Neutral Citation Number: [2022] EWHC 1998 (QB)

Case No: QB-2019-002738

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2022

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

Thurrock Council	**Claimant**
- and -	
(1) Martin Stokes **(2)-(107) Other named Defendants (see Appendix)** **(108) Persons Unknown**	**Defendants**

- -
- -

Caroline Bolton and Natalie Pratt (instructed by **LB Barking & Dagenham Legal Services**) for the **Claimant**
No defendant attended or was represented at the hearing

Hearing dates: 25-29 October 2021

- -

Approved Judgment

The Honourable Mr Justice Nicklin :

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A: Introduction

2. This judgment follows the final hearing of a Part 8 Claim brought by Thurrock Council ("Thurrock") against 107 named defendants. It determines to what, if any, relief Thurrock is entitled following an adjudication of its claim against the named defendants. A claim has also been brought against "Persons Unknown" (without any description). The "persons unknown" claim was adjourned pending the Court of Appeal decision in ***LB Barking & Dagenham -v- Persons Unknown*** **[2022] 2 WLR 946**.

B: Background and Procedural History

3. The background to the claims, brought by various local authorities, against both named individuals and "persons unknown" is set out in two previous judgments: **[2021] EWHC 1201 (QB)** ("the First Judgment") and **[2021] EWHC 2648 (QB)** ("the Second Judgment"). The procedural history of this claim is given in [72]-[81] in the Second Judgment, but in summary:

   i) The Claim was commenced by Part 8 Claim Form on 31 July 2019.

   ii) On that same date, the Court granted an alternative service order without notice to the Defendants (see [10] below).

   iii) An interim injunction order was granted on 3 September 2019 against 89 named defendants and "persons unknown". The order imposed a borough wide prohibition on encampments and/or fly-tipping. The interim injunction contained a power of arrest.

   iv) The interim injunction contained no return date nor any directions for a further hearing. As a result, the proceedings were allowed by Thurrock to become dormant for a substantial period, until the claim was brought together as part of the Cohort of claims that led ultimately to the First Judgment.

   v) As a result of that judgment, the power of arrest included in the interim injunction was discharged: see [79]-[82] and [245] of the First Judgment.

C: The Defendants to the Claim

4. The Part 8 Claim Form was issued on 31 July 2019. Originally, the claim was brought against 107 named Defendants. In summary, the claim alleges that each of the named Defendants has (at various places and times) formed at least one encampment on land situated within Thurrock's administrative area that has had "*a detrimental impact on the borough's residents and businesses, as well as the enjoyment of public open spaces and sporting grounds.*"

5. In the Claim Form, Thurrock brought the claim for an interim and final injunction under s.222 Local Government Act 1972 and/or s.187B Town & Country Planning Act 1990 and/or s.1 Anti-Social Behaviour, Crime and Policing Act 2014.

6. Thurrock has not pursued all the named Defendants to the final hearing. Several Defendants have fallen away as the claim has progressed. The table in the Appendix lists all the originally named Defendants and explains the status of the claim against each Defendant. The claims against the greyed-out defendants have been discontinued at some point, some as recently as the trial of the claim. The claims against 12 Defendants were discontinued before the grant of the interim injunction on 3 September 2019. 16 further claims were abandoned between the grant of the interim injunction and the trial. Thurrock sought permission to discontinue or abandoned a further 27 claims at trial. At the conclusion of the trial, and removing duplicate Defendants, there remained 51 active individual Defendants against whom Thurrock sought a final injunction.

7. None of the 107 named Defendants responded to the claim, whether by filing acknowledgement of service or otherwise. None has taken part in the proceedings. As the claim is made by way of Part 8, there is no question of Thurrock being granted judgment in default or summary judgment. Even if either of those routes to a judgment without a trial were available, it would not mean that Thurrock would automatically be granted an injunction. As a discretionary remedy, the Court would always scrutinise whether any injunction ought to be granted, and if so in what terms.

8. The fact that no named Defendant has participated in the proceedings presents some difficulties, and it also raises some questions.

9. The first issue of concern is whether the Claim Form has actually been received by each of the Defendants. Thurrock's claim is that each of the named Defendants is a member of the Gypsy or Traveller communities and that, therefore, they threaten to form further unauthorised encampments on land. Service of legal documents on members of such communities presents some challenges. Unless the Court permits another method, a Claim Form is required to be served personally on a defendant to a civil claim who is an individual.

10. Largely anticipating the difficulties of personally serving a Claim Form on a largely itinerant community, on 31 July 2019, Thurrock obtained an alternative service order, without notice to the Defendants, the material parts of which provided:

> "In the event that the Claimant is unable to personally serve the 1st to 107th Defendants, pursuant to CPR 6.14 and 6.15 the Claimant shall be permitted to serve any such Defendants by leaving a copy (as opposed to an original) of the application notice, claim form, draft order and supporting evidence in a clear transparent envelope and affixing the same to a caravan, mobile home or other vehicle, or to the front door of any residential premises which in each case is reasonable (sic) believed to be owned or occupied by the said Defendants, or by putting such copy documents through the letter box of any such residential premises. Any such copy documents served by this method will be deemed served the second working day after service of the application notice and claim form."

11. Thurrock has obtained and filed witness statements from the process servers who served the Claim Form (and other documents) on the named Defendants. The evidence demonstrates that **not one** of the 107 named defendants was served personally. That statistic is striking and surprising, but also troubling. I have become increasingly concerned in this case as to the confidence I can have that the named Defendants have actually received the Claim Form and whether they know anything about these proceedings. Service of a Claim Form on someone you contend is a member of an itinerant community, at a fixed address given as the address of the registered keeper of a vehicle, carries with it an obvious risk that the address used has no real or continuing connection with that individual.

12. The failure to serve the Claim Form personally on any named Defendant also means that Thurrock must rely upon the alternative service order it obtained to validate service of the Claim Form on the named Defendants to establish jurisdiction over them. However, the evidence of the process servers does not confirm that efforts were made to serve the Claim Form personally, and that such steps were unsuccessful. That was a

prerequisite for alternative service under the order. Compliance with the alternative service order has become a point of significance in relation to the 11th Defendant, Brian Murphy (see [73]-[75] below). Subject to my decision on the claims against each remaining Defendant, it may be necessary to inquire further whether there has been proper compliance with the terms of the alternative service order.

13. Finally, the Part 8 Claim Form did not include the address at which the Defendants to the claim can be served, as required by CPR 6.6(2). The addresses at which the Claim Form was actually served on each Defendant can only be identified from the witness statements of the process servers.

D: The evidence

14. Served together with the Part 8 Claim Form was the evidence relied upon by Thurrock.

15. Witness statements on behalf of 22 individuals were originally served by Thurrock. Most of these witness statements contained what I described as "*generic evidence*" in the Second Judgment ([102]); that is evidence of alleged wrongdoing by people who had formed unauthorised encampments on land and/or fly-tipping, but not alleged to have been committed by any of the named Defendants. This evidence appears to have been gathered in support of the claim against "Persons Unknown". As against the named Defendants, Thurrock's evidence is much more limited.

16. The key evidence relied upon against the named Defendants is that from Paul Ballard. At the time of his statement, signed on 18 July 2019, he was the Community Policing Inspector for Essex Police based at South Ockendon Police Station. In his statement, Inspector Ballard gives a useful summary of the circumstances in which the police can – by direction made under s.61 Criminal Justice and Public Order Act 1994 (see First Judgment [74]-[76] and [393] below) – require people who have formed an unauthorised encampment to vacate the land:

> "… [The section] gives the police powers to deal with unauthorised encampments on both public and private land, providing the circumstances meet a criterion. Namely, that a senior police officer at the scene reasonably believes that two or more persons are trespassing on the land and are there with the common purpose of residing there for any period, and that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and that any of those persons has caused damage to the land or property on the land, or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family, or any employee or agent of his, or that those persons have between them six or more vehicles on the land. The police must consider the following:
>
> (1) Serious Breach of the Peace, disorder and criminal activities;
>
> (2) Is the eviction reasonable and proportionate?
>
> (3) [Are] there enough resources?"

17. Inspector Ballard does not appear to have any direct knowledge of the matters set out in his witness statement. Instead, he has produced three lever-arch files of internal police documents. His witness statement consists largely of his explanation of these

police records and what they are said to demonstrate. He explained his methodology as follows:

> "The following report and information within has been constructed and provided by the Thurrock Community Policing Team. It is important to understand that we are not analysts and this information has been obtained and presented by Community Policing Sergeant Rob Thompson… and therefore has been completed under his own personal search parameters using the Essex Police STORM and ATHENA system. The following statistics have been obtained by searching the Essex Police STORM system between the dates of 01/01/2016 through to 09/10/2018. The search parameters consisted of all calls headed under the call type of 'Unlawful Encampment', under closed status and within the ward of B2 (which covers the entire Thurrock District)…
>
> Thurrock Community Team have been asked to provide evidence in the form of incident prints, Athena record prints, C126 (Eviction Rationale) and linked crime reports for all Thurrock Encampments that were on 'Private Land', and all reports that were subject of a Section 61 authorisation on both private and public (Council Land). However, to establish this, all incidents recorded have had to be read and analysed."

18. Inspector Ballard provided three tables, setting out chronologically the recorded incidents of unauthorised encampments in Thurrock in the years of 2016, 2017 and 2018. The tables identify, for each incident, the location, whether public or private land, whether a s.61 notice was issued, the result, details of any corresponding ATHENA and/or crime report, whether a C126 assessment was completed and any linked crime reference.

19. Inspector Ballard does not explain in his evidence what STORM and ATHENA reports are, but it appears that STORM reports are incident specific logs that record information received by the police and actions taken or directed. They also record the key decisions taken by the police in connection with the incident. Inspector Ballard does state that if an incident generates a crime report, then there will be a linked ATHENA report. STORM reports can contain references to the linked ATHENA report. A review of the documents suggests that the ATHENA reports that have been exhibited may not be complete. For example, some STORM reports refer to photographs of encampments being attached to the ATHENA report, but no photographs have been provided.

20. Perhaps because they are primarily internal police documents, the STORM reports are particularly difficult to understand, and the information contained in them not always easy to identify or to follow. They contain many codes and use of shorthand that have not been explained in the evidence. As they contain real-time records of information received by the police, the information in a STORM report can sometimes conflict (examples are given in Section G below). Inspector Ballard has therefore interpreted the STORM reports and his witness statement provides a summary of each incident drawn from the relevant documents. However, in most instances his summary is very brief and contains only the key information. Much of the detail relied upon by Thurrock against the individual Defendants comes only from the underlying police documents, principally the STORM and ATHENA reports. At the hearing, Ms Bolton essentially selected from these reports pieces of information upon which Thurrock seeks to rely.

The exercise was somewhat haphazard and, at times, demonstrated elements of cherry-picking (see further my observations on hearsay in [28(iii)] below).

21. In hardcopy format, Thurrock's evidence runs to six lever-arch files, totalling over 2,000 pages. No named Defendant was ever served with a hardcopy of the evidence. Unless s/he requested a hardcopy, each Defendant was expected to access the evidence either on a USB stick or by following a link to Thurrock's website. Under the heading of "*Fairness*" in the Second Judgment, I noted:

> [127] The exercise of looking at the claims against individual named defendants has, however, identified a concern about the fairness of the process. The claims brought by the five local authorities involve claims against a large number of individual named Defendants, as well as against "Persons Unknown". The claims have been brought under Part 8. This means that there are no Particulars of Claim (or any other document) identifying what is alleged against each named defendant. The documentary material relied upon by each local authority is very substantial. The STORM reports are internal police records that would not be easy for a lay-person to understand. The evidential importance and relevance of some of the documents is only apparent when compared with other documents.

> [128] I have set out above what, in real terms, the evidence amounts to in each claim for the sample defendants... The effect of bringing one Part 8 claim against up to (and sometimes over) 100 named defendants is that any individual named defendant is confronted with a formidable task even to understand what s/he is alleged to have done. The relevant Service Orders granted to the local authorities allowed them to serve their evidence either on a USB stick or by providing an electronic link to a website where the evidence could be found. Ms Bolton submitted that serving 6 ring binders of documents on an individual defendant would have been "*inappropriate*", but the thrust of her submission is that it is nevertheless reasonable to expect the same defendant to access this evidence on a USB stick or via a link to a website.

> [129] I have identified the evidence that actually relates to the 8 individual sample defendants in the Thurrock case... As against each individual defendant, this represents a tiny fraction of the total evidence relied upon by the Claimant. This is simply not fair. It is not reasonable to expect any individual litigant to read, in Thurrock's case, over 2,000 pages of documentation to identify what amounts, in some instances, to no more than 10 pages that contained the evidence against him/her personally. I asked Ms Bolton, when we were looking at the evidence in relation to D2, whether she submitted that it was fair to expect D2, from the documents which had been served on her, to understand the case that was being made against her in the claim. Ms Bolton answered that whether D2 had read the documents was a matter for her and not something that should affect the Claimant's "*entitlement to an injunction*". Ms Bolton submitted that D2 had been served with the Claim Form and the evidence and it was irrelevant whether she had read and understood it. That is an alarming and unfortunate approach for a public authority to adopt towards litigation.

> [130] No named Defendant has filed an acknowledgement of service or any evidence in response to the Claim. Ms Bolton relies upon this as demonstrating a lack of engagement by the named defendants and, she argues, a basis on which the Court can infer that the named defendants accept the allegations made against them. Views may differ as to whether this lack of engagement is because the relevant named defendant thinks that it is a "fair cop" or whether it is because s/he has simply failed to grasp the nature of the claim that is being made against him/her personally. The Claim Form presents the claim as a general claim for an injunction to prevent encampments and/or fly-tipping rather than a claim made against individuals.
>
> [131] In the Cohort Claims, the Court has been provided with evidence that suggests that members of the Gypsy and Traveller Communities would find the task of accessing and considering this material more challenging than the average person.

I would only add that, since that judgment, it has become apparent that none of the named Defendants has been personally served with the Claim Form (see [11] above), undermining further the inference Ms Bolton invited about the Defendants' alleged non-engagement. It is now also clear that Thurrock has misidentified several named Defendants which has led them to join people to the proceedings who had nothing to do with the events alleged against them. Many of those in this category have had the claim against them discontinued. But others have been pursued to trial and it is only as a result of a careful analysis of the evidence that further examples have been identified (see the claims against Tom Ward, 102nd Defendant, and William O'Donoghue, 104th Defendant). As neither of these individuals responded to the Claim Form (or Claim Summary Letter – see [24] below) (assuming that they received them), Ms Bolton's submission that their failure to engage with the proceedings indicates an admission is weakened further still.

22. There is a further point about bringing a claim made against 107 named Defendants. It appears to me, at least arguably, that the claim should never have been made against multiple defendants in the way it has. CPR 7.3 provides that "*a claimant may use a single claim form to start all claims which <u>can be conveniently disposed</u> of in the same proceedings*" (emphasis added). Having conducted the trial, and written this judgment, I am convinced that the procedure of investigating claims against 107 named Defendants, in respect of different incidents of alleged encampment on land is the antithesis of "*convenient*". On the contrary, it seems to have the several significant disadvantages that I have identified. It is one thing to bring a claim against several defendants who are alleged to have been party to the same encampment, it is quite another to bring a single claim in respect of a series of encampments by different people. The evidence in respect of each is different. The trial of this action took 5 days even when no Defendant participated. Had a substantial number of Defendants participated in the proceedings, disputed the claims made against them, and called evidence, the trial would quickly have become unmanageable and would have been lengthy. It is quite clear to me that such claims are not suitable for the Part 8 procedure, even though claims under s.187B are *required* to be brought under Part 8.

23. It is too late to do anything about this issue in this case, but I would suggest that in future cases the Court should be more vigilant as to whether a claim brought against a

large number of defendants in respect of different incidents complies with CPR 7.3 and whether there is a need to transfer to the Part 7 procedure, or at least for there to be Particulars of Claim or other document that sets out, for each defendant, what is alleged against him/her.

E: Order that Thurrock provide details of the claim to each of the named Defendants

24. To attempt to redress what I considered was the unfairness of serving a mass of evidence (electronically), only a tiny fraction of which was relevant to any individual, I made an Order on 30 July 2021 that required Thurrock, by 3 September 2021, to send a letter to each named Defendant which (a) identified in numbered paragraphs, what each Defendant was alleged by Thurrock to have done; (b) identified the parts of the evidence upon which Thurrock intended to rely to prove the identified acts of the relevant defendant; and (c) set out the terms of the injunction that Thurrock intended to ask the Court to impose on the relevant defendant ("the Claim Summary Letter"). The Claim Summary Letter effectively discharged the role of a Particulars of Claim. It also gave details of the date of the final hearing.

25. The Order of 30 July 2021 also required Thurrock, a week before the final hearing, to serve a copy of its skeleton argument on each Defendant against whom it intended to seek an injunction.

26. Mr Rulewski filed a witness statement, dated 4 October 2021, confirming that the Claim Summary Letters were sent to the named Defendants on 2 September 2021. He also provided details of any Claim Summary Letters that had been returned, or in respect of which there was evidence casting doubt on whether the relevant defendant lived at the address given for service for the relevant defendant.

    i) A letter was received by Thurrock from Margaret McDonagh, dated 6 September 2021, from an address in County Tyrone in Northern Ireland stating that "*no one by the name of Tom Ward lives, or has ever lived at my address and [I] cannot understand why I am being sent legal papers in his name*". She added "*my address is being falsely used by other people… who clearly live in England and not in my home.*" A telephone call was also received from John Fahy Solicitors, on behalf of Margaret McDonagh, in which the solicitors stated that Ms McDonagh had lived at her address for 20 years and a "Tom Ward" has never lived there.

    ii) A letter was received by Thurrock from Morna MacLeod, dated 23 September 2021, from an address in Inverurie, Scotland. She stated:

    > "Somebody did come to my door. I'm not sure of the date. They asked for Declan MacLeod. I explained that he no longer lived at this address and hadn't for some time. The man said he had to give this to him, waving something in his hand. I said he no longer lives here and I don't know where he is. As I went inside and closed the door, he [threw] something on the ground… Any letters that come to my house for Declan I return to sender. This letter didn't have a return to sender and as his name was spelt McCleod, I opened it. Declan is my son… when he turned 17, as I wouldn't allow him to do certain things, he left home. I don't know where he lives, works or anything about him. That is 7 years he's been away."

I note that the DVLA response, dated 17 April 2019, following an inquiry by Thurrock as to the registered keeper of a vehicle suspected to have been part of an encampment, named the registered keeper as Declan MacLeod. The name of the 18th Defendant appears to have been recorded incorrectly by Thurrock.

iii) The letter sent to Patrick McDonagh, to an address in County Tyrone, was returned to Thurrock marked "*does not live here*".

27. In addition, I have been provided with a file note, dated 23 September 2021, stating the Claim Summary Letter sent to Fred Mason (67th Defendant) was returned to Thurrock stating that the addressee had "*not lived there for some years*".

28. Several issues concerning the Claim Summary Letters arose during the hearing.

i) First, some extracts of the evidence sent to each Defendant, particularly in the Police Reports, were redacted. I was told that this was for data protection reasons. That did not seem to me to be a valid basis on which to redact documents that, apparently, had already been served on the relevant defendant in unredacted form in the mass of the 2,000+ pages of evidence. Indeed, if the purpose of the redactions was data protection, it failed spectacularly. The redactions frequently removed precisely the information that would have alerted the relevant Defendant to the part of the police report related to him/her, whilst leaving unredacted information (often sensitive personal data) about other third parties. For example, in relation to the 1st Defendant, his own name, and most of his address, was redacted from both the STORM and crime reports provided to him with his Claim Summary Letter. There could have been no data protection justification for redacting a person's own information and doing so significantly impaired the value and purpose of providing these documents.

ii) Second, it became clear that Thurrock intended to make allegations against individual Defendants (and rely on evidence to support them) that went beyond what had been notified to the individual Defendants in the letters. This led to Thurrock making an application during the trial for permission to rely on allegations and evidence that had not been particularised in the Claim Summary Letters (see Section E below).

iii) Third, the Police reports contained various hearsay accounts, frequently second even third-hand, some of which conflicted (see e.g. [153] and [337] below). Thurrock had served no hearsay notices identifying the evidence upon which it wanted to rely from the STORM/ATHENA reports. Ms Bolton submitted that hearsay notices are not required in Part 8 Claims. I can find no authority to support that proposition and Ms Bolton was not able to provide any. As hearsay remains admissible in civil proceedings, notwithstanding a failure to serve the relevant notice, I will deal with any point as to the weight to be attached to any hearsay evidence when I come to assess the evidence relied upon by Thurrock in respect of each named Defendant. The failure by Thurrock even to recognise that it was relying upon hearsay evidence and thereafter properly to identify the hearsay evidence relied upon, is generally in keeping with its approach to the gathering and presentation of evidence in this case.

F: Thurrock's Application that it be permitted to rely upon incidents and evidence beyond that which had been notified to the named Defendants

29. Provided with the skeleton argument for the hearing was a Schedule which provided cross-references to the evidence upon which Thurrock wished to rely in relation to each named Defendant.

30. However, when Thurrock began presenting its evidence at the final hearing, it became apparent that it was attempting to rely upon incidents and evidence that had not been notified to the Defendants in the Claim Summary Letters. I indicated that, to rely upon incidents and evidence not notified in the Claim Summary Letters, Thurrock would need permission.

31. It was not until 28 October 2021, the penultimate day of the trial, that Thurrock issued an Application Notice seeking (1) to rely upon the evidence that had been served as part of the Part 8 Claim, but not included in the Claim Summary Letters; alternatively, (2) permission to amend the Claim Summary Letters, for these to be re-served on the relevant named Defendants and the trial adjourned to enable this to take place; alternatively (3) relief from sanctions pursuant to CPR 3.9. The Application was sent to me overnight.

32. The Application Notice was supported by a witness statement of Adam Rulewski, dated 28 October 2021. Mr Rulewski stated that the job of reviewing and preparing each of the letters had taken a significant amount of time. He explained that, in similar cases for other local authorities, he and Counsel were used to preparing a schedule at the final hearing "*so that we are prepared to take the Court through each defendant at trial should that be necessary*". Mr Rulewski said that he and a case officer had begun preparing for the final hearing in Thurrock's case in early 2020. He had asked the case officer to provide him with a spreadsheet that collated, for each Defendant, the registration number of the relevant vehicle and the encampment to which the vehicle was linked.

33. Mr Rulewski explained that the task of compiling the Claim Summary Letters was complicated by the fact that some of the witness evidence, and all of the exhibits, were not available in a searchable format. This meant that he and his team had to complete a manual review of the documents to identify any relevant evidence. Mr Rulewski provided details of his personal circumstances which meant that, for some of the period in which he was required to prepare the Claim Summary Letters, he was working from home. He also relied upon Thurrock's "*limited resources*", which he stated meant "*it is often not possible to outsource work to Counsel or private solicitors*". "*It was not until … Counsel commenced preparation for this final hearing that the Additional Evidence was noted and inserted into the Schedule… attached to Counsel's skeleton argument.*" Mr Rulewski noted that no sanction had been included in the Order of 30 July 2021.

34. The evidence that had not been included in the Claim Summary Letters and upon which Thurrock wished to rely was that contained in the witness statements of Stephen Andrews, the manager of the Essex Countrywide Traveller Unit ("ECTU"), and Donna Burnett, an Enforcement Project Manager at Thurrock.

    i) Mr Andrews' witness statement is not dated, but it was served with the original Part 8 Claim Form. ECTU is a partnership operation between eleven Essex

District, Borough, City and Unitary Councils, including Thurrock. In his witness statement, in addition to dealing with other general evidence, Mr Andrews goes through the various encampments that he dealt with, starting with three caravans stationed on Thames Road car park in Grays, on 8 February 2016, and finishing with a two-caravan encampment on land at the junction of Rainbow Road and Felippe Road in Grays on 11 October 2018. Mr Andrews exhibits photographs of some of the encampments variously to demonstrate its size, any damage and any fly-tipping. The witness statement does not identify any named Defendant as having been responsible for any of the encampments identified. Mr Andrews' evidence is limited to identification of the index number of vehicles and/or caravans that were on the land. In that respect, the link between Mr Andrews' evidence and the named Defendants can only be made by tracing the individual index numbers through the police evidence. This demonstrates the importance of the Claim Summary Letters in linking the evidence of Mr Andrews to individual defendants. Mr Andrews does not (and cannot) identify who is responsible for any of the damage/fly-tipping that is alleged. The witness statement contains hearsay evidence from unidentified individuals who complained to Thurrock about encampments.

ii) Donna Burnett has filed two witness statements. The first, originally dated 25 July 2019, but amended prior to trial, largely advances Thurrock's "*generic evidence*" about encampments. However, at the beginning of the trial, Ms Bolton referred me to several passages in Ms Burnett's evidence concerning a serious incident of fly-tipping in Thurrock that took place in 2014 on land known as "Cory's Wharf". This fly-tipping was alleged to be linked to an encampment at Botany Cottages. Ms Bolton then took me to various parts of the police evidence which she contended demonstrated that six of the named Defendants had been part of the encampment at Botany Cottages. This, Ms Bolton submitted, was evidence that the six men were "*actively involved*" in fly-tipping at "Cory's Wharf". None of Ms Burnett's evidence was identified in Ms Bolton's schedule as evidence of alleged wrongdoing against named Defendants. It was only in the skeleton argument on 28 October 2021 that an indication was given that Thurrock would also seek permission to add these allegations as against the six named Defendants that Ms Bolton identified.

iii) Ms Burnett filed a short second witness statement dated 1 September 2022, but unsigned, in which she gives some further limited evidence.

35. In preparing this judgment, I have noted that, in respect of the 11th Defendant, Brian Murphy, his Claim Summary Letter *did* include allegations and identify evidence contained in Mr Andrews' witness statement (see [80]-[87] below). This suggests that Mr Rulewski did not adopt a consistent approach to the preparation of the Claim Summary Letters.

36. Before Court began sitting on 28 October 2021, I thought that there might be a way of fairly resolving the issue. As noted above, Ms Bolton's skeleton argument for the hearing was accompanied by a schedule that identified, for each Defendant, the allegation(s) being made against him/her and the evidence relied upon by Thurrock. My Order of 30 July 2021 had required the skeleton argument to be served on each named Defendant (see [25] above). It appeared to me that Thurrock could rely upon the service of the skeleton argument and accompanying schedule as having, effectively,

identified the case that Thurrock would be advancing at the final hearing which would mitigate the potential unfairness of the case being wider than that advanced in the Claim Summary Letter. When I raised this with Ms Bolton as a possible way forward, I was told that Thurrock had not served its skeleton argument (or accompanying schedule) on any of the named Defendants. As well as being a breach of the Order of 30 July 2021, this meant that Thurrock could not rely upon this as mitigating the unfairness of departing from the parameters of the claim as notified to each Defendant in the Claim Summary Letters.

37. Ms Bolton rightly accepted that Thurrock fully understood that the intention and purpose in requiring the Claim Summary Letters to be sent to each named Defendant was to achieve procedural fairness; to state clearly what was alleged against each Defendant, to identify the evidence relied upon and to indicate the terms of the injunction order that would be sought against the Defendant. Prior to that point, it would have been practically impossible for any named Defendant to identify what was being alleged against him/her or the particular evidence that was being relied upon. The Claim Summary Letters were therefore a belated proxy for a statement of case.

38. During submissions on 28 October 2021, I was told that Ms Pratt (at least) had, on Friday 22 October 2021, identified that the Claim Summary Letters had failed to identify the full case that Thurrock wished to advance at the final hearing against several Defendants. Nevertheless, nothing was mentioned to me on the first day of the trial and no application was made. The issue was only tackled and addressed by Ms Bolton when, during the trial, my attention focused on the claims and evidence against the individual named Defendants. Ms Bolton had intended to present the case by reference to the trial documents, whereas I had been working from the files containing the Claim Summary Letters and the documents enclosed with them. As a result, it became apparent to me during the trial that there were several instances where the claim being presented against some named Defendants by Ms Bolton was wider than that set out in the relevant Claim Summary Letter.

39. On behalf of Thurrock, Ms Bolton submitted that, the evidence having been served in accordance with the Part 8 Claim, Thurrock was "*entitled*" to rely upon this evidence, and the Court should not exercise its discretion to exclude otherwise relevant and admissible evidence under CPR 32.1. Ms Bolton relied on the following passage from Lord Bingham's speech from ***O'Brien -v- Chief Constable of South Wales Police*** **[2005] 2 AC 534** [6]:

> "In deciding whether evidence in a given case should be admitted the judge's overriding purpose will be to promote the ends of justice. But the judge must always bear in mind that justice requires not only that the right answer be given but also that it be achieved by a trial process which is fair to all parties."

40. Ms Bolton submitted that CPR 32.1(2) does not provide for a blanket exclusion of evidence, and it would be wrong to exclude it. Fairness to Thurrock required that the additional evidence be admitted. She contended that Thurrock would be prejudiced if prevented from relying upon the evidence. Mr Andrews' evidence, Ms Bolton submitted was of "*huge importance*" to Thurrock's case. Any unfairness and/or prejudice to the named Defendants caused by admitting evidence not notified in the Claim Summary Letters could be remedied by adjourning the trial to enable amended Claim Summary Letters to be sent to the relevant Defendants.

41. Further, Ms Bolton argued that the Order of 30 July 2021 provided no sanction for a failure to set out every allegation and the evidence in support upon which Thurrock wanted to rely and therefore no sanction should be visited on Thurrock for having failed to have set out its full case in the Claim Summary Letters. Ms Bolton accepted that the Court can apply a sanction even where the order breached did not contain one: ***Denton -v- TH White Ltd*** **[2014] 1 WLR 3926**. Ms Bolton submits that the application for permission to amend and reserve the Claim Summary Letters is akin to an application for permission to amend a statement of case. She relied upon ***Ahmed -v- Ahmed*** **[2016] EWCA Civ 686** [6] as establishing the principle that the ***Denton*** principles do not apply to applications to amend pleadings, even where such an amendment is sought at a very late stage. Ms Bolton submitted that the Defendants would suffer no prejudice if the trial were to be adjourned to allow for amended Claim Summary Letters to be prepared and served. There would be no issue of the Defendants having to amend any pleading in consequence.

42. Finally, Ms Bolton submitted that, if Thurrock was required to apply for relief from sanctions, then such relief should be granted. As to the seriousness and significance of the failure, Ms Bolton's primary submission was that it was neither because none of the named Defendants had participated in the proceedings. If that submission was rejected, Ms Bolton accepted that the non-compliance with the Order requiring the Claim Summary Letters to identify Thurrock's case and evidence was serious and significant. As to whether there was a good reason for the default, Ms Bolton submitted that there was. Mr Rulewski was under considerable pressure, working on the claims for two local authorities. He was required to conduct name and vehicle searches for each Defendant through a large number of lever arch files, whilst managing 120+ case files and court hearings in a challenging working environment. Considering all the circumstances of the case, Ms Bolton argued that, since learning of the Court's concern about the failure of the Claim Summary Letters to include the full case against several named Defendants, Thurrock had acted promptly in making its application for relief from sanction. An adjournment of the case would not cause disproportionate costs to be incurred. The default was not wilful, and it was not really a case of non-compliance, more a case of needing to amend the Claim Summary Letters to include additional elements within the evidence.

43. I refused the application during the trial. My reasons for doing so are set out in the remaining paragraphs of this section of the judgment.

44. The Claim Summary Letters were an essential part of remedying the obvious unfairness of serving a Part 8 Claim against over 100 named Defendants together with 2,000+ pages of witness statements and documents. The witness statements of Inspector Ballard and Mr Andrews largely do not include the names of any Defendants, so do not alert them as to the allegations being made against them. A Defendant would either have to recognise the index number of a vehicle alleged to have been part of an encampment or trace the index number through the almost impenetrable police documents. In presenting the claim in the way it did, Thurrock completely failed to articulate clearly to each named Defendant what it was alleging against him/her and the evidence upon which it intended to rely to establish these allegations. This was inherently unfair, and it undermines (perhaps fatally) the contention that the non-engagement by the named Defendants should be taken as their acceptance of what has been alleged against them. The Claim Summary Letters were the obvious,

but necessary, expedient to overcome this unfairness. They were fundamental to the fairness of the proceedings, as Thurrock recognised and clearly understood.

