Neutral Citation Number: [2024] EWHC 2750 (KB)

Case No: QB-2022-001317

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2024

Before :

THE HONOURABLE MR JUSTICE BOURNE

- -

Between :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

- and -

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING

OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

(230)-(262) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM **<u>Defendants</u>**

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Caroline Bolton and Natalie Pratt (instructed by **Sharpe Pritchard LLP**) for the **Claimants**
Jamie Burton KC (instructed by **Bindmans LLP**) for the **Defendants**

Hearing date: 9 October 2024

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Approved Judgment

This judgment was handed down remotely at 10am on Wednesday 30 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Honourable Mr Justice Bourne :

Introduction

1. This is the final hearing of a claim by two local authorities for injunctive relief to restrain protest activities in the vicinity of several fuel and oil terminals in their areas by members of environmental campaign groups, notably Just Stop Oil ("JSO"). The litigation arises from protest activity which (it is common ground) took place in and around the Thurrock area between 1 and 15 April 2022.

2. The litigation began on 24 April 2022, when the Claimants made a without notice application for an interim injunction against 222 named Defendants and 7 categories of persons unknown. Ritchie J granted the order sought, restraining acts of public nuisance by obstruction of the highway, acts of trespass including tunnelling under or near the highway and other apprehended acts of public nuisance and trespass, and attaching a power of arrest. Provision was also made for service of the Claim Form.

3. CPR 8.3 requires a defendant to file an acknowledgment of service within 14 days of service of the Claim Form, indicating whether the claim is contested. By CPR 8.4, a defendant who fails to file an acknowledgment of service in time may attend the hearing of the claim but may not take part in the hearing unless the Court gives permission.

4. At a return date on 27 May 2022, HHJ Simon (sitting as a Deputy High Court Judge) continued the injunction.

5. On 26 January 2023, Foster J granted an application, on paper and without a hearing, to adjourn the final hearing of the claim for injunctive relief pending the decision of the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* ("*Wolverhampton*") which would be of particular relevance to the claims against persons unknown, and to continue the injunction and power of arrest in the meantime.

6. The Supreme Court handed down judgment in *Wolverhampton* on 29 November 2023. Various case management orders were then made to progress the matter towards this final hearing. On 20 December 2023, Jefford J ordered a case management hearing to be listed to progress the matter to trial.

7. That hearing took place before Collins Rice J on 19 April 2024. By that time, 204 of the 222 named defendants had settled the claim by giving undertakings. The Claimants had sought to add another 33 named defendants and 16 of those had consented to being added and had settled by way of undertakings. The claim was discontinued against a defendant who had died. Some 34 named defendants had not settled.

8. Collins Rice J gave separate directions affecting the unnamed and the named Defendants.

9. A hearing was listed on 12 July 2024 to review the continuation of the injunction against the unnamed Defendants only.

10. Named defendants, on the other hand, were ordered to file and serve any evidence on which they wished to rely by 11 September 2024. The "final hearing of the Claim" was listed on 9 October 2024, though it seems to me that "the Claim", in context, meant the claim against the named Defendants only.

11. Ahead of that final hearing, the Claimants were required to serve a bundle (and provision was made for service of skeleton arguments) only on "those named Defendants who have acknowledged service of the Claim and/or filed evidence in defence of the Claim or indicated that they intend to participate in the final hearing of the Claim (if any)".

12. At the review hearing on 12 July 2024, Julian Knowles J ordered that the injunction against the unnamed Defendants should continue for 5 years with annual reviews. As at 9 October 2024 when the hearing before me took place, the judgment of Julian Knowles J was due to be handed down on 11 October, but his draft judgment had been shown to me, to the Claimants and to Mr Laurie and his representatives on terms that they respect the usual embargo. I directed that any further submissions arising from that judgment, once handed down, be made in writing by 18 October. In the event, no further submissions were received.

13. The Claimants now pursue their claim against 26 named Defendants who have not settled the claim. Until 11 September 2024, no named Defendant had acknowledged service or defended the claim.

14. On 11 September 2024, the 110th named Defendant, Mr Charles Philip Laurie, known as Phil Laurie, sought to file an acknowledgement of service and applied for an extension of time to do so, and for permission to participate in the proceedings.

15. The Claimants pointed out that the wrong form had been used to acknowledge service so Mr Laurie then applied on 27 September 2024 for a further extension and relief from sanction in respect of the late service.

<u>Mr Laurie's applications</u>

16. In a witness statement Mr Laurie explained that when the proceedings were served on him in 2022, he did not understand that it was necessary to file and serve an AOS. In the course of 2024, he became aware that some Defendants were settling the claims against them. He first consulted a solicitor on 19 August 2024 and then took advice from counsel, which led to his making his first application.

