Neutral Citation Number: [2022] EWHC 2072 (QB)

Case No: QB-2021-003094

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 August 2022

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) MBR Acres Limited
(2) Demetris Markou
(for and on behalf of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited pursuant to CPR 19.6)
(3) B&K Universal Limited
(4) Susan Pressick
(for and on behalf of the officers and employees of B&K Universal Limited, and the officers and employees of third party suppliers and service providers to B&K Universal Limited pursuant to CPR 19.6)

Claimants/ Applicants

- and -

Gillian Frances McGivern — **Respondent**

- -
- -

Caroline Bolton and **Natalie Pratt** (instructed by **Mills & Reeve LLP**) for the **Applicants**
Ashley Underwood QC and **Adam Tear** (instructed by **Scott-Moncrieff & Associates Ltd**) for the **Respondent**

Hearing dates: 21-22 July 2022

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Approved Judgment

The Honourable Mr Justice Nicklin :

1. This is the judgment following a contempt application made against Gillian McGivern ("Ms McGivern") for alleged breaches of an injunction order that was originally granted on 10 November 2021 ("the Injunction"). The judgment handed down on that date ([2021] EWHC 2996 (QB)) explains the terms in which the Injunction was granted ("the Injunction Judgment"). It also sets out the background and circumstances in which the Injunction was sought and imposed.

2. The hearing took place over two days. At the end of the hearing, I dismissed the contempt application and indicated that I would give my reasons in writing at a later date. This judgment explains my decision.

3. The issues raised in the Contempt Application, particularly service of the Injunction on Ms McGivern, require that I set out some of the history of the litigation.

A: The parties to the Contempt Application

4. The Claimants are described in the Injunction Judgment (see [3]-[6]).

5. Ms McGivern was called to the Bar in 1994. She transferred to become a solicitor and has spent a career since working primarily in criminal litigation. She has obtained higher rights of audience in the criminal courts and regularly practises there. Ms McGivern undertakes police station work as part of the duty solicitor scheme.

6. As a result of the contempt application that was made against her, Ms McGivern self-reported to the Solicitors Regulation Authority ("SRA") and she ceased working for her firm. Although the SRA subsequently confirmed that she could continue working as a solicitor, Ms McGivern found the stress of facing the contempt application, and the possible consequences for her, too much to be able to continue work as a solicitor. She therefore remained absent from her firm, pending determination of the contempt application. A solicitor who is found to be guilty of contempt of court is likely to find that, in addition to any penalty imposed by the Court, s/he is likely to face further regulatory sanction that could include being struck off. For Ms McGivern the personal and professional stakes could not have been higher.

B: The Injunction in the underlying proceedings and orders for alternative service

7. The claim brought by the Claimants was commenced on 13 August 2021. It sought interim and final remedies against those protesting about the activities of, primarily, the First Claimant at its site Wyton, Huntingdon, Cambridgeshire ("the Wyton Site"). As originally framed, the claim was made against two representative Defendants (the First and Second Defendants), seven named Defendants (the Third to Ninth Defendants) and the Tenth Defendant, "Persons Unknown" then identified as those:

> "… who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at [the Wyton Site] and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited"

8. By an Application Notice filed on 11 August 2021, the Claimants sought, without notice, an order for alternative service of the Claim Form on the Tenth Defendant "Persons Unknown". On 12 August 2021, Ellenbogen J granted an order in the following terms:

> "Pursuant to CPR Part 6.14, 6.15, 6.26 and 6.27 the Claimants have permission to serve the Tenth Defendant, Persons Unknown, by the following alternative forms of service:
>
> 3.1 Affixing copies (as opposed to originals) of the Claim Form, the Injunction Application Notice, draft Injunction Order, and this Order permitting alternative service, in a transparent envelope on the gates of the First and Third Claimants' Land and in a prominent position on the grass verge at the front of First and Third Claimants' Land.
>
> 3.2 The documents shall be accompanied by a cover letter in the form set out in Annexure 2, explaining to Persons Unknown that they can access copies of:
>
> 3.2.1 The Response Pack;
>
> 3.2.2 Evidence in support of the Alternative Service and Injunction Applications; and
>
> 3.2.3 The skeleton argument and note of the hearing of the Alternative Service Application, at the dedicated share file website at [Dropbox link given]:
>
> 3.3 The deemed date of service for the documents referred to in paragraphs 3 to 3.2.3 above shall be two working days after service is completed in accordance with paragraphs 3 to 3.2.3 above."

9. In granting that alternative service order as against the Tenth Defendant Persons Unknown, the Judge would have been satisfied, on the evidence, that the proposed method of alternative service – detailed in Paragraphs 3.1 to 3.2 – could "*reasonably be expected to bring the proceedings to the attention of the defendant*": ***Cameron -v- Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** [21]. As the "Persons Unknowns" were, at that stage, defined by reference to those protesting within a marked area, the alternative service method proposed was likely to be effective in bringing the proceedings to the attention of the protesters in that area.

10. The alternative service order, however, did not comply with the mandatory requirement, under CPR 6.15(4)(c), that the order must specify the period for (i) filing an acknowledgment of service; (ii) filing an admission; or (iii) filing a defence. I will return below to the potential implications of this (see [74] below).

11. An interim injunction was granted on 20 August 2021 against all the Defendants (see Injunction Judgment [34]-[37]). The terms of the injunction were reconsidered at a hearing on 4 October 2021 and varied, following the handing down of the Injunction Judgment. The claim brought against the representative First and Second Defendants was stayed (Injunction Judgment: [52]-[67]). The original Tenth Defendant "Persons Unknown" was replaced by three new categories of "Persons Unknown" with the

addition of the Fifteenth to Seventeenth Defendants, who were joined as Defendants to the proceedings and defined as follows:

> "**(15) PERSON(S) UNKNOWN**
>
> (who are entering or remaining without the consent of the first claimant on the land and in buildings outlined in red on the plan at Annex 1 of the Amended Claim Form, that land known [the Wyton Site])
>
> **(16) PERSON(S) UNKNOWN**
>
> (who are interfering with the rights of way enjoyed by the First Claimant over the access road on the land shown in purple at Annex 3 of the Amended Claim Form and enjoyed by the Second Claimant as an implied or express licensee of the First Claimant)
>
> **(17) PERSON(S) UNKNOWN**
>
> (who are obstructing vehicles of the Second Claimant entering or exiting the access road shown in purple Annex 3 of the Amended Claim Form Order and/or entering the First Claimant's land at [the Wyton Site])."

Four further named individuals were added as Defendants to the Claim (the Eleventh to Fourteenth Defendants) on 10 November 2021.

12. The material parts of the Injunction, granted on 10 November 2021, were as follows. Paragraph 1 of the Injunction provided:

> "1. The Third to Ninth, Eleventh to Fourteenth, and Fifteenth to Seventeenth Defendants **MUST NOT**:
>
> (1) enter into or remain upon the following land:
>
> the First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the 'Wyton Site'); …
>
> (2) enter into or remain upon the area marked with black hatching on the plans at Annex 1 … (the 'Exclusion Zone'), save where … accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the Exclusion Zone, save for when stopped by traffic congestion, or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision, or at the direction of a Police Officer.
>
> (3) park any vehicle, or place or leave any other item (including, but not limited to, banners) anywhere in the Exclusion Zone;
>
> (4) approach and/or obstruct the path of any vehicle directly entering or exiting the Exclusion Zone (save that for the avoidance of doubt it will not be a breach of this Injunction Order where any obstruction occurs as a result of an emergency)."

13. Definitions, set out in Schedule A to the Injunction, provided:

> "The 'Exclusion Zone' is… for the purpose of the Wyton site, the area with black hatching at Annex 1 of this Order measuring 20 meters in length either side of the midpoint of the gate to the entrance of the Wyton site and extending out to the midpoint of the carriageway…"

14. Annex 1 to the Injunction was a plan of the Wyton Site marked with the Exclusion Zone around the entrance to the First Claimant's premises. Annex 1 included boxes containing annotations. One of those provided:

> "Exclusion zone in black crosshatched area is 20 metres either side of the centre of the Gate to the Wyton Site marked by posts on the grass verge up to the centre of the carriageway."

15. The evidence of the protest activities at the Wyton Site was set out in the Injunction Judgment ([17]). In summary, this evidence demonstrated that there were continuing issues with protesters blocking access to the Wyton Site and surrounding vehicles of those entering or leaving the Wyton Site and subjecting the occupants to abuse. I was satisfied that this justified the imposition of the exclusion zone immediately outside the gates to the Wyton Site and a prohibition on obstructing vehicles directly entering or leaving the exclusion zone. I explained my reasons in the Injunction Judgment:

> [117] An injunction in these terms is justified on the evidence provided by the Claimants. The flashpoint has been the confrontations that have taken place between the protestors and those seeking to enter or leave the Wyton Site. Insofar as the protestors' presence immediately outside the gates of the Wyton Site is not a trespass, it is sufficiently arguable that it would be unlawful for the Defendants to prevent people entering or leaving the Wyton Site to justify an injunction in these terms. At this stage, I am satisfied that the restrictions I intend to impose are necessary to protect the rights of the First and Third Claimants (and those the "Protected Persons" represented by the Second and Fourth Claimants) and that these restrictions are proportionate to that aim. The protestors' rights of freedom of expression and/or assembly are restricted only to a limited extent and those restrictions are necessary and proportionate to protect the legitimate interests of the Claimants. I note that imposition of an exclusion order - rather than a restriction on "*harassment*" - was also the measure adopted by Warby J as the principal method of striking the balance between the rights of protestors and others in ***Birmingham City Council -v- Afsar*** **[2019] EWHC 1560 (QB)**.
>
> [118] The injunction will not be made under the [the Protection from Harassment Act 1997]. I consider that, at this stage, the Court should address the issues raised by the Claimants by a territorial order, rather than an order intended to restrain "*harassment*". For the reasons explained above, injunctions to prohibit "*harassment*", in the context of demonstrations, are inherently problematic and appropriate terms of an injunction almost impossible to devise. If there is another way of the Court solving the problem, then that is to be preferred. On the evidence, I think it likely that, if the restrictions imposed by the injunction are observed, then future demonstrations will avoid the sort of confrontations that have given rise to the feelings of harassment and intimidation felt by some of those entering and leaving the Wyton Site. I appreciate that the Exclusion Zone will potentially restrain otherwise lawful activity. However, I am satisfied that such a restriction, imposed on an interim

basis, is a limited - but necessary - measure to provide effective protection to the rights of the Claimants.