45. Thurrock had complete control over the allegations and evidence that they wished to include in each Claim Summary Letter. The legal team conducting the case on behalf of Thurrock could have been in no doubt of the importance of these letters. It became clear during submissions on 28 October 2021, that neither Counsel had been asked to review the Claim Summary Letters before they were sent out. Given that Mr Rulewski stated that it was usual for Counsel to provide a Schedule collating and presenting the evidence relied upon at a final hearing, that decision would appear to have been imprudent (at best). If Mr Rulewski considered that he did not have sufficient time to complete the task fully or reliably, then Thurrock should either have instructed Counsel, or an external firm, to assist with the task. Ultimately, if constraints on resources meant that such a step was not possible, Thurrock should have applied for an extension of time. Having not applied for an extension of time, as soon as it became apparent that the Claim Summary Letters were in some instances incomplete, Thurrock should have notified the Court and sought directions by making the necessary application. The failure by Thurrock even to mention the problem – which was known prior to the trial – at the very outset of the trial was a serious misjudgment. It betokens a surprising lack of candour, perhaps even the hope that the Court might not notice.

46. I accept that preparing the Claim Summary Letters involved substantial work. But there is an irony in Mr Rulewski's complaint about the complexity of the task in identifying Thurrock's case against each Defendant. It rather demonstrates how unrealistic (and unfair) it was to expect the individual named Defendants to do the same job, particularly given Mr Rulewski's immeasurably greater familiarity with the police documents and what they showed. Whilst I sympathise with Mr Rulewski's personal circumstances, he was working for a local authority that has chosen to launch an ambitious claim against 107 named defendants seeking borough-wide injunctions against them. If a local authority cannot properly resource litigation on such a scale, if necessary, by instructing external solicitors or Counsel, then it should consider carefully whether it ought to embark upon it.

47. No application was made seeking further time to complete the exercise. It is remarkable that the Claim Summary Letters were sent out by Mr Rulewski without any of them being checked (even on a sample basis) by Counsel to ensure that they advanced the full claim against the relevant defendants. Most seriously, even when the flaws in the Claim Summary Letters were identified, on the Friday before the trial commenced, inexplicably, Thurrock did not mention this at the beginning of the trial so that the issue could be dealt with properly.

48. The example of Brian Murphy's Claim Summary Letter (see [35] above) shows that Mr Rulewski *had* considered the evidence contained in Mr Andrews' witness statement in relation to Mr Murphy, and from that identified further incidents to be included in his Claim Summary Letter. It is inexplicable – and certainly no explanation has been provided – how Mr Rulewski then failed to include incidents from Mr Andrews' evidence in the Claim Summary Letters for other Defendants.

49. Stepping back, my decision to exercise the discretion under CPR 32.1(2) to exclude otherwise admissible evidence was made on case management grounds to protect the fairness of the process. In my judgment, and against the history of the way in which

the claim had been presented to multiple defendants, it would simply have been wrong and unfair to allow Thurrock to expand the case that they had told individual defendants in the Claim Summary Letters they would be pursuing against them. That would have been to undermine the whole point of the Claim Summary Letters.

50. The suggestion that the Court should – on the penultimate day of a 5-day hearing – adjourn to a later date to allow amended Claim Summary Letters to be prepared and served – was unrealistic. It failed to recognise the significant impact on the resources of the Court of the adjournment. The time needed to amend and then reserve the Claim Summary Letters would, in all probability, have meant that the adjourned trial could not have been brought back much before January 2022. That sort of disruption to the work of the Court – and the impact it has on other litigants – will not be tolerated without a very good reason. Thurrock does not have a good reason. It simply did not resource adequately the critical job of properly preparing the Claim Summary Letters, the importance of which was fully appreciated. Ultimately, my decision to exclude allegations and evidence that was not notified to the named Defendants in the Claim Summary Letters was necessary to enforce basic fairness that led to my order that these letters must be sent.

51. I do not regard this as the imposition of a sanction, but even if it is viewed through this prism, it is a sanction that is justified. The application for relief from sanction fails for similar reason. The breach was serious and significant. Permitting Thurrock to advance a case outside the parameters set in the Claim Summary Letters would have thwarted their whole purpose. There is no good reason for the failure. The task was inadequately resourced and inadequately supervised. The factors I have identified above militate against relief from sanction.

52. I do not accept that exclusion of the evidence has the dramatic consequences that Ms Bolton submitted. The evidence of both Mr Andrews and Ms Burnett both suffer from the same problem: beyond potentially demonstrating presence of a particular Defendant at an encampment, their evidence cannot establish which of the named Defendants was responsible for the further unlawful acts upon which Thurrock seeks to rely, particularly fly-tipping. The same issue arises in considering the evidence of Inspector Ballard, and I explain below what conclusions can be drawn from his evidence. In summary, even if I had admitted the evidence, I cannot identify a material respect in which it would have affected the outcome having regard to the conclusions I have reached as set out later in this judgment.

G: The claims against the remaining active Defendants and findings of fact

53. In this section of the judgment, I shall deal with the claims against the remaining 51 named Defendants and make findings of fact as to what Thurrock has established against each of them by its evidence. Some of the incidents relied upon are alleged against multiple Defendants. In such instances, I shall deal with the event in some detail for the first occasion, and then in summary form for subsequent Defendants. The evidence does not generally discriminate between conduct of individual defendants in each incident where more than one Defendant is alleged to be involved. In the sub-headings, the number in brackets is the relevant Defendant's number in the Appendix. The details of the allegation made against each Defendant are taken from the Claim Summary Letter. Where vehicle registration details are provided, I have partially redacted the information.

(1) Martin Stokes

(a) Allegation(s)

54. Thurrock's allegation against Mr Stokes is:

> "between 25-27 June 2016, you and/or your vehicle registration number YK14 *VM formed a large unauthorised encampment in West Thurrock, that encampment using an angle grinder to gain entry to premises, fly tipped and used abuse behaviour and suspected theft."

55. That description was incomplete. The complaint by Thurrock made against Mr Stokes is that he was party to three separate encampments between 25-27 June 2016. The first on land behind Frankie & Benny's in West Thurrock; the second at Moto Services in West Thurrock; and the third at land at Car Craft in West Thurrock. Thurrock abandoned reliance upon the second incident at the hearing.

56. I will permit reliance on the evidence relating to the Car Craft incident because the evidence relevant to it was included with the Claim Summary Letter sent to Mr Stokes.

(b) Evidence

(i) The Frankie & Benny's incident

57. The evidence relied upon from Inspector Ballard, in respect of the Frankie & Benny's incident is:

> "On 23 June 2016, a call was received [that] travellers had encamped on the service road behind Frankie & Benny's, West Thurrock, Essex. Bailiffs did attend the site, but due to the number of caravans and the occupants refusing to leave the land, stating they would leave n a few days. Around 20/30 vehicles were present, and angle grinders were used to access the site. The Bailiffs and Police withdrew due to insufficient resources. When the police had gone to check on the travellers, they found that they had padlocked the gate to shut themselves in. There were up to 40 caravans and dogs running loose. They vacated the site on 27 June 2016. The vehicles, including their registered keeper on site were the following: [Table included identifying 16 vehicles and 8 registered keepers]

In Inspector Ballard's table he states that the incident was resolved by private eviction, without a s.61 notice being served and there was no crime reference or linked ATHENA report. However, in the police documents, there is a crime report that was opened on 23 June 2016 and closed on 15 July 2016. The crime report does not include any reference to the use of angle-grinders. I note that the crime report names two individuals, Ben Ward (FG02 *RT) and Margaret Stokes (LN64 *WU), in the "*comprehensive list*" of vehicles and persons involved completed on 24 June 2016. If these are the 9th and 42nd Defendants, then the action against them was discontinued after the grant of the interim injunction. A subsequent check on the police national computer of the relevant vehicle index numbers on 24 June 2016, also identified the 1st Defendant and the 50th Defendant (BN03 *MV). The identification of further registered keepers was done subsequently for the purposes of Inspector Ballard's witness statement.

58. The C126 assessment, dated 24 June 2016 and completed by Inspector 1664 Fraser, contained the following:

> "It would appear that the lock to metal gates has been removed to gain access. The gates have then been closed and a combination padlock attached. This was reported at around 2030 on 23 June 2016. The only area which may be affected is a courtyard at the end which houses the waste bins, presumably for the local businesses. No other issues… Each of the caravans had waste bags attached to them. There were numerous items of property stacked behind each caravan, but these appeared to be personal items as opposed to rubbish. There are varying degrees of waste in the road leading to the site, however, the majority appears to have been there for some time. As you walk towards the entrance gates there is an area to the right which has numerous wood, metal, mattresses and other rubbish which has been dumped, but again unclear if this was present prior to the encampment being set up."

The police did not exercise any powers to evict those on site.

59. The original STORM report for the incident included the following information.

    i) The original complaint to police was recorded at 20.15 on 23 June 2016.

    ii) The informant is recorded as having stated that "*around 19.15 … travellers have used an angle grinder to cut the lock to the premises. There are between 20 to 30 vehicles, a combination of vans, cars and caravans.*"

    iii) The initial THRIVE (threat, harm, risk, investigation, vulnerability and engagement) assessment, conducted immediately following the call about the incident, identified that there was a risk of harm to land.

    iv) A later THRIVE reassessment at 23:08 on 23 June 2016 downgraded the assessment of harm to "*none*".

    v) On 26 June 2016, at 23.47, there is an entry: "*No further calls on this since 24 June 2016. INC has been crimed, suitable for closure?*"

    vi) On 27 June 2017, at 09.29, the final entry suggests that a crime report had been completed and the incident closed.

60. A second STORM report relating to this incident contained the further following information:

    i) The report was initiated, on 25 June 2016 at 12.12, following contact from the bailiffs who were instructed to carry out an eviction of the encampment. The bailiff is recorded as having stated: "*He has spoken to the travellers who are refusing to move*".

    ii) At 13.24 an entry records: "*The people still on the site have said they will leave on Monday. We don't have the resources to evict. We will liaise with the landowner.*"

iii) Then at 13.39: "*Still waiting [to] hear from the landowners as to whether they will allow the travellers to remain until Monday. Bailiffs have the STORM ref and they will call back and update when they will be evicting and will resource if required.*"

iv) At 14.44, an entry records that the Bailiffs had given those on the site until 18.00 on Sunday (26 June 2016) to vacate the site and would return on Monday morning (27 June 2016) at approximately 11.00 to ensure that this has happened.

v) On 27 June 2016, an entry made at 07.44, records that the site is still occupied. An officer had spoken to someone who had told the police that they were not planning to leave until Tuesday or Wednesday evening.

vi) Police attended the scene from around 11am on 27 June 2016 to supervise the eviction by the bailiffs.

vii) The eviction then appears to have been effected and, at 12.04, there is an entry: "*It appears that all 16 vehicles are leaving the scene*" and, at 13.14: "*All caravans have now left the site except 2 which are waiting for a towing vehicle... All police resources are now [to leave].*"

viii) A further entry, at 12.40, noted: "*Have info that this group have been much further afield and are likely to be going out of force – they are certainly using SatNavs to plot their next route. We don't have the resources to shadow them out of the area.*"

The STORM report contains no suggestion that there was any fly-tipping or other damage to the land.

(ii) The Car Craft incident

61. The evidence relied upon from Inspector Ballard, in respect of the Car Craft incident is:

> "On 27 June 2016, a call was received that a transit van had broken the fence to gain entry to Car Craft, Weston Avenue, West Thurrock, Essex. The informant was very shocked. On arrival police recognised one of the females who had stuck her middle finger at them. There was approximately five caravans, four females, three men and six children ranging from five months to ten years old. Police noted that damage had also been [caused to] bollards to assist with entry to the land. The driver of a van on Irish plates, Martin Maughan was wanted for breaching a court order. As two of the vehicles had been at previous encampments with the area and damage had been caused, a section 61 notice to leave the land was handed to Winnie Stokes, Kathleen Ward, Lisa Stokes and Lisa Maughan requesting them to leave the land once Brian Ward and Martin Stokes had been released from custody… The vehicles present were [Table included identifying 3 vehicles and 3 registered keepers]"

The incident does not appear in Inspector Ballard's table. According to the documents, Mr Stokes and Brian Ward (not a Defendant to these proceedings) were arrested (it appears for suspected criminal damage – see [64(iii)] below). Inspector Ballard's statement does not confirm whether he subsequently faced any charges, and Ms Bolton

was unable to provide any further information. It appears from the crime report that no charges were brought (see [62(iii)] below).

62. The crime report for the Car Craft incident, opened on 27 June 2016 at 18.51, records the following information:

i) "*Five caravans and three motor vehicles have entered the front car-park of a fore mentioned premises. In doing so at least two of the male travellers have been seen to forceablely (sic) displace bollards causing damage and thereby allowing access to the land*"

ii) A s.61 notice was served at around 21.32 on 27 June 2016 requiring those on the site to leave within 30 minutes of the release from custody of the two men who had been arrested.

iii) The crime report was closed on 12 August 2016 with a note "*Resolved through other means – non-crime*", which I take to indicate that no criminal charges were brought against the two men.

63. The C126 assessment, dated 27 June 2016 and completed by Inspector 3551 Ross, contained the following:

> "Attended the site and there are 6 or more vehicles, including caravans. The persons are on site with the intention of residing. Damage has been done to bollards to assist entry to the land. The site is not yet fully established, so no significant welfare issues identified. At least two of the vehicles – 115-D-*6273 and FG02 *RT – have been on previous encampments in the area. As a result I am satisfied that the factors are present to justify use of s.61 powers… I have served notices to leave the land on Winnie Stokes, Kathleen Ward, Lisa Maughan and Lisa Stokes. The direction is to leave within 30 minutes of the release from custody of Brian Ward and Martin Stokes. This is so the females can have assistance in removing there (sic) vehicles. The initial request to leave was made by an agent of the land owner…"

64. The STORM report for the incident contains the following additional information:

i) The initial report to the police was made by a security officer at the premises at 18.52 on 27 June 2016.

ii) In response to a question: "*Are there any details of the suspect who gained entry to the location?*" there is an entry: "*Index YK14 *VM big van. No description of the person who broke the fence, just index. The van that broke the fence was a transit van. No descriptions.*" The source of this information is unclear. It may have come from the initial information provided by the security officer.

iii) Mr Stokes and Brian Ward were arrested on suspicion of causing criminal damage

iv) The site appears to have been vacated just after 10pm on 27 June 2016.

65. None of the police reports contains any suggestion that any fly-tipping took place at the Car Craft site.

(c) Findings of fact relating to Mr Stokes

66. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Stokes was part of an encampment on land behind Frankie & Benny's for a period of up to 5 days, between 23-27 June 2016 and for a period of some 6 hours at Car Craft on 27 June 2016. Mr Stokes was arrested at the Car Craft site on 27 June 2016. Present there was his vehicle. That vehicle had previously been at the Frankie & Benny's site less than a week before. From this evidence, I can safely infer that he was also present at the Frankie & Benny's site.

67. The encampments, to which Mr Stokes was party, led to damage being caused to the lock at Frankie & Benny's and to the fence and bollards at the Car Craft site. However, it is impossible, on Thurrock's evidence, to conclude that it is more likely than not that Mr Stokes was responsible for causing that damage. On the evidence, I cannot infer that Mr Stokes caused the damage any more than I can infer that any other person present in the encampment had done so. Ms Bolton cannot – and does not – advance her case against Mr Stokes on any sort of joint enterprise or joint tortfeasor basis. Beyond presence at an encampment, there is no evidence to support liability on such a basis.

68. The evidence does not establish that there was any fly-tipping at either site, still less that Mr Stokes was the person (or among the persons) responsible for such fly-tipping. The hearsay evidence of Inspector Fraser, contained in the C126 assessment (see [58] above), was inconclusive as to whether the waste had been left at the Frankie & Benny's site before or after the encampment had arrived. Thurrock did not obtain a witness statement from Inspector Fraser or to seek to elicit any further information or evidence from him.

69. Beyond these two incidents, Thurrock has not demonstrated that Mr Stokes has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is also no evidence of Mr Stokes using abusive behaviour or that he was suspected of theft. Without admissible and probative evidence to support them, these allegations should not have been made against Mr Stokes.

70. Finally, I have detected a point on service of the Claim Form that, depending upon my overall conclusions, may be material. In the STORM report for the Frankie & Benny's incident, Mr Stokes address is given as Lisnafin Park, Strabane in County Tyrone, together with a post code. The witness statement from the process server states that he served the Claim Form by posting it through the letter box of an address in Lindisfarn Park, County Tyrone (an address that does not appear to exist). This conflict would need to be resolved, and proper proof of service of the Claim Form, before the Court would grant any injunction. I do not know to which address the Claim Summary Letter was sent.

(11) Brian Murphy

(a) Allegation(s)

71. Thurrock's allegations against Mr Murphy are:

"(a) On 15 February 2016, you and/or your vehicle registration number YF13 *KY formed an unauthorised encampment at Pets at Home Thurrock.

(b) You and/or your vehicle registration number YF13 *KY formed the following unauthorised encampments:

15/02/2016	Pets at Home, West Thurrock
01/05/2018	Gordon Road, Stanford Le Hope
11/05/2018	Merlin Close, Grays
22/05/2018	The Haven, Grays
11/06/2018	Brenan Roads Playing Field
21/06/2018	Dilkes Park, South Ockendon
08/08/2018	Badgers Dene, Grays"

72. Before turning to consider the evidence against Mr Murphy I would note that there is, included in the trial bundles, a letter from the DVLA, dated 17 April 2019, responding to an inquiry as to the registered keeper of vehicle index YF13 *KY as at 15 February 2016. No similar inquiry appears to have been made to confirm that Mr Murphy was still the registered keeper of the vehicle in the period May to August 2018.

73. Further the address given by the DVLA for Mr Murphy is a unit at the Crayfield Industrial Park in Orpington. A search engine inquiry suggests that this is a business, not residential, address.

74. The witness statement from a process server, dated 27 August 2019, confirms that the Claim Form was served (together with other documents) by posting it through the letter box at the Industrial Park address, provided by the DVLA, on 21 August 2019.

75. I do not have any evidence as to whether Thurrock attempted to serve the Claim Form personally on Mr Murphy so as to be entitled to utilise the method of alternative service provided in the order (see [10] above). Assuming that Thurrock could demonstrate that it did make efforts to serve the Claim Form personally on Mr Murphy, but failed, it nevertheless appears that the Claim Form has not been validly served on Mr Murphy because it was not served in accordance with the alternative service order. The short point is that the service address does not appear to be a residential premises. Certainly, the witness statement of the process server does not state that it was a residential premises that was "*reasonably believed to be to be owned or occupied*" by Mr Murphy. If that is right, and unless the failure validly to serve the Claim Form is now capable of being remedied, no relief can be granted against Mr Murphy. Unless validly served with the Claim Form, Mr Murphy is simply not a Defendant to the claim.

76. As this point has arisen since the hearing of the claim, I shall give Ms Bolton and her team an opportunity to make any further submissions on behalf of Thurrock on this point following receipt of the draft judgment.

77. Notwithstanding my conclusion that Mr Murphy does not appear to have been validly served with the Claim Form, I will go on to consider the claim and evidence against him.

(b) Evidence

(i) The Pets at Home Retail Park incident

78. The evidence relied upon from Inspector Ballard, in respect of the Pets at Home incident is:

> "On 15 February 2016, a call was received stating that there were three caravans and one vehicle at Pets at Home. Police attended and noted that there were no adults at the site. The police had contacted the landowner who were making arrangements for the land to be cleared. The following vehicles and caravans were present: [Table included identifying 3 vehicles]"

In Inspector Ballard's table he states that the incident was resolved by private eviction, without a s.61 notice being served and there was no crime reference or linked ATHENA report. There is no C126 assessment for this incident and the police did not exercise any powers to evict those on site.

79. The STORM report for the incident included the following information.

i) The original complaint to police was made at 11.48 on 15 February 2016 by Essex County Council who relayed that the Council had been notified of an unauthorised encampment.

ii) No further information beyond that contained in Inspector Ballard's witness statement is included.

iii) The report appears to have been closed at around 15.44 on 15 February 2016.

The STORM report contains no suggestion that there was any fly-tipping or other damage to the land. The only evidence of Mr Murphy's alleged presence is his vehicle. The evidence does not indicate for how long people remained at the site.

(ii) The Gordon Road incident

80. The evidence relied upon from Mr Andrews, in respect of the Gordon Road incident is:

> "On 1 May 2018, three caravans encamped on Gordon Road car park, Stanford Le Hope, Essex. A section 77 notice was issued and the travellers refused to leave the land. A bailiff company was deployed and the land was vacated on 9 May 2018. The vehicles present were: [Table identifying 2 vehicles and 2 caravans]"

I note that vehicle YF13 *KJ was *not* noted as being present on this occasion, but one of the caravans bore a plate with the same index number.

(iii) The Merlin Close incident

81. The evidence relied upon from Mr Andrews, in respect of the Merlin Close incident is:

> "On 11 May 2018, the incursion which was originally at Gordon Road car park, who vacated on 9 May 2018, had now encamped at Merlin Close, Grays Essex. A section 77 notice was issued and the land was vacated on 21 May 2018. The vehicles present were: [Table identifying the same vehicles and caravans as had been present in the Gordon Road incident]"

(iv) The Parker Road incident

82. The evidence relied upon from Mr Andrews, in respect of the Parker Road incident is:

> "On 22 May 2018, three caravans encamped in Parker Road, Grays, Essex. A section 77 notice was issued and they (sic) land was vacated on 1 June 2018... [Table identifying the same vehicles and caravans as had been present in the Gordon Road and Merlin Close incidents]"

(v) The Haven incident

83. The evidence relied upon from Mr Andrews, in respect of The Haven incident is:

> "On 11 June 2018, three caravans encamped on land at The Haven, Grays, Essex. A section 77 notice was issued, the travellers refused to leave the land. Bailiffs were deployed and the land was vacated on 19 June 2018. [Table identifying the same vehicles and caravans as had been present in the Gordon Road, Merlin Close and Parker Road incidents]"

(vi) The Brennan Road incident

84. The evidence relied upon from Mr Andrews, in respect of the Brennan Road incident is:

> "On 21 June 2018, four caravans encamped on the playing field adjacent to Brennan Road, Tilbury, Essex. The vehicles present was (sic) a Vauxhall Movano FP04 *AV and a Ford Transit RE16 *TB. The caravans present [were the same as had been present in the Gordon Road, Merlin Close, Parker Road and The Haven incidents, but with a further caravan bearing index KV06 LAO]. A section 77 notice was issued and the travellers refused to leave the land. Bailiffs were deployed and the land was vacated on 30 June 2018."

(vii) The Dilkes Park incident

85. The evidence relied upon from Mr Andrews, in respect of the Dilkes Park incident is:

> "On 1 August 2018, five caravans encamped on Dilkes Park, South Ockendon, Essex. The vehicles present were [Table including 8 vehicles, including YF13 *KJ, and 5 caravans none of which had been seen at the earlier encampments]. A section 77 notice was issued and the travellers refused to leave the land. Bailiffs were deployed and the land was vacated on 8 August 2018."

(vii) The Orchis Grove incident

86. The evidence relied upon from Mr Andrews, in respect of the Orchis Grove incident is:

> "On 8 August 2018, there was an incursion at Orchis Grove, Badgers Dene, Grays, Essex. The vehicles on site were [the same as the Dilkes Park incident]… A section 77 was issued and the travellers refused to leave the land. Bailiffs were deployed and the land was vacated on 15 August 2018."

87. In respect of each of the Gordon Road, Merlin Close, and Parker Road incidents, Mr Andrews produced photographs of each site when occupied and after the land was vacated. The photographs are unremarkable, showing only a couple of caravans on the site and, once vacated, no rubbish or evidence of fly-tipping.

(c) Findings of fact relating to Mr Murphy

88. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Murphy was part of an encampment for a very short period (perhaps less than a day) on 15 February 2016, at the Pets at Home Retail Park. Narrowly, I am prepared to draw the inference that the presence on the site of a vehicle of which there is evidence Mr Murphy was the registered keeper at the time means that it is more likely than not that Mr Murphy was also present. The evidence does not establish any other aggravating features or that there was any fly-tipping on the site.

89. In respect of the incidents in 2018, the evidence needs to be considered carefully. The vehicle YF13 *KJ was *not* present at the Gordon Road, Merlin Close, Parker Road, or Brennan Road incidents. At each of these sites, Mr Andrews' evidence is that a caravan bearing this index plate was present. After a gap of about a month, and a distance of around 20 miles, the *vehicle* YF13 *KJ was then observed at Dilkes Park and Orchis Road, but not the caravan bearing the same index plate.

90. That evidence suggests that the encampments at Gordon Road, Merlin Close, Parker Road, and Brennan Road were formed by one group of people, and the encampments at Dilkes Park and Orchis Road by another group of people. Beyond the oddity of the number plate on the caravan in the first four incidents, and the vehicle in the latter two, there is no commonality in the evidence as to the vehicles and caravans present between these two groups. One explanation is that the caravan bearing index YF13 *KJ had been transferred to another owner and s/he had simply not updated its number plate.

91. But this is speculation, and speculation is not a substitute for the careful process of drawing inferences from evidence. In addition to the confusion over the presence of a vehicle and caravan bearing index YF13 *KJ, Thurrock has not produced in evidence a DVLA check confirming that Mr Murphy was still the registered keeper of the vehicle in 2018. There is no other evidence to link Mr Murphy with these events. A finding that Mr Murphy was present in these encampments in 2018 would not be the product of inferences drawn from evidence, but from guesswork. Ultimately, Thurrock bears the burden of proof to demonstrate that it is more likely than not that Mr Murphy was present at each of the encampments identified in 2018. It has not discharged this burden with the very limited evidence it has adduced.

92. Beyond the Pets at Home incident, Thurrock has not demonstrated that Mr Murphy has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(12) Brian Stokes

(a) Allegation(s)

93. Thurrock's allegation against Mr Stokes is:

> "… between 25-27 June 2016, you and/or your vehicle registration number WA15 *PO formed a large unauthorised encampment in West Thurrock, that encampment using an angle grinder to gain entry to premises, fly tipped and used abuse behaviour and suspected theft."

94. The claim against Brian Stokes is the same as advanced against the 1st Defendant, Martin Stokes, and relates to the Frankie & Benny's and Car Craft incidents.

(b) Evidence

95. The evidence relied upon from Inspector Ballard is substantially the same as was relied upon against Martin Stokes (see [57]-[65] above). One point of important difference is that Brian Stokes was not arrested on suspicion of causing criminal damage in the Car Craft incident. The vehicle, WA15 *PO, registered to Brian Stokes, was not one of those linked to the forced entry to the Car Craft site. Importantly, the STORM report includes a comment listing the vehicles that had "*left the site and gone elsewhere*". WA15 *PO was one of those vehicles.

(c) Findings of fact relating to Mr Stokes

96. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Stokes was part of an encampment on land behind Frankie & Benny's for a period of up to 5 days, between 23-27 June 2016. I am not satisfied that Thurrock has demonstrated that Mr Stokes was part of any encampment at Car Craft. The evidence appears to demonstrate that, if his vehicle entered the land at all, it left very shortly after the police arrived. In short, he did not form part of an encampment at Car Craft.

97. The encampment, to which Mr Stokes was party, led to damage being caused to the lock at Frankie & Benny's. However, it is impossible, on Thurrock's evidence, to conclude that it is more likely than not that Mr Stokes was responsible for causing that damage. I adopt the reasoning I have set out in [67] above.

98. The evidence does not establish that there was any fly-tipping at Frankie & Benny's still less that Mr Stokes was the person (or among the persons) responsible for such fly-tipping. I adopt the reasoning I have set out in [68] above.

99. Beyond the incident at Frankie & Benny's, Thurrock has not demonstrated that Mr Stokes has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is also no evidence of Mr Stokes using abusive behaviour or that he was suspected of theft. Without admissible and probative evidence to support them, these allegations should not have been made against Mr Stokes.

(13) Brian Stokes (2nd)

100. In the schedule accompanying her skeleton argument, Ms Bolton indicated that Thurrock's case was that the second Brian Stokes was the same person as the first Brian Stokes. I have little by way of evidence to reach a conclusion whether Ms Bolton is right about this. In terms of addresses for service, the Claim Form was purportedly served on the first Brian Stokes by sticking it to the front door at an address in Stirling in Scotland, on 22 August 2019. The Claim Form was purportedly served on the second Brian Stokes by posting it through the letter box at an address in County Tyrone, Northern Ireland, on 23 August 2019. For the purposes of complying with the alternative service order (see [10] above), there must be at least some question over whether Thurrock could reasonably believe that both addresses were owned or occupied by one Brian Stokes.

101. In light of that, I will treat the second Brian Stokes as being a separate person for the purposes of assessing the claim and evidence against him, as up until trial Thurrock has done. Whether it is important to resolve whether he is one and the same person will depend on what facts I find proved and whether, ultimately, I grant any relief against him/them.

(a) Allegation(s)

102. Thurrock's allegation against Mr Stokes (2nd) is:

> "… on 3 October 2016, you and/or your vehicle registration number PLZ*976 formed an (sic) large unauthorised encampment in Thurrock near a national security site. A forklift truck was stolen and the encampment barricaded itself into the site. Children spat at police."

103. If the Claim Summary Letter was actually received by Mr Stokes, the failure to identify the site of the unauthorised encampment is likely to have impaired his ability to understand what was being alleged against him. That is not Thurrock's fault. As will appear from what follows, that information has been withheld from Thurrock by the police.

(b) Evidence

104. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 3 October 2016, a call was received that there was an encampment at [REDACTED NATIONAL SECURITY]. The called stated that the gate was open and he was blocking the entrance with his van but the travellers were threatening him and banging on his van and he drove away. Counter terrorism were said to be concerned due to location next to a Critical Infrastructure site. Contingency planning held emergency details around the site next to [REDACTED NATIONAL SECURITY]. A further call was received that the travellers had stolen a fork lift truck from another unit and was driving it around doing wheelies. Travellers broke into a building and started to remove vehicles. The forklift was used to move internal and external CCTV cameras. When police attended, the travellers had barricaded themselves in and place fire extinguishers by the front entrance. The travellers stated that [they] were intending on claiming squatters rights. While in situ the travellers children were spitting at police while others were

shouting abuse. The travellers said to police that they were waiting for a permanent site. The travellers had reversed a flat bed truck against the side door and were stacking chairs preventing the police from gaining entry. When the police finally gained entry to the warehouse, they found that the fork lift truck had been hotwired. Brian Stokes, John Lawrence and Edward McDonagh were arrested on suspicion of burglary."

105. No application was made to the Court to withhold the information that was unilaterally redacted by Inspector Ballard. Neither I, nor Mr Stokes, has been provided with the unredacted material. The supporting police documents have been withheld both from the Court, Mr Stokes, and (it appears) Thurrock.

106. In Inspector Ballard's table, however, he identified the site as being in Central Avenue, West Thurrock, that a s.61 Notice was issued by the police, but no C126 assessment was made. I have no further details of Mr Stokes' arrest, whether it led to any prosecution and, if it did, with what result. It might be thought that the arrest of Mr Stokes might have allowed the police to assist Thurrock with identifying whether he was the same person as the 12th Defendant.

(c) Findings of fact relating to Mr Stokes

107. With the limited evidence that Thurrock has presented, I am only satisfied, on the balance of probabilities, that Mr Stokes was part of group of people the police described as Travellers who had broken into the unidentified premises on Central Avenue, West Thurrock. The evidence does not support a finding that this was an "encampment", and it does not enable any conclusion to be drawn as to whether Mr Stokes was responsible for any of the activities, attributed generally to "*the Travellers*", as described in Inspector Ballard's evidence. Specifically, there is no evidence that Mr Stokes had stolen a forklift truck or was involved in the barricading of the premises. Without admissible and probative evidence to support them, these allegations should not have been made against Mr Stokes. The evidence does not establish that there was any fly-tipping as a result of the incident.