17. I have read the evidence of Mr Laurie's solicitor, who explained that the use of the wrong form was an administrative error.

18. The Claimants have stated that they are neutral on the applications to extend time and for relief from sanction and for permission to participate.

19. I have decided that it is in the interests of justice to allow those applications, enabling the Court to deal with the real issues between the parties. As Mr Laurie's counsel, Jamie Burton KC, points out, the order of Collins Rice J appeared to contemplate

defendants filing evidence in opposition to the claim even though none had acknowledged service in time and, since Mr Laurie did file his evidence by the deadline, no practical prejudice has been caused to the Claimants by the lateness of his participation or by the use of the wrong form. In these unusual circumstances, although the default was serious and the explanation for it is not meritorious, it is just and equitable to grant the relief sought.

The substantive issues

20. Mr Laurie opposes the continuation of any injunctive relief against him, and he also raises more general objections of principle to some of the terms of the injunction as it currently stands.

21. In his witness statement dated 11 September 2024 he explains that he is a Quaker and describes activism as the practical side of his faith. As a retired engineer he states that he understands the science relevant to climate change. He sets out his fears about the likely catastrophic effects of climate change. He places responsibility on fossil fuel companies for selling products which cause climate change, and on Government for not taking sufficient action. He states that his faith "requires me to take action to alert people to the dangers of climate change and put pressure on the Government and fossil fuel companies change their ways, while the Government and big business are failing to do so".

22. Mr Laurie has not sought to argue that there were no grounds for injunctive relief to be granted in favour of the Claimants. He concedes that it would be appropriate for dangerous activities such as tunnelling and interference with tankers while refuelling to be the subject of an injunction against those who have carried out or may carry out those particular activities.

23. However, he contends that the terms of the injunction are too wide and would have the effect of restraining legitimate and lawful activity. He also contends that provisions of the criminal law already provide a suitable remedy for much of the apprehended activity. I will come to the detail of his objections below.

24. So far as his individual case is concerned, Mr Laurie denies that the evidence against him discloses any case of trespass or public nuisance which could justify injunctive relief against him, stating that his interest is in peaceful and proportionate protest and that there is no imminent and real risk of harm from future actions by him in breach of the Claimant's rights.

The evidence

25. The factual background is set out in detail in the judgment of Julian Knowles J dated 11 October 2024 at [2024] EWHC 2576 (KB), to which reference should be made as necessary. I adopt the summary of the evidence in that judgment and add only a briefer summary for present purposes.

26. When the claim was commenced in 2022, it was supported by the witness statements of, in particular, Adewale Adesina, an officer of Thurrock Council, Paul Crick, an officer of Essex County Council and Temporary DCS Morgan Cronin.

27. Mr Adesina described protest activities taking place around the sites of the Navigator Fuel Terminal in West Thurrock, the Esso Fuel Terminal in Purfleet and the Exolum site in Grays. He stated that the activity exceeded the bounds of peaceful and lawful protest e.g. by obstructing the highway and damaging the highway by tunnelling and other dangerous activity. He exhibited the council's incident logs for a 2 week period in April 2022, recording activity of those kinds. He referred to figures showing that stock levels at petrol forecourts fell to unusually low levels at the time of the protests. He explained that fuel shortages could have an impact on the provision of social care, education, highway services and emergency planning. Essex County Fire and Rescue Service had reported sometimes being unable to attend sites in emergencies because of protesters locking themselves onto fuel tankers at the entrances to sites. Firefighters and other responders were having to take risks in attending protesters who had attached themselves at height to installations and pipework with hazardous or flammable material contained within. There had also been disruption to waste collection services due to traffic issues caused by obstruction of the highway. Dangerous damage had been caused by tunnelling at highway locations. Mr Adesina also referred to public statements on behalf of JSO and others, expressing the intention to escalate their protest activities.

28. Mr Crick gave evidence on behalf of Essex County Council, referring to a likelihood of protest activity in the vicinity of a national fuel infrastructure site operated by Oikos Storage Ltd in Canvey Island.

29. T/DCS Cronin gave evidence about protests taking place at specific locations on specific dates, and individuals being arrested, with protesters blocking or obstructing roads, gluing themselves to roads and road furniture and intercepting and climbing about fuel transport lorries and attaching themselves to them, and also tunnelling under the highway. T/DCS Cronin identified those named protesters who had been arrested for such activities between 1 and 16 April 2022, including Mr Laurie for obstruction of the highway on 2 April 2022. He gave some details of the extensive impact on police resources of having to deal with these incidents. He also referred to intelligence suggesting that these disruptive protest activities would continue, with JSO having confirmed a three-stage approach to protest with a future phase involving "high stakes resistance against oil".