16. As it is usually impossible to serve an injunction personally on "Persons Unknown", the 10 November 2021 Order extended the permission granted to the Claimants to serve the Injunction on the Fifteenth to Seventeenth "Persons Unknown" by the same method of alternative service as had been permitted to serve the Claim Form (see [8] above).

17. The Injunction has been modified (and extended) by subsequent orders of 18-19 January 2022 and 31 March 2022. These orders have added new Defendants to the claim, both named and further categories of "Persons Unknown", but the material prohibitions (as set out in [12] above) have remained the same. The Order of 31 March 2022 contained the following provision as to alternative service of the Injunction:

> "7. Pursuant to CPR 6.15, 6.26 and 6.27, the Claimants are permitted to serve this Order on the … Fifteenth to Seventeenth … Defendants by:
>
> (a) affixing copies (as opposed to originals) of the Application Notice and this Order in a transparent envelope on the noticeboard opposite the First Claimant's premises at [the Wyton Site];
>
> (b) the documents referred to in [(a)] above shall be accompanied by a cover letter explaining to the Defendants that they can access copies of
>
> (i) the evidence in support of the Application; and
>
> (ii) the skeleton argument and note of the hearing at which this Order was made
>
> at the dedicated share file website at [1st Dropbox link given]. The letter will also contain an email address and telephone number at which the Defendants can contact the solicitors for the Claimant and arrange to be provided with an email copy or a hardcopy of the documents referred to in paragraphs 7(a) and 7(b) above.
>
> 8. The deemed date of service for the documents referred to in paragraphs 7(a) and 7(b) above shall be one working day after service is completed with paragraphs 7(a) to 7(b) above."

18. At no point has Ms McGivern been a named Defendant in the underlying proceedings.

C: The Contempt Application

19. On 20 June 2022, there was a case management hearing in the underlying proceedings. The main item on the agenda for that hearing was an application by the Claimants to vary and widen the terms of the Injunction. As a result of there emerging the real possibility that unrepresented named Defendants might be able to secure, pro bono, the services of a QC to represent them, the hearing was adjourned to 21 July 2022 (see [2022] EWHC 1715 (QB) [12]-[18]). Ms McGivern attended the hearing on 20 June 2022, remotely, via CVP. At that stage she attended the hearing in her capacity as a solicitor. Ms McGivern told me:

> "I have higher rights within the criminal jurisdiction, but not the civil jurisdiction. I am currently a solicitor advocate with the Credence Law Group based throughout the county of Cambridgeshire. My firm currently acts for a number of people arrested from the Wyton Site in respect of ongoing criminal proceedings. As a result of that association, I have become familiar, of course, with the wider context of activities taking place there and, as such, have offered my assistance as a McKenzie friend to some or all of those defendants currently unrepresented… I have been making my best endeavours over a number of weeks now to locate a firm with a civil [Legal Aid] contract, which would be willing to accept instructions from any defendant who would wish representation and who fundamentally would qualify on their means for public funding."

20. After Ms McGivern had explained her role, Ms Bolton on behalf of the Claimants stated:

> "I need to raise one issue with Ms McGivern, which is that Ms McGivern is also a protester at the site and has also breached the injunction, and, therefore, she would be walking a very difficult tightrope, I think, if she was in the position of having to do the advocacy…"

21. Despite the clear statement by Ms Bolton, presumably on instructions, that Ms McGivern was a "*protester*" who had "*breached the injunction*", no indication was given at this hearing that the Claimants intended to bring a contempt application against her. I did not consider it appropriate, or necessary, at this hearing to inquire further into allegations that Ms McGivern had herself breached the Injunction.

22. Following this hearing, the Claimants did not send Ms McGivern any letter setting out their contention that she was a "*protester*" who had breached the Injunction, or providing details of the alleged breach, and inviting her to comment or provide her explanation. The contempt application made by the Claimants was the first that Ms McGivern learned about the circumstances in which she was alleged to have breached the Injunction.

23. The contempt application was filed on 4 July 2022. It alleged that, on 4 May 2022, Ms McGivern was guilty of the following 8 breaches of the Injunction:

    i) between 15.06 and 16.14, Ms McGivern parked a white Vauxhall (sic) Golf motor car [registration given] in the Exclusion Zone, in breach of paragraph 1(3) of the Injunction;

    ii) between 15.06 and 16.04, Ms McGivern entered the Exclusion Zone, in breach of paragraph 1(2) of the Injunction;

    iii) between 16.00 and 16.01, Ms McGivern approached and/or obstructed the path of a white Nissan Juke motor car driven by a contractor to the First Claimant as that vehicle was directly exiting and/or entering the Exclusion Zone, in breach of paragraph 1(4) of the Injunction;

    iv) between 16.03 and 16.04, Ms McGivern approached and/or obstructed the path of a white Nissan Juke motor car driven by a contractor to the First Claimant as that vehicle was directly exiting and/or entering the Exclusion Zone, in breach of paragraph 1(4) of the Injunction;

v) between 16.09 and 16.11, Ms McGivern entered the Exclusion Zone, in breach of paragraph 1(2) of the Injunction;

vi) at 16.09, Ms McGivern entered the Wyton Site in breach of paragraph 1(1) of the Injunction;

vii) between 16.09 and 16.11, Ms McGivern approached and/or obstructed the path of a green Vauxhall Mokka motor car driven by Jane Read, as that vehicle was directly exiting and/or entering the Exclusion Zone, in breach of paragraph 1(4) of the Injunction; and

viii) at 16.13, Ms McGivern entered the Exclusion Zone, in breach of paragraph 1(2) of the Injunction.

Particulars of each alleged breach were given in the contempt application.

24. The contempt application was supported by the Eighth Affidavit of Susan Pressick, sworn on 1 July 2022. Ms Pressick is the Site Manager and UK Administration & European Quality Manager for the UK subsidiary companies of the Marshall Farm Group Ltd (including the First and Third Claimants). Ms Pressick had no personal knowledge of the alleged breaches of the Injunction, but she produced and exhibited the CCTV footage relied upon by the Claimants to establish the alleged breaches.

25. The CCTV footage demonstrates the following facts:

i) Ms McGivern arrived at the Wyton Site at around 15.06 on 4 May 2022. She parked her white Volkswagen Golf on part of the entrance road outside the Wyton Site. It is common ground that she had parked in the Exclusion Zone imposed by the Injunction. Ms McGivern stayed at the site until leaving at around 16.15.

ii) After arriving, Ms McGivern got out of her vehicle and went first to speak to some of the protestors who were on the same side of the carriageway to the left of the entrance to the Wyton Site. She remained there until just before 4pm, when she made her way back to the main gate of the Wyton Site. At that point, the white Nissan Juke, that is the subject of ground 3 was about to leave the Wyton Site. Ms McGivern can be seen deliberately to stand in front of this vehicle, forcing it to stop. She shakes her head. After a few seconds, the vehicle reverses and Ms McGivern goes to look at a noticeboard next to the gates (not the noticeboard on which the Injunction was posted). She looks at the board for about 5 seconds, goes back into the centre of the gate area, then returns to look at the noticeboard again for up to a minute. At 16.03, Ms McGivern stands her ground, and obstructs the Nissan Juke from leaving the Wyton Site. She can be seen speaking to someone, it appears the security officer, whilst standing in front of the vehicle. The vehicle reverses about 20 seconds later.

iii) At 16.04, Ms McGivern crosses to the opposite side of the carriageway in front of the Wyton Site. The Nissan Juke leaves the site shortly thereafter. From 16.04 until 16.10, the footage shows Ms McGivern talking to some of the protestors gathered on the verge behind waist-high red and white safety barriers. Amongst the protestors is Michael Maher, the 12th Defendant, who was holding and

occasionally using a loudhailer. There is no audio recording that demonstrates what was said. At this point, Ms McGivern is standing about 4-5 metres to the left of the noticeboard where the Injunction was displayed. Whilst talking to Mr Maher and others, Ms McGivern can be seen occasionally to look back towards the gates of the Wyton Site and to shake her head. It is clear that vehicles occasionally leave the Wyton Site and that this provokes shouting by the protestors and use of the loudhailer by Mr Maher. There are occasional hand gestures by Ms McGivern and the protestors, but without knowing the conversation they are impossible to interpret.

iv) At 16.10, Ms McGivern crossed back over the carriageway. It appears that her attention has been drawn to another vehicle that is about to leave the Wyton Site. Ms McGivern walks to the gateway and stands in front of a green Vauxhall Mokka, that is the subject of ground 7. At one point, for a matter of seconds, Ms McGivern stepped into the yellow hatched area beyond the metal strip on the ground marking the property of the First Claimant. Ms McGivern, whilst standing in front of the vehicle, can be seen to be speaking to someone (who is not visible) to the right of the vehicle. The car reverses after about 20-30 seconds. Shortly thereafter, Ms McGivern points to the noticeboard to the left of the gate. At 16.11 she leaves the gate area and walks back across the road to speak again to the protestors on the opposite side of the carriageway. She can be seen speaking to them for about a minute, before she crosses the road and leaves in her vehicle, driving off at just before 16.15.