108. Thurrock has therefore not demonstrated that Mr Stokes formed an "encampment" on this or any other occasions on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(14) Charles Lansky

(a) Allegation(s)

109. Thurrock's allegation against Mr Lansky is:

> "… on 18 August 2016, you and/or your vehicle registration number YP54 *NB formed an unauthorised encampment at the Grove Road in Stanford Le Hope. Members of the encampment were abusive."

(b) Evidence

110. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 18 August 2016, on leaving [a different site], the travellers went to a park in Grove Road, Stanford Le Hope. The manager from the Rugby Club had spoken to the travellers asking them to leave when he was told to 'fuck off'. A section 61 was authorised and they left the following day… The vehicles present were [Table included identifying 8 vehicles]"

I cannot find the incident in Inspector Ballard's table and no C126 assessment has been provided for the incident.

111. The crime report for the incident, opened at 20.10 on 18 August 2016, noted the following:

> "Suspects unknown without authority of the landowner and after being given direction to leave have entered private land. Suspect vehicles are as follows: [identified but not including YP54 *NB]"

A subsequent entry on 27 August 2016 at 12.59 noted:

> "… Section 61 powers were initiated by Insp Bashford. Site was given until 0900hrs on the 19th to clear, of which upon police arrival at this time they did move on. This particular… report can be closed."

112. The STORM report for the incident included the following information.

i) The report was initiated, on 18 August 2016 at 20.11, following a report that "*4 traveller vehicles have just come [onto the land]… No VRM details. [Informant] says it is a public park.*" This was followed by a further call from the manager of the Rugby Club at 20.16.

ii) A decision was made at 21.27 by Chief Inspector 2570 Ray that an Inspector should attend the scene. Two police units were deployed.

iii) At 22.40, the police received a further call to say that others were accessing the site through Billet Lane and the number of vehicles had increased to 9 caravans "*with more arriving*".

iv) The s.61 notice was served at around 01.00 on 19 August 2016.

v) On 19 August 2016, at 09.02 there is there is an entry recording the details of vehicle YP54 *NB, a gold Toyota Avensis, and the information received about the vehicle and the registered keeper from the PNC. However, the entry includes the following:

> "S165 Removal YP54 *NB S165. Albert Road VEH REC"

vi) Earlier on in the STORM report under a heading "ISR Relations" (a term that I do not understand and has not been explained in evidence) there are the following entries:

> "EXTERNAL – RECOVERY: ELVIS REFERENCE FOR YP54 *NB IS 160664
>
> VEHICLE – S165 REMOVAL – YP54 *NB S165"

I cannot with confidence interpret these comments (and again they have not been explained in the evidence), but they appear to suggest that the vehicle was seized by the police.

vii) At the end of the STORM report, an entry at 10.18 on 19 August 2016 records:

> "Vehicle recovered no insurance, also Gold Toyota Avensis was displaying Irish plates 05-LK-*155"

There is an earlier entry recording: "NO TRACE PNC 05LK*155", although the lack of trace on the PNC is likely to be because it was an Irish vehicle.

The STORM report contains no suggestion that there was any fly-tipping or other damage to the land.

(c) Findings of fact relating to Mr Lansky

113. The evidence against Mr Lansky is very unsatisfactory. The only evidence against him is the record of the presence of a vehicle, of which he was the registered keeper, in the STORM report. Mr Lansky was not arrested, but apparently the vehicle was seized. However, there is no reference to the vehicle in the crime report, which lists 12 other vehicles as "suspects". Added to that the vehicle was recorded as having Irish plates with a different index number, in respect of which the STORM report does not record any information. Neither Inspector Ballard nor Thurrock appear to have carried out any investigation as to the registered keeper of 05-LK-*155. There is no evidence as to what happened to the seized vehicle (for example whether it was subsequently claimed by the owner, and, if so, who that was).

114. Given these unsatisfactory elements of the evidence, I am not prepared to draw the inference, that I might otherwise draw, from proof of the presence of a vehicle, that Mr Lansky, the registered keeper, was also present.

115. Thurrock has therefore not demonstrated that Mr Lansky formed an "encampment" on this or any other occasions on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is also no evidence that Mr Lansky was abusive. Without admissible and probative evidence to support it, this allegation should not have been made against Mr Lansky.

(15) Charlie McDonagh

(a) Allegation(s)

116. Thurrock's allegation against Mr McDonagh is:

> "… on 8 September 2016, you and/or your vehicle registration number YF13 *KJ formed an unauthorised encampment at Thurrock Business Centre, Grays."

(b) Evidence

117. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 8 September 2016, a call was received that travellers had set up an unauthorised encampment at Thurrock Business Centre, Breach Road, Grays, Essex. … The vehicles present were [Table included identifying 2 vehicles]"

In Inspector Ballard's table he states that the incident was resolved by the people on site leaving voluntarily, without a s.61 notice being served or need for a private eviction.

118. The crime report contains little additional information and confirms the limited number of vehicles present and that there was no need for any police action. It confirms that no C126 assessment was carried out. Mr McDonagh was wrongly sent a C126 assessment from another incident with his Claim Summary Letter. The STORM report for the incident (which was opened and closed on 8 September 2016) records that there were two caravans, a truck and a car.

(c) Findings of fact relating to Mr McDonagh

119. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr McDonagh was present on private land at the Thurrock Business Centre with the intention of forming an encampment, but he (and the others with him) left the site voluntarily a short time after they had arrived. There is no evidence of fly-tipping or other damage to the land at the site.

120. Thurrock has not demonstrated that Mr McDonagh actually formed an "encampment" on this or any other occasions on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(16) Clarence Bulmer

(a) Allegation(s)

121. Thurrock's allegation against Mr Bulmer is:

> "… on 18 October 2017, you formed an authorised encampment at the East Tilbury Pumping Station, where entry was forced."

(b) Evidence

122. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 18 October 2017, a call was received that there were caravans and vehicles at the Pumping Station, East Tilbury Road, Stanford Le Hope, Essex and the gates had been forced. Police issued a section 61 notice because one of the caravans was about five feet away from the pumping station. The pumping station is responsible for the sewage flow for the whole of East Tilbury and Linford. If this was tampered or damaged, it would lead to residents having raw sewage coming up through their drains and flowing into the street. The travellers had to leave the same day. The persons identified at the site were Michaela McKenzie [60th Defendant], Clarence Bulmer, [two children whose address was the same as Michaela McKenzie]."

123. The crime report contains little additional information and indicates that it was "*created for audit purposes. Encampment now secure and travellers left without any issues. This is to be filed.*" No arrests were made.

124. The C126 assessment, completed by Inspector 3663 Fisher on 18 October 2017 in support of the decision to issue a s.61 notice, contains the following:

> "At 14.09 hours a local informant notifies Essex Police of two cars and a caravan that have forced their way onto a piece of land on the East Thurrock Road, Linford. The gate securing the compound had a large chain and padlock locking it in place. However this has been cut off recently to facilitate access. The land is owned by Anglian Water and has a key sewerage pumping station inside of the permitter. The staff member from Anglian Water drove past the site in the morning of the incident and confirmed it was locked and secured with the padlock and chain in place. The main occupier [name given, not a Defendant] is not an Irish traveller but a local resident of Tilbury. He appears to have decided to adopt the traveller way of life and take his caravan from place to place locally. There is no known history of other trespasses involving [him], his girlfriend or associates."

The report then includes the assessment of possible harm that is included in Inspector Ballard's evidence. It is not apparent from whom this information was obtained as it is unlikely that Inspector Fisher would have had personal knowledge of the risks to the sewage system if machinery at the pumping station were to be damaged.

125. The STORM report for the incident included the following information.

i) The report was initiated, on 18 October 2016 at 14.09, following a report that "*2 cars and 1 caravan turned up on waste ground at approx. 1320. Appears they have forced entry to gates to get access to land*".

ii) The report contains little further until an entry at 17.43 confirming that a s.61 notice had been served. The people on the land then left by the required deadline of 20.00.

(c) Findings of fact relating to Mr Bulmer

126. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Bulmer was present on private land at the Pumping Station in East Tilbury Lane and formed part of a short-lived encampment, but he (and the others with him) left the site voluntarily no more than 7 hours after they had arrived. There is no evidence of fly-tipping. The only damage to the land was to the chain/padlock to gain entry. However, Thurrock has not proved, on the balance of probabilities, that Mr Bulmer was responsible for this damage. As the STORM report noted, the report was only that the individuals on the land had "appeared" to have forced entry to gain access. The police arrived on the scene shortly afterwards, but made no arrests on suspicion of criminal damage. That is a strong indicator that officers on the ground had insufficient evidence to suspect any individual, including Mr Bulmer, of having caused the damage.

127. Thurrock has not demonstrated that Mr Bulmer formed an "encampment" on any other occasions on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(18) Danny Hallissey

(a) Allegation(s)

128. Thurrock's allegation against Mr Hallissey is:

> "… between 28 September and 3 October 2018, you and/or your vehicle registration number LK65 *LN formed an unauthorised encampment in South Ockendon, that encampment engaging in human defecation, fly tipping and suspected caravan theft."

(b) Evidence

129. The evidence relied upon from Inspector Ballard, in respect of what are alleged to be two separate encampments, is:

> "On 28 September 2018, a call was received that travellers were gaining access to the field in Cullen Square, South Ockendon, Essex, where they had previously been in Cruick Avenue. There were approximately six vehicles and four caravans. Police issued a section 61 notice and requested that they vacated the land by 1900 hours on 3 October 2018. Once the site was clear, police attended and found a large amount of fly-tipped green waste, human excrement in the bushes and a stolen caravan was recovered from the site… The vehicles present were [table identifying 8 vehicles/caravans].
>
> On 3 October 2018, a call was received that the caravans which were previously at Cullen Square have now gone to Callan Grove, South Ockendon, Essex. Police noted that there was already an accumulation of litter and used toilet tissue on the field. A section 61 notice was served for the site to be vacated by 4 October 2018 1900 hours… The vehicles present were [table showing the same vehicles as were noted in respect of the Cullen Square incident]."

130. The crime report for the Cullen Square incident contains the following:

i) The initial police assessment (19.40 on 28 September 2018) was that it was not necessary or proportionate for a s.61 notice to be issued:

> "… The site is clean and tidy; members of the public can still use the field and there is on community or economic impact at this time."

ii) Further vehicles are recorded as having arrived on 30 September 2018, but it was noted (at 18.29): "*site clean and tidy. Research of STORM shows no incidents reported regarding the presence of the travellers no reports of [anti-social behaviour] or fly-tipping*".

iii) On 3 October 2018 (at 17.04) there is an entry from Sergeant 2131 Downes (the Scene Management Officer):

> "I attended the scene today with PC Long and conducted a site assessment. I found that a quad bike was being used by young children on the site and they were riding around the green. There was human waste behind some bushes where the public could walk and a considerable amount of green

> waste fly-tipping. A stolen caravan has also been recovered from the site. S.61 notices have been served to be gone by 1900hrs today…"

iv) At 19.53 the final entry confirms that the site had been vacated.

131. PS Downes also completed the C126 assessment prior to issuing the s.61 notice (approved by Chief Inspector 3099 Ford). It substantially repeats the information that he provided in the crime report quoted above.

132. The STORM report for the Cullen Square incident does not contain anything of note. Perhaps surprisingly, there is no reference to any of the matters identified by Sergeant Downes in the crime report.

133. The crime report for the Callan Grove incident contains the following:

i) The group of travellers who had been evicted from Cullen Square were reported (at 21.46 on 3 October 2018) to have moved to Callan Grove.

ii) A site inspection was carried out by the police on 4 October 2018, and it was noted (at 15.25):

> "The encampment is made up of four caravans, a camper van and four other vehicles. There are a number of dogs present which were barking continuously. Even though they have only been at the site for less than 24 hours there is already a small amount of litter on the field and some used toilet tissue. These above facts will have an impact on the local community who live directly next to the field."

As a result, the decision was made to serve a s.61 notice, which is recorded as having been served at 15.32, requiring the site to be vacated by 19.00 on 4 October 2018.

iii) The last entry in the crime report is:

> "All travellers, vehicles and caravans vacated the site as requested by the bailiffs. Site left clean and tidy. Site now clear."

134. The C126 assessment for the Callan Grove site, completed by Superintendent 77745 Saunders and Inspector 2559 Bainbridge Fisher on 4 October 2018. Largely this repeated the information recorded in the crime report following the site inspection.

135. The STORM report for the Callan Grove incident included the following information.

i) The report was initiated, on 3 October 2018 at 18.08, following a report to police that "*there are transit vans and caravans setting up camp*". A note at 19.12 commented that they were likely to be part of the group that had been evicted from Cullen Square. An officer at the scene at 19.51 is recorded as having spoken to the individuals who had advised they planned to stay for 2 days.

ii) At 12:20 on 4 October 2018, there is a note that the travellers had been asked to leave by the landowner. There a further note stating (at 12.21): "*on route now*

to issue s.61 Notices" and "*on scene to start the eviction process*" (at 12.27) (which appears to be before the site inspection – see [133(ii)] above).

iii) The site was vacated on 5 October 2018 at shortly after 10am. There is an entry (at 12.48) noting "*site left clean and tidy*".

(c) Findings of fact relating to Mr Hallissey

136. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Hallissey was one of those who encamped on land at Cullen Square (for 6 days) and at Callan Grove (for 2 days). There is some evidence that the encampment at Cullen Square left human and green waste, which is an aggravating factor of the encampment (and which ultimately led to the eviction notice being served). Beyond these incidents, Thurrock has not demonstrated that Mr Hallissey has formed other encampments on land in its local authority area (or anywhere else). There is no evidence of such waste being left at the Callan Grove site once those in occupation had left the site. There is also no evidence of Mr Hallissey being in any way connected to the alleged theft of a caravan. Without admissible and probative evidence to support them, this allegation should not have been made against Mr Hallissey.

137. However, Thurrock has not proved, on the balance of probabilities, that Mr Hallissey was responsible for fly-tipping or the depositing of any other waste at either site. None of the police evidence attributes responsibility for the depositing of waste to any individual. No doubt that represents the reality of the situation; that they had no evidence to demonstrate who was responsible.

138. Nevertheless, Thurrock's submission was that *all* of the people at the site are to be held responsible for the fly-tipping. Ms Bolton was not able to provide any authority for that proposition which would appear to fly in the face of basic principles of justice and fairness. Absent proof of some form of joint enterprise or commission of a joint tort, which is not alleged against any of these Defendants, an individual is responsible for his/her acts, not those of someone in their family, amongst their neighbours or wider community.

(22) Declan McLeod

139. There is an issue as to whether Mr MacLeod's surname has been correctly spelled and, indeed, whether he has been properly served with the Claim Form – like all the other named Defendants, he was not personally served – and Claim Summary Letter (see [26(ii)] above). Notwithstanding these issues, Thurrock has maintained its claim against Mr McLeod (sic) at trial.

(a) Allegation(s)

140. Thurrock's allegation against Mr McLeod (sic) is:

> "… on 9 May 2016, you and/or your vehicle registration number PO58 *LB, formed an unauthorised encampment at Manor Way. Thurrock."

(b) Evidence

141. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 8 May 2016, a call was received that there were travellers on the A1014 commonly known as the Manor Way, Stanford Le Hope, Essex. The vehicles were being driven the wrong way down a cycle path onto a farmer's field. Some of the vehicles present were: [Table included identifying 9 vehicles]"

I cannot find the incident in Inspector Ballard's table. There are recorded incidents for both 8 and 9 May 2016, but neither relates to an incident in Manor Way. There is no C126 assessment. The DVLA response to the vehicle inquiry stated that the vehicle PO58 *LB was a Renault Dropside Lorry.

142. The crime report for the incident, which was opened at 21.00 on 8 May 2016, records: "*Travelling encampment consisting of 3 vehicles and 5 caravans*". The first entry is at 11.10 on 10 May 2021 following a visit by PC 71450 Watts: "*Attended… No persons present. Photos obtained of the site and uploaded to Athena. Not causing any obstructions to foot or vehicle traffic*". The photographs referred to have not been produced in evidence. At 12.16, a further entry records, "*Site appears to be on the Highway so Sec. 61 CJPOA will not be enforceable. The [unauthorised encampment] is not causing an obstruction of the highway…*". On 11 May 2016, an entry in the crime report record, first, that "*only two people… of Romanian descent*" were present. On 13 May 2016, the police recorded that no people appeared to be present at the site, but later that day a notice under s.77 CJPOA had been served. On 18 May 2016, the final entry in the crime report records a conversation with a security manager who told the police, "*the travellers have now left the location*" and he reported "*no issues*".

143. Mr MacLeod was sent two STORM reports with the Claim Summary Letter. One of these related to an incident at Stoneness Road on 9 May 2016 which was not alleged to be anything to do with him. The STORM report for the Manor Way incident was opened just after 21.30 on 8 May 2016 after a call from a member of the public who worked at the Thames Enterprise Park. The police were provided with the index numbers of four vehicles in a further call at 21.43. None of them was a vehicle of which Mr MacLeod was the registered keeper. The STORM report does not include a record of vehicle PO58 *LB. The only reference to this vehicle is in the crime report. The names of the people who, it appears, provided the information, have been redacted.

144. There was clearly initial confusion as to whether the encampment was on private land. An inspector was due to attend the site on 10 May 2016, but if s/he did attend, no report was completed and it was only on 13 May 2016 that a direction to leave was made by the police. At 13.52 on 13 May 2016, there is an entry in the STORM report: "*Caravans are still at the location… No people present at the site. Staff have informed us that at this time they have had no issues with this group*".

(c) Findings of fact relating to Mr McLeod (sic)

145. I am not satisfied on the evidence presented, that Thurrock has demonstrated, on the balance of probabilities, that Mr MacLeod was one of those who encamped on land at Manor Way (for 5-6 days). Unlike the claims against most of the other named Defendants, there is no reference to his vehicle in the STORM Report. The only reference to the vehicle of which he was the registered keeper is in the crime report, and the names of those who provided the information have been withheld. In any event, the encampment on Manor Way was relatively short-lived and had no aggravating features. There is no evidence of fly-tipping or of other damage to land.

146. In the light of this conclusion, it is not necessary for me to investigate further whether the Claim Form has been properly served on Mr McLeod (sic) (see [26(ii)] above).

(23) Dennis Doherty

(a) Allegation(s)

147. Thurrock's allegation against Mr Doherty is:

> "… between 14 and 22 August 2017, you and/or your vehicle registration number VK13 *DM formed a series of unauthorised encampments in Thurrock."

(b) Evidence

148. The evidence relied upon from Inspector Ballard, in respect of these incidents is:

> "On 14 August 2017, a call was received that there were vehicles, caravans and a horse in the car park at Dunelm Mill, The Junction, Lakeside Retail Park, West Thurrock, Essex, RM20 3LP… The vehicles were: [Table included identifying 5 vehicles].
>
> On 22 August 2017, a call was received from security at Motherwell Way, Grays, Essex RM20 3XD that vehicles towing caravans were attending the site… The vehicles present were: [Table included identifying 7 vehicles]."

149. Mr Doherty was sent STORM and crime reports and a C126 assessment for an incident on 14 July 2017, in respect of which I can find no trace of his vehicle. He was also sent a crime report for an incident on 5 January 2017 concerning criminal damage to a vehicle. This also appears to have nothing to do with Mr Doherty.

150. The STORM report for the Dunelm Mill incident was opened on 14 August 2017 following a report at 12.25 that travellers had set up in the car park with 9 caravans and a horse. VK13 *DM was noted to be amongst the vehicles at 18.31 on 14 August 2017. There is a second STORM report for the Dunelm Mill incident which was opened on 16 August 2017 following a 999 complaint to the police at 20:24: "*reporting approx. 20 caravans in the car park… [The informant] saw 2 caravans and a horse tied up at approx. 1940hrs. She has now driven past and seen more caravans on site*". Neither STORM report indicates any aggravating features or records what happened to the encampment.

151. In respect of the Motherwell Way incident, the STORM report was opened on 22 August 2017 at 21.20 following a report that around 10 caravans and 3 other vehicles had arrived at the scene, which was a dead-end road. Vehicle VK13 *DM was noted as being present at 05.21 on 23 August 2017. At 10.43 on 23 August 2017, the police officers attended the scene and noted 6 caravans and 5 vehicles and that, "*site is clean and tidy. Damage to gate which in my opinion would have been caused to get onto this site.*" No s.61 Notice was served by police. The C126 assessment, completed by Inspector 1664 Fraser on 22 August 2017, noted:

> "The encampment has been set up on the parking area in front of a number of industrial units down a side road of the Lakeside complex. The site was accessed simply by driving on the forecourt. No gates or locks exist and as such no damage

> was caused. It is believed a number of the occupants have moved to this location after being evicted from a site on the lakeside area 24 hours ago… The site is currently made up of 6 caravans and 6 motor vehicles. There were no animals seen. The site was clean, tidy and well maintained… There was no evidence of defecation or industrial waste. The site is situated on the loading area of a number of industrial units which are currently unoccupied. There is no housing within the vicinity as the entire area is an industrial unit… No immediate welfare issues were identified and no access to services are currently considered necessary. Female, Madonna Doherty was spoken to as well as male occupant Patrick Doherty. They were reasonable and communicative. They advised that they intended to remain on site for a couple of days."

In explaining his decision not to serve a s.61 Notice, Inspector Fraser added:

> "… allegations of a crime or identification of an individual suspect at an encampment should not be grounds alone for consideration of a full group eviction. This view complies fully with Human Rights legislation. The Equality Act 2010 confirms that a nomadic lifestyle is protected in law. It must be considered that there is a lack of pitches on authorised sites across the country and Thurrock is no exception. Therefore it is difficult if not impossible for travellers to avoid setting up unauthorised pitches. The presence on this site at its current location is fairly unobtrusive. The travellers have made their intention to remain in the area until tomorrow in agreement with the landowners representative. As a result any action to move them on will only likely result in a further site being established elsewhere, which may not be so inoffensive."

152. Linked to the Motherwell site, it appears that there was a further encampment nearby at Euclid Way. There is a crime report for the Euclid Way encampment, but the list of vehicles does **not** include VK13 *DM. This records: "*... damage has been caused to main gate to get in. Magnetic locking system and electronic automatic gate opening devices have been significantly damaged... The unauthorised encampment moved off the site at or around 28/08/17 prior to an eviction being executed.*" There was also a C126 assessment for the Euclid Way encampment which contained the following: "*It is believed a number of the occupants have moved to this location after being evicted from a site… in the last few hours on Motherwell Way*".

(c) Findings of fact relating to Mr Doherty

153. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Doherty was one of those who encamped on land at Dunelm Mill and thereafter at Motherwell Way (but not Euclid Way). The evidence contains contradictory hearsay statements as to whether damage was caused to gates. In light of that, I am not satisfied that Thurrock has demonstrated any aggravating features. There is no evidence of fly-tipping or other damage to land. Beyond this incident, Thurrock has not demonstrated that Mr Doherty has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(25) Edward Lowther

(a) Allegation(s)

154. Thurrock's allegation against Mr Lowther is:

> "… between 10 May and 13 May 2017, you and/or your vehicle registration number NH57 *FZ formed an unauthorised encampment at various sites in Thurrock."

(b) Evidence

155. The evidence relied upon from Inspector Ballard, in respect of these incidents is:

> "On 13 May 2017, a call was received that there were caravans and vehicles at Welling Road, Orsett, Grays, Essex… The vehicles were [Table included identifying 3 vehicles]."

The evidence of Inspector Ballard does not demonstrate that Mr Lowther (or the vehicle of which he was the registered keeper) was present at any encampment on 10 May 2017. The STORM and crime reports, that Mr Lowther was sent with his Claim Summary Letter, similarly disclose no evidence to link him to this incident. There was no C126 assessment for either incident. The evidence therefore discloses a single allegation of encampment involving Mr Lowther. The entries in Inspector Ballard's table state that the encampment on 13 May 2017 was resolved with a private eviction.

156. The STORM report for the incident at Welling Road on 13 May 2017 was opened that day at 14.37 with a report from a member of the public that a caravan and a tent had been seen and "*more caravans have turned up today*". A 14.40, the police received a further call alleging that "*a lot more travellers are currently turning up*". Police attended the scene at around 15.20 and noted that "*they are setting up at the top of Welling Road*". Contrary to the initial reports, police noted only three vehicles, one of which was NH57 *FZ, two caravans and a total of 9 people, On 14 May 2017, at 06.27, there is a note that there were 2 caravans and 1 tent left on the site. The incident was closed at 09.17.

(c) Findings of fact relating to Mr Lowther

157. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Lowther was one of those who encamped on land overnight at Welling Road. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping or other damage to land. Beyond this incident, Thurrock has not demonstrated that Mr Lowther has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(30) Ellen McDonagh

(a) Allegation(s)

158. Thurrock's allegation against Ms McDonagh is:

> "… on 19 February 2018, you and/or your vehicle registration number FHZ *403 formed an unauthorised encampment at Holy Cross School, South Ockendon. Locks were broken, there as (sic) fly tipping and a large bonfire."

(b) Evidence

159. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 19 February 2018, a call was received that there were eight vehicles and nine caravans on the land next to Holy Cross School, Daiglen Drive, South Ockendon, Essex. The caller goes on to say the occupants had cut the lock of the (sic) and put their own locks on the gate. A large bonfire was reported and residents were concerned it may catch the houses. Police officers gained access by climbing over the gate… The vehicles were [Table included identifying 12 vehicles]."

The entries in Inspector Ballard's table state that the encampment on 19 February 2018 was resolved with a private eviction. It is clear from the evidence that the alleged encampment was on land *next to* Holy Cross School not, as contained in the allegation sent to Ms McDonagh in the Claim Summary Letter *at* the school. There is no C126 assessment for this incident.

160. The STORM report for the incident was opened that day at 21.08 with a report from a member of the public that "*a group of travellers … are setting up next to the Holy Cross School. They have cut open the gates*". The caller told the police that there were around 9 caravans. Police arrived at the scene at just after 23.00. The officers noted 9 caravans and 8 vehicles and "*they have come from Brighton and are looking for a legal site to stay*". Index numbers of the vehicles present were noted by the officers at 23.22 – including FHX *403 (with a caravan) of which Ms McDonagh was the registered keeper. The police noted that the encampment was on private land. On 20 February 2018, the police noted at 12:17: "*Have had a call from the Council. They have witnessed fly-tipping at this location and want to go and deal. Can local officers attend and support the Council going onto the site.*" A further call was received from a member of the public, at 15.24, that "*they have now lit a huge bonfire*" and that "*if the wind blows it will catch the houses*". There appears to be no independent assessment of the risk of the bonfire by the police. At 17.12 it was noted that "*the weather has picked up and rain has put fire out*". There is an entry from an unidentified officer at 17.42: "*I attended the site. With the fly-tipping present, the fire that had been started and the report of the lock being broken to allow access, I deemed s61 appropriate. Before the local inspector attended the site the travellers left the area. The council will deal with the litter and waste.*"

161. The crime report contains little further information than is contained in the STORM report. The crime report contained no reference to (or any description of) any fly-tipping. The incident was not referred to in the witness statement of Mr Andrews. It is referred to in a witness statement from Phil Carver, dated 12 June 2019, and he exhibits photographs of the alleged fly-tipping. Mr Carver did not witness the fly-tipping. He identified 10 vehicles that were present by registration plates. Two of which were Ford Transit Tipper vehicles, but neither of which was registered to Ms McDonagh (or any other named Defendant). Mr Carver's evidence was not identified as being relied upon in any of the Claim Summary Letters.

(c) Findings of fact relating to Ms McDonagh

162. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Ms McDonagh was one of those who encamped overnight on land next to Holy Cross School. The breaking of the lock to gain entry, the fire and the evidence of fly-tipping are aggravating features of the encampment as a whole. However, Thurrock has provided no evidence that would enable the Court, even on the balance of probabilities, to conclude that Ms McDonagh was responsible for the fly-tipping.

I reject Ms Bolton's submission that all people who are part of an encampment on land are responsible for any fly-tipping. I adopt the same reasoning as in [138] above.

(31) John Bryan

(a) Allegation(s)

163. Thurrock's allegation against Mr Bryan is:

> "… between 28 September and 3 October 2018, you and/or your vehicle registration number HJ14 *YK formed an unauthorised encampment in South Ockendon, that encampment engaging in human defecation, fly-tipping and an (sic) suspected caravan theft."

(b) Evidence

164. The Claim Summary Letter sent to Mr Bryan referred to the wrong paragraphs of Inspector Ballard's witness statement, but the correct paragraphs were sent with the letter.

165. The two incidents alleged against Mr Bryan are the Cullen Square and Callan Grove incidents that were also alleged, in similar terms, against Danny Hallissey, 18th Defendant (see [129]-[130] above). The evidence relied upon from Inspector Ballard, in respect of these incidents is the same.

(c) Findings of fact relating to Mr Bryan

166. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Bryan was one of those who encamped on land at Cullen Square (for 6 days) and at Callan Grove (for 2 days). There is some evidence that the encampment at Cullen Square left human and green waste, which is an aggravating factor of the encampment (and which ultimately led to the eviction notice being served). Beyond these incidents, Thurrock has not demonstrated that Mr Bryan has formed other encampments on land in its local authority area (or anywhere else). There is no evidence of such waste being left at the Callan Grove site once those in occupation had left the site. There is also no evidence of Mr Bryan being in any way connected to the alleged theft of a caravan. Without admissible and probative evidence to support them, this allegation should not have been made against Mr Bryan.

167. However, Thurrock has not proved, on the balance of probabilities, that Mr Bryan was responsible for fly-tipping or the depositing of any other waste at either site. None of the police evidence attributes responsibility for the depositing of waste to any individual. No doubt that represents the reality of the situation; that they had no evidence to demonstrate who was responsible. I reject Ms Bolton's submission that all people who are part of an encampment on land are responsible for any fly-tipping. I adopt the same reasoning as in [138] above.

(32) John Connors (sic)

(a) Allegation(s)

168. Thurrock's allegation against Mr Connors (sic) is:

> "… on 9 February 2018, you and/or your vehicle registration number SF17 *RZ formed an unauthorised encampment at the nearby lorry park. It was a large encampment with suspected fuel theft."

169. This appears to be another example of the Defendant's name being wrongly spelled on the Claim Form. The STORM report for this incident identifies the registered keeper of the vehicle as John Conners, at an address in the Bashley Road Caravan Site in Old Oak Common, London NW10. The process server evidence filed on behalf of Thurrock states that Mr Connors (sic) was served, on 21 August 2019, by putting the Claim Form and accompanying documents through the letterbox, presumably of the caravan present on the relevant plot at the time. There is no evidence of any attempt at personal service, or of any inquiries made at the time to try and establish whether this was still Mr Conners' residential address. Certainly, the witness statement of the process server does not state that it was a residential premises that was "*reasonably believed to be to be owned or occupied*" by Mr Conners. Doubtless, this is also the address to which the Claim Summary Letter was sent. There is no evidence that Mr Conners has lived at the caravan park from February 2018. Indeed, Thurrock's allegation against him is that he is a traveller who was present, with his caravan, at Moto Services in Thurrock between 9-11 February 2018. This is perhaps a further example of the unreality of "serving" a claim on a member of an itinerant community.

(b) Evidence

170. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 9 February 2018, a call was received that there were travellers attempting to fill a 20 litre container of fuel and that there were caravans in the lorry park. There are approximately 20 to 30 caravans and the occupants have not said how long they intend to stay. The report states that it's impossible to note down all the indexes as there are caravans and vehicles spread out across the car park… The vehicles present were [Table included identifying 15 vehicles]."

The entries in Inspector Ballard's table state that the encampment on 9 February 2018 was resolved with service of a s.61 Notice. A review of all the available evidence – particularly the STORM report – suggests that this is not correct, and no C126 assessment has been provided.