30. As I have said, an interim injunction was granted on 24 April 2022. It was continued on 27 May 2022 despite opposition from one Defendant who was represented by leading counsel. Judge Simon gave a reasoned judgment. When considering, at the first stage of the *American Cyanamid* test, whether the Claimants had shown an arguable cause of action, he said:

> "51. The nature of the protest activity seen in Thurrock between 1 and 15 April 2022 is very evident from the incident log at Annex 4 and the Claimants' evidence more generally. It involved actions that presented a serious threat to the health and wellbeing of the protesters, the police and the general populace. The evidence of the reckless actions of some protesters who gained entry to the terminals underlines the level of potential risk to which people could be exposed by a repeat of activity conducted on the highways in April. This, in my judgment, justifies a cause of action in public nuisance. The significant reduction in fuel stock levels

resulting from the April protests and its potential impact on emergency and essential services, many of which are intended for residents who would properly be considered as vulnerable, by whatever measure, adds further support to my conclusion that a cause of action in public nuisance is made out.

52. In addition, the care that must be exercised when responding to any impediment to the progress of tankers as described in the unchallenged evidence also justifies a cause of action in public nuisance. One need only take, as an example, the three days that were needed safely to free a protester from atop an intercepted tanker to understand the degree of obstruction (as well as risk of serious harm) that actions by some protesters have provoked. This too justifies the Claimants in bringing an action in public nuisance under s222 LGA as well as in the guise of the relevant Highways Authority under s130 HA . As to a cause of action in trespass, Mr Simblet [counsel for the 68th Defendant] acknowledged that Thurrock would at the very least be entitled to rely on this, as a result of the tunnelling activities described and depicted in the evidence."

31. In respect of the case against the Defendants generally, there has been no evidence which could undermine the conclusions set out by the Judge when making his interim order.

32. In March 2024 the Claimants applied to add a further 33 named Defendants to the claim. In a supporting witness statement dated 20 March 2024, Mr Adesina reported that there had been a "second wave" of similar protests between 23 August and 4 September 2022, including the excavation and occupation of two tunnels under access roads to the oil terminals and adjacent industrial area. On 24 August 2022 five of the named Defendants were arrested at the Esso Petrol station at the Thurrock motorway services. At committal proceedings before me, they admitted obstructing the access and one admitted damaging the petrol pumps, and all received suspended custodial sentences. Since then, there had been no major protest incidents in Thurrock. However, on its website JSO was now threatening to target airports for protest activity.

33. There was also a statement by DS Jennings dated 23 March 2024, providing the names of the proposed new Defendants and the dates and circumstances of their arrests.

34. For the hearing before Julian Knowles J on 12 July 2024 concerning the unnamed Defendants, Mr Adesina made a third witness statement dated 26 June 2024. He referred to major protest incidents in July and October 2022 involving JSO in parts of Essex other than Thurrock, in which there had again been substantial obstructions of the highway.

35. For the hearing before me, Mr Adesina made a fourth statement dated 7 August 2024 which pulls together the strands from the earlier statements by him and by the other witnesses. Those include a statement dated 11 July 2024 by a member of the Claimants' legal team, Adam Rulewski, drawing attention to a JSO press release stating that protest activity would continue despite the change of government and to injunctions which had recently been granted to a number of airports.

36. Several of the statements contained information about harm caused by the protests to the public, in terms of traffic congestion and fuel supply, and to the Police in particular. In April 2022, thousands of police officers were involved in responses to the incidents, large sums were spent on the provision of extra officers including officers from other forces, extensions of duties, specialist support officers and cancellation of rest days. Judge Simon particularly noted that 250 named Defendants had been arrested, some more than once. Resources were diverted from other police operations. Some policing operations and training had to be cancelled. Thurrock Council had also spent significant sums on reinstatement works after the tunnelling incidents.

37. Mr Adesina confirmed that the remaining named Defendants all took part in the protests in 2022 under the banner of JSO. That organisation remains active. In a press release on 22 July 2024, it re-stated a commitment to targeting airports in the summer of 2024. Further press releases documented activity in the period 24 July to 1 August 2024 at Heathrow and Gatwick airports. Nine would-be protesters were arrested on the perimeter road at Heathrow on 24 July. Departure Gates at Gatwick were disrupted on 29 July. An entrance and departure boards at Heathrow were spray painted on 30 July by protesters including one of the named Defendants, Phoebe Plummer, and access to departure gates at Heathrow was blocked by 6 protesters on 1 August. The statement also lists 16 named Defendants who are also defendants in a claim of a similar kind brought by North Warwickshire Borough Council. It also lists 15 of the named Defendants (including 11 of those who are North Warwickshire defendants) who have been involved in incidents elsewhere in the country for which they have been dealt with by the courts.