26. The Claimants contend that Ms McGivern is bound by the Injunction because, by her actions, she has brought herself within the definition of the Fifteenth to Seventeenth Defendants "Persons Unknown" and she is deemed to have been served with the Injunction as a result of the alternative service order. In her Eighth Affidavit, Ms Pressick stated that David Manning, a security officer at the Wyton Site, had posted the Injunction on the noticeboard opposite the Wyton Site at approximately 14.42 on 29 April 2022 (the time having been established by reference to CCTV footage).

27. As to the identification of Ms McGivern, Ms Pressick stated that, as a result of receipt of an email from Ms McGivern on 19 May 2022, she had looked at Ms McGivern's profile on her firm's website which included a photograph of Ms McGivern. Ms Pressick considered that Ms McGivern might be the person who she believed had "*committed… multiple breaches of the Injunction*". However, she was not sure. As a result, the Claimants' solicitors, Mills & Reeve, sent an email to Ms McGivern asking her to confirm that she was the person shown in a still image captured from the CCTV footage of events on 4 May 2022. On 19 May 2022, Ms McGivern responded:

> "I work with the Credence Law Group, who currently advise or act for a number of Camp Beagle protestors in respect of criminal matters. In my personal capacity I am assisting a number of the defendants named in the injunction proceedings… Might I inquire why you seek confirmation of my identity".

Mills & Reeve responded, on 20 May 2022:

> "In terms of enquiries as to identity, our clients were not seeking confirmation of your identity per se – rather they were seeking confirmation as to the identity of the individual in the photograph we sent, which they believe to be you. From your

> response we infer that the photograph is indeed of you, though please do correct us if in fact it is someone else".

If the Claimants and/or Mills & Reeve thought that Ms McGivern was the individual shown in the CCTV footage of events on 4 May 2022, it would have been a simple and straightforward matter for them to have said so.

28. Nothing further was said to Ms McGivern, whether in correspondence or otherwise, until Ms Bolton's announcement in Court, a month later, on 20 June 2022, that Ms McGivern had "*breached the injunction*".

29. Under a heading, "*Ms McGivern's knowledge of the Injunction Order*", Ms Pressick stated:

> "29. As I have set out above, Ms McGivern's actions on 4 May 2022 cause her to fall within the Fifteenth, Sixteenth and Seventeenth Defendant categories. Those categories of Defendant were served with the Injunction Order as per paragraphs 7 and 8 of the Injunction Order.
>
> 30. On top of that service, Ms McGivern must also have knowledge of the Injunction Order and its terms because:
>
> (i) In her email exchange with Mills & Reeve [on 19 May 2022], Ms McGivern made reference to her "assisting a number of the defendants named in the injunction proceedings, and that her firm had already been advising Camp Beagle protestors in criminal proceedings …
>
> (ii) Ms McGivern appears to have been involved with Camp Beagle and the injunction proceedings for some time. I exhibit the transcript of the Case Management Hearing on 20 June 2022… [set out in [19] above]
>
> (iii) Ms McGivern, on 4 May 2022, spent a considerable amount of time talking with the protestors (including Mr Maher [the 12th Defendant]) at the Wyton Site, who would know of the Injunction Order and its terms. Furthermore, Ms McGivern is stood (sic) speaking with protestors on 4 May 2022, she is standing within feet of the noticeboard at the Wyton Site on which the Injunction Order is posted; she simply cannot have neglected to see that noticeboard and the Injunction Order. For example, [the CCTV footage] shows Ms McGivern in close proximity to the noticeboard between the timestamps of 16.04:40 and 16.09:42 and 16.12:43 and 16.13:04."

30. The evidence in paragraph 30 is rather speculative. Having now seen the footage referred to by Ms Pressick in paragraph 30(iii), I would merely observe that Ms McGivern can be seen to be standing, talking to various people, several metres away from the noticeboard. There is no footage showing, nor is any allegation made by the Claimants, that Ms McGivern ever went to look at the noticeboard. Ms Pressick's evidence therefore has very limited relevance insofar as it is tendered on the issue of Ms McGivern's knowledge of the Injunction and its terms.

D: Ms McGivern's response and witness statement

31. The defendant to a contempt application is not required to file any evidence in response. S/he can simply require the applicant to prove the alleged breaches to the required standard. However, Ms McGivern chose to respond. First, on 10 July 2022, she provided a document titled "*Position Statement*", verified with a statement of truth. Before setting out details of her case, the following was provided by way of summary:

> "In broad terms:
>
> (a) Ms McGivern visited the Wyton Site in her professional capacity. She had no actual knowledge of the injunction or its relevant aspects;
>
> (b) She accepts that, in that capacity, she did voluntary acts which were prohibited by the injunction;
>
> (c) She avers that in all the circumstances, the contempt application should be dismissed as an abuse of process.

32. The Position Statement admitted the acts alleged against her, as shown in the CCTV footage and particularised in the contempt application, but Ms McGivern denied having knowledge of the Injunction or its terms at the time of the alleged breach. The statement concluded:

> "… Ms McGivern has reported herself to the SRA. She takes the view that, if found to be in contempt of Court, that will lead to the Solicitors Disciplinary Tribunal striking her off, regardless of the penalty (if any) imposed by this Court. Further, a finding of contempt would be likely to inhibit Ms McGivern's career even if it were allowed to continue. Even pending the hearing of the contempt application, she is unable to practice and to earn her living, so is suffering a significant and continuing penalty"

33. Having considered the Position Statement, on 12 July 2022, the following email was sent to the Claimants' solicitors by the Court:

> "The Judge has now viewed the video footage and he has read Ms McGivern's Position Statement dated 10 July 2022. The Judge is now considering what further directions should be given as to the contempt application but before doing so he would appreciate the Claimants' response to the following.
>
> The Claimants will have considered the position statement of Ms McGivern. Having regard to its contents, the purposes of contempt proceedings and the principles of proportionality, do the Claimants intend to proceed with their contempt application against her?"

34. Mills & Reeve responded to that email, on 13 July 2022:

> "Having considered the Position Statement of Ms McGivern, and noting that no formal admissions are being made, but instead what is being claimed is that it's an abuse of process and that Ms McGivern did not have knowledge of the injunction, the Claimants intend to proceed with the application..."

35. In light of that, on 13 July 2022, I made an Order directing that the contempt application would be listed on 21 July 2022. The Order also provided that, if Ms McGivern wished to rely upon any further evidence, then she could (but was not obliged) to file a witness statement by 4.30pm on 15 July 2022. As the Order was made without a hearing, it provided that any party could apply to vary or discharge, but any application to do so "*must be made by Application Notice, issued filed and served by 4.30pm on Friday 15 July 2022.*"

36. Ms McGivern duly provided her witness statement for the contempt application shortly after 11am on 15 July 2022. I will need to consider its contents in more detail below, but in summary Ms McGivern again accepted that she had done the acts captured on the CCTV footage but repeated her denial that she had any knowledge of the Injunction or its terms when she did so on 4 May 2022. The statement did, however, contain the following:

> "10. On 27 April 2022, I was in court in a criminal trial to cross examine a number of witnesses, on behalf of an unrepresented Defendant. In taking instructions on the alleged aggravated trespass, I became aware of the existence of Camp Beagle.
>
> 11. I understood that a number of supporters of Camp Beagle wanted to secure legal advice in relation to criminal investigations and charges resulting from their presence at Camp. I said I would consider whether I could assist them. I was provided with no paperwork concerning the litigation and I was not made aware of the terms of the injunction granted by the Court.
>
> 12. On 4 May 2022, I was in Court in Huntingdon. Having finished early, I decided to visit Camp Beagle to get a better understanding of the legal issues and what was happening. My satellite navigation system took me to the location and adjacent to the tents, I saw a lay-by where I could park my car. I indicated and parked in this lay-by."

There is no dispute that the "*lay-by*" to which Ms McGivern referred was actually the approach road to the entrance of the Wyton Site and Ms McGivern had in fact parked in the Exclusion Zone. What took place thereafter is covered by the CCTV footage (see [25] above).

37. As to the breaches of the Injunction alleged against her, Ms McGivern did not dispute what was shown in the CCTV footage, but in her First Witness Statement, she gave the following account of the events on 4 May 2022:

> "17. I got out of my car and approached the first people I saw, who wanted to inform me about what took place behind the gate, and about animal experimentation generally. I also had privileged conversations with those at Camp Beagle, and as a result of which, I decided to ascertain if there was an injunction in place which may have a bearing on any legal advice I might subsequently provide.
>
> 18. At some point, the gate slid open, providing me with the opportunity to identify a member of staff to talk to. I attempted several times to gain the attention of a man who looked like a security guard. I asked if there was in place any injunction or other order concerning the site. I was polite and

formal. I was also professionally dressed at the time. I do not recall seeing the intercom bell, which I am told later was on the right-hand side of the gate, on the Claimants' land.

19. The person I spoke to did not respond. I did not know if he understood my requests for information. I did not know if perhaps he had radioed for a colleague to come and answer my questions. This seemed likely, as I was dressed like a lawyer having come from court.