171. The STORM report for the incident was opened at 23:48 on 9 February 2018, following a call from a member of public who was noted as telling the police: "*some travellers are walking in the lorry part of the car park with container of diesel. This is 20L container.*" The note records the informant as having said that he believed that it was stolen, "*but he hasn't seen them steal it*". The call handler then records:

> "Have asked [informant] multi times where he has seen the persons come from to make him think it is stolen. But he won't answer that question. Just says they are now at the caravans in the lorry park. Appears they are just at the caravans with a container. So [informant] is assuming that it has been stolen. [He] hasn't seen them take it from the petrol area or from any other lorries… Not put on as stolen as [informant] cannot confirm this and hasn't even seen where this container has come from."

172. That is the only evidence of any alleged theft. It was discounted, immediately, by the call handler, on the basis that the informant could not provide any evidence to substantiate his claim that there had been any theft. Against that, it is very surprising to see that Inspector Ballard chose to include the (erroneous) details of an alleged theft in the short details he provided about this incident in his witness statement. It is more surprising still to see that Thurrock included a "*suspected theft*" allegation against Mr Connors (sic) in his Claim Summary Letter, and that Ms Bolton, in the schedule accompanying her skeleton argument, also included an allegation against Mr Connors (sic) of "*suspected fuel theft*". It was quite clear from the STORM report that the police did not consider that there was any evidence to support an allegation of theft. It is regrettable (to say the least) that such an allegation has been included without anyone, including anyone in Thurrock's legal team, apparently considering the underlying evidence to decide whether it supports such an allegation.

173. As to the encampment, the material evidence from the STORM report includes the following:

i) During the morning of 10 February 2018, a police officer arrived to carry out an assessment of the site. At 11.47, s/he added the following note to the STORM report:

> "I have attended the location to conduct the initial assessment. These are the same group evicted from Thorndon Park, Brentwood, yesterday. I was present at the eviction. And the person I spoke with this morning confirm it. They have parked up here due to being evicted and having children who need a place to sleep overnight. The situation is that there are 19 caravans and 9 vehicles in the car park which is a payment car park and does allow caravans to park there. The people I spoke with all stated that they have paid for their stay online. I have checked with the staff at Moto Services and they have no independent means of confirming this as it is run by an independent company and there is no way for them to confirm over the weekend. The site is controlled by ANPR so any unpaid bills will be recovered civilly. It would appear that they are there lawfully at this time and as such no direction has been given. However, I have completed the assessment which I will upload onto the original Athena record… I have questioned the use of section 61 powers with PC Harkness in the light of them being there lawfully and his advice is that should they begin to cause antisocial behaviour then the landowner can request them to leave and once the request has been made then regardless of payment we can revert to use of the powers should we need to. All I have spoken with have stated that they plan to leave the area today and to leave Essex. I have advised them that that we will return later this afternoon to see whether they are in fact packing up to leave."

ii) At 06.42 on 11 February 2018, a different unidentified officer added:

> "On advice from the Traveller Liaison Team I have added the details to the original Athena record as they are the same group who have moved on from Wickford and then Brentwood. They are not technically an unauthorised encampment so I have not created a new record. The details are on [crime report] 42/18732/18 [which is the crime report for the Thorndon Countryside Centre]. I will get someone to attend later this morning to see whether the remaining caravans are moving off and it can then be closed later today."

iii) The last entry in the STORM report was at 10.21 on 11 February 2018. It recorded that there were fewer vehicles left and that there was some confusion about whether s.61 notices had been served (the travellers appeared to think that they had whereas the police had not done so). The incident was closed at 12:24 on 11 February 2018 so it appears that those who were at the services had left.

174. The Claim Summary Letter sent to Mr Connors included, erroneously, a crime report for an incident on 8 February 2018 at Thorndon Countryside Centre that did not relate to him. It appears to have been included because, although the vehicle SF17 *RZ is not identified in the list of vehicles present, the crime report includes the following sentence: "*1 caravan had no index plate but was believed to be used by SF17 *RZ – silver transit. Not at scene…*" This is an example of the lack of care that has been taken by Thurrock as to what the evidence they have relied upon actually proves. No other crime report relating to the incident at Moto Services was sent to Mr Connors, and although one is referenced in Inspector Ballard's table, I cannot trace it in the bundle of police evidence. Similarly, the references in Ms Bolton's table do not identify it.

(c) Findings of fact relating to Mr Connors (sic)

175. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Conners was one of those who stayed overnight at the Moto Services between 9-11 February 2018. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or a breach of planning control. According to the accounts of those present given to the police, they had paid the relevant parking charge. Even if they had not paid, as the officer noted, Moto would be able to recover a parking charge from the registered keepers. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Mr Conners has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. As I have already noted, the allegation of "*suspected theft of fuel*" was not supported by any credible evidence and there was absolutely no evidence to link this allegation to Mr Conners. Thurrock should not have made the allegation against him.

(33) John Keenan

(a) Allegation(s)

176. Thurrock's allegation against Mr Keenan is:

> "… on 18 August 2016, you and/or your vehicle registration number 04 MO *993 formed an unauthorised encampment at the Grove Road in Stanford Le Hope. Members of the encampment were abusive."

(b) Evidence

177. Although the Claim Summary Letter identified a single incident in Grove Road, in fact the evidence relied upon from Inspector Ballard, in respect of this vehicle, and which was sent with the Claim Summary Letter, demonstrates that there were two, linked, incidents:

> "On 18 August 2016, a call was received about an encampment near to gate 3 P&O Developments Ltd, Shell Haven, the Manor Way, Stanford Le Hope. The informant goes on to state that the travellers (sic) children are using wire cutters causing damage to the fence. The travellers left later the same day. The security staff reported that the encampment occupants were abusive and demanded money for diesel before they would leave, and threatened to 'shit all over the car park'… The vehicles on site were [Table included identifying 6 vehicles].
>
> On 18 August 2016, on leaving Shell Haven, the travellers went to a park in Grove Road, Stanford Le Hope. The manager from the Rugby Club had spoken to the travellers asking them to leave when he was told to 'fuck off'. A section 61 was authorised and they left the following day. One of the travellers, [not a Defendant to the proceedings], was arrested for being wanted for questioning for grievous bodily harm s.20… The vehicles present were [Table included identifying 8 vehicles]."

The entries in Inspector Ballard's table state that both "encampments" on 18 August 2018 were resolved with service of a s.61 Notice. A review of all the available evidence – particularly the STORM report – suggests that this is not correct and no C126 assessment has been provided.

178. Mr Keenan was not sent a copy of the STORM report for the Shell Haven incident with the Claim Summary Letter. The initial report to police was received around 18.48 on 18 August 2016 with a caller complaining that 6 caravans and associated vehicles had arrived. By 19.50, three of the caravans were reported to have left. A further entry at 20.47 records: "*From Gold – Ch Supt O'Callaghan – I have had Thurrock Chief Exec onto my mobile. Briefed with current situation.*" At 21.25 the police noted that all the vehicles, but one, had left the site. The incident appears to have been over by 22.22. The STORM report did not record details of any of the vehicles involved.

179. In the crime report for the Shell Haven incident (also not sent with the Claim Summary Letter), vehicle 04 MO *993 was recorded as having been present at the site. The summary recorded: "*Without authority of the landowner and after being given direction to leave, suspects unknown have been verbally abusive to members of staff and have entered private land..*"

180. The C126 assessment for the Shell Haven incident (also not sent with the Claim Summary Letter), completed by Inspector 1664 Fraser at 21.00 on 18 August 2016, recorded:

> "No specific aggrevating (sic) factors in terms of number of caravans or the impact on the community itself. The site was clean and tidy, however there was one small dog running loose, and a large number of children running around the car park where heavy goods vehicles turn around… This was a combination of cars, transit vans and caravans. The security staff haver reported that at the time the vehicles entered the site they were abusive to staff. Security staff approached the encampment and asked them to leave, the occupants of the encampment were abusive to the security representative demanding money for diesel before they would leave, and also being verbally abusive and threatening to 'shit all over the car park'. The staff have reported that they felt intimidated by the occupants. The group had also been moved on from an earlier site whereby they had been

> abusive to the landowner and threatening towards police officers. As such it was appropriate to envoke (sic) the powers under Section 61 in order to protect the site itself in respect of the use for the parking of HGV's, to protect the staff who felt intimidated and had been verbally abused by the staff and also to ensure the safety of those occupants on the site due to the number of children running around the site and the risk of being struck by traffic… All vehicles left the site within 10 minutes [of the s.61 Notice being served]."

181. The Grove Road incident is the same event that was relied upon against Charles Lansky (see [110]-[112] above).

182. The PNC check on 04 MO *993, recorded in the STORM report at 00.18 on 19 August 2016, identified John Gerrard Keenan as the registered keeper at an address outside Wolverhampton in the West Midlands. However, on the same page of the STORM report there appear the results of a PNC search on John Gerrard Keenan which returned a last known address (as of 17 March 2016) of a caravan park in Brookthorpe, Gloucestershire. It is unclear to me why Thurrock chose the West Midlands address as the address for service of the Claim Form on Mr Keenan, but the evidence, as a whole, again demonstrates how potentially unreliable service at the address of a registered keeper of a vehicle is when the person being served is a member of the Traveller community.

(c) Findings of fact relating to Mr Keenan

183. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Keenan was one of those who was, for a matter of a few hours, present on land at Shell Haven and that, thereafter, he was part of a short-lived overnight encampment at Grove Road. There is no evidence of fly-tipping during either incident. Beyond these incidents, Thurrock has not demonstrated that Mr Keenan has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is no evidence to link any allegations of abusive behaviour to Mr Keenan. Thurrock should not have made such an allegation against him. In the schedule to her skeleton argument, Ms Bolton alleged that Mr Keenan had "*used wire cutters to damage fence*". There was no evidence to support that allegation against Mr Keenan and it should not have been made.

(34) John McDonagh

(a) Allegation(s)

184. Thurrock's allegation against Mr McDonagh is:

> "… on 14 July 2016, you and/or your vehicle registration number M52 *GX formed an unauthorised encampment at Moto Services in Thurrock."

185. The registration number of the vehicle notified to Mr McDonagh in his Claim Summary Letter was incorrect. The correct registration number of the vehicle of which he is alleged to be the registered keeper is MW52 *GX.

(b) Evidence

186. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 14 July 2016, a call was received about caravans and vehicles being in the coach car park area of Moto Services. They left the site on 15 July 2016… The vehicles present were [Table included identifying 14 vehicles]"

The entry in Inspector Ballard's table states that the incident on 14 July 2016 was resolved with a private eviction.

187. The STORM report was opened on 14 July 2016 at 08.51 and recorded the registration details of the vehicles on site. Few details are provided of the incident, which was reported to have been "*disposed*" at 20.50 on 14 July 2016.

188. The crime report contained a few further details and recorded that there were 8 vehicles with a total of 14 caravans on the site. The penultimate entry in the crime report, at 13.53 on 15 July 2016 noted: "*Survey done at 13.25 today. 9 caravans all packed up and ready to travel. Spoke to an adult male who stated they would be gone in the next ½ hour. He declined to give his name.*"

(c) Findings of fact relating to Mr McDonagh

189. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr McDonagh was one of those who was present on land at Moto Services on 14 July 2016, possibly not leaving until the following day. As such, he was part of a short-lived encampment. Presence in the car park area of Moto Services is permitted on terms set by the landowner. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or that such an overnight "encampment" was a breach of planning control, for the reasons I have already given (see [175] above). The evidence demonstrates no aggravating features. There is no evidence of fly-tipping or other damage to land. Beyond this incident, Thurrock has not demonstrated that Mr McDonagh has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(35) John O'Brian

(a) Allegation(s)

190. Thurrock's allegation against Mr O'Brian is:

> "… on 3 February 2018, you or your vehicle registration number DX15 *VP, formed an unauthorised encampment at DHL Warehouse in Thurrock. Entry was forced."

(b) Evidence

191. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 3 February 2018, a call was received that approximately 15 vehicles and caravans had forced entry to the derelict DHL Warehouse, Weston Road, Grays Essex by cutting a chain… The vehicles present were [Table included identifying 7 vehicles]"

The details in the table indicate that a more accurate description would be 7 vehicles and 8 caravans. I cannot find an entry relating to this incident in Inspector Ballard's table. There is no crime report or C126 assessment.

192. The STORM report was opened on 3 February 2018 at 15.10 following a call to report that "*50 travellers' caravans have gone on to the car park by cutting the chain*". Subsequent details of the incident demonstrate that the estimate of 50 caravans was wildly inaccurate. Police attended the scene at around 15.42 and noted that there were more like 15 vehicles and caravans. The site was described as an "*old large commercial place*" that had no signs on the building. The officer noted: "*Site is clean. Couple of animals, little dogs. No signs of any [offences] yet apart from chain. No one known to have done that. They are well out of the way for community impact*". At 17.25, a note was made that a representative of the landowner had made a formal request that the occupants should leave the site. The STORM report was closed at 20:51.

(c) Findings of fact relating to Mr O'Brian

193. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr O'Brian was one of those who was present on land at the derelict DHL Warehouse on 3 February 2018, but it appears that he had left the same day. As such, he was part of a very short-lived encampment. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Mr O'Brian has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Mr O'Brian who did it. This allegation should not have been included against Mr O'Brian.

(37) John Stokes

(a) Allegation(s)

194. Thurrock's allegation against Mr Stokes is:

> "… on 18 August 2016, you or your vehicle registration number MK12 *MX, formed an unauthorised encampment at the Grove Road in Stanford Le Hope. Members of the encampment were abusive."

195. Ms Bolton's skeleton argument also relied upon an incident, on 18 August 2016, in which Mr Stokes was alleged to have been part of disturbance at an old landfill site at Medebridge Road, Grays, Essex. Although the relevant paragraph of Inspector Ballard's witness statement was included in the Claim Summary Letter, none of the supporting police documents relating to this incident was included and I have been unable to locate them using the cross-references in Ms Bolton's schedule.

(b) Evidence

196. The Grove Road incident is the same event that was relied upon against Charles Lansky and the evidence is the same (see [110]-[112] above).

(c) Findings of fact relating to Mr Stokes

197. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Stokes was one of those who was part of a short-lived overnight encampment at Grove Road. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Mr Stokes has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is no evidence to link any allegations of abusive behaviour to Mr Stokes. Thurrock should not have made such an allegation against him.

(40) Lawrence Connors

(a) Allegation(s)

198. Thurrock's allegation against Mr Connors is:

> "… on 25 February 2018, you or your vehicle registration number NA60 *KN, formed an (sic) large unauthorised encampment at Moto Services in Grays."

(b) Evidence

199. Although the wrong reference was given in the Claim Summary Letter, the evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 25 February 2018, Police on duty identified an encampment at Moto Services, Thurrock Motoways Services, Grays, Essex RM16 3BG that there was a large encampment in the car park… The vehicles present were: [Table included identifying 8 vehicles]."

200. Included with the Claim Summary Letter were various police documents relating to an earlier incident at the railway station at Purfleet on 24 February 2018. I cannot find anything that links this evidence to Mr Connors. It appears to have been sent to him in error.

201. The STORM report for the Moto incident has an entry from an officer at the site, at 18.21 on 25 February 2018:

> "Have spoken too (sic) Duty Manager at Moto. They are not happy with the situation and we have explained that this is private property and they have to employ bailiffs to deal and progress. The plan from the travellers is that they will leave am tomorrow to travel to KP to carry out work in the area."

The STORM report was closed at 20.13.

202. The crime report for the incident noted that a large group of vehicles and caravans had set up an "unauthorised" encampment in the corner of the car park: "*no damage caused as all vehicles and caravans just able to drive in*". PC 2149 Ranson noted, at 21.12 on 25 February 2018:

> "As such a large car park there are still plenty of spaces for other members of the public to use so no impact on the economy, no fly-tipping present and at this stage no reports

> of any public order incidents towards the land owner. At this time, section 61 no[t] authorised although to be reviewed on a regular basis… Management from Moto's to start their own proceedings to remove the travellers."

203. The C126 assessment, completed by Inspector 1705 Brettell, recorded that a s.61 Notice would not be authorised. The officer noted:

> "At this time there is no fly-tipping or any other waste/rubbish present. Management from Moto's made aware of the encampment and although they have indicated they do not want the travellers present as yet they have not actually requested the travellers to leave. They have indicated they will be informing their own legal department with a view of using their own bailiffs."

(c) Findings of fact relating to Mr Connors

204. I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Connors was one of those who was part of a short-lived possibly overnight encampment at Moto Services on 25 February 2016. There is no evidence of fly-tipping during this incident. Presence in the car park area of Moto Services is permitted on terms set by the landowner. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or that such an overnight "encampment" was a breach of planning control, for the reasons I have already given (see [175] above). Beyond this incident, Thurrock has not demonstrated that Mr Connors has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping or other damage to land.

(41) Luke Connors

(a) Allegation(s)

205. Thurrock's allegation against Mr Connors is:

> "… between 28 September and 3 October 2018, you and/or your vehicle registration number PX06 *CY formed an unauthorised encampment in South Ockendon, that encampment engaging in human defecation, fly-tipping an (sic) suspected caravan theft."

(b) Evidence

206. The two incidents alleged against Mr Connors are the Cullen Square and Callan Grove incidents that were also alleged, in similar terms, against Danny Hallissey, 18th Defendant (see [129]-[130] above). The evidence relied upon from Inspector Ballard, in respect of these incidents is the same.

(c) Findings of fact relating to Mr Connors

207. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Connors was one of those who encamped on land at Cullen Square (for 6 days) and at Callan Grove (for 2 days). There is some evidence that the encampment at Cullen Square left human and green waste, which is an aggravating factor of the encampment (and which ultimately led to the eviction notice being served). Beyond these two incidents, Thurrock has not demonstrated that

Mr Connors has formed other encampments on land in its local authority area (or anywhere else). There is no evidence of such waste being left at the Callan Grove site once those in occupation had left the site. There is also no evidence of Mr Connors being in any way connected to the alleged theft of a caravan. Without admissible and probative evidence to support them, this allegation should not have been made against Mr Connors.

208. However, Thurrock has not proved, on the balance of probabilities, that Mr Connors was responsible for fly-tipping or the depositing of any other waste at either site. No part of the police evidence attributes responsibility for the depositing of waste to any individual. No doubt that represents the reality of the situation; that they had no evidence to demonstrate who was responsible. I reject Ms Bolton's submission that all people who are part of an encampment on land are responsible for any fly-tipping. I adopt the same reasoning as in [138] above.

(44) Mark Ryan

(a) Allegation(s)

209. Thurrock's allegation against Mr Ryan is:

> "… on 3 August 2016, you or your vehicle registration number CE09 *CV formed an unauthorised encampment at the Yacht Club, in Grays. The encampment cause (sic) damage, was large and abusive resulting in community tensions."

210. The date given in the Claim Summary Letter was incorrect. The incident was on 4 August 2016, but this would have been clear from the extract of Inspector Ballard's witness statement that was enclosed with the letter. Ms Bolton also sought to rely upon a further incident, on 5 August 2016, at Manor Way, Stanford Le Hope, Essex. CE09 *CV was noted as being present at the site, but all vehicles vacated the site on the same date. The police documents relied upon by Thurrock in relation to this further incident had not been enclosed with the Claim Summary Letter. I refused to permit reliance on this further incident because proper notice of it had not been given to Mr Ryan.

(b) Evidence

211. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 4 August 2016, a call was received stating that there were a lot of caravans and vans queuing to get onto the playing fields by the Yacht Club, Argent Street, Grays, Essex. This location is very near to where the travellers had set up camp on 3 August 2016 in Thames Road. The caller went on to say that there were approximately 100 caravans and lots of horses. When the police arrived they had blocked the entrance to the Yacht Club preventing further vehicles accessing the land and noted around 20 caravans were in fact present. Due to the damage that they had caused entering the site and being verbally abusive where a traveller had said to the police 'if you try and remove us tonight we will fight you'. Community tensions (sic) was present, with local residents shouting at the travellers from the high rise flats. A section 61 notice was issued for them to leave the land by 11am on 5 August 2016… The vehicles on site were: [Table included identifying 35 vehicles]."

Inspector Ballard's table identifies this as an encampment on public land that was resolved by the service of a s.61 Notice. There appears to be no C126 assessment.

212. The STORM report was opened at 22.23 on 4 August 2016 recording the call from a member of the public. As appears from Inspector Ballard's witness statement, the initial report of the number of caravans was a significant over-estimate. Police attended the scene and blocked the entrance at 22.38. 20 caravans were noted as being on the field. The decision to issue a s.61 Notice was recorded at 23.10 requiring the occupants to vacate the site by 11.00 the next day. This timing was influenced by safety and resourcing considerations. The occupants were noted to be leaving the site at 11.25 on 5 August 2016.

213. The crime report contains little further information about the incident.

(c) Findings of fact relating to Mr Ryan

214. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Ryan was one of those who encamped on land near to the Yacht Club in Grays overnight on 4-5 August 2016. There is some evidence that the encampment caused damage to gain entrance to the site, that some people used threatening language and that community tensions were inflamed, which are aggravating factors of the encampment (and which ultimately led to the eviction notice being served). Beyond this incident, Thurrock has not demonstrated that Mr Ryan has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is no evidence to link any allegations of abusive behaviour or of causing damage to property to Mr Ryan. Thurrock should not have made these allegations against him.

(46) Martin Lawrence

(a) Allegation(s)

215. Thurrock's allegation against Mr Lawrence is:

> "… on 15 February 2016, you or your vehicle registration number SJ16 *XW formed a (sic) unauthorised encampment at Old Toomey Car Showroom, Thurrock."

216. The date given in the Claim Summary Letter was incorrect. The incident was on 19 April 2016, but this would have been clear from the extract of Inspector Ballard's witness statement that was enclosed with the letter.

(b) Evidence

217. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 19 April 2016, a caller rang police stating that travellers were breaking into the Old Toomey Car Showroom, Maidstone Road, Grays, Essex and were trying to set up home there. The travellers gained entry by opening a gate… The vehicles present were: [Table included identifying 3 vehicles].

> ANPR records show that the vehicle SJ16 *XW had been circulating in Thurrock, in particular Moto Services and Lakeside Retail Park, Essex. The occupants stated that they were on site due to attending a wedding in London and would move afterwards. Police could not obtain any further details because the travellers had padlocked the gate. They were also obstructive and vague refusing to provide details."

Inspector Ballard's table identifies this as an encampment on private land that was resolved by a private eviction. There was no C126 assessment.

218. The original STORM report was opened at 19.49 on 19 April 2016 with a caller telling the police that about 30 minutes before he had witnessed a white van (SJ16 *XW) pull up at the gates of Old Toomey car showroom and the passenger get out and use bolt cutters to cut off the padlock. It was noted that the showroom was derelict, but it had a car park. The caller told the police that s/he thought that it was the work of travellers "*who will be coming back to move into the car park*". A PNC check carried out at 19.57 identified Mr Lawrence as the registered keeper of the vehicle that had been seen, which was registered as a white Citroen. At 20.20, the informant called back to state that 4 vans and 4 caravans were stationary on the site. No people were seen with the vehicles, but the caller thought that they were travellers. On 20 April 2016, police attended the site and saw 5 caravans and "*numerous transits*". At 19.31, it was noted:

> "5 caravans on site and only 1 vehicle which is associated with the site – there are two visitors from elsewhere… The site is self contained yard which used to be a garage area… The vehicle on [site] were as follows: Red Ford Transit 09D12*659… TNZ *373 White Ford Transit… Another White Ford Transit Hicube which the index was not visible. The owner refused to provide them. The males were obstructive and vague. One refused all details and the other provided John Laurence and Anthony McDonnal. They have stated that they have come from Liverpool area for a wedding in London. They intend to leave next Monday/Tuesday… There appears to be no damage though I don't know about the security on the gates originally. And no animals."

219. The crime report contains little further information about the incident, although importantly it did not list SJ16 *XW as having been a vehicle encamping on the site. Nor did it record a possible incident of criminal damage originally recorded in the STORM report. It confirms that a s.61 Notice could not be served by the police, because of lack of aggravating circumstances, and that the landowners were taking civil proceeding to regain possession. A subsequent entry confirms that those on the land had "*moved on with no issues*" and no further police involvement was necessary.

(c) Findings of fact relating to Mr Lawrence

220. Although the evidence might support a conclusion, on the balance of probabilities, that Mr Lawrence was involved in the act of criminal damage of using the bolt cutters to gain access to the site, his vehicle was not subsequently seen on the site as forming part of the encampment. None of other evidence proves that he was present. On the balance of probabilities, therefore, Thurrock has failed to prove that Mr Lawrence was part of an unauthorised encampment on land. There is no evidence of fly-tipping at the site.

(49) Martin McDonagh

(a) Allegation(s)

221. Thurrock's allegation against Mr McDonagh is:

> "… between 25 June 2016 and 27 June 2016, you and/or your vehicle registration number GL64 *LC formed an (sic) large unauthorised encampment in West Thurrock, that encampment using an angle grinder to gain entry to premises, fly tipped and used abusive behaviour and suspected theft."

222. That description was inaccurate and incomplete. The inaccuracy is the registration number, which according to the police documents was GL64 *HC. Further, the complaint by Thurrock made against Mr McDonagh is that he was party to three separate encampments between 25-27 June 2016. The first on land behind Frankie & Benny's in West Thurrock; the second at Moto Services in West Thurrock; and the third at land at Car Craft in West Thurrock. Thurrock abandoned reliance upon the second incident at the hearing. In that respect, the allegations mirror those made against Martin Stokes, 1st Defendant (see [54]-[65] above).

223. Again, I will permit reliance on the evidence relating to the Car Craft incident because the evidence relevant to it was included with the Claim Summary Letter sent to Mr McDonagh.

(b) Evidence

224. The evidence relied upon from Inspector Ballard, in respect of these two incidents, is the same as relied upon against Martin Stokes, 1st Defendant (see [57]-[65] above).

(c) Findings of fact relating to Mr McDonagh

225. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr McDonagh was part of an encampment on land behind Frankie & Benny's for a period of up to 5 days, between 23-27 June 2016 and for a period of some 6 hours at Car Craft on 27 June 2016.

226. The encampments, to which Mr McDonagh was party, led to damage being caused to the lock at Frankie & Benny's and to the fence and bollards at the Car Craft site. However, it is impossible, on Thurrock's evidence, to conclude that it is more likely than not that Mr McDonagh was responsible for causing that damage. My reasoning is the same as set out for Mr Stokes (see [67] above).

227. The evidence does not establish that there was any fly-tipping at either site, still less that Mr McDonagh was the person (or among the persons) responsible for such fly-tipping. The hearsay evidence of Inspector Fraser, contained in the C126 assessment (see [58] above), was inconclusive as to whether the waste had been left at the Frankie & Benny's site before or after the encampment had arrived. Thurrock did not obtain a witness statement from Inspector Fraser or to seek to elicit any further information or evidence from him (or anyone else).

228. Beyond these two incidents, Thurrock has not demonstrated that Mr McDonagh has formed other encampments on land in its local authority area (or anywhere else) or been

guilty of any fly-tipping. There is also no evidence of Mr McDonagh using abusive behaviour or that he was suspected of theft. Without admissible and probative evidence to support them, these allegations should not have been made against Mr McDonagh.

(50) Martin McDonagh (2nd)

229. The 2nd Mr McDonagh, against whom Thurrock has brought a claim, in fact appears to be the same as the 49th Defendant, at least that was Thurrock's contention at trial. In the Claim Summary Letter, he was alleged to have participated in the same encampments as the 49th Defendant, but this time using vehicle BN03 *MV. There are, however, several important points to note from the evidence in respect of this duplication, and the contention that the 49th and 50th Defendants are the same person.

i) First, although the 2nd Mr McDonagh is the registered keeper of the further vehicle, BN03 *MV, the address at which the vehicle is registered, according to the STORM report is an address in Dungannon, County Tyrone, Northern Ireland.

ii) Second, notwithstanding this, Thurrock actually purported to serve the Claim Form on the 2nd Mr McDonagh (by posting through a letter box) at an address in Ely, Cambridgeshire. That is not the address given in the STORM report for the registered keeper of BN03 *MV for the Frankie & Benny's incident. Nor is it the address give in the crime report for that incident (although the details were redacted in the document sent to the 2nd Mr McDonagh with the Claim Summary Letter). I cannot find the Ely address in any of the police reports of the Frankie & Benny's incident.

iii) Finally, there is no trace of BN03 *MV having been present at the Car Craft incident.

230. As well as raising the question whether the 50th Defendant was properly served with the Claim Form, these facts demonstrate the potential unreliability of drawing an inference from the presence of a vehicle that the registered keeper at the scene. Further, it demonstrates, again, the unreliability of the registered address of the keeper of a vehicle actually being an address at which a member of the Traveller or Gypsy communities has any continuing association.

231. Finally, the absence of BN03 *MV from the Car Craft incident would also seem to suggest that vehicles GL64 *HC and BN03 *MV were being driven by different people. However, I need not dwell on this point as Thurrock has abandoned the claim against the 2nd Mr McDonagh.

(53) Mary Boland

(a) Allegation(s)

232. Thurrock's allegation against Ms Boland is:

> "… on 17 November 2016, you and/or your vehicle registration number AU54 *JZ formed an (sic) large unauthorised encampment at Sandy Lane, Thurrock. The encampment caused fly tipping and safety risks due to chemicals"

233. The date given in the Claim Summary Letter is incorrect. According to the evidence of Inspector Ballard, the incident alleged to involve Ms Boland was on 21 November 2016.

(b) Evidence

234. The evidence relied upon from Inspector Ballard, in respect of this incident is:

> "On 21 November 2016, a call was received that there were travellers had (sic) Sandy Lane, Aveley, Essex. FCC Environment who owned the site reported the matter which occurred at a closed landfill site. FCC raised concerns that there was methane on site along with hydrogen sulphide. There was a risk if the lines were disturbed. While the travellers were on site there was a substantial amount of commercial waste which had been fly-tipped… The vehicles present were: [Table included identifying 3 vehicles]."

The incident does not appear in Inspector Ballard's table.

235. The STORM report for the incident was opened at 09.40 on 21 November 2016 following a call from FCC Environment. The caller stated that "*travellers have broken in over the weekend… There are 2 caravans, a car and 3 Transit/pick up trucks*". The call-handler noted: "*[Informant] says they need to get rid of the travellers as [Informant] has methane gas on [site].*" Police arrived at the scene at 10.32 and noted the registration details of three vehicles, including a Vauxhall Astra AU54 *JZ. At 11.08, the caller advised the police: "*… there is no immediate risk. The site is safe, but officers should have a gas alarm with them. There is also hydrogen sulphide on site, but there should be no risk unless the gas lines are tampered with…*" The caller then met officers at the site and, at 13.25, there is a note that he had told the officers that he believed that the occupants were "*waste tipping rather than moving onto the site or possibly both*". There are no further material entries until 09.44 on 24 November 2016 when an unidentified officer noted:

> "I have spoke to [name redacted] and he has agreed to meet me at the site for 10.30hrs to conduct an assessment of the encampment. I have advised him that as the site is private land the onus is on him to seek to remove the travellers via court order/bailiff. To this point, no effort has been made by the landowners to instigate formal measures to see the travellers quit the land. I have given advice around this and the time scales involved. In relation to flytipping, Andy cannot provide any link between those occupying the land and the vehicles attending to tip waste. [Name redacted, but in context the same person] has been advised that it is the landowners responsibility to clear the waste. However, if the offence of flytipping is made out as assessed when police attend this will be recorded, evidenced and investigated."

The STORM report was closed later that day.

236. The crime report for the encampment incident was opened at 12.56 on 24 November 2016. The summary was: "*Suspects unidentified have driven a number of vehicles onto … land used as a close[d] landfill site owned by the victim and set up an encampment*". The site was recorded as having been vacated by 19.21 on 24 November 2016. No further details beyond the registration details of the suspect vehicles were included.