38. Finally Mr Adesina refers to a JSO press release on 7 August 2024, announcing a pause in its activity while there was civil unrest across the country, stating: "In accordance with our commitment to nonviolence, we will not stretch police resources, such that they are unable to protect communities most at risk. Therefore, we are pausing our nonviolent resistance until the immediate threats to safety have been dealt with appropriately". It could reasonably be inferred that JSO's actions will resume now that the civil unrest has subsided.

39. Mr Laurie's witness statement says this about his own activities:

> "**Events of 2 April 2022**
> 18. On 2 April 2022 I was arrested in Greys [sic] in Essex for obstruction of the highway after taking part in a protest organised by Just Stop Oil. There were six of us involved in the action, which took place on West Thurrock Way, at the roundabout approach. We walked into the road in front of an empty returning tanker and the driver stopped. Four members of the team climbed on top of the tanker and occupied it. I was the de-escalator and established contact with the driver. Once he understood what was happening and immobilised the vehicle, I went and sat in the road in front of the tanker. We glued ourselves to the road and blocked the entrance to the depot. We did not block or disrupt any other vehicles or traffic and there was no tunnelling involved.
>
> 19. I was arrested very quickly; we had barely been on the road for 15 minutes. I and the other protestor on the ground with me were held by the side of the road

for around one and a half hours while the police removed the other protestors, before being taken to Grays Police Station. I believe the total length of the disruption may have been around four hours. I was held for 16 hours. I was not interviewed so I did not ask for a solicitor. I was eventually released under investigation with no charge but with a bail condition not to enter the county of Essex. The bail condition was subsequently withdrawn. I have not protested anywhere in Thurrock or Essex since.

20. Since that day I have been arrested a further seven times, each time for offences related to participating in protests. Only two of those have led to prosecutions, and on both occasions I have been acquitted. Of the remaining five: a) On 10 April 2022 I was arrested for blocking the entrance to a fuel station and gluing myself to a police car; b) On 26 August 2022 I was arrested for gluing myself to a petrol pump; c) On 14 September 2022 I was arrested for breach of an injunction after merely entering an injuncted area; d) On 15 May 2023 I was arrested for holding up a placard outside court with words that were innocuous and ridiculous; and e) On 12 Nov 2023 arrested for slow marching. I am awaiting trial for that offence.

21. I have never used or threatened violence against any person and would never do so, in view of my faith. Nor have I ever been arrested or charged for violence against a person."

The law

40. Section 130 of the Highways Act 1980 makes it a duty of a highway authority to "assert and protect the rights of the public to the use and enjoyment" of relevant highways and to prevent the obstruction of them, and they may do so by issuing any legal proceedings.

41. Section 222 of the Local Government Act 1972 empowers a local authority to institute proceedings of this kind.

42. Under section 27(3) of the Police and Justice Act 2006, where a local authority is party to proceedings by virtue of section 222 of the LGA 1972 and an injunction is granted which prohibits conduct which is capable of causing nuisance or annoyance to a person, a power of arrest may be attached to the injunction if:

"... the court thinks that either-
(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or
(b) there is a significant risk of harm to the person mentioned in that subsection."

43. Section 37 of the Senior Courts Act 1981 provides:

"(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

…"

44. The grant of an injunction is therefore within the discretion of the Court, which is empowered to leave a claimant to his remedy in damages where an injunction is not just and convenient. The *American Cyanamid* requirements do not apply to an application for a final, rather than interim, injunction.

45. In *HS2 Limited v Persons Unknown* [2024] EWHC 1277, Ritchie J said:

> "32. … on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
>
> 33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply."

46. Those observations concerned the review of an interim injunction rather than the grant of a final injunction. However, I bear in mind on the one hand the value of the findings made at the interim stages of the case, and on the other, the need to be alert to subsequent developments and changes.

47. The Claimants seek an "anticipatory" or "precautionary" injunction to restrain conduct which they apprehend may happen in the future. Such an order, formerly known as a "quia timet" injunction, will be granted only where there is a strong probability that, unless restrained, a defendant will act in breach of a claimant's rights and that the harm resulting from such a breach would be so grave and irreparable that damages would not be an adequate remedy: *TFL v Persons Unknown and others* [2023] EWHC 1201 KB at [20] ("*TFL*"). The Claimants must show that there is an imminent and real risk of such harm: *HS2 Limited v Persons Unknown* [2022] EWHC 2360 (KB) at [99].

48. A number of principles emerge from case law which are relevant to disputes about protest activity taking place on or affecting the use of the highway. These are explored in detail in the judgment of Julian Knowles J. I gratefully adopt his analysis, and add a much more abbreviated summary.

