in relation to England, a non-profit private registered provider of social housing;

(d) in relation to Wales, a Welsh body registered as a social landlord under section 3 of the Housing Act 1996;

(e) any body (other than a local authority or a body within paragraphs (a) to (d)) that is a landlord under a secure tenancy within the meaning given by section 79 of the Housing Act 1985;

"local authority" means—

(a) in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council;

"respondent" has the meaning given by section 1(1).

(2) A person's age is treated for the purposes of this Part as being that which it appears to the court to be after considering any available evidence.

…

*Public Spaces Protection Orders*

**59. Power to make orders**

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or

(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities—

(a) is, or is likely to be, of a persistent or continuing nature,

(b) is, or is likely to be, such as to make the activities unreasonable, and

(c) justifies the restrictions imposed by the notice.

(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—

(a) prohibits specified things being done in the restricted area,

(b) requires specified things to be done by persons carrying on specified activities in that area, or

(c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

(a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or

(b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

(a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;

(b) so as to apply at all times, or only at specified times, or at all times except those specified;

(c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

(a) identify the activities referred to in subsection (2);

(b) explain the effect of section 63 (where it applies) and section 67;

(c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

**60. Duration of orders**

(1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.

(2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

(3) An extension under this section—

(a) may not be for a period of more than 3 years;

(b) must be published in accordance with regulations made by the Secretary of State.

(4) A public spaces protection order may be extended under this section more than once.

### 61. Variation and discharge of orders

(1) Where a public spaces protection order is in force, the local authority that made the order may vary it—

(a) by increasing or reducing the restricted area;

(b) by altering or removing a prohibition or requirement included in the order, or adding a new one.

(2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 59(2) and (3) are met as regards activities in that area.

(3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 59(5) allows to be imposed.

(4) A public spaces protection order may be discharged by the local authority that made it.

(5) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

(6) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

### 62. Premises etc to which alcohol prohibition does not apply

(1) A prohibition in a public spaces protection order on consuming alcohol does not apply to—

(a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;

(b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;

(c) a place within the curtilage of premises within paragraph (a) or (b);

(d) premises which by virtue of Part 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 30 minutes before that time;

(e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (highway-related uses).

(2) A prohibition in a public spaces protection order on consuming alcohol does not apply to council-operated licensed premises—

(a) when the premises are being used for the supply of alcohol, or

(b) within 30 minutes after the end of a period during which the premises have been used for the supply of alcohol.

(3) In this section—

"club premises certificate" has the meaning given by section 60 of the Licensing Act 2003;

"premises licence" has the meaning given by section 11 of that Act;

"supply of alcohol" has the meaning given by section 14 of that Act.

(4) For the purposes of this section, premises are "council-operated licensed premises" if they are authorised by a premises licence to be used for the supply of alcohol and—

(a) the licence is held by a local authority in whose area the premises (or part of the premises) are situated, or

(b) the licence is held by another person but the premises are occupied by a local authority or are managed by or on behalf of a local authority.

**63. Consumption of alcohol in breach of prohibition in order**

(1) This section applies where a constable or an authorised person reasonably believes that a person (P)—

(a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or

(b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section "authorised person" means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

(2) The constable or authorised person may require P—

(a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol;

(b) to surrender anything in P's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

(3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

(4) A requirement imposed by an authorised person under subsection (2) is not valid if the person—

(a) is asked by P to show evidence of his or her authorisation, and

(b) fails to do so.

(5) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.

(6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**64.Orders restricting public right of way over highway**

(1) A local authority may not make a public spaces protection order that restricts the public right of way over a highway without considering—

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;

(b) the likely effect of making the order on other persons in the locality;

(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(2) Before making such an order a local authority must—

(a) notify potentially affected persons of the proposed order,

(b) inform those persons how they can see a copy of the proposed order,

(c) notify those persons of the period within which they may make representations about the proposed order, and

(d) consider any representations made.

In this subsection "potentially affected persons" means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.

(3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so.

(4) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(5) A public spaces protection order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.

(6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.

(7) A public spaces protection order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.

(8) A local authority may install, operate and maintain barriers authorised under subsection (7).

(9) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)).

(10) In this section—

"dwelling" means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;

"highway" has the meaning given by section 328 of the Highways Act 1980.

**65.Categories of highway over which public right of way may not be restricted**

(1) A public spaces protection order may not restrict the public right of way over a highway that is—

(a) a special road;

(b) a trunk road;

(c) a classified or principal road;

(d) a strategic road;

(e) a highway in England of a description prescribed by regulations made by the Secretary of State;

(f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.