237. The C126 assessment, which led to the service of a s.61 Notice requiring the site to be vacated by 5pm on 24 November 2016, was completed by Chief Inspector 3511 Baxter. The material parts are as follows:

> "The site is accessed by two points. Both were originally secured gates, but both have been forced and locks and chains cut. These damaged items were not present. The initial point of entry is the smaller of two gates…. As a result of the insecure double gates persons unknown have entered the site and have been involved in flytipping on the site to an industrial scale. Whilst this cannot be linked directly to the travellers on site, their presence means the landowner is unable to secure the site and thus is unable to prevent the flytipping. The amount of waste is substantial and is a criminal offence that will be recorded on an Ath Crime Report. The clear up costs will be substantial and if left will become a public health/environmental issue… The site manager [name redacted] was on scene during my attendance and confirmed there was no CCTV evidence and that there was no evidence linking the travellers on site to the presence of the waste. The xref inc 026522/22 provides no vehicle details for those flytipping and the only vehicle description is dark blue or black lorry tipping waste. This is not consistent with the vehicles found on site…"

238. The subsequent crime report for the fly-tipping incident was opened at 13:58 on 24 November 2016. Sergeant 3663 Fisher attended the site on 25 November 2016. He commented:

> "I attended the scene of this fly tipping. The amount of rubbish deposited is incredibly substantial. The volume of which I would estimate would fill 9 artic lorries. It is approx. 100 metres deep by 20 metres wide and will come at a serious economic cost to clear.
>
> Travellers have settled on the site and as a result the gates were wide open. During the course of three days the fly tipping has taken place. There is nothing to suggest that the travellers who settled on the site are the suspects for this offence."

(c) Findings of fact relating to Ms Boland

239. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Ms Boland was one of those who encamped on land at Sandy Lane in the period from 21-24 November 2016. Beyond this incident, Thurrock has not demonstrated that Ms Boland has formed other encampments on land in its local authority area (or anywhere else).

240. In both the Claim Summary Letter and in the schedule to Ms Bolton's skeleton argument, Thurrock has alleged that Ms Boland was guilty of fly-tipping. In the Claim Summary Letter, Thurrock suggested that the fly-tipped waste caused "*safety risks due to chemicals*". It is plain, from a simple reading of entries from the STORM report, that the methane risk arose from the old land-fill site, and the risk of a chemical leak only arose if those on site tampered with a pipe. As to the charge of fly-tipping generally, the evidence provided by Thurrock not only fails to support that charge, but it also positively demonstrates that the police did not consider Ms Boland, or any of the others on the site, even to be suspects in relation to the fly-tipping on the site. At the hearing, Ms Bolton persisted in submissions that Ms Boland was guilty of fly-tipping even when confronted by the evidence I have set out above. It is very much to be

regretted that this allegation ever came to be made by Thurrock against Ms Boland and that it has persisted with it despite the evidence.

(55) Mary Mullane

(a) Allegation(s)

241. Thurrock's allegation against Ms Mullane is:

> "… on 3 August 2016, you and/or your vehicle registration number WR14 *WC formed an unauthorised encampment at the Yacht Club, in Grays. The encampment cause (sic) damage, was large and abusive resulting in community tensions."

(b) Evidence

242. The evidence relied upon from Inspector Ballard, in respect of this incident is the same as relied upon against Mark Ryan, the 44th Defendant and the evidence is the same (see [211]-[213] above).

(c) Findings of fact relating to Ms Mullane

243. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Ms Mullane was one of those who encamped on land near to the Yacht Club in Grays overnight on 4-5 August 2016. There is some evidence that the encampment caused damage to gain entrance to the site, that some people used threatening language and that community tensions were inflamed, which are aggravating factors of the encampment (and which ultimately led to the eviction notice being served). Beyond this incident, Thurrock has not demonstrated that Ms Mullane has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is no evidence to link any allegations of abusive behaviour or of causing damage to property to Ms Mullane. Thurrock should not have made these allegations against her.

(60) Michaela McKenzie

(a) Allegation(s)

244. Thurrock's allegation against Ms McKenzie is:

> "… on 18 October 2017, you formed an authorised encampment at the East Tilbury Pumping Station, where entry was forced."

(b) Evidence

245. The Pumping Station incident is the same event that was relied upon against Clarence Bulmer, 16th Defendant, and the evidence is the same (see [122]-[125] above).

(c) Findings of fact relating to Ms McKenzie

246. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Ms McKenzie was present on private land at the

Pumping Station in East Tilbury Lane formed part of a short-lived encampment, but she (and the others with her) left the site voluntarily no more than 7 hours after they had arrived. There is no evidence of fly-tipping. The only damage to the land was to the chain/padlock to gain entry. However, Thurrock has not proved, on the balance of probabilities, that Ms McKenzie was responsible for this damage. As the STORM report noted, the report was only that the individuals on the land had "*appeared*" to have forced entry to gain access. The police arrived on the scene shortly afterwards, but made no arrests on suspicion of criminal damage. That is a strong indicator that officers on the ground had insufficient evidence to suspect any individual, including Ms McKenzie, of having caused the damage.

247. Thurrock has not demonstrated that Ms McKenzie formed an "encampment" on any other occasions on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(63) Andrew Cash

(a) Allegation(s)

248. Thurrock's allegation against Mr Cash is:

> "… on 24 August 2017, you or your vehicle registration number KN66 *AF formed an unauthorised encampment at Martin Cosgrove, in Grays. Criminal damage and attempted theft took place, and a further encampment on 02/02/18 at Moto Services in Thurrock where there was suspected fuel theft"

249. The date of the latter incident at Moto Services is incorrect. As appears from the extract from Inspector Ballard's evidence served with the Claim Summary Letter, the alleged incident took place on 9 February 2018, and is the same incident as is alleged against John Connors (sic), the 32nd Defendant.

(b) Evidence

250. The evidence relied upon from Inspector Ballard, in respect of the Martin Cosgrove incident is:

> "On 24 August 2017, a call was received that travellers had broken the locks and gained access to Martin Cosgrove Ltd, Euro Court, Oliver Close, Grays RM20 3EE. The travellers had put up a squatters notice and padlocked themselves in. Essex Police attended and they vacated the site the same day following negotiation. When the travellers had left, police found that the alarms had been taken down from the wall and have attempted to take out the ignition barrel from a Cherry Picker. Copper had been removed and alarms removed from wall and left on floor… The vehicles were [Table included identifying 11 vehicles]."

Inspector Ballard's table identifies this as an encampment on private land that was resolved by private eviction.

251. The STORM report for the Martin Cosgrove incident was opened at 07.33 on 24 August 2017, following a call from someone at the premises who reported that "*travellers have broken the locks… They have turned up overnight. There are about 12 caravans*". Police arrived at the scene around 07.40 and noted that a squatters' notice had been put

up and the gates padlocked. Vehicle details were noted, including KN66 *AF, a Volkswagen Golf. A PNC check identified Mr Cash as the registered keeper of the vehicle. A note at 08.11 records that: "*the travellers have made it clear that they have no intention of moving*". An officer searched inside the premises and a note was added at 08.32: "*Searched inside the building. There has been an attempt to take the cooper (sic) and attempt[t] to take out ignition from a cherry picker. Alarms have been removed from the wall and left on the floor…*" At 09.16, an officer recorded:

> "Made contact with head member of the family. They are planning to leave of their own accord. They need 1.30 hrs. The landowner is happy with [t]his. We do have damage inside and outside. Can not target individual person to this. The landowner does not wish to press charges. Just want them off his land."

At 09.34, the officer added a further note: "*They have all left the location. Nothing remains. No direction to leave was issued. They had listened to the landowner, crime [report] will be completed. Units will escort the travellers from the area.*"

252. There is no C126 assessment for this incident. The crime report was opened on 24 August 2017, at 12.26:

> "This site was dealt with on the day. After negotiating with the travellers and the landowner they moved off before a section 61 was served. This record has been created for intelligence purposes only."

253. As already noted, the Moto Services incident, on 9 February 2018, is the same event that was relied upon against John Connors (sic), the 16th Defendant, and the evidence is the same (see [170]-[173] above).

(c) Findings of fact relating to Mr Cash

254. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Cash was one of those who encamped on land at Martin Cosgrove overnight on 23-24 August 2017. There is evidence that the encampment caused damage to gain entrance to the site and on site, which are aggravating factors of the encampment. However, Thurrock has no evidence to demonstrate that Mr Cash was responsible for that damage or any attempted theft. These allegations should not have been made against Mr Cash.

255. In respect of the Moto Services incident, for similar reasons as explained when dealing with the same incident alleged against John Connors (sic), I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Cash was one of those who stayed overnight at the Moto Services between 9-11 February 2018. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or a breach of planning control. According to the accounts of those present given to the police, they had paid the relevant parking charge. Even if they had not paid, as the officer noted, Moto would be able to recover a parking charge from the registered keepers. There is no evidence of fly-tipping during this incident. The allegation of "*suspected theft of fuel*" was not supported by any credible evidence and there was absolutely no evidence to link this allegation to Mr Cash. Thurrock should not have made the allegation against him.

256. Beyond these two incidents, Thurrock has not demonstrated that Mr Cash has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(64) Antoney Doherty

(a) Allegation(s)

257. Thurrock's allegation against Mr Doherty is:

> "… between 16 July and 23 August 2017, you and/or your vehicle registration number DU65 *KF formed a series of unauthorised encampments in Thurrock. The encampments involved fly-tipping, breaking into and damaging sites."

(b) Evidence

258. The evidence relied upon from Inspector Ballard, in respect of what were five separate incidents, is:

> "On 14 July 2017, a call was received that there (sic) travellers had forced entry to The Junction, Thurrock Shopping Centre, Unit 5, West Thurrock, Essex RM20 3LP by breaking the padlock. The reports (sic) states that there was a pile of rubbish in the corner… The vehicles present were: [Table included identifying 4 vehicles]. Police identified named individuals being involved in the incursion which were: [Table included identifying 4 people, 3 of whom were aged 10 below on the relevant date].
>
> On 16 July 2017, a call was received about travellers near to Decathlon, Lakeside Retail Park, West Thurrock, Essex RM20 3LP. These were the same people who had moved from the Junction.
>
> On 14 August 2017, a call was received that there were vehicles, caravans and a horse in the car park at Dunelm Mill, The Junction, Lakeside Retail Park, West Thurrock, Essex RM20 3LP… The vehicles were: [Table included identifying 5 vehicles].
>
> On 22 August 2017, a call was received from security at Motherwell Way, Grays, Essex RM20 3XD, that vehicles towing caravans were attending the site. Significant damage was caused to an electromagnetic locking system… The vehicles present were: [Table included identifying 7 vehicles].
>
> On 22 August 2017, a call was received that four travellers' vehicles had parked in the Waterglade Industrial Estate, West Thurrock, Essex, RM20 3FG. The vehicles present had been previously at other sites within Thurrock. [Table included identifying 4 vehicles]."

259. I will take each incident in turn.

(i) Kiddicare/Sports Direct – 14 July 2017

260. The STORM report contains an entry from a police officer first at the scene at 20:54 on 14 July 2017:

> "On attendance, the site comprised 3 motor vehicles and 2 caravans. There are at least 2 persons present for the purpose of residing on the land. The site is the car park to a disused warehouse. Access to the site is gained through a further car park from the slip off B186. The gates to this further car park are secured open with cable ties. It is unclear whether a padlock has been removed. The site is best accessed on foot from Weston Avenue… It is unclear if the landowner or his agent has made a request of the travellers to leave. Until this is confirmed sec 61 cannot be considered. However, sec 61 criteria is not satisfied as urgent action is not required and the land owner should instigate their own action to recover the land.

261. On 17 July 2017, there is a further update with information provided by the landowner that a padlock had been removed to gain access to his land. The police carried out a further site visit on 19 July 2017, for a further assessment. The officer noted that there were now only 2 vehicles and 3 caravans present. DU65 *KF was not amongst the registration plate noted during the visit. The officer noted:

> "Only one female on site called Madonna, who stated they were intending to stay a few more days. The Kiddicare building is still secure. There were traces of excrement in the bushes, but could not ascertain whether human or animal. Rubbish was being piled neatly in a corner. There were no obvious dangers on site such as dogs. Do not think that this still falls under sec 61. Landowner will be informed of update and advised to start civil proceedings through the courts".

The STORM report for this incident was closed shortly after this entry.

262. The crime report for the Kiddicare incident contains little additional information beyond the information contained in the STORM report. The C126 assessment (of which only 1 page is available in the evidence, meaning that the identity of the author and when it was completed are not available), contained the following:

> "The land is a self-contained car park to a disused warehouse. The site according to the travellers was established on 13/07/17 and is accessed through a further car park that services retail outlets at Lakeside… The position of the site is discrete and has no impact at all on the retail outlets nearby or the industrial unit as it is currently vacant… The site is tidy and self-contained. It comprises of 2 caravans, 3 motor vehicles and a trailer. There is no impact on the local retailers. The site is owned by Sports Direct, but it is not operated at this time and the unit is empty therefore there is no obvious disruption to the business of the landowner or their neighbouring retailers. The site was generally tidy and no dogs were seen… There was no obvious damage. If a padlock has been cut this is not evidenced and certainly is not serious damage. There is no evidence of threats being made to the landowner or his agent. There were only 5 vehicles on site, albeit a possible sixth was seen to leave the site on police arrival and an index recorded on one of the caravan's didn't relate to any of the motor vehicles present. The need for police eviction action is not urgent and eviction criteria is not satisfied."

(ii) Decathlon – 16 July 2017

263. There are no police documents relating to this incident. Thurrock can therefore prove nothing beyond the little that is said about it in the witness statement of Inspector Ballard.

(iii) Dunelm Mill – 14 August 2017

264. This is the same incident that was also alleged against Dennis Doherty and the evidence is the same (see [150] above)

(iv) Motherwell Way – 22 August 2017

265. This is the same incident that was also alleged against Dennis Doherty and the evidence is the same (see [151] above). It appears that there was a second nearby encampment at Euclid Way (see [152] above). Vehicle DU65 *KF **was** noted as being present in Euclid Way as well as at Motherwell Way.

(v) Waterglade Industrial Estate – 22 August 2017

266. I cannot locate any police documents relating to this incident and none was sent to Mr Doherty with his Summary Claim Letter. In the schedule attached to Ms Bolton's skeleton argument, she provided a cross-reference to police documents in the evidence (which were also not sent to Mr Doherty), but these documents relate to the encampment at Motherwell Way.

(c) Findings of fact relating to Mr Doherty

267. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Doherty was part of a group that formed three, relatively short-lived encampments at the Kiddicare site (from 13 July 2017), at Dunelm Mill (from 14 August 2017) and at Motherwell Way/Euclid Way (from 22 August 2017). For similar reasons that I have stated in relation to findings I have made in respect of these incidents above (see [153] above), I am not satisfied that Thurrock has demonstrated any aggravating features in respect of these encampments, specifically fly-tipping or other damage to land. These allegations should not have been made against Mr Doherty. Beyond these incidents, Thurrock has not demonstrated that Mr Doherty has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. The evidence does not permit any findings to be made in respect of the Decathlon site or the Waterglade Industrial Estate.

(65) Antoney Doherty (2nd)

268. Thurrock's allegations against the second Mr Doherty mirror those against the first Mr Doherty, but in respect of vehicle HJ14 *YK. That vehicle was registered to an address in St. Helens in Lancashire. The first Mr Doherty, the 64th Defendant, was purportedly served with the Claim Form by it (together with accompanying documents) being posted through a letter box at an address in Newtownabbey in Northern Ireland on 24 August 2019. The second Mr Doherty, the 65th Defendant, was purportedly served with the Claim Form by it (together with accompanying documents) being posted through the letter box at the address in St. Helens on 12 August 2019. If, as appears to be Thurrock's case, that the 64th and 65th Defendants are in fact the same person, then the conflict between the registered addresses for his two vehicles again raises the issue of whether sending documents (including the Claim Form) to the address of a registered keeper of a vehicle provides a reliable method of serving civil proceedings in the particular circumstances of these Defendants.

(66) Barry Smith

(a) Allegation(s)

269. Thurrock's allegation against Mr Smith is:

> "… on 3 February 2018, you and/or your vehicle registration number Y694 *EY, formed an unauthorised encampment at DHL Warehouse in Thurrock. Entry was forced."

(b) Evidence

270. The evidence relied upon from Inspector Ballard, in respect of this incident is the same as relied upon against John O'Brian, the 35th Defendant (see [191]-[192] above).

(c) Findings of fact relating to Mr Smith

271. For similar reasons, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Smith was one of those who was present on land at the derelict DHL Warehouse on 3 February 2018, but it appears that he had left the same day. As such, he was part of a very short-lived encampment. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Mr O'Brian has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Mr Smith who did it. This allegation should not have been included against Mr Smith.

(67) Fred Mason

(a) Allegation(s)

272. Thurrock's allegation against Mr Mason is:

> "… between 10 May and 13 May 2017, you and/or your vehicle registration number YT16 *TF formed an unauthorised encampment at various sites in Thurrock."

273. The "*various sites*" were one at Uniserve in Tilbury, Essex, on 10 May 2017 and a further incident at Welling Road, on 13 May 2017 (which is an incident also alleged against Edward Lowther, the 25th Defendant).

274. A further incident, on 10 May 2017 at Voujon Indian restaurant in Orsett, was identified in the schedule to Ms Bolton skeleton argument. However none of the supporting police reports relating to this alleged encampment had been sent with the Claim Summary Letter. I have therefore excluded this from consideration against Mr Mason. However, having read both the STORM and crime reports from this incident, it is trivial and discloses no aggravating features.

(b) Evidence

275. In respect the Welling Road incident, the evidence is the same as relied upon against Mr Lowther (see [155]-[156] above).

276. The evidence relied upon from Inspector Ballard, in respect of the Uniserve incident, is:

> "On 10 May 2017, a call was received stating that there were a number of caravans and vehicles on the grass verge entrance to Uniserve, Portcentric House, Thurrock Park Way, Tilbury, Essex, RM18 7HQ… The vehicles present were [Table included identifying 2 vehicles]."

277. The STORM report in respect of the Uniserve incident was opened at 19.07 on 10 May 2017 following a call from a member of the public who reported that "*a number of vehicles believe[d] [to be] travellers ... have turned up outside [my] work address. They are parked on the grass verge just by the entrance. One caravan. One tent, car and a van.*" Police arrive at the scene at around 20.15 and noted two vehicles, one of which was YT16 *TF. The crime report contains no further details. There was no C126 assessment. In his table, Inspector Ballard suggested that this incident was resolved by the police issuing a s.61 Notice. However, no support for this can be found in the police documents (in which there would usually be a record if this enforcement step had been taken by the police) and the encampment would not seem to have met the criteria for such a notice to be issued.

(c) Findings of fact relating to Mr Mason

278. As regards the Uniserve incident, Thurrock has not demonstrated, on the balance of probabilities, that any encampment was formed. The evidence suggests little more than two vehicles stopping for a short period on a grass verge. There are no aggravating factors.

279. For similar reasons as explained in relation to Mr Lowther, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Mason was one of those who encamped on land overnight at Welling Road. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping or other damage to land. Beyond this incident, Thurrock has not demonstrated that Mr Lowther has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

280. There is a potential issue with the surname of this defendant. I note in the STORM reports that the check of the vehicle YT16*TF identified the registered keeper as Fred Manson. No explanation has been provided as to why Inspector Ballard refers to him as Fred Mason in his witness statement. The evidence of the process server is that Fred Mason was served with the Claim Form on 20 August 2019. The Claim Summary Letter was addressed to Fred Mason.

281. Finally, specific concerns arise as to whether the 67th Defendant has been served with the Claim Form (see [27] above). If any relief is to be granted against this named Defendant, the Court will have to investigate further whether he has been validly served with the Claim Form.

(69) Hughie Mason

(a) Allegation(s)

282. Thurrock's allegation against Mr Mason is:

> "… between 10 May and 13 May 2017, you and/or your vehicle registration number PO56 *FU formed an unauthorised encampment at various sites in Thurrock."

283. The incidents alleged against Mr Mason are similar to those alleged against Fred Mason, although the evidence does not demonstrate that Mr Mason's vehicle was present at Welling Road.

(b) Evidence

284. In respect the Uniserve incident, the evidence is the same as relied upon against Fred Mason (see [276]-[277] above).

(c) Findings of fact relating to Mr Mason

285. Again, as regards the Uniserve incident, Thurrock has not demonstrated, on the balance of probabilities, that any encampment was formed. The evidence suggests little more than two vehicles stopping for a short period on a grass verge. There are no aggravating factors.

286. Mr Mason was not sent any of the documents relating to the Voujon Indian restaurant in Orsett on 10 May 2017 with the Claim Summary Letter (wrongly addressed to him as "Mr Manson"). I exclude this incident from consideration for similar reasons (see [274] above).

287. Again, there is a potential issue with the surname of this defendant. I note in the STORM reports that the check of the vehicle PO65 *FU identified the registered keeper as Hughie Manson. No explanation has been provided as to why Inspector Ballard refers to him as Hughie Mason in his witness statement. The evidence of the process server is that Hughie Mason was served with the Claim Form on 12 August 2019. The Claim Summary Letter was addressed to Hughie Manson.

(71) Michael McKay

(a) Allegation(s)

288. Thurrock's allegation against Mr McKay is:

> "… on 3 February 2018, you and/or your vehicle registration number HV58 *VW, formed an unauthorised encampment at DHL Warehouse in Thurrock. Entry was forced."

(b) Evidence

289. The evidence relied upon from Inspector Ballard, in respect of this incident is the same as relied upon against John O'Brian, the 35th Defendant (see [191]-[192] above).

(c) Findings of fact relating to Mr McKay

290. For similar reasons, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr McKay was one of those who was present on land at the derelict DHL Warehouse on 3 February 2018, but it appears that he had left the same day. As such, he was part of a very short-lived encampment. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Mr O'Brian has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Mr McKay who did it. This allegation should not have been included against Mr McKay.

(72) William Connors

(a) Allegation(s)

291. Thurrock's allegation against Mr Connors is:

> "… on 24 August 2017, you or your vehicle registration number VK13 *UF formed an unauthorised encampment at Martin Cosgrove, in Grays. Criminal damage and attempted theft took place."

(b) Evidence

292. The evidence relied upon from Inspector Ballard, in respect of the Martin Cosgrove incident is the same as was alleged against Andrew Cash, the 63rd Defendant (see [250]-[252] above).

(c) Findings of fact relating to Mr Connors

293. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Connors was one of those who encamped on land at Martin Cosgrove overnight on 23-24 August 2017. There is evidence that the encampment caused damage to gain entrance to the site and on site, which are aggravating factors of the encampment. However, Thurrock has no evidence to demonstrate that Mr Connors was responsible for that damage or any attempted theft. These allegations should not have been made against Mr Connors. Beyond this incident, Thurrock has not demonstrated that Mr Connors has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(74) Josie Doran

(a) Allegation(s)

294. Thurrock's allegation against Ms Doran is:

> "… on 3 February 2018, you and/or your vehicle registration number DA11 *JV, formed an unauthorised encampment at DHL Warehouse in Thurrock. Entry was forced."

(b) Evidence

295. The evidence relied upon from Inspector Ballard, in respect of this incident is the same as relied upon against John O'Brian, the 35th Defendant (see [191]-[192] above).

(c) Findings of fact relating to Ms Doran

296. For similar reasons, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Ms Doran was one of those who was present on land at the derelict DHL Warehouse on 3 February 2018, but it appears that she had left the same day. As such, she was part of a very short-lived encampment. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping during this incident. Beyond this incident, Thurrock has not demonstrated that Ms Doran has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Ms Doran who did it. This allegation should not have been included against Ms Doran.

(78) Nicola Tomlinson

(a) Allegation(s)

297. Thurrock's allegation against Ms Tomlinson is:

> "… on 3 February 2018, you and/or your vehicle registration number H67 *UJ, formed an unauthorised encampment at DHL Warehouse in Thurrock. Entry was forced.
>
> … on 9 February 2018, you and/or your vehicle registrations number H67 *UJ formed an unauthorised encampment at the nearby lorry park. It was a large encampment with suspected fuel theft."

298. The registration number of the vehicle was stated incorrectly. As is clear from the STORM reports, the vehicle observed by the police in both of these incidents was HF67 *UJ, of which Ms Tomlinson was the registered keeper. The same error was made in the schedule to Ms Bolton's skeleton argument.

(b) Evidence

299. The evidence relied upon from Inspector Ballard, in respect of the DHL incident on 3 February 2018 is the same as relied upon against John O'Brian, the 35th Defendant (see [191]-[192] above).

300. The evidence relied upon from Inspector Ballard, in respect of what was an incident at Moto Services, on 9 February 2018, is the same as relied upon against John Connors (sic), the 16th Defendant (see [170]-[173] above).

(c) Findings of fact relating to Ms Tomlinson

301. For similar reasons, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that:

i) Ms Tomlinson was one of those who was present on land at the derelict DHL Warehouse on 3 February 2018, but it appears that she had left the same day. As such, she was part of a very short-lived encampment. The evidence demonstrates no aggravating features. There is no evidence of fly-tipping during this incident. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Ms Tomlinson who did it. This allegation should not have been included against Ms Tomlinson.

ii) Ms Tomlinson was one of those who stayed overnight at the Moto Services between 9-11 February 2018. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or a breach of planning control. According to the accounts of those present given to the police, they had paid the relevant parking charge. Even if they had not paid, as the officer noted, Moto would be able to recover a parking charge from the registered keepers. There is no evidence of fly-tipping during this incident. As I have already noted, the allegation of "*suspected theft of fuel*" was not supported by any credible evidence and there was absolutely no evidence to link this allegation to Ms Tomlinson. Thurrock should not have made the allegation against her.

302. Beyond these incidents, Thurrock has not demonstrated that Ms Tomlinson has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(80) Patrick Connors

(a) Allegation(s)

303. Thurrock's allegation against Mr Connors is:

> "… on 9 February 2018, you and/or your vehicle registrations number EF12 *ZE formed an unauthorised encampment at the nearby lorry park. It was a large encampment with suspected fuel theft."

304. Included in the schedule to Ms Bolton's skeleton argument was a further alleged incident on 12 February 2018 at Sainsbury's in Chafford Hundred described by Ms Bolton as "*threats to kill*" made by Mr Connors. Although the relevant paragraph of Inspector Ballard's witness statement was included with the Claim Summary Letter, the letter itself did not include this further allegation and none of the supporting police documents were provided. I have therefore excluded it from consideration. The evidence is particularly weak consisting of second-hand hearsay from unidentified individuals reporting what was alleged to have taken place at a branch of Sainsbury's. I can find no trace of any "*threat to kill*" in the STORM or crime reports. Beyond Mr Connors being the registered keeper of one of 8 vehicles observed to be in the car park of the store, none of the evidence proves that Mr Connors was even in the store. This is perhaps the worst example of the lax approach Thurrock has taken to evidence in this claim. An allegation as serious as "threats to kill" should not be made without admissible evidence to support it. Thurrock had no evidence at all to make this allegation against Mr Connors.

(b) Evidence

305. The evidence relied upon from Inspector Ballard, in respect of what was an incident at Moto Services, on 9 February 2018, is the same as relied upon against John Connors (sic), the 16th Defendant (see [170]-[173] above).

(c) Findings of fact relating to Mr Connors

306. For similar reasons, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Connors was one of those who stayed overnight at the Moto Services between 9-11 February 2018. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or a breach of planning control. According to the accounts of those present given to the police, they had paid the relevant parking charge. Even if they had not paid, as the officer noted, Moto would be able to recover a parking charge from the registered keepers. There is no evidence of fly-tipping during this incident. As I have already noted, the allegation of "*suspected theft of fuel*" was not supported by any credible evidence and there was absolutely no evidence to link this allegation to Mr Connors. Thurrock should not have made the allegation against him. Beyond this incident, Thurrock has not demonstrated that Mr Connors has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(81)-(84) Patrick McDonagh

307. Four separate Defendants shared the name "Patrick McDonagh". In her submissions at trial, Ms Bolton submitted that the 81st, 82nd and 83rd Defendants were the same person. I do not know on what evidence this submission is made. Certainly, up until the trial, Thurrock had been treating them as separate individuals, and separate from the 84th Defendant.

308. The evidence from the police and in relation to service of the Claim Form and Claim Summary Letters is confused. The easiest way of demonstrating the potential issues that, depending on my overall conclusions, may require further investigation, is by the following table:

Defendant and vehicle	**Address of registered keeper**	**Claim Form Address**	**Claim Summary Letter Address**
(81) TNZ *373	Killyclogher Road, County Tyrone	Killyclogher Road, County Tyrone	Killyclogher Road, County Tyrone
(82) TNZ *373	Killyclogher Road, County Tyrone	Castleview Park, County Tyrone	Castleview Park, County Tyrone
(83) HF13 *XS	Killyclogher Road, County Tyrone	Killyclogher Road, County Tyrone	Killyclogher Road, County Tyrone
(84) LX16 *FT	Castleview Park, County Tyrone	Killyclogher Road, County Tyrone	Killyclogher Road, County Tyrone

In summary, if the 84th Defendant is a different Patrick McDonagh from the others, the Claim Form may have been served on the wrong address for the 82nd/84th Defendants.

309. In these circumstances, I shall assess the claims brought against each Patrick McDonagh by treating each individual as being a separate person. Once I have concluded what Thurrock has proved against each Defendant, I will then consider whether I need to resolve any issue as to service of the Claim Form.

(81) Patrick McDonagh

(a) Allegation(s)

310. Thurrock's allegation against the first Mr McDonagh is:

> "… on 15 February 2016, you and/or your vehicle registration number TNZ *373 formed a (sic) unauthorised encampment at Old Toomey Car Showroom, Thurrock."

311. The date given in the Claim Summary Letter was incorrect. The incident was on 19 April 2016, but this would have been clear from the extract of Inspector Ballard's witness statement that was enclosed with the letter.

(b) Evidence

312. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Martin Lawrence, the 46th Defendant (see [218]-[219] above).

(c) Findings of fact relating to Mr McDonagh

313. On the balance of probabilities, the evidence does support a conclusion that Mr McDonagh was one of those who had encamped on the land at the Old Toomey car showroom from 19 April 2016. Beyond the evidence of the cutting of the lock to gain entry, the evidence demonstrates no aggravating features. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Mr McDonagh who did it. This allegation should not have been included against Mr McDonagh. There is no evidence of fly-tipping during this incident.

(82) Patrick McDonagh (2nd) and (83) Patrick McDonagh (3rd)

(a) Allegation(s)

314. Thurrock's allegation against the second and third Mr McDonagh is:

> "… on 14 July 2016, you and/or your vehicle registration number TNZ *373 [and HF13 *XS] formed an unauthorised encampment at Moto Services in Thurrock."

(b) Evidence

315. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against John McDonagh, the 34th Defendant (see [186]-[188] above).

(c) Findings of fact relating to Mr McDonagh

316. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr McDonagh was one of those who was present on

land at Moto Services on 14 July 2016, possibly not leaving until the following day. As such, he was part of a short-lived encampment. Presence in the car park area of Moto Services is permitted on terms set by the landowner. Thurrock has not proved that this encampment was unlawful (in the sense of being a trespass on land) or a breach of planning control, for the reasons I have already given (see [175] above). The evidence demonstrates no aggravating features. There is no evidence of fly-tipping or other damage to land.

(84) Patrick McDonagh (4th)

(a) Allegation(s)

317. Thurrock's allegation against the fourth Mr McDonagh is:

> "… on 3 October 2016, you and/or your vehicle registration number LX16 *FT formed an (sic) large unauthorised encampment in Thurrock near a national security site. A forklift truck was stolen and the encampment barricaded itself into the site. Children spat at police."

(b) Evidence

318. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Brian Stokes (2nd), the 13th Defendant (see [104]-[106] above).

(c) Findings of fact relating to Mr McDonagh

319. For similar reasons, therefore, with the limited evidence that Thurrock has presented, I am only satisfied, on the balance of probabilities, that Mr McDonagh was part of group of people the police described as Travellers who had broken into the unidentified premises on Central Avenue, West Thurrock. The evidence does not support a finding that this was an "encampment", and it does not enable any conclusion to be drawn as to whether Mr McDonagh was responsible for any of the activities, attributed generally to "*the Travellers*", as described in Inspector Ballard's evidence. Specifically, there is no evidence that Mr McDonagh had stolen a forklift truck or was involved in the barricading of the premises. Without admissible and probative evidence to support them, these allegations should not have been made against Mr McDonagh. The evidence does not establish that there was any fly-tipping as a result of the incident.