49. Whilst the public generally has a licence to be on the highway, if they exceed that licence by doing something on that land which they do not have permission to do, such as tunnelling, they commit trespass. Trespass is a tort of strict liability and a claimant does not have to show damage. The exercise of Convention rights protected by Articles 10 and 11 cannot normally justify a trespass: *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 359, at [9(1)] to [9(2)] per Warby LJ.

50. In the present case, Ms Bolton puts her case in trespass with particular focus on tunnelling. That has happened before and it is apprehended that named Defendants may repeat it, but Mr Laurie says that he has not engaged in and would not engage in activity of that kind.

51. In respect of Mr Laurie and in respect of protests on the highway more generally, the Claimants rely on the tort of public nuisance.

52. It is well-established law that it is a public nuisance to obstruct or hinder the free passage of the public along the highway: *East Hertfordshire DC v Isobel Hospice Trading Ltd* [2001] JPL 597.

53. The parties agree that, as in in *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch) per Morgan J at [43] and *Arla Foods Ltd v Persons Unknown* [2024] EWHC 1952 (Ch) per Jonathan Hilliard KC (sitting as a Deputy High Court Judge) at [75], when deciding whether an obstruction of the highway amounts to public nuisance, I should apply the same principles as are applied when deciding whether a person has committed the offence of obstructing the highway contrary to section 137 of the HA 1980.

54. Having reviewed *Ineos* and the earlier cases of *Harrison v Duke of Rutland* [1893] 1 QB 142 and *DPP v Jones* [1999] 2 AC 240, Julian Knowles J summarised the law in this area as follows:

    a. There is a right to peaceful assembly on the highway (which consists of more than just the carriageway).
    b. That right does not extend so far as to allow the committing of a public nuisance.
    c. While the right to use the highway comprises activities such as assembly on the highway, such activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with the primary use of the highway to pass and repass, if a person is deliberately interfering with the primary use to pass and repass, they are obstructing the highway.
    d. Public nuisance may arise by the unreasonable obstruction of the highway, such as unreasonably impeding the primary right of the public to pass and repass.
    e. Whether an obstruction of the highway is unreasonable is a question of fact, but will generally require that the obstruction is more than de minimis, and it must be wilful.

55. There is a defence of lawful excuse. By way of lawful excuse, a defendant may rely on the rights to freedom of expression and peaceful assembly under ECHR Articles 10-11.

56. In that regard, Julian Knowles J reviewed *DPP v Ziegler and others* [2022] AC 408, *Reference by the Attorney General for Northern Ireland-Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] 2 WLR 33 and *Arla Foods Ltd v Persons Unknown* [2024] EWHC 1952 (Ch). He concluded that, when the Court decides the issue of lawful excuse, it will ask what have become known as the Z*iegler* questions:
    a. Is what the defendant did in exercise of one of the rights in Articles 10 or 11?
    b. If so, is there an interference by a public authority with that right?
    c. If there is an interference, is it "prescribed by law"?
    d. If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Articles 10 and 11, for example the protection of the rights of others?
    e. If so, is the interference "necessary in a democratic society" to achieve that legitimate aim?

57. That last question can be sub-divided into a number of further questions:

    a. Is the aim sufficiently important to justify interference with a fundamental right?
    b. Is there a rational connection between the means chosen and the aim in view?
    c. Are there less restrictive alternative means available to achieve that aim?
    d. Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

58. This is a fact-specific enquiry in which, depending on the facts, the following factors may be relevant:

    a. the extent to which the continuation of the protest would breach domestic law;
    b. the importance of the precise location to the protestors;
    c. the duration of the protest;
    d. the degree to which the protestors occupy the land;
    e. the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public;
    f. whether the views giving rise to the protest relate to "very important issues" and whether they are "views which many would see as being of considerable breadth, depth and relevance"; and
    g. whether the protestors "believed in the views that they were expressing".

The parties' submissions

59. The Claimants were represented by Caroline Bolton of counsel, leading Natalie Pratt.

60. To establish a threat to her clients' rights, Ms Bolton points to the events of 2022 and the serious harm caused by them, the fact that JSO continues to announce and engage in a programme of direct action, the propensity of the remaining named Defendants to

commit acts of the kind complained of and to Mr Laurie's confirmation that he has been arrested and prosecuted as a result of further climate change protest activity.

61. Ms Bolton submits that the kind of harm which would be caused by further such activity cannot easily be undone after the event. Physical harm to the public or to the protesters themselves cannot be undone. The impact on the public of road disruption cannot be readily quantified in money terms.