20. This man certainly did not tell me there was an injunction, nor did he ask me to leave. He seemed to pretend I did not exist.

21. I became increasingly frustrated, as the noticeboard to the left was of no help to me. This was my opportunity to ask questions. I therefore remained until it was clear that I was not going to receive any assistance.

22. I accept that two vehicles could not leave whilst I was asking my questions and seeking clarification. I apologies unreservedly for the inconvenience this caused. Had someone mentioned the injunction or said it is on the noticeboard on the other side of the site, I would have gone and had a look.

23. I do not accept that I was shaking my head in disapproval. I believe I was disenchanted by the shouting coming from behind me. I did not know who was exiting the site. I was hoping it was someone that could tell me about the injunction, such as a member of staff. I just did not understand why no one would communicate with me. I have never experience a situation like this before.

24. I had absolutely no intention to inflame the situation as Ms Pressick suggests in her statement. What possible benefit would this have and it did not accord with my professional duty and standing as a solicitor.

25. I had no prior interaction with the people present. I had not idea at all how they would react to the gate opening and cars leaving. I reject the assertion that my presence did inflame the protestors. I am told that they respond in the same way every time a car enters or exits the site and as I understand it, is in part the case against the defendants to the civil injunction.

26. When I crossed to the other side of the road I do not recall if I went behind the barriers. I was not at any time aware of any Noticeboard.

27. When I entered into the exclusion zone, as I now know, and on to the strip of road in front of the gate, I was trying to communicate with staff there to find out what was going on. If I had seen the intercom I would have pressed the bell and asked to speak to someone, after the security guard refused to speak with me. When I stepped on to the land I was clearly communicating or trying to read the notice board closest to the gate to try and work out what the injunction was about but this noticeboard did not have the terms of the injunction. It was obvious to anyone observing me that I was new to the site and likely to be a professional such as a solicitor from what I was wearing.

38. As to her knowledge of the injunction, Ms McGivern stated as follows in her First Witness Statement:

> "1. I … make this statement in rebutting the misplaced allegation that I was aware of the terms of the injunction granted by the Court and that when the terms were breached I was aware that I was doing so and also the consequences for doing so. This is simply untrue…
>
> …
>
> 29. I was not aware of the injunction or its potential applicability to me. Of my absence of knowledge at that time civil injunctions bearing a penal notice, that those it concerned would be fully aware of its terms usually by being served personally with the injunction itself…
>
> 30. Ms Pressick suggests that I was helping people with the civil injunction issues, so I must have known about the injunction. All of my assistance in relation to the civil matter was well after the 4 May 2022. Even then until the application was issued, and following securing legal advice myself many days later, I did not understand the concept of persons unknown. It is foreign to the criminal lawyer. I would not have understood that I was a person unknown, and thereby in breach of an injunction. I have made clear the limitation of my assistance on this day…"

E: Further evidence

(1) From the Claimants

39. Following receipt of Ms McGivern's witness statement, Mills & Reeve sent the following email to the Court, at 16.26 on 15 July 2022:

> "Our clients are considering the Witness Statement of Ms McGivern which was provided this morning...
>
> Our clients note that her position is that the Injunction was not considered at the criminal hearing regarding Ronan Falsey (the 4th Defendant) on 27 April 2022 at Peterborough Magistrates Court in which Ms McGivern represented Mr Falsey. Our clients understand that is not the case, and that the injunction was referred to and considered at the hearing on 27 April 2022 where Ms McGivern represented Mr Falsey. Our clients were requested by the Police to provide a copy of the Order as it was relevant to the hearing which our clients provided to the police at 1.41pm on 27 April 2022. Our clients therefore understand the Injunction was considered during the hearing but they are making enquiries regarding this matter.
>
> Given the seriousness of this matter and Ms McGivern only referring to the events on 27 April 2022 for the first time in her witness evidence today, our clients do seek permission to file evidence in reply, which is consistent with the directions in the other committals in these proceedings. We have recently received confirmation from the police that they would need to be provided with an order directing that they provide evidence. That is because the Police wish to remain neutral in these proceedings. Our clients are also seeing whether they can seek assistance from the CPS.
>
> Under the circumstances the Claimants request the following variation to the directions of 13 July 2022:

1. That the Claimants be permitted to file evidence in reply to the witness statement of Ms McGivern;

2. That the Court order the Police to confirm why the injunction order was requested to be provided on the 27 April 2022 to Peterborough Magistrates Court in the criminal hearing regarding Ronan Falsey, and whether the injunction was produced in court on that day;

3. That the Court adjourn the committal hearing until 2 August 2022, being the date listed for other committals in these proceedings in order to allow the Claimants sufficient time to investigate what occurred on 27 April 2022. Miss McGivern has indicated in her evidence that she is now able to practice, so the proposed adjournment should not prevent the hearing of the variation application taking place on 21st and 22nd July 2022.

Accordingly, the Claimants therefore request that the Order dated 13 July 2022 be varied to permit the Claimants to file evidence in response to Ms McGivern's evidence and obtain the relevant evidence from the Police."

40. Although not made by Application Notice in accordance with the direction given in the Order of 13 July 2022 (see [35] above), I treated that email as having been made by Application Notice. I refused the application for an adjournment and made the following order on 15 July 2022:

"1. The Claimants must file and serve any evidence in response to the Respondent's Witness Statement by 4.30pm on Monday 18 July 2022.

2. The Claimants have permission under CPR 34.3(2) to have a witness summons (or witness summonses) issued requiring the attendance of police officer(s) from Cambridgeshire Constabulary at the hearing of the Contempt Application on 21 July 2022. Any such witness summons(es) must be issued, filed and served by 4.30pn on 19 July 2022."

41. The Order provided my reasons for the Orders I made as follows:

"(A) Although the Order of 13 July 2022 made clear that any application to vary the Order must be made by Application Notice, issued, filed and served by 4.30pm on Friday 15 July 2022, exceptionally (and given the urgency) I will treat the Email as having been made by Application Notice. In the time available, it has not been possible to seek the submissions of the Respondent.

(B) The information provided in the Email about what took place at the hearing at Peterborough Magistrates' Court on 27 April 2022 appears somewhat vague. If the Claimants believe that the police *can* provide relevant admissible evidence in the terms described, then they can witness summons the relevant officer(s). It is not for the Court to order that the police provide information on a Contempt Application. It is for the Claimants to gather their evidence in support of the proceedings, whether from the police or other witnesses. The Court's processes – in the form of the use of witness summons(es) - can be employed if the Claimants consider that this is the only way that they can produce relevant admissible evidence on the Contempt Application. It remains to be seen what, if any, relevant admissible evidence is produced by this method. I am mindful that a respondent to a Contempt

Application must be provided with fair notice of the evidence against him/her. Depending on what is forthcoming, it may be that the Respondent would apply to adjourn the Contempt Application. The Court will have to deal with this as events unfold.

(C) I am not prepared to adjourn the Contempt Application at this stage. First, I do not know whether Ms McGivern would be able to attend a hearing on 2 August 2022. Second, I am doubtful whether there is sufficient time on 2 August 2022 (which is already an exceptional hearing taking place in the vacation) to complete both the Contempt Application and the adjourned cases against [two other Defendants], which must be resolved on 2 August 2022.

(D) I do not accept that the fact Ms McGivern has been given permission by the SRA to practise pending the Contempt Application reduces the urgency that I identified in the 'Reasons' section of the last Order. Ms McGivern's evidence in her witness statement is that she has had to ask her firm '*for time away from work as [she] cannot function as a consequence of this application.*' The position is therefore that although she has been permitted by the SRA to practise, she is not doing so. The urgency to resolve this application remains."

42. As indicated, I had reservations about permitting a witness summons to be used by the Claimants in support of their contempt application. There was a risk of ambush. However, it appeared to me to represent the best course to adopt in the short term. The contempt application needed to be dealt with. The Claimants had indicated that they believed that they could obtain evidence from the police that was potentially relevant to Ms McGivern's state of knowledge of the Injunction. Ultimately, the Court could address at the hearing whether any prejudice to Ms McGivern by the late service of evidence would lead to her seeking an adjournment.

43. On 18 July 2022, the Claimants filed the Ninth Affidavit of Ms Pressick in answer to Ms McGivern's witness statement. The material parts of her affidavit are as follows:

"9. Ms McGivern has been assisting Ronan Falsey since at least 27 April 2022. She accepts she has been acting for certain of the protestors since 27 April 2022 at paragraph 10 of her witness statement. On 27 April 2022, Ronan Falsey (the Fourth Defendant) had a criminal trial in respect of actions he had allegedly performed at the Wyton Site before the Peterborough Magistrates Court…

10. I was not present at the hearing on 27 April 2022. However, I was called by PC Dalton Shailes of the police on 27 April 2022 at around lunchtime who asked for a copy of the Injunction Order as they wanted to refer to it during the hearing. I sent a copy of the Injunction Order dated 19 January 2022 to PC Shailes at 13.41 [a copy is exhibited]. The reason the Claimants provided the Order dated 19 July 2022 rather than the Order dated 31 March 2022 was because the 31 March 2022 Order had not been sealed by the Court by the time of the Request. It was only sealed and received by the Claimants on 28 April 2022 at 09.57am.