(86) Patrick Stokes

(a) Allegation(s)

320. Thurrock's allegation against Mr Stokes is:

> "… on 19 February 2018, you and/or your vehicle registration number BE52 *JE formed an unauthorised encampment at Holy Cross School, South Ockendon. Locks were broken, there as (sic) fly tipping and a large bonfire."

(b) Evidence

321. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Ellen McDonagh, the 30th Defendant (see [159]-[161] above).

(c) Findings of fact relating to Mr Stokes

322. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Stokes was one of those who encamped overnight on land next to Holy Cross School. The breaking of the lock to gain entry, the fire and the evidence of fly-tipping are aggravating features of the encampment as a whole. However, Thurrock has provided no evidence that would enable the Court, even on the balance of probabilities, to conclude that Mr Stokes was responsible for the fly-tipping. I reject Ms Bolton's submission that all people who are part of an encampment on land are responsible for any fly-tipping. I adopt the same reasoning as in [138] above.

(87) Patrick Stokes (2nd)

(a) Allegation(s)

323. Thurrock's allegation against the second Mr Stokes is:

> "… on 27 June 2016, you and/or your vehicle registration number LN64 *WU formed an unauthorised encampment at Moto Services in Thurrock. Angle grinders had been used to gain access."

(b) Evidence

324. This description of what was alleged against Mr Stokes was inaccurate. The evidence of Inspector Ballard relied upon and identified in the Claim Summary Letter demonstrates that the allegation against Mr Stokes is that he was part of those involved in the Frankie & Benny's incident. In that respect, the evidence relied upon, in respect of this incident, is the same as relied upon against Martin Stokes, the 1st Defendant (see [57]-[60]). LN64 *WU was not one of the vehicles noted to be present at the Car Craft incident, so no allegation is made that Mr Stokes was part of that encampment.

325. In the schedule accompanying the skeleton argument, Ms Bolton confirmed that the allegation against Mr Stokes related to Frankie & Benny's, but provided a different registration number (SA16 *TO). This appears to be an error.

326. Thurrock also provided Mr Stokes with a copy of the DVLA inquiry response, dated 17 April 2019, confirming that he was the registered keeper LN64 *WU on 27 June 2016.

(c) Findings of fact relating to Mr Stokes

327. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Stokes was part of an encampment on land behind Frankie & Benny's for a period of up to 5 days, between 23-27 June 2016. This encampment led to damage being caused to the lock at Frankie & Benny's. However, it is impossible, on Thurrock's evidence, to conclude that it is more likely than not that Mr Stokes was responsible for causing that damage. I adopt the reasoning I have set out in [67] above. The evidence does not establish that there was any fly-tipping at the site, still less that Mr Stokes was the person (or among the persons) responsible for such fly-tipping. The hearsay evidence of Inspector Fraser, contained in the C126 assessment (see [58] above), was inconclusive as to whether the waste had been left at the Frankie & Benny's site

before or after the encampment had arrived. Thurrock did not obtain a witness statement from Inspector Fraser or to seek to elicit any further information or evidence from him. Beyond this incident, Thurrock has not demonstrated that Mr Stokes has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is also no evidence that Mr Stokes used an angle grinder to gain access. Without admissible and probative evidence to support them, this allegation should not have been made against Mr Stokes.

(94) Robert McDonagh

(a) Allegation(s)

328. Thurrock's allegation against Mr McDonagh is:

> "… on 9 May 2016, you and/or your vehicle registration number MX64 *LH formed an unauthorised encampment at Manor Way, Thurrock."

(b) Evidence

329. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Declan McLeod (sic), the 22nd Defendant (see [141]-[144] above). However, the STORM report does record MX64 *LH as being present at Manor Way.

(c) Findings of fact relating to Mr McDonagh

330. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr McDonagh was part of an encampment on land at Manor Way (for 5-6 days). This encampment was relatively short-lived and had no aggravating features. There is no evidence of fly-tipping or of other damage to land. Beyond this incident, Thurrock has not demonstrated that Mr McDonagh has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(97) Sidney Smith

(a) Allegation(s)

331. Thurrock's allegation against Mr Smith is:

> "… between 16 September 2016 and 02 October 2016, you and/or your vehicle registration number WR05 *DG formed a series of unauthorised encampments in Thurrock. The encampment involved breaking into sites."

(b) Evidence

332. Despite the Claim Summary Letter identifying a date range of 16 September to 2 October 2016, only one paragraph was identified from Inspector Ballard's witness statement:

> "On 26 September 2016, a call was received stating that there was an unauthorised encampment at Stanley Road, Grays, Essex. The travellers had gained entry to the

site by damaging the bollard. The majority of travellers had come from the previous encampments at Moto services and London Road/Gumley Road. The vehicles present were: [Table included identifying 9 vehicles]. The locations of the travellers were in a public car park preventing members of the public from parking which has a detrimental effect on the local economy. Police spoke with one of the occupants Michael Maloney who stated that he is pursuing a meeting with Thurrock Council to request land that him and his family can reside on. Due to the travellers intimidating the local community and preventing them from using the car park (sic). The police authorised a section 61 notice to be handed to the families to vacate the land by noon on 29 September 2016. The following day, police returned to the site and found that the travellers were still in situ. The police liaised with John and Michael Maloney and the site was vacated by 14.35 hours…"

333. The STORM report for this incident was opened at 22:04 on 26 September 2016 following a call to report: "*a group of travellers, 7-8 caravans with [vehicles]… have broken the barriers approx. 30min to get into the open car park next to the multistorey car park.*" Police arrived at the scene at around 23.40 and noted the vehicles present, including WR05 *DG. The next material entry is at 10.43 on 28 September 2016. An officer had arranged to attend the site with a representative from Thurrock to carry out an assessment of the encampment. The site assessment was carried out at around 11am. An entry at 11.12 records, "*Spoken to one [occupant] who has not gone to work today. Been in touch with Malone. He will be on scene in 10 mins. 61 notice has been submitted for leave by 1500 hrs.*" That was followed by a further note at 11.40: "*Spoken to Michael. Due to pregnant women onbored (sic) and children, extended deadline to noon tomorrow so they are able to pack up and move on safely. They are going to camp in and not leave. Please can OSG be made aware for them to attend with TA and Silver Command OSG*".

334. Although it is apparent from the STORM report that a s.61 Notice was served by the police requiring the occupants to leave, the C126 assessment has not been provided. There is an entry in the STORM report, at 12:27 on 28 September 2016, made by a senior but unidentified officer, that records an assessment of the justification for eviction:

> "I have attended the pay and display car park at Stanley Road, Grays to determine an eviction rationale with the Maloney family. It's pretty obvious they have snapped a padlock to get in. I attended with the County Hall Traveller Unit who served the court direction to leave notices on them. It's the first time I have attended this site and they are taking up 20 plus car parking spaces backing on to the residential homes. Michael came back to talk to us. I have weighed up the circumstances. His is a family unit, made up of a number of males, females and children. He is seeking land from the council to officially stay on. He is still pursuing a meeting with police leaders and local authority leaders to explore the viability of this. Some of his company are intimidating and threatening. They threatened to shut the car park for example to any [member of the public]. He states that 2 of the females are pregnant which doesn't in itself prevent them from packing up and leaving but may play a part if they enforce a stay. I do not consider that taking up of a public car part to which the public not only pay, but also have access is inflammatory and while I have some sympathy with his view, parking up in council paid areas is not the way to go about it.

> Thurrock is an area of low public confidence and there is a strong public resistance to travellers, particularly when they prevent the public from going about their normal daily routine. I certainly have the legality in terms of section 61, I also believe I have proportionality in that I have considered the welfare situation of the Maloney family and nothing I have seen prevents them from moving and yet they are intimidating general members of the public and preventing them from using the car park fully. There is no mess or animals.
>
> They are content to let the council exercise their powers over a longer period and see my intervention as police harassment. The necessity isn't urgent but it is significant and their presence gone will allow the community to resume their normal daily routine.
>
> I have assured Michael I have no axe to grind and that the bigger picture is the disruption to the local community and the local authority. There has been no Inspector to visit this site during the daytime until now…"

The last vehicle vacated the site at around 14.30 on 29 September 2016.

335. The crime report contains little further information than contained in the STORM report, but it does include the following note: "*Suspects unknown had entered a council car park. No damage to be seen despite the report stating that the suspects have broken the barrier for the car park to get into the car park but no damage has been caused… There appears to be no rubbish left at this time and the site is tidy…* "

336. In the schedule to her skeleton argument, Ms Bolton also sought to rely upon a further incident at Hangmans Wood, Stanford Road, Grays, Essex, on 29 September 2016. She described this incident as "*forced entry, smashed fence*". As the Claim Summary Letter did not identify this allegation, and as the only underlying police evidence sent by Thurrock with the Claim Summary Letter was the evidence relating to the Stanley Road incident, I have not permitted Thurrock to rely upon this further incident. I have, however, read the underlying police documents. The encampment was resolved with the police serving a s.61 Notice on the grounds that there were more than 6 vehicles present. The C126 assessment contained the following: "*No aggrevating (sic) factors directly relating to the condition of the site. The site itself is clean and tidy. There were no animals present at the time and no damage had been caused in gaining access.*" The police assessment therefore does not bear out or support Ms Bolton's description.

(c) Findings of fact relating to Mr Smith

337. I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Smith was part of an encampment in a public car park on Stanley Road from 26 September 2016 for up to 3 days. This encampment was relatively short-lived and had no aggravating features. There is no evidence of fly-tipping. As to whether Thurrock has proved any damage to the land, this is a good example of contradictory hearsay in the underlying police documents. The initial call to the police recorded the hearsay evidence of an unidentified complainant that the barriers had been "*broken*" to gain entry. The hearsay of the unidentified officer who carried out the C126 assessment was that it was "*pretty obvious*" (without explanation why) that a padlock had been "*snapped*" to gain entry. Neither of these provides support for Inspector Ballard's evidence that entry had been obtained by "*damaging a bollard*". Yet, in the crime report, the police assessment was that "*no damage has been seen despite the report*

stating that the suspects have broken the barrier" before a conclusion that "*no damage had been caused*". Presented with that evidence, and in the absence of any hearsay notice or other identification of what of this evidence Thurrock contends is the truth, it is my judgment that Thurrock has failed to prove that there was any damage to the land. Even if any damage was caused, Thurrock there is no evidence that it was caused by Mr Smith. Beyond this incident (and even allowing for the further incident in Hangmans Wood), Thurrock has not demonstrated that Mr Smith has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping.

(98) Simon Connolly

(a) Allegation(s)

338. Thurrock's allegation against Mr Connolly is:

> "… on 17 November 2016, you and/or your vehicle registration number NA10 *XH formed an (sic) large unauthorised encampment at Sandy Lane, Thurrock. The encampment caused fly tipping and safety risks due to chemicals."

339. The date given in the Claim Summary Letter is incorrect. According to the evidence of Inspector Ballard, the incident alleged to involve Mr Connolly was on 21 November 2016.

(b) Evidence

340. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Mary Boland, the 53rd Defendant (see [234]-[238] above).

(c) Findings of fact relating to Mr Connolly

341. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock that, on the balance of probabilities, Mr Connolly was one of those who encamped on land at Sandy Lane in the period from 21-24 November 2016. Beyond this incident, Thurrock has not demonstrated that Mr Connolly has formed other encampments on land in its local authority area (or anywhere else).

342. In both the Claim Summary Letter and in the schedule to Ms Bolton's skeleton argument, Thurrock has alleged that Ms Boland was guilty of fly-tipping. In the Claim Summary Letter, Thurrock suggested that the fly-tipped waste caused "*safety risks due to chemicals*". It is plain, from a simple reading of entries from the STORM report, that the methane risk arose from the old land-fill site, and the risk of a chemical leak only arose if those on site tampered with a pipe. As to the charge of fly-tipping generally, the evidence provided by Thurrock not only fails to support that charge, but it also positively demonstrates that the police did not consider Mr Connolly, or any of the others on the site, even to be suspects in relation to the fly-tipping on the site. At the hearing, Ms Bolton persisted in submissions that Mr Connolly was guilty of fly-tipping even when confronted by the evidence I have set out above. It is very much to be regretted that this allegation ever came to be made by Thurrock against Mr Connolly and that it has persisted with it despite the evidence.

(101) Thomas Keenan

(a) Allegation(s)

343. Thurrock's allegation against Mr Keenan is:

> "… on 18 August 2016, you and/or your vehicle registration number SM55 *GJ formed an unauthorised encampment at the Grove Road in Stanford Le Hope. Members of the encampment were abusive."

(b) Evidence

344. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against John Keenan, the 33rd Defendant (see [177]-[181] above).

(c) Findings of fact relating to Mr Keenan

345. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Keenan was one of those who was, for a matter of a few hours, present on land at Shell Haven and that, thereafter, he was part of a short-lived overnight encampment at Grove Road. There is no evidence of fly-tipping during either incident. Beyond these incidents, Thurrock has not demonstrated that Mr Keenan has formed other encampments on land in its local authority area (or anywhere else) or been guilty of any fly-tipping. There is no evidence to link any allegations of abusive behaviour to Mr Keenan. Thurrock should not have made such an allegation against him.

(101) Tom Ward

(a) Allegation(s)

346. Thurrock's allegation against Mr Ward is:

> "… on 19 February 2018, you and/or your vehicle registration number S29 *MD formed an unauthorised encampment at Holy Cross School, South Ockendon. Locks were broken, there as (sic) fly tipping and a large bonfire."

(b) Evidence

347. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Ellen McDonagh, the 30th Defendant (see [159]-[161] above).

348. The evidence relating to the registered keeper of S29 *MD is unclear, and casts doubt over whether Mr Ward has been correctly identified as someone who was amongst those who formed the encampment near the Holy Cross School.

   i) As noted in the STORM report, with further details in the crime report, the registration number S29 *MD was a "cherished" registration number, meaning that it was transferred from to/from different vehicles.

ii) The information in the STORM report simply recorded that the registration number was associated with a silver Vauxhall Astra, without a registered keeper, at an address in Armagh, Northern Ireland.

iii) The crime report notes: "*This vehicle is insured as a different make and model*". The PNC check, carried out on 20 February 2018, returned Mr Ward as the registered keeper of EU13 *MM, a silver Vauxhall Astra, which previously had the registration number S29 *MD, at an address in County Tyrone, Northern Ireland.

iv) The insurance details held on the PNC/DVLA database identified a different vehicle, a Ford Galaxy, bearing S29 *EMD and insured by Margaret McDonagh, at a different address in County Tyrone.

v) In the final entry on the crime report, PC 74057 Armstrong identified the vehicles on site and noted: "*S29 *MD Ford Galaxy blue (displaying the wrong index plate) with Pagean Champagne cream caravan*".

(c) Findings of fact relating to Mr Ward

349. In my judgment, the evidence leads to the conclusion, on the balance of probabilities, that the vehicle seen at the site bearing the registration number S29 *MD was a blue Ford Galaxy. The vehicle, of which Mr Ward was the registered keeper, was a silver Vauxhall Astra that had at some point carried the registration number S29 *MD. Mr Ward has therefore been wrongly identified by Thurrock as the registered keeper of the blue Ford Galaxy, and Thurrock has therefore not proved that Mr Ward was part of the alleged encampment.

350. In light of this conclusion, it is not necessary to consider the evidence that suggests that Mr Ward never received the Claim Form (see [26(i)] above).

(104) William O'Donnaghue

(a) Allegation(s)

351. Thurrock's allegation against Mr O'Donnaghue is:

> "… on 3 August 2016, you and/or your vehicle registration number SN15 *PP formed an unauthorised encampment at the Yacht Club in Grays. The encampment cause (sic) damage, was large and abusive resulting in community tensions."

352. In the schedule to Ms Bolton's skeleton argument, Thurrock also contended that Mr O'Donnaghue had encamped at Manor Way, on 5 August 2016. This was not included in Mr O'Donnaghue's Claim Summary Letter, although the relevant paragraph of Inspector Ballard's witness statement was sent. However, that paragraph of the witness statement did not identify Mr O'Donnaghue by name, but only the vehicle SN15 *PP. The supporting police documents for the Manor Way incident were not sent to Mr O'Donnaghue.

(b) Evidence

353. The evidence relied upon from Inspector Ballard, in respect of the Yacht Club incident is the same as relied upon against Mark Ryan, the 44th Defendant and the evidence is the same (see [211]-[213] above).

354. The STORM report records that the registered keeper of SN15 *PP, a white Ford Transit, was William O'Donaughe (i.e. a different surname from the name of the 104th Defendant), at an address in Gray's, Essex. However, in the crime report, the vehicle's registration number is recorded, twice, as SN15 *DP, a silver Ford Zetec, registered to an Emma Henderson, at an address in Midlothian, Scotland.

355. Inspector Ballard, in his witness statement, also identifies the vehicle that was present as having registration number SN15 *DP, but says that it was a Ford Transit. He does not explain the discrepancy in the underlying police evidence, and neither he nor Thurrock has picked up that the crime report identifies SN15 *DP as a different type of vehicle. As to the registered keeper of this vehicle, Inspector Ballard states "*Not known*". There is no explanation in Thurrock's evidence for why they selected Mr O'Donnaghue as the 104th Defendant, or the evidence upon which they contend the Court can conclude that he was present at the encampment.

(c) Findings of fact relating to Mr O'Donnaghue (sic)

356. For the reasons I have explained, the identification evidence of the vehicle (and thereafter its registered keeper) is contradictory and unreliable. I am not satisfied that Thurrock has demonstrated, on the balance of probabilities, that Mr O'Donnaghue (or Mr O'Donaughe, as per the STORM report) encamped on the land at the Yacht Club (or Manor Way).

(105) William Stokes

(a) Allegation(s)

357. Thurrock's allegation against Mr Stokes is:

> "… on 19 February 2018, you and/or your vehicle registration number FA65 *FM formed an unauthorised encampment at Holy Cross School, South Ockendon. Locks were broken, there as (sic) fly tipping and a large bonfire."

(b) Evidence

358. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Ellen McDonagh, the 30th Defendant (see [159]-[161] above).

(c) Findings of fact relating to Mr Stokes

359. For similar reasons, therefore, I am satisfied on the evidence presented by Thurrock, on the balance of probabilities, that Mr Stokes was one of those who encamped overnight on land next to Holy Cross School. The breaking of the lock to gain entry, the fire and the evidence of fly-tipping are aggravating features of the encampment as a whole. However, Thurrock has provided no evidence that would enable the Court, even on the balance of probabilities, to conclude that Mr Stokes was responsible for the

fly-tipping. I reject Ms Bolton's submission that all people who are part of an encampment on land are responsible for any fly-tipping. I adopt the same reasoning as in [138] above.

(106) Winifred McDonagh

(a) Allegation(s)

360. Thurrock's allegation against Ms McDonagh is:

> "… on 15 February 2016, you and/or your vehicle registration number LM10 *FZ formed an unauthorised encampment at Old Toomey Car Showroom, Thurrock."

361. The date given in the Claim Summary Letter was incorrect. The incident was on 19 April 2016, but this would have been clear from the extract of Inspector Ballard's witness statement that was enclosed with the letter.

(b) Evidence

362. The evidence relied upon from Inspector Ballard, in respect of this incident, is the same as relied upon against Martin Lawrence, the 46th Defendant (see [218]-[219] above).

(c) Findings of fact relating to Ms McDonagh

363. For similar reasons, therefore, the evidence does support a conclusion that Ms McDonagh was one of those who had encamped on the land at the Old Toomey car showroom from 19 April 2016. Beyond the evidence of the cutting of the lock to gain entry, the evidence demonstrates no aggravating features. If entry to the site was forced, then Thurrock has no evidence to demonstrate that it was Ms McDonagh who did it. This allegation should not have been included against Ms McDonagh. There is no evidence of fly-tipping during this incident.

H: Should an injunction be granted against the Defendants or any of them?

364. In light of the findings of fact made in Section G above, the claim made by Thurrock against several of the named Defendants simply fails on the facts; Thurrock has failed to demonstrate that the relevant Defendant has encamped on land (either at all or in breach of planning control) or been guilty of fly-tipping). There is no other basis on which Thurrock can contend, credibly, that s/he threatens to do so. The claim against those Defendants (identified in [412] below) will be dismissed.

365. In respect of those named Defendants that I have found to have encamped on land, the next issue to be resolved is whether, on the basis of those findings, I should grant any form of injunction against the relevant Defendant and, if so, in what terms.

(1) Terms of the injunction sought against the named Defendants

366. Thurrock was required to notify each Defendant, in the Claim Summary Letter, the terms of the injunction that it would be seeking against him/her. Thurrock did not differentiate between named Defendants in this respect and notified all of them that an injunction in the following terms would be sought prohibiting them from:

"(a) setting up an encampment on any land within Thurrock Council unless authorised to do so by the owner of the land;

(b) setting up an encampment on any land within Thurrock Council without written permission from the Local Planning Authority, or, planning permission granted by the planning inspector, or in accordance with statutory permitted development rights;

(c) entering and/or occupying any part of the Land for residential purposes (temporary or otherwise) including the occupation of caravans/mobile homes, storage of vehicles, caravans and residential paraphernalia;

(d) bringing on to the Land or stationing on the Land any caravans/mobile homes other than when homes other than when driving through Thurrock Council or in compliance with the parking orders regulating the use of car parks or with the express permission from the owners of the land;

(e) 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

'The Land' proposed to be included in the injunction is all land within Thurrock Council…"

367. Several points should be noted about the form of injunction that Thurrock seeks.

i) As originally drafted, the injunction sought is not for a defined period, it is permanent. However, in her closing submissions, Ms Bolton indicated that Thurrock sought an order for 3 years.

ii) The prohibitions sought by Thurrock are extremely wide; it covers all land in the local authority area. If granted, the named Defendant would be prohibited, save in narrowly defined circumstances, from encamping on any land in Thurrock for any period, however short.

iii) The width of paragraph (c) would appear to prohibit any named Defendants from even staying in any residential premises (e.g. houses, hotels or hostels) in Thurrock.

iv) Paragraph (d) would appear to prohibit any named Defendants from parking up in a mobile home in a supermarket car park without getting the "*express permission*" of the landowner.

v) Paragraph (e) seeks to prohibit fly-tipping and other disposal of waste on land.

No doubt, if the Court considered that some relief ought to be granted, then the Court could grant a different and more limited order, but the terms of the injunction sought are indicative of Thurrock's general approach.

368. The anti-fly-tipping part of the injunction was sought by Thurrock, indiscriminately, against all named Defendants, whether Thurrock had any evidence of fly-tipping against the individual Defendant or not. Ms Bolton's submission in support of this approach towards people against whom Thurrock advanced no evidence of historic

fly-tipping seemed to be based on little more than the premise that, if someone is a member of a Gypsy or Traveller community that has encamped on land in the past, s/he threatens to fly-tip in the future. That proposition only needs to be stated to be rejected (and appears, in any event, to be contrary to Thurrock's own evidence that those guilty of fly-tipping represent a "*small minority*" of those in the Gypsy/Traveller communities who are alleged to have formed unlawful encampments – see [396] below). As a matter of fact, and for the reasons set out in Section G, Thurrock has failed to prove that any named Defendant has been guilty of fly-tipping or credibly threatens to do so in the future.

(2) The legal framework

369. Although other bases were relied upon in the Claim Form (see [5] above), by the end of the trial Thurrock relied upon s.187B Town & Country Planning Act 1990 ("s.187B") and s.222 Local Government Act 1972 ("s.222") as justifying the relief sought against the named Defendants. The Appendix to the judgment shows that s.187B is relied upon against all remaining named Defendants, with s.222 relied upon additionally against up to 9 named Defendants (there is some duplication).

(a) s.187 Town & Country Planning Act 1990

370. s.187B provides as follows:

> "**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 an 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.

371. s.187B was introduced by the Planning and Compensation Act 1991 following the Carnwarth Report "*Enforcing Planning Control*" (HMSO, 1989). The power, granted to local planning authorities under s.187B, is one part of the enforcement regime for planning control under Part VII of the Town & Country Planning Act 1990, which also includes enforcement and stop notices. In response to a breach (actual or apprehended) of planning control, it is for the local planning authority to decide (a) whether to take any enforcement action; and, if so: (b) what action.

372. The leading authority in this area is ***South Buckinghamshire District Council -v- Porter & Others* [2003] 2 AC 558**. Lord Bingham noted the guidance given to local planning authorities following the introduction of s.187B:

[17] Since the enactment of the section the Department of the Environment has given guidance to local planning authorities on the exercise of enforcement powers which, although inadmissible to construe the section, throws light on what was officially understood to be its effect. Thus in circular 21/91 ("*Planning and Compensation Act 1991: Implementation of the Main Enforcement Provisions*", 16 December 1991) it was stated:

> "7. The decision whether to grant an injunction is always solely a matter for the court, in its absolute discretion in the circumstances of any case. Nevertheless, it is unlikely that the court will grant an injunction unless all the following criteria are satisfied—(1) the LPA have taken account of what appear to be the relevant considerations in deciding that it is necessary or expedient to initiate injunctive proceedings; (2) there is clear evidence that a breach of planning, listed building, or conservation area control, or unauthorised work on a protected tree, has already occurred, or is likely to occur, on land in the LPA's area; (3) injunctive relief is a commensurate remedy in the circumstances of the particular case ... Even when all these criteria are satisfied, the court may decide that the circumstances of the case do not, on the balance of convenience, justify granting an injunction. If an injunction is granted, the court may suspend its effect until a specified later date."

This advice was substantially repeated in circular 10/97 ("*Enforcing Planning Control: Legislative Provisions and Procedural Requirements*", 31 July 1997, paragraphs 5.5-5.10), with the substitution of "*proportionate*" for "*commensurate*" but again with reference to the "*absolute*" discretion of the court. In chapter 9 of *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities* (1997), the Department of Environment, Transport and the Regions addressed the topic again:

> "*The personal nature of injunctive proceedings*
>
> "9.9 Unlike an enforcement notice or a stop notice, a planning enforcement injunction is not primarily directed at the parcel of land on which the breach of control is taking place. Injunctive proceedings are '*personal*' in the sense that the LPA seeks to obtain an order from the court to restrain a person, or a number of people, who must each be cited by name in the LPA's application, from carrying on the breach. It follows that, in assessing what is called '*the balance of convenience*' in the decision whether to grant injunctive relief on the LPA's application, the court will have to weigh the public interest (which the LPA represents) against the private interest of the person or people whom the LPA seek to restrain. This differs from, for example, the process of an enforcement appeal where the decision-maker is concerned with whether the appeal should succeed on its legal or planning merits. And, even if the court concludes that an interlocutory injunction should be granted, its effect may be suspended for a specified period so that the defendant has time in which to make suitable alternative arrangements for whatever activity is to be restrained. The court may require the plaintiff (the LPA) and the defendant to appear in person at the end of an initial period of suspension of an injunction, so that the balance of convenience can be reassessed."

373. Lord Bingham noted the impact of the Human Rights Act 1998 on the issues to be considered by the Court when deciding whether to grant an injunction under s.187B ([18]):

> "… Whatever the position before the Human Rights Act 1998, the court must now address the issues arising under article 8(2) of the European Convention on Human Rights and reach its own decision on whether the Gipsies' removal from the site is proportionate to the public interest in preserving the environment. This did not mean that the court would pay no heed to the decisions of local planning authorities: issues as to whether or not planning permission should be granted are exclusively a matter for them, and the planning history of the site, including any recent decisions, will be highly relevant. Respect should be accorded to the decisions of a democratically accountable body. But it is still for the court to reach its own independent conclusion on the proportionality of the relief sought to the object to be attained."

374. Lord Bingham also quoted with approval ([20], [38]) the following section of Simon Brown LJ's judgment dealing with the proper approach to be adopted by the Court when considering applications for injunctions under s.187B:

> [38] I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a s.187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, '*entirely foreclosed*' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues,

> and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.
>
> [39] Relevant too will be the local authority's decision under s.187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.
>
> [40] Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.
>
> [41] True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be '*commensurate*' — in today's language, proportionate. The approach in the ***Hambleton District Council -v- Bird*** **[1995] 3 PLR 8** seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the ***Hambleton*** approach in the period prior to the coming into force of the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under section 6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.
>
> [42] I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge.

375. Lord Bingham expressed his own conclusions as follows:

> [27] The jurisdiction of the court under s.187B is an original, not a supervisory, jurisdiction. The supervisory jurisdiction of the court is invoked when a party asks it to review an exercise of public power. A local planning authority seeking an injunction to restrain an actual or apprehended breach

of planning control does nothing of the kind. Like other applicants for injunctive relief it asks the court to exercise its power to grant such relief. It is of course open to the defendant, in resisting the grant of an injunction, to seek to impugn the local authority's decision to apply for an injunction on any of the conventional grounds which may be relied on to found an application for judicial review. As Carnwath J observed in ***R -v- Basildon District Council, Ex p Clarke*** **[1996] JPL 866, 869**:

> "If something had gone seriously wrong with the procedure, whether in the initiation of the injunction proceedings or in any other way, it was difficult to see why the county court judge could not properly take it into account in the exercise of his discretion to grant or refuse the injunction."

But a defendant seeking to resist the grant of an injunction is not restricted to reliance on grounds which would found an application for judicial review.

[28] The court's power to grant an injunction under s.187B is a discretionary power. The permissive "*may*" in subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances. Underpinning the court's jurisdiction to grant an injunction is s.37(1) Supreme Court Act 1981, conferring power to do so "*in all cases in which it appears to the court to be just and convenient to do so*". Thus the court is not obliged to grant an injunction because a local authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court...

[29] The court's discretion to grant or withhold relief is not however unfettered (and by quoting the word "*absolute*" from the 1991 Circular in paragraph 41 of his judgment Simon Brown LJ cannot have intended to suggest that it was). The discretion of the court under s.187B, like every other judicial discretion, must be exercised judicially. That means, in this context, that the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. Since the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion should be exercised in favour of granting an injunction from those in which it should not. Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (***City of London Corpn -v- Bovis Construction Ltd*** **[1992] 3 All ER 697, 714**), that will point strongly towards the grant of an injunction. So will a history of unsuccessful enforcement and persistent non-compliance, as will evidence that the defendant has played the system by wilfully exploiting every opportunity for prevarication and delay, although s.187B(1) makes plain that a local planning authority, in applying for an injunction, need not have exercised nor propose to exercise any of its other enforcement powers under Part VII of the Act. In cases such as these

the task of the court may be relatively straightforward. But in all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular defendant.

[30] As shown above the 1990 Act, like its predecessors, allocates the control of development of land to democratically-accountable bodies, local planning authorities and the Secretary of State. Issues of planning policy and judgment are within their exclusive purview. As Lord Scarman pointed out in ***Pioneer Aggregates (UK) Ltd -v- Secretary of State for the Environment*** **[1985] AC 132 , 141**, "*Parliament has provided a comprehensive code of planning control.*" In ***R (Alconbury Developments Ltd) -v- Secretary of State for the Environment, Transport and the Regions*** **[2003] 2 AC 295** [48], [60], [75], [129], [132], [139]-[140], [159] the limited role of the court in the planning field is made very clear. An application by a local planning authority under s.187B is not an invitation to the court to exercise functions allocated elsewhere. Thus it could never be appropriate for the court to hold that planning permission should not have been refused or that an appeal against an enforcement notice should have succeeded or (as in ***Hambleton*** **[1995] 3 PLR 8**) that a local authority should have had different spending priorities. But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (pace ***Hambleton***) the possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence.

[31] In ***Westminster City Council -v- Great Portland Estates plc*** **[1985] AC 661, 670** Lord Scarman drew attention to the relevance to planning decisions, on occasion, of personal considerations:

> "Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."