62. Prosecution under section 7 of the Public Order Act 2023 is not an alternative which makes the grant of an injunction unnecessary, and activists continue to engage in relevant activity despite the introduction of that section.

63. In response, Mr Burton submits that the claim against Mr Laurie for public nuisance must fail. His acts of protest were peaceful, of limited duration, in accordance with his long-standing, sincerely held beliefs and targeted, and did not disrupt road users other than a single empty returning fuel tanker.

64. He further submits that there is no imminent and real risk of Mr Laurie causing harm by any future breach of the Claimant's rights. Mr Laurie disavows any intention to do anything dangerous. Any peaceful protest, e.g. by holding placards or slow marching, would be a lawful exercise of his Article 10/11 rights.

65. As to specific provisions of the order which the Claimants seek to have continued:

    a. Objection is taken to paragraphs 2.1 and 2.2, and the recently increased sentence for willful obstruction of the highway of up to 6 months' imprisonment (s.80 of the Police, Crime, Sentencing and Courts Act 2022 amending s.137 of the Highways Act 1980) will act as a deterrent to unreasonable obstruction by protestors.
    b. Objection is taken to paragraphs 2.14 and 2.15, because blocking or slowing down traffic is a legitimate form of protest if it does not endanger anyone.
    c. Objection is taken to paragraphs 2.7 and 2.8, because not all "locking on" is unlawful and it can be dealt with by prosecution for specific new offences under sections 1 and 2 of the Public Order Act 2023.
    d. Paragraph 2.9 prohibiting the erection of "any structure" on roads is too broad.
    e. Paragraph 2.12 prohibiting "damage to the surface of or to any apparatus of or to any apparatus on or adjacent to the Roads or any vehicle" is too broad, covering activity such as sticking signs, flyers or posters to roads or apparatus.
    f. Paragraph 2.17 prohibiting inter alia "encouraging" any breach of the provisions is unclear.
    g. The word "interfering", used in many of the paragraphs, is also unclear.
    h. It is not clear which roads are included in the definition and maps annexed to the injunction.

66. Mr Burton also contends that the test for attaching a power of arrest is not satisfied because there is no basis for finding that the (currently) prohibited actions pose a significant risk of harm for the purposes of s.27(3)(b), and/or any risk is of a highly marginal degree when compared with the extreme forms of protest such as tunnelling or interfering with tankers or other fuel terminal infrastructure, or vehicles actively refuelling.

Discussion

67. I begin with the position of the named Defendants generally and will then turn to that of Mr Laurie.

68. The history of this case has already been analysed in the judgment of Julian Knowles J. He did not have the advantage of being addressed by counsel in opposition to the continuation of the injunction but I agree with his conclusions, having considered them anew in the light of the submissions made by Mr Burton. In particular I agree that the past protests were not peaceful but involved unlawful activity, leading to arrests, and were such as to put the protesters and others at risk. I also agree with the assessment by Judge Simon which I quoted at paragraph 30 above.

69. The 28 named Defendants other than Mr Laurie have not declared any intention to desist from dangerous activity. Several have shown a sustained determination to participate in protest activity of an unlawful kind, as Mr Adesina's fourth statement describes. All of the remaining named Defendants appear to be associated with JSO. JSO continues to promote and organise direct action and has not disavowed any of the dangerous activities, such as tunnelling, which some protests have involved.

70. Of the *Ziegler* questions, I agree that the fifth is the determinative one in this case. I accept that the Defendants have sought to exercise their Article 10/11 rights and that the injunction is an interference with such rights. The interference, in the form of an injunction to restrain unlawful acts, is prescribed by law, and is undoubtedly in pursuit of a legitimate aim i.e. the protection of the rights of the public and the agencies who serve the public.

71. In answering the fifth question, of whether the interference is necessary, I bear in mind that the injunction does not bar the Defendants from protesting. They are barred from protesting in specific ways which are dangerous, or which obstruct the public in their right to pass and repass along the highway. That being so, the importance and sincerity of the protesters' beliefs carry less weight. The issue is the way in which those beliefs are manifested.

72. I therefore adopt the reasoning of Julian Knowles J in these paragraphs of his judgment, and hold that the same logic applies to the named Defendants:

> "85. Turning to the four questions into which the fifth *Ziegler* proportionality question breaks down, I conclude as follows. Firstly, by committing trespass and nuisance, the Persons Unknown risk obstructing supplies of fuel which are vital to the economy, and risk causing the unnecessary expenditure of large sums of public money as well as other potential harm, all of which crystalised during the protests in 2022. In that context, I conclude that the aim pursued by the Claimants in making this application is sufficiently important to justify interference with the Defendants' rights under Articles 10 and 11, especially as that interference will be limited to what occurs on public land, where lawful protest will still be permitted. A single person holding a placard will not be caught by the injunction. Even if the interference were more extensive, I would still reach the same

conclusion. I base that conclusion primarily on the considerable disruption caused by protests to date as described in the evidence.