> 11. In the time available, I have contacted the Head of Legal Services for Cambridgeshire Constabulary who has stated that they have spoken to PC Shailes. The Head of Legal Services informed me that:
>
> (i) PC Shailes was in the police room at the Court on 27 April 2022.
>
> (ii) An issue was raised with him about the land at the Wyton Site and what was public land and what was private land.
>
> (iii) PC Shailes was aware of the Injunction and so therefore asked me for a copy of it.
>
> (iv) Mr Falsey's representative, Ms McGivern looked at the Injunction with the Prosecutor on PC Shailes' laptop.
>
> (v) Ms McGivern made comments regarding the boundary in the maps of the injunction Order."

44. As noted, Ms Pressick exhibited a copy of the emails exchanged by her and PC Shailes on 27 April 2022.

i) At 13.13, PC Shailes emailed Ms Pressick:

> "Hi Sue,
>
> As discussed please can you send over the new injunction with map defining what is public/private land."

ii) At 13.41, Ms Pressick replied:

> "Dear PC Dalton
>
> Please see attached Injunction notice as requested – this injunction continues to be alive document by the High courts…"

Although there was some confusion at the hearing, caused largely by the way the Claimants' solicitors had provided the email chain in a redacted form, I am satisfied that Ms Pressick attached a copy of the 19 January 2022 injunction order to her email to PC Shailes.

45. The evidence given in Paragraph 11 of Ms Pressick's affidavit was recognised to be hearsay. It was also materially different from the account given in the email of 15 July 2022 (see [39] above). Mills & Reeve served a Hearsay Notice with the Affidavit. It was defective. Neither the name of the maker of the statement (the Head of Legal Services) nor the reason for not calling him/her as a witness was provided (as required by CPR 33.2(2)(b)).

46. On 18 July 2022, the Claimants issued a witness summons requiring PC Dalton Shailes to attend the hearing of the contempt application.

47. In response to that witness summons, on 19 July 2022, PC Shailes signed a witness statement. It is relatively short and, given its importance, I shall set it out in full:

> "1. I am Police Constable 897 Dalton SHAILES of CAMBRIDGESHIRE CONSTABULARY currently seconded as an investigator on Operation Vastus. I make this statement pursuant to a witness summons issued by the High Court of Justice Queen's Bench Division on the 19TH of JULY 2002.
>
> 2. On the 27TH of APRIL 2022 I was in the police room at CAMBRIDGE MAGISTRATES' COURT. I was informed by whom I cannot remember of an issue relating to the Crowns prosecution case against Ronan FALSEY. I was not the officer in the case.
>
> 3. The duty solicitor dealing with the matter was Gill MCGIVERN. The Crown Prosecution Service prosecutor was Anita ADDISON. She and MCGIVERN were discussing whether a certain area around the front gates of MBR ACRES LTD in CAMBRIDGESHIRE were public or private property.
>
> 4. I was aware of a civil injunction issued by the High Court on behalf of MBR ACRES LTD, and telephoned Sue PRESSICK and requested a copy of the injunction was emailed to me, which she complied.
>
> 5. I did not forward the email to MCGIVERN or ADDISON but allowed them to review its contents on my laptop. MCGIVERN made some comments regarding the injunction which I cannot remember.
>
> 6. I did not enter the courtroom and do not know what happened there. I am aware that the case against FALSEY was discontinued.
>
> 7. I am aware that my attendance at court may be required. I believe the facts in this statement to be true."

(2) From Ms McGivern

48. In response to this further evidence, Ms McGivern has filed a Second and Third Witness Statement, both dated 20 July 2022.

49. In her Second Witness Statement, Ms McGivern stated that, notwithstanding the late service of the Claimants' further evidence, she did not intend to apply for any adjournment of the contempt application, adding: "*As I have made clear in my evidence, I did not know of the existence of an injunction or the terms of any Order from the Court when I visited the Applicants premises and land on 4 May 2022. I have used the short space of time to make inquiries as best I can from independent sources to support my case.*"

50. Concerning the hearing at the Magistrates' Court on 27 April 2022, Ms McGivern stated that she was acting for Ronan Falsey who was due to stand trial on a charge of aggravated trespass at the Wyton Site on 7 July 2021. The hearing was at Cambridge, not Peterborough, Magistrates' Court. Prosecuting counsel was Maggy Morrissey, not Anita Addison. The case was due to start at 10am, but was put back to allow time for the prosecution to provide further evidence in support of its case. Following various applications in the morning, the case was adjourned for lunchtime at 12.30. The case was expected to resume at 13.30. Ms McGivern states:

> "9. During the lunch adjournment, I was with Ms Morrissey and the Officer in Case PC Dalton Shailes in the Police room. This meeting in the Police room occurred shortly after the start of the lunch break.
>
> 10. During this lunch break meeting, I absolutely do not recall looking at a laptop, or any discussion about an injunction at all during that meeting. As I have stated, the injunction was irrelevant as the alleged incident pre-dated the injunction. In any event, on the Claimants' evidence the injunction was only sent over at 13.41 by which time my meeting in the Police room had ended.
>
> 11. I believe that at around 13.30, I was told by Ms Morrissey that a decision had been made to offer no evidence and the claim would therefore be dismissed. To the best of my recollection I do not believe that Mr Falsey or myself were in Court when the case was dismissed.
>
> 12. I cannot remember exactly how I was made aware, but I must have told Mr Falsey that we weren't needed and would only have done so, had we been told not to go back in. This was around the time that Ms Pressick says that she was sending the email to PC Shailes.
>
> 13. Following the meeting in the Police room I was with Mr Falsey. I told him the good news that his case had been dismissed. Mr Falsey left the magistrates court and when outside he texted a friend at 13.50 saying 'charges dropped'. From this sequence of events, the decision to offer no evidence and the claim being dismissed occurred around 13.30 and following a brief discussion with me, Mr Falsey left the Magistrates court and then sent the text message.
>
> 14. By the time the injunction had been sent to PC Shailes, the case had been dismissed and I was with Mr Falsey and shortly afterwards Mr Falsey had left the Magistrates court…"

51. Ms McGivern exhibited to her statement email exchanges between her solicitor and Ms Morrissey. A hearsay notice was provided. Ms Morrissey could not be called as a witness statement because she was abroad on holiday. In an email to Ms McGivern's solicitors on 19 July 2022, Ms Morrissey stated:

> "I was the advocate dealing with the prosecution of Mr Falsey. This is one in which the Crown had to offer no evidence for two reasons.
>
> (1) No evidence he was on a public highway; and
>
> (2) No evidence to show that the establishment protested against had any of the relevant research licences which was part of the charge.
>
> Ms McGivern submitted to that effect and, fortuitously, the officer was at court from whom I was able to take instructions.
>
> Ms McGivern subsequently came to the police room where that same discussion in front of the [District Judge] was replayed to DC (sic) Shailes. She left the room and I continued my discussion with the officer. I, personally, have no recollection of an [Injunction] and nor do my notes reflect any such discussion."

52. Ms McGivern's Third Witness Statement does not contain any evidence relevant to the contempt application.

F: The hearing of the contempt application

53. Three witnesses were called to give evidence for the Claimants: Ms Pressick, PC Shailes and David Manning. Although the Affidavit from Mr Manning had not been provided in accordance with the directions for service of evidence, in the end no objection was taken by Ms McGivern to his giving evidence.

54. As most of the relevant evidence provided by Ms Pressick was in the form of the CCTV footage that she produced, she was not cross-examined on any of the evidence as to Ms McGivern's alleged breach of the Order. Mr Underwood QC asked her some limited questions about the email she had sent to PC Shailes.

55. When he gave evidence, PC Shailes confirmed the contents of his witness statement (see [47] above) and was then cross-examined by Mr Underwood QC. PC Shailes confirmed that he had not taken a note of the events on 27 April 2022. He had first been asked to recall them on 18 July 2022, when he was asked by his Detective Sergeant to provide any information he had regarding discussions with Ms McGivern. PC Shailes stated that he had told her what was contained in his statement. When asked about the additional piece of information, recorded in Paragraph 11(v) of Ms Pressick's Ninth Affidavit (see [43] above), PC Shailes replied: "*I don't know who wrote that, so I can't comment on it*". More generally, asked how good his recollection of the events of that day was, PC Shailes answered: "*I can recall the day. Of course, there's going to be bits that I forget because it's been several months since then.*" Mr Underwood QC asked how confident he was that he had correctly identified the name of the prosecutor. PC Shailes replied that the name of the prosecutor had been provided to him by the "*case team*" and that if the name was incorrect then he had been "*misinformed*". The officer could not say whether he knew Ms Morrissey. He attended Cambridge Magistrates' Court once every three to four months.

56. PC Shailes could not remember whether Ms McGivern and Ms Morrissey had arrived in the police room together and, as he had not been in Court, he could not confirm whether they arrived after the Court had adjourned for lunch at around 12.30. There followed this exchange (which I need to set out because of a point raised by Ms Bolton):

> Q: I'm going to suggest to you that by the point [Ms McGivern and Ms Morrissey arrived in the police room] the email hadn't arrived from Ms Pressick. What do you say about that?
>
> A: Again, I'm not aware, I can't recall the timings of exactly when the emails were sent or when people walked in.
>
> Q: But you can recall the sequence?
>
> A: I can't, no.
>
> Q: And I'm going to suggest that when Ms McGivern and the prosecutor saw you in the room to discuss the matter with you, the email had not arrived. What do you say?

A: Again, I don't know.

With that answer, Mr Underwood QC completed his cross-examination.

57. In re-examination, Ms Bolton repeated a part of the cross-examination where PC Shailes had initially confirmed that that he recalled what was included in paragraph 11(v) of Ms Pressick's witness statement, and then asked him what maps were being commented upon. PC Shailes answered that they were the maps of outside MBR Acres in Wyton that were part of the Injunction.