(2) In this section—

"classified road", "special road" and "trunk road" have the meaning given by section 329(1) of the Highways Act 1980;

"highway" has the meaning given by section 328 of that Act;

"principal road" has the meaning given by section 12 of that Act (and see section 13 of that Act);

"strategic road" has the meaning given by section 60(4) of the Traffic Management Act 2004.

**66.Challenging the validity of orders**

(1) An interested person may apply to the High Court to question the validity of—

(a) a public spaces protection order, or

(b) a variation of a public spaces protection order.

"Interested person" means an individual who lives in the restricted area or who regularly works in or visits that area.

(2) The grounds on which an application under this section may be made are—

(a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);

(b) that a requirement under this Chapter was not complied with in relation to the order or variation.

(3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

(a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or

(b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

(a) generally, or

(b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

### 67.Offence of failing to comply with order

(1) It is an offence for a person without reasonable excuse—

(a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

### 68.Fixed penalty notices

(1) A constable or an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 63 or 67 in relation to a public spaces protection order.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.

(3) The local authority specified under subsection (2) must be the one that made the public spaces protection order.

(4) Where a person is issued with a notice under this section in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A fixed penalty notice must—

(a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;

(b) state the period during which (because of subsection (4)(a)) proceedings will not be taken for the offence;

(c) specify the amount of the fixed penalty;

(d) state the name and address of the person to whom the fixed penalty may be paid;

(e) specify permissible methods of payment.

(6) An amount specified under subsection (5)(c) must not be more than £100.

(7) A fixed penalty notice may specify two amounts under subsection (5)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.

(8) Whatever other method may be specified under subsection (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(9) Where a letter is sent as mentioned in subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(10) In any proceedings, a certificate that—

(a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and

(b) states that payment of a fixed penalty was, or was not, received by the dated specified in the certificate,

is evidence of the facts stated.

(11) In this section—

"authorised person" means a person authorised for the purposes of this section by the local authority that made the order (or authorised by virtue of section 69(2));

"chief finance officer", in relation to a local authority, means the person with responsibility for the authority's financial affairs.

…

**70.Byelaws**

A byelaw that prohibits, by the creation of an offence, an activity regulated by a public spaces protection order is of no effect in relation to the restricted area during the currency of the order.

…

**72.Convention rights, consultation, publicity and notification**

(1) A local authority, in deciding—

(a) whether to make a public spaces protection order (under section 59) and if so what it should include,

(b) whether to extend the period for which a public spaces protection order has effect (under section 60) and if so for how long,

(c) whether to vary a public spaces protection order (under section 61) and if so how, or

(d) whether to discharge a public spaces protection order (under section 61),

must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

(2) In subsection (1) "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

(3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—

(a) making a public spaces protection order,

(b) extending the period for which a public spaces protection order has effect, or

(c) varying or discharging a public spaces protection order.

(4) In subsection (3)—

"the necessary consultation" means consulting with—

(a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;

(b) whatever community representatives the local authority thinks it appropriate to consult;

(c) the owner or occupier of land within the restricted area;

"the necessary publicity" means—

(a) in the case of a proposed order or variation, publishing the text of it;

(b) in the case of a proposed extension or discharge, publicising the proposal;

"the necessary notification" means notifying the following authorities of the proposed order, extension, variation or discharge—

(a) the parish council or community council (if any) for the area that includes the restricted area;

(b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

(5) The requirement to consult with the owner or occupier of land within the restricted area—

(a) does not apply to land that is owned and occupied by the local authority;

(b) applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.

(6) In the case of a person or body designated under section 71, the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.

(7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area.

**73.Guidance**

(1) The Secretary of State may issue—

(a) guidance to local authorities about the exercise of their functions under this Chapter and those of persons authorised by local authorities under section 63 or 68;

(b) guidance to chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

**74.Interpretation of Chapter 2**

(1) In this Chapter—

"alcohol" has the meaning given by section 191 of the Licensing Act 2003;

"community representative", in relation to a public spaces protection order that a local authority proposes to make or has made, means any individual or body appearing to the authority to represent the views of people who live in, work in or visit the restricted area;

"local authority" means—

(a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London (in its capacity as a local authority) or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council;

"public place" means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"restricted area" has the meaning given by section 59(4).

(2) For the purposes of this Chapter, a public spaces protection order "regulates" an activity if the activity is—

(a) prohibited by virtue of section 59(4)(a), or

(b) subjected to requirements by virtue of section 59(4)(b),

whether or not for all persons and at all times.