Ouseley J made the same point more recently in ***Basildon District Council -v- Secretary of State for the Environment, Transport and the Regions***

[2001] JPL 1184, an appeal under s.288 of the 1990 Act, when he said in paragraph 33 of his judgment:

> "From that analysis I conclude, first, that quite apart from any considerations of common humanity, the needs of these particular gipsy families were a material consideration because they had a need for this development in this location. Those personal circumstances entitled the Secretary of State to have regard to them as relevant to the decision he had to make in the public interest about the use of the land for the stationing of residential caravans. Their particular need for stability in the interest of the education of the younger children can also reasonably be seen as an aspect of the wider land use interest in the provision of gipsy sites, which interest includes the need for stable educational opportunities. There is also a public interest in the planning system providing stable educational opportunities for gipsy families, including these gipsy families."

Thus the Secretary of State was entitled to have regard to the personal circumstances of the Gipsies, as he did in the cases of Mr Berry and Mrs Porter. When application is made to the court under s.187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances, and there is force in the observation attributed to Vaclav Havel, no doubt informed by the dire experience of central Europe: "*The Gipsies are a litmus test not of democracy but of civil society*" (quoted by McCracken and Jones, counsel for Hertsmere in the fourth appeal, "*Article 8 ECHR, Gipsies, and Some Remaining Problems after South Buckinghamshire*" [2003] JPL 382, 396, fn 99).

376. As to the impact of the Article 8 rights of Gypsies and Travellers, Lord Bingham referred to two decisions of the ECtHR (***Buckley -v- United Kingdom*** **(1996) 23 EHRR 101** and ***Chapman -v- United Kingdom*** **(2001) 33 EHRR 399**) and noted ([37]):

> "These cases make plain that decisions properly and fairly made by national authorities must command respect. They also make plain that any interference with a person's right to respect for her home, even if in accordance with national law and directed to a legitimate aim, must be proportionate. As a public authority, the English court is prohibited by s.6(1) and (3)(a) Human Rights Act 1998 from acting incompatibly with any Convention right as defined in the Act, including article 8. It follows, in my opinion, that when asked to grant injunctive relief under s.187B the court must consider whether, on the facts of the case, such relief is proportionate in the Convention sense, and grant relief only if it judges it to be so. Although domestic law is expressed in terms of justice and convenience rather

than proportionality, this is in all essentials the task which the court is in any event required by domestic law to carry out..."

377. Lord Steyn rejected an argument advanced by the local authorities that, consideration by the local planning authority of issues of hardship caused by an injunction, meant that this was not an aspect that could be considered by the Court on an application under s.187B. He noted (at [51]):

> "[That] argument … sits uneasily with the breadth of the statutory language. The critical provision is subsection (2) which provides that the court *may* grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. '*May*' does not mean '*shall*'. The notion of '*appropriate*' relief necessarily involves an exercise of judgment weighing the factors for and against the grant of an injunction. There is not a hint of the restriction of the court's ordinary powers to consider logically relevant countervailing considerations at the stage of the grant of an injunction."

378. Lord Steyn added:

> [53] There is an even more important factor to be taken into account. The terms of an injunction must be strictly observed. The potential penalties upon a breach of an injunction are considerable. The local authorities argue that, while personal hardship may not be taken into account by the court considering the grant of an injunction, the court will be able to do so in considering what penalties to impose in committal proceedings. The concession is, of course, inevitable. But it results in the situation that, even in a case where the judge would not contemplate sending a defendant to prison for a breach, he must nevertheless impose an injunction carrying that threat. Such an approach does not advance the rule of law. It tends to bring the law into disrepute. [Lord Steyn referred to [38] of Simon Brown LJ's judgment in the Court of Appeal]. I would endorse this approach. In short the granting of an injunction under s.187B is an equitable remedy and the court has a wide discretion.

379. In [54], Lord Steyn noted the various Circulars issued by the Department of the Environment which, he concluded, had "*emphasised the width of the power of the court and that injunctive relief must be a commensurate remedy in the particular case*" and then considered the Court of Appeal decisions in ***Mole Valley District Council -v- Smith*** **(1992) 90 LGR 557** and ***Hambleton District Council -v- Bird*** **[1995] 3 PLR 8**. He held:

> [57] These decisions predate the coming into operation of the Human Rights Act 1998. But even under domestic law the dicta were in my view too austere in so far as they appeared to suggest that even great hardship was irrelevant. A civil society requires a fairer and more balanced approach. There was insufficient allowance for the equitable nature of the remedy and the width of the discretion. On this ground alone these decisions of the Court of Appeal should no longer to be treated as controlling.

380. As to the impact of the Human Right Act 1998 and the decision whether to grant an injunction under s.187B, Lord Steyn explained ([58]):

"… It is unlawful for the court to act in a way which is incompatible with a Convention right: s.6(1). Even if it had previously been possible to ignore great or marked hardship in the exercise of discretion under s.187B — a hypothesis which I do not accept — such an approach is no longer possible. Sometimes, perhaps more often than not, the interference with a Convention right may be justified on public interest grounds. But effective protection of a Convention right requires the court to approach the matter in a structured fashion in accordance with the principle of proportionality. What in the context of the present case is required was explained by Simon Brown LJ in terms on which I cannot improve. He said, at p.1378:

> 'Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.'

Plainly, the protection of the relevant Convention right would not be effectively protected by leaving it to local authorities acting under s.187B(1) to consider matters of hardship under article 8. It follows that, whatever their earlier status, the reasoning in the ***Mole*** and ***Hambleton*** decisions are no longer authoritative or helpful."

381. Lord Clyde considered that an application for an injunction under s.187B was to be seen as part of the enforcement tools available to the local planning authority:

> [64] Subsection (1) may be seen as widening the availability of the power to apply in providing that the application may be made whether or not the authority have exercised or are proposing to exercise any of the other powers in Part VII of the Act. That includes in particular the power to issue a planning contravention notice under s.171C, an enforcement notice under s.172, a breach of condition notice under s.187A, and a stop notice under s.183. But that does not mean that the court may not take account of the facts regarding any other remedy which the authority have pursued or the fact that they have not pursued any other remedy. In my view the provisions in subsection (1) all relate to the power in the authority to make the application. They do not cast any direct light on the question of the scope of the discretion given to the court in subsection (2) in the granting or withholding of the remedy. The authority have to decide in accordance with the statute to make the application for an injunction but it is for the court to decide whether or not to grant it and the decision to make the application cannot determine that question.
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> [65] Since the remedy which the court was expressly permitted to grant under subsection (2) was a familiar remedy under English law it might be expected that in dealing with an application for such a remedy the court would adopt the same approach and apply the same tests as it has always done in relation to injunctions. The jurisdiction expressly conferred upon the court by subsection (2) is plainly an original jurisdiction. It is not presented as a means of appeal or of review of the decision to enforce planning control or of the decision to apply for an injunction. On the face of it there seems no

reason why the court should not take into account what effect an injunction might have on the personal circumstances of the defendant.

[66] Counsel for the appellants laid stress on the final phrase of s.187B(2) "*for the purpose of restraining the breach*". As a matter of the construction of the subsection this phrase does not seem to me to circumscribe the power of the court so as to make the whole choice of action dependant upon the consideration of whether or not an injunction would serve the purpose of restraining the breach. If that was the intention of the final phrase then it would be hard to imagine any case in which an injunction would not be granted. In every case an injunction operates to restrain the breach. But the court is not compelled to grant an injunction. The subsection only empowers that to be done. I cannot read into the phrase any limitation upon the matters to which the court may have regard in exercising its discretion nor can I find there an indication that the court's role is intended to be a supervisory one. The importance of the phrase to my mind is in directing the court to the purposes which any injunction must be designed to achieve. The injunction which is permitted by the subsection is "*such*" injunction as will serve the stated purposes. The phrase indicates the kind of injunction, the terms of the order, if any, which may be granted. It does not resolve the question how far the court's discretion may go.

…

[70] … In deciding whether to take action in the event of a breach of planning control the authority will require to weigh a variety of factors which go beyond the considerations of the planning judgment in the light of which the plans were made and permissions granted or refused. The factors will now include the seriousness of the breach and its effect in the particular case. The authority will also require to consider which of the various methods of enforcement provided by the statute they should adopt. Enforcement notices and stop notices are courses which the authority may take at their own hand. So also is the breach of condition notice introduced by s.187A . But the injunction provided for by s.187B requires the intervention of the court. Parliament has expressly given the power to grant this particular form of remedy to the court. The authority must decide that the course is "*necessary or expedient*", but it is for the court, not for them, to issue the order.

[71] In exercising its power the court must not re-assess matters which are the subject of a planning judgment. But that does not mean that the factors which have been considered by the authority in making their planning judgment may not be properly taken into account by the court in deciding whether or not to grant this particular remedy. In looking at the factors which weighed with the authority the court is not embarking upon a reassessment of what was decided as matter of planning judgment but entering upon the different exercise of deciding whether the circumstances are such as to warrant the granting of the particular remedy of an injunction.

382. Lord Hutton agreed with the speeches of Lords Bingham and Steyn ([77]), holding that consideration of what he called 'the human factor' when the Court was asked to grant an injunction under s.187B did not trespass upon the planning decisions of the local authority.

383. Lord Scott agreed with the other speeches ([104]) and emphasised the public law nature of the injunctive remedy provided under s.187B:

> [98] Section 187B, providing specifically in relation to planning controls an authority to bring proceedings that previously had been provided generally by s.222 of the Local Government Act 1972, authorised a local planning authority to apply for an injunction in support of planning law where the local planning authority "*consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction*" (subsection (1)). The criteria of "*necessary or expedient*" relate to the decision of the local authority to apply for the injunction. They take the place of criteria set out in s.222 of the 1972 Act. They are not criteria which apply to the court's decision whether or not to grant the injunction. Section 187B(2) says that on an application under subsection (1) the court "*may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach*". This language does not, in my opinion, add to or subtract from the criteria expressed in s.37 Supreme Court Act 1981. The grant of the injunction must be "*just and convenient*". If the grant of the injunction cannot satisfy this test it can hardly be thought "*appropriate*" to grant it.
>
> [99] The criteria that govern the grant by the court of the injunction make clear, in my opinion, that the court must take into account all or any circumstances of the case that bear upon the question whether the grant would be "*just and convenient*". Of particular importance, of course, will be whether or not the local planning authority can establish not only that there is a current or apprehended breach of planning control but also that the ordinary statutory means of enforcement are not likely to be effective in preventing the breach or bringing it to an end. In a case in which the statutory procedure of enforcement notice, prosecution for non-compliance and exercise by the authority of such statutory self-help remedies as are available had not been tried and where there was no sufficient reason to assume that, if tried, they would not succeed in dealing with the breach, the local planning authority would be unlikely to succeed in persuading the court that the grant of an injunction would be just and convenient.
>
> [100] In deciding whether or not to grant an injunction under s.187B the court does not turn itself into a tribunal to review the merits of the planning decisions that the authority, or the Secretary of State, has taken. The purpose of the injunction would be to restrain the alleged breach of planning controls and the court could not in my opinion properly refuse an injunction simply on the ground that it disagreed with the planning decisions that had been taken. If the court thought that there was a real prospect that an appeal against an enforcement notice or a fresh application by the defendant for the requisite planning permission might succeed, the court could adjourn the injunction application until the planning situation had become clarified. But where the planning situation is clear and apparently final the court would, in my opinion, have no alternative but to consider the injunction application without regard to the merits of the planning decisions.
>
> [101] It does not, however, follow that once the planning situation is clear and apparently final it is not open to the court to take into account the personal circumstances of the defendant and the hardship that may be caused if the

planning controls are enforced by an injunction. Planning controls are imposed as a matter of public law. The local planning authority in seeking to enforce those controls is not enforcing any private rights of its own. If a local authority mortgagee is seeking an order for possession against the mortgagor, or a local authority landlord is seeking an order for possession against a tenant, or a local authority landowner is seeking an order to remove squatters or to restrain trespass, the local authority is seeking an order to enforce its private property rights. It is as well entitled to do so as is a private mortgagee, landlord or landowner. The function of the court in civil litigation of that character is, in my opinion, to give effect to the private rights that the local authority claimant is seeking to enforce. But an application for an injunction under s.187B, or any other application for an injunction in aid of the public law is different. As Lord Wilberforce said in ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435**, the jurisdiction to grant such injunctions is one of great delicacy and to be used with caution.

[102] I respectfully agree with the criticism expressed by my noble and learned friend, Lord Steyn, of the two Court of Appeal authorities particularly relied on by the appellant planning authorities (see [55] to [57] of his opinion). The hardship likely to be caused to a defendant by the grant of an injunction to enforce the public law will always, in my opinion, be relevant to the court's decision whether or not to grant the injunction. In many, perhaps most, cases the hardship prayed in aid by the defendant will be of insufficient weight to counter balance a continued and persistent disobedience to the law. There is a strong general public interest that planning controls should be observed and, if not observed, enforced. But each case must depend upon its own circumstances.

384. In this respect, Ms Bolton has also submitted that the law relating to planning control has a public character and the House of Lords has cautioned against introducing principles or rules derived from private law unless necessary to give effect to the purpose of the legislation: ***Pioneer Aggregates (UK) Ltd -v- Secretary of State for the Environment*** **[1985] AC 132, 141A** *per* Lord Scarman.

385. The Court of Appeal in ***Bromley LBC -v- Persons Unknown*** **[2020] PTSR 1043** considered the impact of the Equality Act 2010 and guidance given to local authorities as to their enforcement of planning control where the issue is unauthorised encampment on land by Gypsies and Travellers.

(1) Statutes

[49] Romany gipsies and Irish travellers are separate ethnic minorities protected by the Equality Act 2010. Pursuant to s.29(6) of the 2010 Act: "*[a] person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.*" This includes indirect discrimination, which is when a practice, criterion or procedure puts or would put the protected group at a particular disadvantage when compared with people who do not share the protected characteristic. Indirect discrimination by a public authority is capable of justification.

[50] The 2010 Act imposes upon public authorities a public sector equality duty at s.149. This duty requires a public authority, in the exercise of its functions, to have *due regard* to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

[51] By s.149(3) , having due regard to the need to advance equality of opportunity between persons who share a relevant characteristic and those who do not share it involves, in particular, the need to: (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

[52] Whilst it has been repeatedly accepted that the PSED does not require an EIA, the reality is that undertaking an EIA will be a factor in a case of this sort that points towards a proportionate approach on the part of a local authority. It is the substance of the EIA undertaken that matters, not its formal existence (***R (Brown) -v- Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening)*** **[2009] PTSR 1506** [93]). An EIA undertaken prior to the seeking of injunctive relief will be evidence of good practice. Further, the carrying out of a welfare assessment on unauthorised campers to identify any welfare issues that need to be addressed, prior to the taking of any enforcement action against them, is good practice.

[53] As to statutory enforcement powers, the court was taken to ss.61 and 62A Criminal Justice and Public Order Act 1994 ("the CJPOA"), which gives the police powers to direct trespassers to leave land if (in the words of s.61) they consider that they "*are present there with the common purpose of residing there for any period*". The same power is given to the relevant local authority pursuant to s.77 CJPOA, although this is limited to "*unauthorised campers*".

(2) Guidance

[54] The issue of unauthorised encampments is the subject of voluminous guidance. Department for the Environment Circular 18/94 *Gypsy Sites Policy and Unauthorised Camping* (November 1994) states that "*it is a matter for local discretion whether it is appropriate to evict an unauthorised gipsy encampment*" (para 6); 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 (para 6); that local authorities should try and identify possible emergency stopping places as close as possible to the transit routes used by gipsies where gipsy families would be allowed to camp for short periods (para 7); that, where gipsies 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*" (para 8); 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*" (para 9).
>
> [55] In the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, it was emphasised at paras 9 and 77 that local authorities had an obligation to carry out welfare assessments on unauthorised campers to identify any welfare issue that needed to be addressed before taking enforcement action against them. In addition, para 83, entitled "*Avoiding unnecessary enforcement action*", requires landowners to consider "*whether enforcement is absolutely necessary*" and identifies alternatives to eviction action.
>
> [56] And in May 2006, in a document entitled *Guidance on Managing Unauthorised Camping*, the Department for Communities and Local Government provided 66 pages of guidance to local authorities as to how they should best manage unauthorised camping. Chapter 5, entitled "*Making Decisions on Unauthorised Encampments*", stresses the importance of striking a balance between "*the needs of all parties*".

386. As the Court of Appeal noted in ***Bromley***, there remains a long-standing conflict arising from the nomadic lifestyle of Gypsies and Travellers and the chronic shortage of land where they can lawfully settle. The guidance cited by the Court of Appeal represents an attempt to strike a fair balance between the legitimate interests of Gypsies and Travellers and the settled community. The scope of the duties owed to members of the Gypsy and Traveller communities by local planning authorities reflects this fundamental balancing process. In ***Basildon District Council -v- McCarthy* (2009) JPL 1074** the Court of Appeal explained:

> [68] The scope of duties owed to Gypsies and Travellers was considered by the ECtHR in ***Chapman***. The case establishes that the court will be "*slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community*" ([102]). Viewed against the factual background described, that statement of principle is of particular relevance. Notwithstanding the claimants' endeavours, they remain in conscious defiance of the prohibitions of the law.
>
> [69] Moreover, as I read [98] of the judgment in ***Chapman,*** there is no positive obligation of general social policy to provide as many sites as the Gypsy community seek. The obligation that arises is not demand driven to that extent. The judge's conclusions were based on the premise that "*there can be no doubt that the claimants cannot remain where they are and that the time must come when they will have to leave*" ([65] of his judgment).

387. The Court of Appeal, in ***Bromley***, held that, ordinarily, a claimant must show a likelihood of "*irreparable harm*" in order to obtain an interim injunction: [35] and [95] *per* Coulson LJ citing the authorities of ***Fletcher -v- Bealey* (1885) 28 ChD 688, 698** and ***Lloyd -v- Symonds* [1998] EHLR Dig 278** *per* Chadwick LJ.

388. The fundamental question is one of proportionality: "*whether the problem can be dealt with in a less draconian way*": ***Bromley*** [71]. Each case must be assessed on its own merits: ***Bromley*** [78]. Depending upon the circumstances, relevant factors to the Court's discretion whether to grant an injunction, as identified in ***Bromley***, may include:

    i) the extent of the injunction sought, whether for example it is borough wide: [62]-[65]

    ii) the duration of the injunction sought: [88]-[89];

    iii) the (non-)availability of alternative sites (including transit sites); the absence of such sites may be regarded as a "*very important factor militating against the imposition of a borough wide injunction*": [74];

    iv) the cumulative effect of injunctions granted to other local authorities in similar terms: [75]-[79]; and

    v) whether the local authority has carried out its own assessment of the proportionality of use of its enforcement powers: [80]-[87];

389. These principles were identified in the context of an injunction against "Persons Unknown", but in my judgment they apply equally when an injunction is sought against a named defendant. The result is the same whether the person is restrained as a named Defendant or as a "Person Unknown".

390. Borough-wide injunction orders *may* be found to be proportionate – and therefore justified – in particular circumstances. An example provided, and relied upon, by Ms Bolton is ***Wealdon District Council -v- Krushandal* [1999] JPL 174**. The justification for the injunction be granted to prevent breach of planning control by the defendant on a borough-wide basis was that there was an established history of the defendant circumventing previous restrictions and that therefore "*the only effective way of preventing this caravan from being used as a residence was to ban it from the whole of the local authority's area.*"

(b) s.222 Local Government Act 1970

391. s.222 provides as follows:

> "(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…"

392. I explained this provision in my judgment in ***LB Barking -v- Persons Unknown* [2021] EWHC 1201 (QB)**:

[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.

(c) Other relevant provisions

393. The statutory bases for the relief sought by Thurrock against the named Defendants need to be seen in the context of the other remedies that are available to tackle unlawful encampments on land and/or fly-tipping. These include, s.1 Anti-Social Behaviour, Crime and Policing Act 2014, public nuisance, obstruction of the highway, ss.61 and 77-79 Criminal Justice and Public Order Act 1994 ("CJPOA") and trespass (see discussion in ***LB Barking*** [64]-[78]). As the provisions of CJPOA have been used by the police and Thurrock in many instances to remove unlawful encampments that are complained of in this claim, I will set out what I noted about these powers in ***LB Barking***:

[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."

394. Where a person has been guilty of repeated unlawful encampments on land and s/he has been evicted using powers under s.61 and/or ss.77-79 CJPOA, the Court may be persuaded to conclude that, unless restrained by an injunction, the defendant is simply going to keep forming unlawful encampments on land and that s/he is not only "*deliberately and flagrantly flouting the law*" but also that s/he threatens to continue and that nothing short of an injunction will be effective to stop further breaches of the law. An injunction under s.222 may be justified where the Court is satisfied that there is "*clear evidence of persistent and serious conduct*" amounting to a public nuisance: ***City of London Corporation -v- Bovis*** (see [392] above).

(3) Further evidence relevant to remedy

395. The primary evidence relevant to remedy is my findings of fact as set out in Section G above. Beyond that, as the authorities indicate, of potential relevance to the decision of

whether an injunction should be granted is any proportionality (or ***Porter***) assessment carried out by the local authority.

396. Thurrock filed a witness statement from Ms Burnett (see [34(ii)] above) in support of the original interim injunction application. In that evidence, Ms Burnett explained the steps taken to identify the named Defendants via vehicle registration numbers but states that Thurrock considers that "*the majority of persons who do form unauthorised encampments within its borough will be the unidentified persons unknown*". Most of Ms Burnett's evidence concentrates on the generic evidence against "Persons Unknown". She concludes her statement by stating:

> "In the last three years there has been in increase in the number of unlawful encampments, leading to increased pressure on Police and Local Authority officers to utilise their powers and resources. There has also been increased pressure on private utilities to utilise their resources to secure removal of unauthorised encampments. Despite the use of these powers travellers move from location to location within the borough and revisiting old sites. Some encampments can last for significant periods of time. It is apparent that nothing short of an injunction in the terms sought in the draft order will prevent the unauthorised encampments with the associated harm are causing the population. Hence why we seek injunctive relief.
>
> The travellers conduct is a breach of planning control and cause nuisance to the settled community. They flout the law causing harassment, alarm and distress to members or the community and businesses. The Council have weighed up the travellers needs against this action in coming to this conclusion but feel it is proportionate, necessary and reasonable to seek an injunction. The council appreciate that the unlawful actions and commercially motivated fly-tipping does not represent the actions of the vast majority of the gypsy and travelling community. It represents the actions of a small, determined minority who are having a significant impact on the quality of life of those in the vicinity.
>
> No witnesses from the travelling community on these sites have assisted the Police or Council in any prosecutions and names and addresses are not generally supplied. The Council is respectfully of the opinion that as evidenced from the above, and contained in all the evidence filed in support of this claim, that it is expedient for the promotion and or protection of the interests of the inhabitants of Thurrock to seek an injunction. That there is clear evidence that harassment, alarm and distress is being caused to many of those working and living within Thurrock and the considerable costs are being incurred for evictions, clear up costs and waste left behind and the cost of target hardening."

397. Nadia Houghton, the Principal Planning Officer of Thurrock, also provided a witness statement, dated 29 May 2019, for the interim injunction application. The statement dealt with (1) permitted development rights; (2) local provision of sites to meet Gypsy and Traveller needs; (3) National Planning Policy and Guidance; and (4) Thurrock's own policies and assessments.

398. Ms Houghton provided copies of:

i) "*Thurrock Council Gypsy, Traveller and Travelling Showpeople Accommodation Assessment: Need Summary Report – January 2018*" ("the GTAA Need Summary");

ii) "*Essex, Southend-on-Sea and Thurrock Gypsy, Traveller and Travelling Showpeople Accommodation Assessment Summary 2016-2033 – January 2018*" ("the GTAA Summary"); and

iii) "*Essex, Southend-on-Sea and Thurrock Gypsy and Traveller Accommodation Assessment Joint Methodology – January 2018* ("the GTAA Methodology")

399. The GTAA Methodology, under the heading, "*Transit Provision*", contains the following:

> "4.56 GTAA studies require the identification of demand for transit provision. While the majority of Gypsies and Travellers have permanent bases either on Gypsy and Traveller sites or in bricks and mortar and no longer travel, other members of the community either travel permanently or for part of the year. Due to the mobile nature of the population a range of sites can be developed to accommodate Gypsies and Travellers as they move through different areas.
>
> » **Transit sites** - full facilities where Gypsies and Travellers might live temporarily (for up to three months) – for example, to work locally, for holidays or to visit family and friends.
>
> » **Emergency stopping places** - more limited facilities.
>
> » **Temporary sites and stopping places** - only temporary facilities to cater for an event.
>
> » **Negotiated stopping places** - agreements which allow caravans to be sited on suitable specific pieces of ground for an agreed and limited period of time.
>
> 4.57 Transit sites serve a specific function of meeting the needs of Gypsy and Traveller households who are visiting an area or who are passing through on the way to somewhere else. A transit site typically has a restriction on the length of stay of usually around 12 weeks and has a range of facilities such as water supply, electricity and amenity blocks.
>
> 4.58 An alternative to or in addition to a transit site is an emergency stopping place. This type of site also has restrictions on the length of time for which someone can stay on it, but has much more limited facilities with typically only a source of water and chemical toilets provided.
>
> 4.59 Another alternative is '*negotiated stopping*'. The term '*negotiated stopping*' is used to describe agreed short term provision for Gypsy and Traveller caravans. It does not describe permanent '*built*' transit sites but negotiated agreements which allow caravans to be sited on suitable specific pieces of ground for an agreed and limited period of time, with the provision of limited services such as water, waste disposal and toilets. Agreements are made

between the authority and the (temporary) residents regarding expectations on both sides.

4.60 Temporary stopping places can be made available at times of increased demand due to fairs or cultural celebrations that are attended by Gypsies and Travellers. A charge may be levied as determined by the local authority although they only need to provide basic facilities including: a cold water supply; portaloos (sic); sewerage disposal point and refuse disposal facilities.

4.61 The Criminal Justice and Public Order Act 1994 (Section 62a) is particularly important with regard to the issue of Gypsy and Traveller transit site provision. Section 62a of the Act allows the police to direct trespassers to remove themselves and their vehicles and property from any land where a suitable transit pitch on a relevant caravan site is available within the same local authority area (or within the county in two-tier local authority areas).

4.62 It is necessary to investigate the role of transit sites when undertaking a GTAA study. This work will include analysis of records of Traveller Caravan Counts; records of unauthorised sites and encampments; analysis of Direction to Leave Notices; the use of and capacity of existing transit provision where it is present; and where they were possible interviews with Gypsies and Travellers on these sites to identify whether their needs are for transit accommodation or the desire to settle down more permanently in any given locality. Discussions will also be held with the Essex County Traveller Unit (ECTU) and the outcomes of the previous interviews with Council Officers, Officers from neighbouring local authorities and other stakeholders have been taken into consideration.

4.63 Due to the complexity of the situation regarding unauthorised encampments in Greater Essex; the movement of Travellers across Greater Essex and neighbouring areas; and issues relating to the potential location of any new transit or other provision, additional work has been commissioned to complete a robust assessment of transit need. Further details are provided within the Transit Recommendations section of the Essex GTAA Summary Report."

400. It is common ground that Thurrock provides no transit sites for Gypsies and Travellers. The police are unlikely to be able to make any direction under s.62A CJPOA. The evidence before the Court of Appeal in ***Bromley*** was that there were no transit sites in Greater London, with the nearest site being in South Mimms in Hertfordshire (see [9]). Based on interviews completed, the GTAA Need Summary stated (§§3.8-3.9)

> "… it is likely that only a small proportion of the potential need [for pitches] identified from unknown households will need conditioned Gypsy and Traveller pitches, and that the needs of the majority from unknown households will need to be addressed through separate Local Plan policies.
>
> The Council will need to carefully consider how to address the needs associated with unknown Travellers in Local Plan policies as it is unlikely that all of these will have a need that should be addressed through the provision of conditioned Gypsy or Traveller pitches."

401. The statistical base to the GTAA Need Summary appears to have been quite limited. Under a heading, "*Pitch Needs – Gypsies and Travellers that meet the Planning Definition*", the report noted (§§5.19-5.20):

> "The households who meet the planning definition were found on 1 public site, 1 temporary site, 2 tolerated sites and 1 unauthorised site. Analysis of the household interviews identify that there is a need for 1 additional pitch that is currently unauthorised, 4 additional pitches for teenage children in need of a pitch of their own in the next 5 years, 1 pitch that has temporary planning permission and 4 additional pitches through new household formation, using a rate of 2.00% based on the demographics of those who were interviewed.
>
> Therefore the overall level of additional need for those households who meet the planning definition of Gypsy or Traveller is for **10 additional pitches** over the GTAA period to 2033."

Then, under the heading "*Pitch Needs – Unknown Gypsies and Travellers*":

> "5.22 Whilst it was not possible to determine the planning status of a total of 67 households as they were not on site at the time of the fieldwork, the needs of these households still need to be recognised by the GTAA as they are believed to be Gypsies and Travellers and may meet the planning definition…
>
> 5.25 [The interview data] suggests that it is likely that only a small proportion of the potential need identified from these households will need conditioned Gypsy and Travellers pitches, and that the needs of the majority will need to be addressed through other means such as the [Strategic Housing Market Assessment] or [Housing and Economic Development Needs Assessment] and through separate Local Plan policies.
>
> 5.26 Should further information be made available to the Council that will allow for the planning definition to be applied to the unknown households, the overall level of need could rise by up to 13 pitches that are unauthorised, by up to 6 pitches that have temporary planning permission, and by up to 19 pitches from new household formation… Therefore additional need *could* increase by up to a further 38 pitches… However, as an illustration, if the ORS national average of 10% were to be applied this could be as few as 4 additional pitches."

402. Under the heading, "*Transit Recommendations*", the report stated:

> "5.40 Analysis of previous stakeholder interviews, Traveller Caravan Count Data and data collected by the Essex County Traveller Unit (ECTU) shows that there are high and increasing numbers of unauthorised encampments in many parts of Greater Essex. However, the analysis does not provide a detailed enough spatial view on where and how much provision is needed. It also does not explore issues such as small numbers of households accounting for multiple records of encampments.
>
> 5.41 As such it is recommended that further work is undertaken to complete more in-depth analysis of data recorded by ECTU and other relevant sources. This work will be completed by ORS over the next 12 months.

5.42 Discussions held with Officers from ECTU have confirmed that analysis of 'Direction to Leave Notices' may provide a more robust spatial appraisal of current and future transit needs. They have advised that each of these notices contains information such as the number of caravans and vehicle registration details. From this information ORS believe that they would be able to establish with a higher degree of certainty, the number of transit sites or stopping places required throughout Essex, Southend-on-Sea and Thurrock.

5.43 This additional analysis will include work on identifying the number of households accounting for multiple records of encampments; analysis of the average number of caravans per encampment and the average length of stay; and identification of the most common locations for encampments. It is hoped that the outcomes of this work will be to identify a figure for the average number of transit caravan spaces that are needed at any given point in time; whether this can be addressed through permanent transit sites, emergency stopping places and negotiated stopping arrangements; and where the geographic need is for new transit provision.

5.44 In the meantime it is recommended that the situation relating to levels of unauthorised encampments throughout the area should continue to be monitored by ECTU and individual local authorities whilst any potential changes associated with PPTS (2015) develop.

5.45 Finally work to address unauthorised encampments is a complex issue and it is recommended, through the duty to cooperate, that individual local authorities work closely with Essex County Council and ECTU both to identify the need for future transit provision and how to deal with unauthorised encampments when they occur."

(The same recommendations are contained in the GTTA Assessment Summary - §§1.129-1.134)

403. In the "*Conclusions*" section, as to transit provision, the report stated:

> "Whilst there is historic evidence to suggest that there may be a need for some form of transit provision in Greater Essex, it is not recommended that any should be provided at this point in time as the robustness of the data which could indicate this is not considered to be sufficient. It is recommended that the situation relating to levels of unauthorised encampments should continue to be monitored whilst any potential changes associated with PPTS (2015) develop. It is also recommended that further work is completed to identify the need for transit provision on an Essex-wide basis. Thurrock Council is therefore recommended to engage, through the Duty to Cooperate, with the other Essex authorities in the future to ensure this work on Transit Sites can be completed. This will establish whether there is a need for investment in more formal transit sites or emergency stopping places."