58. David Manning, the security officer at the Wyton Site, was called to give evidence about the posting of the Injunction on the notice board opposite the Wyton Site, in purported compliance with the alternative service order. In his Sixth Affidavit, Mr Manning stated that, on 29 April 2022, he had received, by email from Mills & Reeve, copies of the Injunction and two letters to be attached to the noticeboard. The Injunction and letters were printed out, and Mr Manning then put the documents on the noticeboard. Four copies of the documents were placed in a post-box underneath the noticeboard to enable them to be taken away. He exhibited copies of the documents that he had attached to the noticeboard. The letter from Mills & Reeve was a two-page document, dated 29 April 2022, and headed "VERY URGENT. THIS LETTER SERVES AN INJUNCTION ORDER OF THE HIGH COURT WHICH YOU ARE HEREBY DEEMED ON NOTICE OF" ("the 29 April Letter"). At the top right corner of the first page appeared an email address, and at the bottom of the page the address of Mills & Reeve was provided. The first page of the document (and half of the second) was taken up with identification and description of the categories of "Persons Unknown" who were Defendants to the proceedings. Under that, on page 2 of the 29 April Letter, appeared the following:

> "Dear Sirs/Madams,
>
> **Claim Number: QB-2021-003094: MBR Acres Limited and Others -and- Free the MBR Beagles and Others (the "Proceedings")**
>
> By way of service a copy of the Injunction Order of Mr Justice Nicklin dated 31 March 2022 and sealed on 27 April 2022 has been uploaded onto the following shared file website [2nd Dropbox Address given]
>
> Breaching the terms of this Injunction Order may lead to proceedings being issued for contempt of Court. You should therefore read the contents of the Injunction Order and ensure that you comply with the terms of the Injunction…"

59. When cross-examined by Mr Underwood QC, Mr Manning confirmed that he did not read the documents that he was instructed to place on display on the noticeboard. He just followed his instructions to place them there. Each document was displayed in a plastic envelope attached to the board. The noticeboard was contained in a locked glass-fronted cabinet so that the documents could not be removed. Mr Manning confirmed that only the first page of the 29 April Letter was displayed.

60. In addition to the CCTV footage (see [25] above), a recording from a security officer's body-worn camera was played at the hearing. This did have an audio track, but it is very difficult to decipher what was being said because largely it was drowned out by the protestors' shouting. The Claimants put to Ms McGivern that she could be heard saying

to the security officer, "*I want to know if you think I'm legal standing here?*" Ms McGivern thought that she had asked whether it was "*okay*" for her to be standing there. What is confirmed by the body-worn footage is that the security officer was walking by the side of the two vehicles as they were attempting to leave the Wyton Site and Ms McGivern can be seen to be speaking to the security officer on each occasion when the car comes to a stop. After the Nissan Juke reverses back inside the site, the security officer can be seen to go stand at the open window of one of the buildings.

61. Ms McGivern gave evidence in her defence at the hearing. She was cross-examined, in total, for over a day. The length of the cross-examination was largely a result of its repetitive nature; several questions were long, or hypothetical, or both. I only made limited interventions. Ms McGivern, given her position as a criminal advocate, was not prejudiced in giving her evidence by the objectionable form of many of the questions she was asked. Ms McGivern gave clear answers to all proper questions asked of her. Just before lunch on the first day, after Ms McGivern had been cross-examined for over an hour, I did intervene to suggest to Ms Bolton that questions that began "*If…*" were unlikely to assist me because they were only likely to elicit Ms McGivern's comment on a hypothetical scenario.

62. Several themes emerged from Ms Bolton's cross-examination.

    i) The primary case, advanced on behalf of the Claimants, was that Ms McGivern had, by reason of reading the copy of the Injunction on PC Shailes' laptop at Cambridge Magistrates' Court, actual knowledge of the terms of the Injunction. Therefore, her actions on 4 May 2022 were deliberate and "*flagrant*" breaches of the Injunction showing a "*wanton disregard*" for its terms. It was put to Ms McGivern, in terms by Ms Bolton, that, by standing in front of the vehicles, she was "*defying the injunction*".

    ii) A secondary case emerged during the course of the cross-examination. That was that Ms McGivern, as a result of her discussions with the protestors at the site on 4 May 2022, and given that she was a solicitor, must have realised, before she obstructed the vehicles and committed the other alleged breaches of the injunction, that there was an injunction in place and therefore she had actual knowledge of its terms.

    iii) Finally, Ms Bolton pursued a line of questions which, it appeared, was designed to support an argument that Ms McGivern had constructive knowledge of the terms of the injunction. The contention being that, even if she had not learned the actual terms of the injunction through discussion with the protestors, Ms McGivern must have realised that there was an injunction in place, and she recklessly failed to inform herself of the terms by neglecting to go to the noticeboard where a copy of the Injunction was displayed.

63. Contrary to the claim made at the hearing on 20 June 2022, Ms Bolton did not suggest to Ms McGivern that she was acting as a protestor on 4 May 2022. However, Ms Bolton did take up time in cross-examination reviewing with Ms McGivern her Facebook account and "friends" on that platform. The only purpose of this cross-examination was to attempt to suggest that Ms McGivern was herself supportive of the protestors and therefore willing to breach the terms of the Injunction.

G: Submissions

64. For the Claimants, Ms Bolton's fundamental submissions were straightforward. Ms McGivern became subject to the injunction by doing an act or acts that brought her within the definition of one or more categories of the Fifteenth to Seventeenth "Persons Unknown". Thereafter, she is taken to have sufficient notice of the terms of the Injunction by operation of the alternative service order. This conclusion is a product of principles established by ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658** and ***Cuciurean -v- Secretary of State for Transport*** **[2021] EWCA Civ 357**.

65. First, as to capturing people as defendants by operation of the definition of "persons unknown", there is the Court of Appeal decision in ***Gammell***. Sir Anthony Clarke MR explained:

> [32] In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Thus in the case of WM she became a person to whom the injunction was addressed and a defendant when she caused her three caravans to be stationed on the land on 20 September 2004. In the case of KG she became both a person to whom the injunction was addressed and the defendant when she caused or permitted her caravans to occupy the site. In neither case was it necessary to make her a defendant to the proceedings later.

66. The *Gammell* principle – that people can subsequently fall within the definition of Persons Unknown as a result of doing some act after the grant of the interim injunction – has been recognised in subsequent decisions: ***Cameron*** [15]; ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100** [30]; ***Canada Goose UK Retail Ltd -v- Persons Unknown*** **[2020] 1 WLR 2802** [66] and most recently in ***LB Barking & Dagenham -v- Persons Unknown*** **[2022] 2 WLR 946** [25]-[31].

67. I would note however, that, in the following parts of his judgment in ***Barking***, Sir Geoffrey Vos MR suggested that the *Gammell* principle operated to make a newcomer a party to the proceedings (and bound by an injunction) only when s/he had *knowingly* breached the injunction (emphasis added):

> "[***Gammell***] decided that there was no need to join newcomers to an action in which injunctions against persons unknown had been granted and <u>knowingly</u> violated by those newcomers" [30]
>
> "… it was essential to the reasoning [in ***Gammell***] that such injunctions, whether interim or final, applied in their full force to newcomers <u>with knowledge of them</u>" [31];
>
> "Lord Sumption [in ***Cameron***] seems to have accepted that, where an action was brought against unknown trespassers, newcomers could, as Sir Anthony Clarke MR had said in ***Gammell***, make themselves parties to the action by <u>(knowingly)</u> doing one of the prohibited acts. This makes perfect sense, of course, because Lord Sumption's thesis was that, for proceedings to be competent, they had to be served. Once Ms Gammell <u>knowingly</u> breached the injunction, she was both <u>aware of the proceedings</u> and made herself a party" [37]; and finally

> "… one can see that, assuming these statements were part of the essential decision in ***Cameron***, they do not affect the validity of the orders against newcomers made in ***Gammell*** (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating those orders (***Gammell*** [32])" [38]

68. I do not find it easy to reconcile a requirement of *knowing* breach of injunction, as a pre-requisite for becoming a "Persons Unknown" defendant by operation of the *Gammell* principle, with the earlier decision of the Court of Appeal in ***Cuciurean***, in which the Court rejected any requirement of "*knowing*" breach. What was required, the Court of Appeal held in that decision, was notice or service of the relevant order, and that could be achieved by alternative service.