86. Second, I also accept that there is a rational connection between the means chosen by the Claimants and the aim in view – namely to ensure the continued safe and efficient delivery of fuel. Prohibiting activities which interfere with that work is directly connected to that aim.

87. Third, there are no less restrictive alternative means available to achieve that aim. As to this, an action for damages would not prevent the disruption caused by the protests. The protesters are unlikely to have the means to pay damages for losses caused by further years of disruption, given the sums which the Claimants have had to pay to date. Criminal prosecutions are unlikely to be a deterrent, and all the more so since many defendants are unknown.

88. I have considered the geographical extent of the injunction and am satisfied that it is appropriate and not excessive.

89. Fourth, taking account of all of the factors which I have identified in this judgment, I consider that the injunction sought strikes a fair balance between the rights of the individual protestors and the general right and interests of the Claimants and others who are being affected by the protests, including the national economy. As to this: (a) on the one hand, the injunction only prohibits the defendants from protesting in ways that are unlawful. Lawful protest is not prohibited. Moreover, unlike the protest in Ziegler, the protests are not directed at a specific location but at multiple locations … They have caused repeated, prolonged and significant disruption to the activities of many individuals and businesses and have done so in relation to facilities which are important to the economy of this country. Finally on this, the injunction is to be kept under review by the Court, it is not without limit of time, and can and no doubt will be discharged should the need for it disappear.

90. Finally, drawing matters together, I am satisfied that the Claimants have demonstrated the requisite compelling need. They would obtain their injunction after trial."

73. I also conclude that it is appropriate to retain the power of arrest. Section 27(2) and (3) of the Police and Justice Act 2006 provide:

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

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—
(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or
(b) there is a significant risk of harm to the person mentioned in that subsection."

74. Whilst some of the activities prohibited by the injunction could be carried out without violence and without a significant risk of harm to members of the public, it is clear that those activities, considered generically, carry a significant risk of harm to those whom they affect. Interfering with vehicles and apparatus carries a more obvious risk of harm, but activity in the nature of interfering with the flow of traffic clearly also has the potential to cause harm.

75. I therefore conclude that the power of arrest should continue to apply to all of the substantive prohibitions in the order. A more granular approach would make enforcement excessively complicated.

76. So far as Mr Laurie is concerned, I accept that he has not participated in the most extreme activity such as tunnelling. But he does accept being one of a "team" who forced an oil tanker to stop and then "occupied" it, and then blocked the entrance to a depot. It is said that no violence took place, but there was an interference with the vehicle and the depot by force and by weight of numbers. It is said that the tanker was returning empty to the depot, but that incident showed a willingness to interfere with key infrastructure. In my judgment, he has downplayed the seriousness or potential seriousness of that incident.

77. Meanwhile, although he has not protested in Thurrock or Essex since 2022, Mr Laurie has not seen fit to offer undertakings not to engage in unlawful activity of the kinds specified in the order. It may be the injunction and power of arrest which have dissuaded him from resuming such activity in these areas. On 12 November 2023 he was arrested for an offence of "slow marching" elsewhere. I am unable to conclude that Mr Laurie himself does not present sufficient risk for him to be the subject of a continued injunction, at least for the present.

78. More generally, I agree with Judge Simon's analysis of the position of individual Defendants in his judgment in 2022:

> "53. Mr Simblet makes a good point that not all protesters have been directly involved in the differing acts complained of. However, I reject the submission that the Court must assess the conduct of an individual tortfeasor, on the basis that one is not dealing with a single group of individuals congregating in one place. In my judgment, a proper analysis of the acts engaged in by protesters entitles the Claimants and the Court to treat as a broad-based composite the Defendants, whose individual actions are intended to contribute to the goal of an alliance that shares a belief in the tactics promulgated by JSO, however loosely connected each person may be to it. Any other approach would neuter the Claimants in the exercise of their statutory duties. … "

79. I turn to Mr Laurie's objections to specific provisions of the existing injunction.

80. As to paragraphs 2.1, 2.2, 2.7 and 2.8, I am not persuaded that new or toughened criminal provisions are such as to make injunctive relief unnecessary. An injunction with a power of arrest is a targeted response to a threat of unlawful activity in one or more known locations by identified or identifiable individuals. It is not unusual for

civil courts to grant injunctions restraining activity which, if committed, would or might amount to offences.