404. It is not for the Court, in this claim, to review these conclusions, but I would merely note that the conclusion – that the data was insufficiently robust to justify a conclusion that there was a need for transit site provision – might be thought to be contradicted by the evidence put forward by Thurrock in this claim as to the number and extent of unauthorised encampments in the three years between 2016 and 2018. It has been long recognised (indeed, it might be thought to be self-evident) that the presence of

significant numbers of unauthorised encampments tends to demonstrate a clear and immediate need for further site provision. However, in her witness statement, Ms Houghton states:

> "Based upon the evidence of the unauthorized incursions which have occurred, it is highly likely that these same or similar incursions will occur in the future. These incursions will not be in the nature of those which require the need identified by the GTAA. The nature of unauthorized encampments which the council is seeking to prevent are those temporary encampments whose primary purpose appears to be to facilitate fly tipping and are not as a result of under-provision of approved plots."

405. Again, it is for Thurrock, not the Court, to make the assessment of what provision should be made for any unmet need, including through transit sites, but the evidence put forward by Thurrock in this claim does not support Ms Houghton's contention that the "*primary purpose*" of the unauthorised encampments, that are the subject of the claims in these proceedings against the named Defendants, "*appears to be to facilitate fly tipping*." On the contrary, the evidence demonstrates that fly-tipping is only complained of in relatively few incidents, and, in most of those, is a by-product of the encampment rather than its purpose. Ms Houghton appears not to have considered the evidence carefully enough before expressing her conclusion as to what it shows.

406. I have no evidence about the extent to which lack of transit sites in Thurrock has been ameliorated by negotiated stopping and on how many occasions Gypsies or Travellers have been permitted to encamp on land under this negotiated stopping policy. Since the interim injunction granted in this claim on 3 September 2019, those named Defendants bound by it (and "Persons Unknown") have been prohibited from forming encampments. With that in place, any "negotiations" might be thought to be somewhat one-sided.

407. As to the assessment that Thurrock is required to carry out when considering whether to take enforcement action against Gypsies and Travellers encamped on land and, if so, what enforcement measures to take, I was shown a copy of the pro forma that is used by ECTU, headed "*Human Rights Act 1998 Travellers Assessment – Enforcement Proceedings Concerning Travellers*", exhibited to Mr Andrews' witness statement ("the Assessment Form"). The Assessment Form contains the following:

> "I …………………… certify that I have considered the human rights of the Travellers presently located at ……………………………………….
>
> In approaching the matter, I have sought to have regard for their human rights (balanced with the human rights of other) and, in particular, I have sought to:
>
> i) act as fairly, openly and promptly as possible;
>
> ii) explain our procedures and requirements clearly in a language which the Travellers understood;
>
> iii) consider all matters concerning the Travellers;
>
> iv) consider any representations made on behalf of the Travellers;

v) explain the reasons for our decisions.

I am able to seek restriction of the application of human rights of the Travellers both on the basis that there is no human right of 'unlawful trespass' and that I am acting in accordance with the law and further in accordance with the following stated qualifications, namely:

i) Public safety; and/or

ii) The prevention of disorder or crime; and/or

iii) The protection of the rights and freedoms of others.

I have approached the question of necessity of my proposed interference with human rights on the basis that

i) The action fulfils a pressing social need; and

ii) The means that the Council employ are proportional to the aim pursued, inter alia having regard to the availability of space for Travellers in the permanent accommodation in the county.

I have considered the prohibition of discrimination and I am acting on the merits of the matter without discrimination.

On the matter of protection of the possessions the action that the Council is taking is in the public interest and under, and in accordance with the law.

………………………………..

Authorising Officer

Dated this day of ……………………………….."

408. Mr Andrews stated: "*When an encampment is reported, on the first day my team will visit the site, confirm the exact location, numbers, intention the landowner and complete welfare checks via a Human Rights Assessment Form…*". Mr Andrews provided a copy of the ECTU form that is completed when a site visit is carried out ("Site Visit Report"). This seeks to record information about those who have formed the encampment, whether there are children present, whether there are any medical conditions, whether any of those present are pregnant and the number of vehicles and caravans. The form also includes boxes the completion of which would record a structured assessment to whether the encampment is (or threatens to be) a nuisance to the public, by reason of its size, location, duration, noise or other considerations. It requires an assessment of the impact on adjoining or nearby properties; damage to Council property or prejudice to its employees; prejudice to the use of the land by legitimate tenants or occupants; and whether the encampment is causing unacceptable impact on the environment. The final part of the Site Visit Report contains a section titled: "*Recommended Decision*". This provides the following options:

"Apply Essex Code for [Unauthorised Encampments]

Consult ECTU Manager

Use [section] 77/8 Criminal Justice & Public Order Act 1994

Use Part 55 of the Civil Procedure Rules [eviction of trespassers]

Request Police consider their emergency powers s.61 CJPO 1994

Other."

The prescribed options do not include an application for an injunction under s.187B, but the information that the form seeks to achieve would be likely to be included in any ***Porter*** assessment.

409. I have not been provided with any examples of completed Assessment Forms or Site Visit Reports for any of the unauthorised encampments that are the subject of the claims against the named Defendants. It would, for example, have been interesting to see the Site Visit Report and recommendations (if they existed) for the Kiddicare/Sports Direct incident on 14 July 2017 (see [260]-[262] above and further [420] below).

410. Ms Houghton's witness statement concludes with the following paragraphs:

> "The Borough has had numerous unauthorised encampment incursions over recent years. Based upon the evidence of the unauthorized incursions which have occurred, it is highly likely that these same or similar incursions will occur in the future… The nature of the unauthorized encampments which the council is seeking to prevent are those temporary encampments whose primary purpose appears to be to facilitate fly tipping and are not as a result of the under-provision of approved plots.
>
> In taking the decision to seek injunctive relief, the Council has considered the recent enforcement and planning history of recorded unauthorized encampments in the Borough along with local and national planning policy concerning travellers. It has considered the need to ensure fair and equal treatment for travellers and to facilitate the travelling way of life and the local levels of needs. It has considered the right to respect for family and private life. The Council considered the need to enforce planning control in the public interest.
>
> The Council has further considered the potential personal circumstances of the occupiers of the sites.
>
> Having also considered those factors and all the circumstances of this issue, in my view it is expedient, necessary and proportionate to seek the relief sought."

(4) Submissions

411. Ms Bolton made the following key submissions on behalf of Thurrock:

i) There is no requirement for multiple breaches by a defendant before a local planning authority can seek relief under s.187B. An apprehension of one breach, or apprehension on the basis of past breach is sufficient.

ii) The Court cannot look behind the "*apprehension*" of the local authority of the breach of planning control. A claim does not need be proved against any named Defendant. In her written submissions, Ms Bolton argued:

> "The breaches are actual and apprehended breaches of planning control, and the apprehension is based on existing breaches. The Court cannot look behind that. When allegations of not only the breach but what happened on the site (intimidation, breaking and entering etc.) are relied upon, that is not a claim that needs to be proven against an individual defendant, there is no cause of action for the court to adjudicate on. They are simply aggravating factors which go towards the proportionality of the remedy sought, and evidence of impact on the environment and inhabitants of an area, which the LPA's discharging of its public function must safeguard.
>
> Accordingly, the apprehended and actual breaches have been determined by the LPA, no defence has been provided to suggest that the court should disregard that assessment, and the only issue is proportionality of the remedy sought, the Court is not deciding the underlying cause of action and must not involve itself in it, that is for the LPA. This is where the broad evidence of impact is important".

iii) Where a local planning authority faces a large number of encampments, it is entitled to seek an injunction to restrain all those engaging in these encampments in order to balance the interest of its administrative area. This is an area, unlike private law, where broad applications are appropriate and the totality of the evidence of encampments is highly relevant, not simply the number of encampments formed by any individual Defendant.

iv) As to fly-tipping, where the named Defendant is party to an encampment where waste was fly-tipped, it is not unreasonable for the local authority to apprehend that, should those members of the encampment stop on another site, the same harm will occur. The question is not whether it can be proved that they will. The question is having apprehended future breaches, is it proportionate to restrain the future breach. On balance it is reasonable to apprehend further breaches of planning control by the named Defendants. They number of the encampments by multiple named Defendants makes the remedy proportionate.

v) The absence of repeated breaches of planning control is "*unremarkable*". The named Defendants are Travellers, with a travelling lifestyle. They may stop in Thurrock every year, or every three years. Alternatively, they may stop in different areas of the country. What is apprehended is that when they stop, they will breach planning control.

vi) It is not relevant, against the named Defendants, that Thurrock has not provided any transit sites. This may be a material factor in the claim against "Persons Unknown", but it is not against the named Defendants, who have not defended the proceedings and not sought to explain why they should be entitled to trespass on land, breach planning control, obstruct others from using the land, dump waste and cause other harm. Thurrock's negotiated stopping policy and before that its tolerance policy are proper alternatives to transit sites in any event.

vii) The borough-wide injunction sought is permissible and justified: ***Wealdon District Council -v- Krushandal***.

viii) The injunction sought under s.222 is justified because Thurrock has provided evidence that the existing enforcement powers under ss.61, 77-78 CJPOA have

proved ineffective against encampments that have caused significant nuisance and harm at several sites throughout Thurrock. Frequently encampments have visited the same sites (reliance is placed on the generic evidence). Accordingly, an injunction is sought on the grounds that nothing short of an injunction would be effective in restraining the unlawful conduct. It is justified to use s.222 on the basis that the existing enforcement powers have not abated the nuisance.

(5) Decision

(a) The named Defendants against whom Thurrock has failed to prove a breach

412. On the basis of the findings of fact in Section G above, the claims brought against the 13th, 14th, 15th, 22nd, 32nd, 34th, 40th, 46th, 50th, 69th, 80th, 82nd, 83rd, 84th, 102nd and 104th – a total of 16 named Defendants – will be dismissed because, on the facts, Thurrock has failed to demonstrate that the relevant Defendant formed an unauthorised encampment (or one that breached planning control) and/or has been guilty of any act of fly-tipping. There is therefore no factual basis (or any other evidence) to sustain any allegation that the relevant defendant credibly threatens to do so unless restrained by injunction.

413. I reject Ms Bolton's submission that all that matters is whether Thurrock "apprehends" that the relevant named Defendant has breached (or will in future breach) planning control and that the Court should not consider the evidence that has been produced as to the alleged breach of planning control by each named Defendant.

    i) First, no credible evidence has been provided by Thurrock that anyone "apprehends" that any of the named Defendants will breach planning control if not restrained by an injunction (see further [425]-[427] below).

    ii) Second, as made clear in ***Porter*** (see [17]-[18], [28]-[29], [37] *per* Lord Bingham; [51], [54], [58] *per* Lord Steyn; [71] *per* Lord Clyde; [99] *per* Lord Scott) the fundamental question for the court is the proportionality of granting an injunction. An essential part of that proportionality assessment will be the seriousness of the alleged planning breach. As Simon Brown LJ stated, the "*degree and flagrancy of the postulated breach of planning control may well prove critical*" ([38]) and the Court is "*bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end*" ([40]). As the Court must, on an application under s.187B, "*act on the evidence*", that will include as assessment by the Court of the evidence upon which the local authority relies, including evidence as to the alleged breach. The Court would be perfectly entitled to refuse an injunction, in the proper exercise of its discretion, if all that the local authority could establish by evidence was a single trivial short-lived and temporary breach of planning control, *a fortiori*, if the breach had already ceased by the time the injunction application came to be made.

414. In my judgment, the case against each named Defendant must be considered individually. If Thurrock cannot establish an actual or threatened breach of planning control by the relevant named Defendant, then that is an end of the matter. The fact that Thurrock can show that X has breached (or threatens to breach) planning control is of no relevance to the case against Y (absent demonstration of some form of joint liability).

415. On analysis, Ms Bolton's submissions on this point simply collapse into the argument that *all* Gypsies and Travellers are likely to form unauthorised encampments in the future. If any of the named Defendants cannot be demonstrated to have done so yet, then Thurrock apprehends that they threaten to do so in the future and so considers it necessary or expedient to seek a borough-wide injunction against them to prohibit all future encampments on land in breach of planning control. If that argument were accepted, there would be little to stop every local authority in the country from seeking a similar order. Unhesitatingly, I reject such an argument. Even though these proceedings have elements of public law about them, the fundamental principles of fairness continue to apply. A person should not have an injunction granted against him/her, unless such a remedy is justified on the evidence and the Court is satisfied that the relief granted is both necessary and proportionate.

416. Such an injunction order would almost certainly be unjustifiably wide and disproportionate. Indeed, because it was being made prospectively to prohibit all future breaches planning control, the Court would be disabling any assessment the circumstances of any future breach and the necessity and proportionality of granting an injunction to prevent it. That would be to remove, in advance, any future ***Porter*** assessment.

417. The starting point is that when a breach of planning control occurs or is apprehended, it is for the local planning authority to decide what to do in response. One option is to do nothing. If the breach is trivial and temporary, then it would be open to the planning authority, in the proper exercise of its powers, to take no action. If the planning authority decides to use its enforcement powers, then it can choose which power(s) to use. s.187B(1) expressly provides that it can apply for an injunction whether they have used or are proposing to use any other enforcement powers. But, as ***Porter*** makes clear, if the Court considers that the local authority has not utilised other remedies available to it before applying for an injunction, it may fail to persuade the Court that the grant of an injunction would be "*just and convenient*" ([99] *per* Lord Clyde; [38] *per* Simon Brown LJ). Granting the injunction in advance to prohibit all future breaches of planning control (however trivial or temporary) would mean that the Court would be abdicating its responsibility to strike the necessary balance between any competing interests in the structured way indicated in ***Porter***.

(b) The remaining named Defendants against whom there is some evidence of breach

418. I refuse, as an exercise of discretion, to grant any injunction against any of the remaining 32 named Defendants: they are the 1st, 11th, 12th, 16th, 18th, 23rd 25th, 30th, 31st, 33rd, 35th, 37th, 41st, 44th, 49th, 53rd, 55th, 60th, 63rd, 64th, 65th (the same person as 64th Defendant), 66th, 67th, 71st, 72nd, 74th, 78th, 81st, 86th, 87th, 94th, 97th, 98th, 101st, 105th and 106th. The claims against these Defendants will also be dismissed. I explain my reasons in the remaining paragraphs of this section of the judgment.

419. The points I have made in [416]-[417] above, apply equally to the named Defendants in this category too. Put shortly, the evidence of historic acts of unlawful encampment on land cannot justify an injunction in the wide terms sought by Thurrock.

420. The potential injustice, were an injunction to be granted in these wide terms, can be demonstrated by considering the example of the encampment at Kiddicare/Sports

Direct on 14 July 2017 (see [260]-[262] above). As noted in the C126 assessment, the features of this encampment were that, at its height, it consisted of 5 or 6 vehicles; it was in a self-contained car park at a disused warehouse; it had no impact on the surrounding businesses; the site was tidy; there was no evidence of damage to the land or fly-tipping; and there was no other anti-social behaviour. The police decided that the circumstances did not justify any action under s.61 CJPOA.

421. If the injunction sought by Thurrock is not granted against Mr Doherty (64th Defendant), then, if he were in the future to form an encampment similar to the Kiddicare/Sports Direct incident, it would be dealt with as follows. If Thurrock intended to take any planning enforcement measures against Mr Doherty, including an application for an injunction under s.187B, it would have to carry out the necessary assessment. The first stage would be the completion of the Site Visit Report (see [408] above). If fairly completed, that would probably lead to a conclusion that the absence of aggravating features meant it was unnecessary to make an urgent application for a s.187B injunction because the planning impact would likely be limited and temporary. Having regard to the relevant guidance and the need to avoid unnecessary enforcement action (see ***Bromley*** [54]-[56] quoted in [385] above), and in the reasonable exercise of its functions, Thurrock could decide that it was not necessary to take any action in respect of the planning breach represented by the encampment. Formally, and if the landowner agreed, Thurrock might enter into a negotiated stopping agreement with Mr Doherty and the other travellers for a limited period. If, alternatively, Thurrock did decide to apply for an injunction under s.187B, then the Court would consider whether to grant an injunction carrying out the ***Porter*** assessment. Assuming that Mr Doherty and his fellow travellers were still on the land by the time of the injunction application, if they undertook to the Court that they would leave in the next 24 hours, it is highly unlikely that the Court would grant an injunction. If they indicated that they wanted to stay for a longer period, then the Court would assess all relevant factors, including the particular circumstances of the travellers and any welfare issues and vulnerabilities, the likely impact on them of being required to move on, the availability of alternative sites (including sites provided by Thurrock or neighbouring local authorities), and decide upon the appropriate remedy which might be an order that they leave the land by a particular date and time. Of course, separately the landowner could take his/her/its own proceedings to evict the travellers as trespassers, but such a claim would raise entirely different issues.

422. Consider then what would happen in this scenario if the injunction sought by Thurrock in these proceedings against Mr Doherty were granted. Mr Doherty's encampment on the land would be a breach of the order, rendering him liable to enforcement for breach of that order including proceedings for contempt of court. None of the steps identified in [421] above would be taken, and critically, there would be no consideration of the proportionality of ordering Mr Doherty not to encamp on the land, whether by Thurrock or the Court.

423. Turning to specific considerations. In respect of those named Defendants that Thurrock has established an encampment on land in breach of planning control:

i) 25 of the remaining named Defendants are guilty of only one incident of unlawful encampment. One person, Anthony Doherty, has been found to have been party to 3 unlawful encampments. The remaining 8 party to 2 unlawful encampments.

ii) Most of the incidents dated back to 2016 meaning that there had been no repetition of unlawful encampment by the relevant named Defendant by the time the interim injunction was granted on 3 September 2019. There is no evidence of breach of planning control by any of the named Defendants in any other local authority area.

iii) Most of the unlawful encampments were short-lived, meaning that the breach of planning control was only ever temporary. Some were brought to an end as a result of the police using enforcement powers under s.61 CJPOA. Others ended as a result of private evictions. A minority by the occupants of the land leaving of their own accord.

iv) Few of the incidents have any significant aggravating features. None of the remaining named Defendants has been proved to have been guilty of any fly-tipping. Most of the allegations of disposal of waste are incidental to the encampment rather than evidence of commercial fly-tipping. Only in respect of one incident does the evidence suggest commercial fly-tipping carried out by members of the unlawful encampment (on land next to Holy Cross School on 19 February 2018 - see [159]-[162] above).

v) None of the remaining named Defendants is guilty of repeated acts of breach circumventing previous enforcement of planning control such as to lead to the conclusion that the only way of preventing further breaches is to make a borough-wide restriction.

vi) None of the remaining named Defendants is guilty of breaches of the criminal law or been shown to have deliberately flouted the law to such an extent that the Court concludes that nothing short of an injunction will be effective to restrain him/her. Of those in respect of whom Thurrock sought an injunction under s.222:

a) Mr Murphy, the 11th Defendant, I have found to have been part of an encampment on one occasion of perhaps less than a day. There were no other aggravating features (see [88]-[92] above);

b) Mr Stokes, the 12th Defendant, I have found to have been part of an encampment on one occasion of up to five days. There were few aggravating features (see [96]-[99] above);

c) Mr Cash, the 63rd Defendant, I have found to have been part of an encampment overnight on one occasion. Damage was caused to the land, which is an aggravating feature, but Thurrock has not demonstrated that Mr Cash was responsible for that damage (see [254]-[256] above);

d) Mr Doherty, the 64th and 65th Defendant, is the only person to have been found to have been party to three encampments. However, these three incidents were each short-lived and had no aggravating features (see [267] above); and

e) Mr McDonagh, the 81st to 84th Defendant, I have found to have been party to a single encampment. Save for the cutting of a lock to gain entry

(by a person unknown), no aggravating features have been demonstrated (see [313]). Thurrock has failed to prove that the other Mr McDonaghs were guilty of the further alleged encampments or that they were unlawful.

Against these named Defendants, there is no justification therefore for any injunction under s.222.

vii) The overall picture is that the existing framework of enforcement powers (not including planning enforcement) is functioning effectively to resolve incidents of unlawful encampments on land. The relevant processes may take time and cost money, but it means that each unlawful encampment is properly subject to an assessment (whether by the police or Thurrock) as to whether it is necessary and proportionate to exercise the relevant powers to evict those who have encamped. Landowners have recourse to the civil courts to evict trespassers.

424. I am not going to lengthen this judgment yet further by going through the case of each remaining named Defendant because, from the evidence I have set out in Section G and the reasons I have set out above, in no case would it be necessary or proportionate (or just or convenient) to grant the injunction sought by Thurrock (or any injunction). Thurrock has not demonstrated, on the facts that I have found, that any of the named Defendants credibly threatens further to breach planning control or, that if they did, that s/he would cause irreparable harm such as to justify the grant of the injunction in the terms sought. On the critical question of proportionality, Thurrock has not demonstrated that the problem cannot be dealt with in a less draconian way. The analysis above shows that the best way of securing a proportionate outcome is to approach each incident of unlawful encampment separately and to carry out the required assessment before deciding what, if any enforcement action should be taken. If, ultimately, an application is made to the Court for an injunction under s.187B to restrain actual or apprehended breach(es) of planning control, then the Court will consider all the relevant factors as required by ***Porter***, including those identified by the Court of Appeal in ***Bromley*** (see [388] above).

425. This is not a case in which the Court can attach much, if any, weight to the local authority's proportionality assessment. Thurrock's evidence fails to demonstrate that it has carried out any proper proportionality assessment before seeking the injunction against the remaining named defendants. Ms Burnett does not identify what needs of any of the named Defendants she had considered or "*weighed up*" (see [410] above). The manner in which Thurrock has identified the named Defendants means that it is highly unlikely that Thurrock has any knowledge of the personal circumstances of any of the named Defendants, certainly none has been set out in the evidence. The whole approach of Thurrock to these proceedings treats the personal circumstances of the named Defendants as irrelevant.

426. In my judgment, no weight can be attached to Ms Houghton's assessment.

i) First, beyond generalities, she provides no details of the matters she has considered on the assessment of necessity and proportionality. Ms Houghton stated that she had "*considered the recent enforcement and planning history of recorded unauthorized encampments in the Borough*". That can only have been

an assessment at a very high level, not a consideration of the past conduct of the relevant named Defendants. Thurrock has provided little or no evidence to suggest that any of the remaining named Defendants has been a persistent offender in breaching planning control.

ii) Second, and as a direct result, Ms Houghton simply has not considered Thurrock's evidence against any of the named Defendants, the circumstances of the individual encampments and the seriousness of any alleged breach of planning control. She therefore makes no distinction between a single overnight encampment with no aggravating circumstances (e.g. that alleged against Edward Lowther, 25th Defendant – see [154]-[157] above) and the more extensive (and arguably more serious) incidents.

iii) Third, Thurrock has practically disabled itself from considering the personal circumstances of the named Defendants because Thurrock's efforts to identify them, carried out significantly after the event, were limited to DVLA checks of the vehicles noted to be present. As a method of even identifying who was present at any relevant encampment this process has been proven to be unreliable. It also would only ever have identified the registered keeper. Who else was part of the encampment simply has not been, and can cannot now be, established.

iv) Finally, Ms Houghton states that Thurrock "*has further considered the potential personal circumstances of the occupiers of the sites*". It is unclear to me what the word "*potential*" means in this sentence. Insofar as this is a statement that Thurrock has carried out this assessment, Ms Houghton does not state that she did it, and she does not identify who did. For the reasons I have explained, the exercise simply could not be carried out because Thurrock lacks the evidence and ability to do so.

427. I regret to say that, in summary, Ms Houghton's assessment is generalised and perfunctory and no weight can be attached to it when considering whether any injunction should be granted against the remaining named Defendants.

(I) Conclusion and next steps

428. Thurrock's claim against each of the remaining named Defendants will be dismissed. The interim injunction granted against the named Defendants will be discharged.

429. As a result of my decision to dismiss the claims against all remaining named Defendants, it is not necessary to inquire whether the Claim Form has been validly served on any or all of them (see [11] above).

430. The only remaining issue to be resolved in the claim is therefore the outstanding claim for an injunction against the 107th Defendant, "Persons Unknown".

Appendix: Table of Defendants and status of the claim

Name and service address	Status of claim	Basis for injunction
1. Martin Stokes County Tyrone, Ireland	Active trial defendant	s.187B
2. Daniel Martin Connors	Discontinued at trial	n/a
3. Alex Lee	Discontinued prior to injunction	n/a
4. Allan Kinmond	Discontinued after injunction	n/a
5. Andrew Corke	Discontinued after injunction	n/a
6. Andew Corry	Discontinued after injunction	n/a
7. Andris Kelpss	Discontinued at trial	n/a
8. Antonia O'Driscoll	Discontinued at trial	n/a
9. Ben Ward	Discontinued after injunction	n/a
10. Bernard McDonagh	Discontinued at trial	n/a
11. Brian Murphy Crayfield Industrial Park, Orpington, Kent	Active trial defendant[1]	s.187B s.222
12. Brian Stokes Stirling, Scotland	Active trial defendant	s.187B s.222
13. Brian Stokes (2nd) County Tyrone, Ireland	Active trial defendant	s.187B s.222
14. Charles Lansky Colchester, Essex	Active trial defendant	s.187B
15. Charlie McDonagh London E10	Active trial defendant	s.187B
16. Clarence Bulmer Tilbury, Essex	Active trial defendant	s.187B
17. Daniel Wells	Discontinued prior to injunction	n/a
18. Danny Hallissey Walsall, West Midlands	Active trial defendant	s.187B
19. David McDonagh	Discontinued at trial	n/a
20. Debbie Price	Discontinued prior to injunction	n/a
21. Debra Blakely	Discontinued after injunction	n/a
22. Declan McLeod Inverurie, Scotland	Active trial defendant	s.187B
23. Dennis Doherty St. Helens, Merseyside	Active trial defendant	s.187B
24. Donald Harrington	Discontinued after injunction	n/a
25. Edward Lowther Bradford, West Yorkshire	Active trial defendant	s.187B
26. Edward McDonagh	Discontinued at trial	n/a
27. Edward McDonagh (2nd)	Discontinued at trial	n/a
28. Elizabeth Berry	Abandoned at trial	n/a
29. Elizabeth Cassidy	Abandoned at trial	n/a
30. Ellen McDonagh County Tyrone, Northern Ireland	Active trial defendant	s.187B

[1] Subject to whether the Claim Form has been validly served on him – see [72]-[75] in the judgment

Name and service address	Status of claim	Basis for injunction
31. John Bryan Newtownabbey, Northern Ireland	Active trial defendant	s.187B
32. John Connors London, NW10	Active trial defendant	s.187B
33. John Keenan Wolverhampton, West Midlands	Active trial defendant	s.187B
34. John McDonagh County Tyrone, Northern Ireland	Active trial defendant	s.187B
35. John O'Brian Leighton Buzzard, Bedfordshire	Active trial defendant	s.187B
36. John Stevenson	Discontinued at trial	n/a
37. John Stokes Harrow, Middlesex	Active trial defendant	s.187B
38. Judith Watchorn	Discontinued after injunction	n/a
39. Kathleen Keenan	Discontinued at trial	n/a
40. Lawrence Connors Bristol, Avon	Active trial defendant	s.187B
41. Luke Connors Belfast, Northern Ireland	Active trial defendant	s.187B
42. Margaret Stokes	Discontinued after injunction	n/a
43. Mark Reid	Discontinued at trial	n/a
44. Mark Ryan Tilbury, Essex	Active trial defendant	s.187B
45. Martin Collins	Discontinued at trial	n/a
46. Martin Lawrence London, E9	Active trial defendant	s.187B
47. Martin Lawrence (2nd)	Discontinued at trial	n/a
48. Martin Maughan	Discontinued after injunction	n/a
49. Martin McDonagh High Wycombe, Buckinghamshire	Active trial defendant	s.187B
50. Martin McDonagh (2nd) Ely, Cambridgeshire	Same person as 49th Defendant	s.187B
51. Martin McDonagh (3rd)	Discontinued at trial	n/a
52. Martin Ward	Discontinued prior to injunction	n/a
53. Mary Boland Carshalton, Surrey	Active trial defendant	s.187B
54. Mary McDonagh	Discontinued at trial	n/a
55. Mary Mullane Bristol, Avon	Active trial defendant	s.187B
56. Michael Corcoran	Discontinued after injunction	n/a
57. Michael Harrington	Discontinued after injunction	n/a
58. Michael Tonge	Discontinued prior to injunction	n/a
59. Michael Ward	Discontinued at trial	n/a
60. Michaela McKenzie Tilbury, Essex	Active trial defendant	n/a
61. Jacqueline Hughes	Discontinued prior to injunction	n/a
62. Winifred Gilheaney	Discontinued at trial	n/a

Name and service address	Status of claim	Basis for injunction
63. Andrew Cash Wellingborough, Northamptonshire	Active trial defendant	s.187B s.222
64. Antoney Doherty Newtonabbey, Northern Ireland	Active trial defendant	s.187B s.222
65. Antoney Doherty (2nd) St. Helens, Lancashire	Duplicate defendant	s.187B s.222
66. Barry Smith London, N9	Active trial defendant	s.187B
67. Fred Mason Durham, County Durham	Active trial defendant	s.187B
68. Geoffrey Slack	Discontinued prior to injunction	n/a
69. Hughie Mason Blackburn, Lancashire	Active trial defendant	s.187B
70. Loomey Finbar	Discontinued at trial	n/a
71. Michael McKay Wellingborough, Northamptonshire	Active trial defendant	s.187B
72. William Connors Northampton	Active trial defendant	s.187B
73. Catherine McCann	Discontinued prior to injunction	n/a
74. Josie Doran Northampton	Active trial defendant	s.187B
75. Joanna Connors	Discontinued after injunction	n/a
76. Klara Zaipov	Discontinued at trial	n/a
77. Mary Doherty	Discontinued prior to injunction	n/a
78. Nicola Tomlinson London, NW4	Active trial defendant	s.187B
79. Noreen Mullane	Discontinued at trial	n/a
80. Patrick Connors Banstead, Surrey	Active trial defendant	s.187B
81. Patrick McDonagh County Tyrone, Northern Ireland	Active trial defendant[2]	s.187B s.222
82. Patrick McDonagh (2nd) County Tyrone, Northern Ireland	Active trial defendant[2]	s.187B s.222
83. Patrick McDonagh (3rd) County Tyrone, Northern Ireland	Active trial defendant[2]	s.187B s.222
84. Patrick McDonagh (4th) County Tyrone, Northern Ireland	Active trial defendant[2]	s.187B
85. Patrick McDonagh (5th)	Discontinued after injunction	n/a
86. Patrick Stokes Widnes, Cheshire	Active trial defendant	s.187B
87. Patrick Stokes (2nd) Dagenham, Essex	Active trial defendant	s.187B
88. Paul Palmer	Discontinued after injunction	n/a
89. Paul Smith	Discontinued after injunction	n/a

[2] There is an issue as to whether the four Patrick McDonaghs are in fact one individual – see [307]-[309] in the judgment

Name and service address	Status of claim	Basis for injunction
90. Paun Vasilescu	Discontinued at trial	n/a
91. Sean McDonagh	Discontinued at trial	n/a
92. Sean McDonagh	Discontinued at trial	n/a
93. Peter Smith	Discontinued after injunction	n/a
94. Robert McDonagh Gorton, Greater Manchester	Active trial defendant	s.187B
95. Sean Casey	Discontinued at trial	n/a
96. Shane Curtain	Discontinued prior to injunction	n/a
97. Sidney Smith Gloucester	Active trial defendant	s.187B
98. Simon Connolly Hayes, Middlesex	Active trial defendant	s.187B
99. Stephen Gardiner	Discontinued prior to injunction	n/a
100. Stuart Taylor	Discontinued prior to injunction	n/a
101. Thomas Keenan Walsall, West Midlands	Active trial defendant	s.187B
102. Tom Ward County Tyrone, Northern Ireland	Active trial defendant	s.187B
103. William Lawrence	Discontinued at trial	n/a
104. William O'Donnaghue Gray's Essex	Active trial defendant	s.187B
105. William Stokes Stirling, Scotland	Active trial defendant	s.187B
106. Winifred McDonagh	Active trial defendant	s.187B
107. Winifred McDonagh	Discontinued at trial	n/a