69. In ***Cuciurean***, committal proceedings were brought against the appellant. He had not been named as a defendant in the underlying proceedings, but an injunction had been granted against "persons unknown". The appellant had argued that, for him to be liable for contempt for breaching the "persons unknown" injunction, he had to be shown to have knowledge of its terms. This argument was rejected. Warby LJ gave the judgment of the Court of Appeal:

> [54] The Judge found that the service requirements of the March Order reflected an unimpeachable application by Andrews J of the ***Canada Goose*** guidance, and that those requirements were complied with. The Judge noted that neither Counsel had been able to identify any authority supporting the existence of any requirement of "*knowledge*" of the order, independent of the requirement that the order be served. He found it hard to see "*how there is space*" for the existence of any such requirement. He held that it was for the judge making the order to determine whether any and if so what order for service by an alternative means was appropriate. But he did not consider that the question of service could be "*altogether disregarded*" on an application for committal. He concluded that, despite the absence of any rule or authority to this effect, the right approach in principle was that "*provided the person alleged to be in contempt can show that the service provisions have operated unjustly … the service against that person must be set aside.*"
>
> [55] The complaint is that this involves an impermissible reversal of the burden of proof, requiring the appellant to prove a case for setting aside service on the grounds of injustice. The Grounds of Appeal assert that "*The correct test is whether there was good service or not, which is for the claimant to prove beyond reasonable doubt, including negativing any suggestion of injustice raised by the defendant.*"
>
> [56] This is a problematic formulation. It assumes that in order to establish "*good service*" a claimant must prove not only that what was done complied with the rules or the relevant Court order but also something more, including (if the issue is raised by the defendant) that proceeding on that basis is not unjust. As the Judge observed, there is no authority to support any such proposition. More than that, the proposition appears to be contrary to authority. The effect of the authorities was summarised by Lord Oliver in ***Attorney General -v- Times Newspapers Ltd*** **[1992] 1 AC 181, 217-218**:

> "One particular form of contempt by a party to proceedings is that constituted by an intentional act which is in breach of the order of a competent court. Where this occurs as a result of the act of a party who is bound by the order … it constitutes a civil contempt by him which is punishable by the court at the instance of the party for whose benefit the order was made and which can be waived by him. The intention with which the act was done will, of course, be of the highest relevance in the determination of the penalty (if any) to be imposed by the court, but the liability here is a strict one in the sense that all that requires to be proved is service of the order and the subsequent doing by the party bound of that which is prohibited."

[57] The proceedings in ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29** were conducted on that basis. It was common ground that the ingredients of civil contempt were those identified in ***FW Farnsworth Ltd -v- Lacy*** **[2013] EWHC 3487 (Ch)** [20] (above) but it was understood that proof that these were met would not necessarily establish knowing disobedience to the order. HHJ Pelling QC addressed the possibility that "*the respondents did not, in fact, know of the terms of the order even though technically the order had been served as directed*". He identified this as an issue "*relevant to penalty if that stage is reached*", observing that in such a case "*it is highly likely that a court would consider it inappropriate to impose any penalty for the breach…*": [2019] E30MA3131 [14]. On appeal, this Court endorsed this as a "*sensible approach*": *Cuadrilla* (above) [25].

[58] These authorities indicate that (1) in this context "*notice*" is equivalent to "*service*" and *vice versa*; (2) the Court's civil contempt jurisdiction is engaged if the claimant proves to the criminal standard that the order in question was served, and that the defendant performed at least one deliberate act that, as a matter of fact, was non-compliant with the order; (3) there is no further requirement of *mens rea*, though the respondent's state of knowledge may be important in deciding what if any action to take in respect of the contempt. I agree also with the Judge's description of the appellant's argument below: "*it replaces the very clear rules on service with an altogether incoherent additional criterion for the service of the order.*" But nor am I comfortable with the notion that service in accordance with an order properly made can be set aside if the respondent shows that it would be "*unjust in the circumstances*" to proceed. This is not how the Court saw the matter in ***Cuadrilla***, nor is it a basis on which good service can generally be set aside. It also seems to me too nebulous a test.

[59] Ms Williams may have harboured similar misgivings, as the argument she advanced at the hearing was not the same as the written ground of appeal. She accepted that the requirements of *knowledge* and *intention* in this context are limited in the ways I have indicated; but she invited us to find that the requirement of *notice* calls for more than proof that the order which it is sought to enforce was duly served. Her submission was that, the aim of service being to bring the nature and contents of the order to the attention of the respondent, it must be incumbent on the applicant to establish in addition (and to the criminal standard) that the steps taken were in fact effective for that purpose, or could reasonably be expected to be so. In support of this argument, Ms Williams referred us to ***Cuadrilla*** [57]ff. She cited the words of Lord Sumption in ***Cameron -v- Liverpool Victoria Insurance Co Ltd***

> **[2019] 1 WLR 1471** [21], those of Longmore LJ in ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100** [34(3)], and paragraphs [46], [82(1) and (4)] of ***Canada Goose***.
>
> [60] I do not find these arguments persuasive. The cases cited were concerned with the form an order should take, and the criteria to be adopted when considering what, if any, provision to make for alternative forms of service in proceedings against persons unknown. The cases make it clear that any provision for alternative service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant. But that is a standard to be applied prospectively. I can see that, in principle, a defendant joined as a person unknown might later seek to set aside or vary an order for service by alternative means, on the grounds that the Court was misinformed or otherwise erred in its assessment of what would be reasonable. But that is not this case. It is accepted that the relevant criteria were correctly identified and faithfully applied by Andrews J. None of the cases cited supports the further proposition advanced by Ms Williams, that on a committal application such as this the applicant and the Court must revisit the position retrospectively. Nor does it seem to me that we should adopt such a criterion even if (which I doubt) we were free to do so. It seems most unsatisfactory. Indeed, the concept of a hindsight assessment of what could reasonably be expected to happen is hard to grasp. It seems to me that in substance and reality the submission is that the applicant must prove actual notice, which is not what the authorities say.
>
> …
>
> [62] One can perhaps understand the unease referred to by the Judge at the notion that a person may be held in contempt of court even though he is not shown to have had actual knowledge of the relevant order, or its relevant aspects. For my part, I doubt this is a dilemma to which a solution is required. The situation does not seem likely to occur often. And if it does then, as this Court indicated in ***Cuadrilla***, no penalty would be imposed. I do not see that as problematic in principle, especially as this is a civil not a criminal jurisdiction. If there is a problem, my view is that it cannot properly be resolved by the adoption of Ms Williams' approach. Various other procedural mechanisms were canvassed as possibilities during argument in this case. They included an application to set aside the original order, with its deeming provision, and an application to stay or dismiss the contempt application as an abuse of process – both matters on which the onus would fall upon the respondent to the application. This all seems to me to be needlessly complex. But I do not think it necessary to reach a conclusion. On the evidence before the Judge, and in the light of his findings of fact, the appeal would fail even if we accepted Ms Williams' submissions on the requirement of notice.

70. ***Cuciurean*** is therefore authority for the proposition that, providing there has been compliance with the terms granting permission to serve the injunction order by alternative means, the respondent will be taken to have notice of the terms of the injunction. There is no requirement of knowledge. Ignorance of the terms of the injunction is relevant only to penalty, not liability, although where the Court was satisfied that the respondent was ignorant of the relevant order or its terms, then no penalty would be imposed for what would amount to a wholly technical breach.

Cuciurean was not apparently cited to, or considered by, the Court of Appeal in ***Barking***.

71. Before I leave this point, I would merely note that the difficulties with the operation of the *Gammell* principle in this area is not confined to the issue of liability for contempt. During the hearing, I raised the position of Ms McGivern as now being a defendant to the proceedings. Having, by her actions, brought herself within one or more of the categories of "Persons Unknown", Ms McGivern had become a defendant to the proceedings. Whilst it is correct that, in ***Gammell***, Sir Anthony Clarke MR stated that it was not "*necessary*" to join such a person as a defendant to the proceedings, that was because, by her actions, she had already *become* one.

72. But how is this principle to work in practice? In ***Gammell***, the underlying claim was simple. That will not always be the case, and this case rather demonstrates how complex the underlying proceedings in which the "Persons Unknown" injunction has been granted can become. The direct question I asked of Ms Bolton was whether the Claimants intended now to pursue a claim against Ms McGivern. I received no answer.

73. If they do, the Particulars of Claim will need amendment so that Ms McGivern will know what claim(s) are being made, and relief sought, against her. Thereafter, Ms McGivern will need to file an Acknowledgement of Service and, if she intends to defend the claim, a Defence. If the Claimants do not intend to proceed with a claim against Ms McGivern, how is her position as a defendant to the proceedings to be resolved? If no claim is to be pursued, must the Claimants serve a notice of discontinuance? And if they do, does Ms McGivern remain bound by the "Persons Unknown" injunction on the basis of the historic acts that put her into one of more of the categories of "Persons Unknown"? All of these issues remain to be resolved.

74. Finally, under CPR 6.15(4)(c), an order granting permission for alternative service of the Claim Form is *required* to provide the period for filing an Acknowledgement of Service, admission or Defence (see [10] above). How that is to be achieved when the alternative service order is supposed to apply to newcomers is unclear and appears to me to be unworkable. These perhaps are some of the consequences of moving civil litigation out of its established and conventional bounds and into the uncertain territory of prohibitions by injunction that are potentially binding on the whole world.

75. Mr Underwood QC submitted that I should dismiss the contempt application for two reasons. First, the Claimants had failed to comply with the alternative service order. As such, they could not establish, to the criminal standard that the injunction order had been properly served (see ***Cuciurean*** [58]). Second, I should accept Ms McGivern's evidence that she knew nothing of the injunction order and that either the contempt application should be dismissed as frivolous, or, as a wholly technical breach, no penalty should be imposed.

76. The first of these grounds needs some further explanation. Mr Underwood's argument is as follows:

    i) The requirements for alternative service of the injunction order were set out in Paragraph 7 of the order (see [17] above).

ii) Materially, this required the Claimants to display the Injunction and a letter which *explained* to the "Persons Unknown" defendants that they could access copies of the evidence in support of the injunction application, the skeleton argument, and a note of the hearing at a designated website address.

iii) The Claimants have failed to comply with these requirements because:

(a) (as confirmed by Mr Manning's evidence – see [58] above) only the first page of the covering letter was displayed;

(b) the letter, in any event, did not explain that copies of the evidence in support of the injunction application, the skeleton argument and a note of the hearing could be obtained from the designated website address; and

(c) the Dropbox address provided in the letter was not the Dropbox address that had been stated in the Order.

iv) The Court should require strict compliance with these requirements – proved to the criminal standard – because it is by this process that the Court deems that the relevant person has properly been given notice of the injunction order.