81. Nor do I accept that those paragraphs are too wide. Whilst it has been said in case law that protest is not made unlawful by the mere fact of causing the highway to be obstructed, there is a distinction to be drawn between a protest of which obstruction or delay to traffic is a side effect – e.g. because a large number of people assemble in a particular location – and a protest which deliberately consists of obstructing the highway, e.g. by interfering with vehicles or otherwise blocking a road.

82. The word "interfering" is present as an alternative to "blocking, slowing down, endangering, obstructing" traffic and vehicular access. I doubt that it adds anything, but it is there as a safety net in case a person finds a way of making it impossible or more difficult for motorists to pass which is not caught by the other words. My attention has not been drawn to any form of "interference" which would be legitimate.

83. I agree with Julian Knowles J that the order as drafted does not restrain Mr Laurie or anyone else from holding a placard beside a road. He would not be compelling drivers to slow down to read his placard and if they did slow down, the effect on traffic would be minimal.

84. The order does, however, restrain "slow marching" which slows down or obstructs the flow of traffic. Mr Burton points out that in *TFL*, an injunction specifically did not apply to slow marching. However, that was not a decision by the Court. Eyre J at [16] simply observed that the claimants had not sought to include that prohibition. I see no objection of principle to that prohibition because, again, slow marching is a deliberate obstruction of traffic and the obstruction is not just a side-effect.

85. Mr Burton opposes the provision in the order to prohibit the defendants from "locking on" to any of the specified roads, but does not oppose the prohibition of locking onto vehicles. He cites *Ziegler* as a case in which some degree of locking onto the highway was found to be acceptable.

86. *Ziegler* concerned a protest involving obstruction of the highway near a conference centre where an arms fair was taking place. The defendants lay in the middle of an approach road and attached themselves to two lock boxes with pipes sticking out from either side, making it difficult for police to remove them from the highway. Charged under section 137 of the Highways Act 1980, they admitted causing an obstruction but contended that it was not "without lawful excuse" because they were exercising their Article 10/11 rights. A District Judge acquitted them, holding that the prosecution had not proved that their actions had been unreasonable and therefore that the interference with their rights was proportionate. The Divisional Court allowed a prosecution appeal but the Supreme Court restored the decision of the District Judge.

87. *Ziegler* demonstrates that an obstruction of the highway will not lead automatically to the conclusion that a defendant has exceeded the lawful bounds of peaceful protest. However, the answer to Mr Burton's reliance on that case is found in paragraphs [85]-[90] of the judgment of Julian Knowles, quoted at [72] above. The Claimants have sought a prohibition of locking-on because of the history, in this case, of it being used in multiple locations as a tactic to cause considerable harm to the public interest. That

is what makes it appropriate and necessary to prohibit that form of obstruction of the highway. It is no answer to say that a person could engage in a more limited or smaller-scale form of locking on, because that is not the conduct which has given rise to this claim.

88. In respect of paragraphs 2.14 and 2.15, Mr Burton submits that it is or should be permissible for protesters to "disrupt" users entering petrol stations, by blocking or slowing down traffic, so long as they do not endanger anyone. I reject that submission. Again, disruption of the public going about their lawful business may be an inevitable side-effect of protest, but that does not mean that protesters can set out to disrupt the public going about their lawful business. And it does not matter whether the disruption occurs only by the pumps or in forecourts and access roads.

89. Mr Burton objects to paragraph 2.9 on the ground that "erecting any structure on the Roads" is too broad and would prohibit "non-disruptive peaceful protest such as constructing banners or other messaging devices". I am not convinced and, even with counsel's assistance, I have not been able to imagine what "structure" a person might erect which ought to be permitted. A banner and a structure are two different things.

90. Nor am I persuaded that any refinement is needed to paragraph 2.12, which prohibits the causing of damage. No doubt protesters can, and should, attach signs, flyers or posters to any apparatus or vehicle without damaging it.

91. Paragraph 2.17 prohibits anyone from "causing, assisting or encouraging" a breach of the other provisions. That language is similar to terms used in criminal justice and is very often used in injunctions. "Encouraging" is a plain English word, and I see no proper objection to prohibiting people from encouraging others to infringe Court orders.

92. Finally I also am not persuaded that there is any defect in the list of roads covered by the order, although it is a long list. The prohibitions are aimed at entire roads and the maps show, with sufficient precision, where those roads are situated.

Conclusion

93. I agree with Julian Knowles J that continued injunctive relief is appropriate. The test for a final precautionary injunction is satisfied. The scope of the prohibitions in the order is appropriate. In line with the order in respect of unnamed defendants, my order will continue for 5 years from the date of the hearing and will be subject to annual reviews. It will also contain a provision for any person affected to apply to vary or discharge it. Circumstances may arise in which variation or discharge become appropriate but despite the points made by and on behalf of Mr Laurie, that time has not come yet.