77. Ms Bolton argues, in response, that Mr Manning's evidence indicates that the full copy of the letter was provided in the box under the noticeboard.

H: Decision

78. Although Mr Underwood QC's arguments on non-compliance with the alternative service order are technical, rather than substantive, in my judgment he is correct to submit that the Court should require strict compliance with the terms of an alternative service order if that is to be relied upon, in a contempt application, as the basis on which notice of the injunction order is to be established. The requirement is to establish service or notice of the injunction order to the criminal standard. Although there appears to be some tension between ***Cuciurean*** and ***Barking*** as to the basis on which someone becomes bound by an injunction order, the Claimants have relied upon ***Cuciurean***. As such, the Court should require strict adherence to the terms of the alternative service order. The Claimants have failed to comply with those terms for the reasons identified by Mr Underwood QC. Mr Manning's placing of four copies of the documents in a place different from that directed by the Injunction is no answer, not least because it does not overcome the issue as to the flawed terms of the letter.

79. This decision alone would lead to the dismissal of the contempt application. However, in case I were to be wrong on the service point, and in fairness to Ms McGivern, I will go on to consider the application on the basis that the Claimants have proved, to the criminal standard, that Ms McGivern had been given notice of the Injunction by operation of the alternative service order.

80. At the beginning of her cross-examination, Ms Bolton informed Ms McGivern that she would not be pursuing grounds 1 and 2 in the contempt application. Ms Bolton suggested that was because to do so "*would take up time… that isn't necessary*". In fact, and as was probably appreciated (albeit belatedly by the Claimants' advisors), the first

two grounds were hopeless and bound to fail. At the time of the alleged commission of the first two breaches of the Injunction, Ms McGivern had not, by her actions and operation of the *Gammell* principle, brought herself within the definition of any of the categories of "Persons Unknown". It was the third alleged breach that did so. From that point onwards, she was bound by the Injunction under the *Gammell* principle.

81. Ms McGivern has never disputed the factual allegations of what she did on 4 May 2022, or that they were a breach of the Injunction. The issue is whether she had knowledge of the terms of the injunction when she did these acts. On this, I can state my conclusions on the evidence very shortly.

82. Ms McGivern was a conspicuously honest and careful witness. I accept her evidence as truthful. In particular, I accept that she was not shown, and did not consider, the Injunction on PC Shailes' laptop at the Cambridge Magistrates' Court on 27 April 2022. Her evidence on this point is also corroborated and supported by the hearsay evidence of Ms Morrissey and, particularly, by the timing of the arrival of the email. I accept Ms McGivern's evidence that, by 13.41, she and Ms Morrissey had concluded their discussion about Mr Falsey's case and Ms Morrissey had obtained instructions to offer no evidence against him. Given that the Court is likely to have begun sitting after the luncheon adjournment at around 13.30, and Mr Falsey had texted a friend at 13.50 to confirm that proceedings against him had been "*dropped*", there simply is not time for the discussions (and importantly the decision making that would have been consequent on them) to have taken place. It may be that the Injunction was discussed between the officer and Ms Morrissey after it arrived at 13.41, but I find that those discussions did not include Ms McGivern.

83. In that respect, I consider that PC Shailes was an honest, but mistaken witness. The reliability of PC Shailes' recollection was undermined by (a) his mistake as to the identity of the prosecutor; (b) his mistake as to the location of the Magistrates' Court; and (c) the fact that he had only been asked for his recollection some months after the relevant events and had made no notes. This event is unlikely to have struck PC Shailes as being important at the time. Consequently, I am satisfied that PC Shailes has simply misremembered what took place.

84. I also reject the alternative bases for establishing that Ms McGivern had actual or constructive knowledge of the terms of the Injunction (see [62(ii)] and [62(iii)] above). In the absence of evidence that the Injunction has been served, constructive knowledge is insufficient to sustain liability for contempt. In those circumstances, it is a question of fact, not whether the terms of the injunction *should* have come to the attention of the alleged contemnor, but whether it *did*. The cross-examination on these points was speculative and, in places, devoid of reality, for example suggestions made about people pointing at the noticeboard and an allegation, put to Ms McGivern without any evidence to support it, that she had been discussing the Injunction with the protestors.

85. At one point in her cross-examination, after Ms Bolton had put to her, again, that she had known the terms of the Injunction and, on 4 May 2022, she had been "*challenging and defying it*", Ms McGivern responded, "*And risking everything?*". At the end of her evidence, I asked Ms McGivern to expand on that answer. This was her response:

> "It's the claimants' case that I did know, and it's their case that I knew as a lawyer. So, if I had known that day that there was an injunction in place and that it would

> affect me as a person unknown, if I had known that attached to that injunction that there was an exclusion zone, I must surely have taken a calculated risk, if I had known that, by parking in plain sight within that exclusion zone.
>
> It can only have been a calculated risk that a lawyer would have taken if she had known the actual facts. And here I am, this is the implication of somebody knowingly breaching an injunction, in court for contempt with all of my colleagues knowing that.
>
> If I lose, I could lose my home. I will lose my reputation. I haven't slept, I have barely eaten.
>
> I might sound coherent, but I am falling apart. That is not a risk I would have knowingly taken, not for any cause in the world, particularly not a cause that I had only been made aware of less than an hour ago. I am not stupid. There are things, as Ms Bolton suggests, respectfully, that I should know as a human being. But on that day, I didn't know there was an injunction. I would not have breached it.
>
> I've spent over 30 years as a lawyer within our justice system. I am one of the fiercest fighters and protectors of this system. I think it is the single best defining feature of a civilised society. I talk to people throughout my life about the independence of the judiciary, particularly when you look at the situation in the United States of America. I am so proud to be a lawyer and to have fought for the underdog for 30-plus years. I would not have risked that.
>
> Maybe if it's suggested if this had been my cause for years. Maybe if I have been an animal rights protester for years. I never have been. I should have been, but I haven't because I wasn't — I didn't know about the plight of these animals on 4 May, and I did not know I had breached that injunction, so help me God."

86. I have set out that answer in full, not only because I was impressed with it, but because it highlights a fundamental issue: why would Ms McGivern "*risk everything*" by breaching the Injunction. The consequences for her, if found to be in contempt of court, would have been career-ending. Rather faintly, Ms Bolton suggested in cross-examination that Ms McGivern was working on the basis that she would never be identified. I reject that. As Ms McGivern pointed out in her evidence, when this hypothesis was put to her, she had arrived at the scene in her own vehicle. In her closing submissions, Ms Bolton was driven to submit that, in the passage of evidence I have set out above, Ms McGivern was practising an enormous deception; it was all an act. I reject that submission.

87. Before leaving this issue, I need to deal with a submission that Ms Bolton made to me to the effect that I was *bound* to accept PC Shailes' evidence, and to reject the evidence of Ms McGivern. This was so because, she argued, Mr Underwood QC had not properly challenged the officer to the effect that he had not shown the injunction to Ms McGivern on his laptop. Ms Bolton's submission even went so far as to contend that I was *bound* to find that Ms McGivern was a liar because of this supposed failure in the cross-examination of PC Shailes. In support of this, Ms Bolton relied upon ***Browne -v- Dunn* (1894) 6 R 67**; ***Markem Corporation -v- Markem Technologies Ltd* [2005] EWCA 267**; and ***Abdulrida -v- Al-Najar* [2021] EWHC 398 (Ch)**. None of these was authority for the startling proposition advanced by Ms Bolton.

88. I reject the proposition of law advanced by Ms Bolton. I am satisfied that the rule is accurately stated in *Phipson on Evidence* (12th edition, 2022, Sweet & Maxwell). In §12-12, the authors state (footnotes omitted):

> "In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal. In general the CPR does not alter that position.
>
> This rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty submitting that the evidence should be rejected. Thus where, during trial, a witness has not been challenged as inaccurate, it was not appropriate for that evidence to then be challenged in closing speeches.
>
> However, the rule is not an inflexible one. For example, if there is a time-limit imposed by the judge on cross-examination it may not be practicable to cross-examine on every minor point, particularly where a lengthy witness statement has been served and treated as evidence-in-chief. Thus, in practice there is bound to be at least some relaxation of the rule.
>
> Failure to put a relevant matter to a witness may be most appropriately remedied by the court permitting the recall of that witness to have the matter put to him."

89. I have also considered the Court of Appeal's decision in ***Griffiths -v- TUI (UK) Ltd*** **[2022] 1 WLR 973** which is referred to in this passage from *Phipson*. A point that I put to Ms Bolton in argument was that this rule was principally concerned with two things: fairness to a witness (i.e. not inviting a tribunal of fact to disbelieve his/her evidence if not challenged) and the fairness of the proceedings. It was not a rule that bound the tribunal of fact.

90. In an adversarial system, an obligation falls on the party to put questions on any significant factual issue upon which that party intended to rely to any witness of his opponent who could reasonably be expected to have relevant evidence to give on the point. A failure to observe these principles does not immediately put the tribunal of fact into a straitjacket, dictating what evidence must be accepted and what must be rejected. It may be that basic fairness would compel a Judge to refuse to condemn a witness as a liar if s/he had not been given an opportunity to address the challenge to his/her honesty. But that example is stark. In most other cases, the failure to put a relevant point to a witness is likely simply to be a factor in the Court's overall assessment of the evidence. In ***Griffiths -v- TUI*** [81], Nugee LJ said this:

> "As a matter of basic principle it is the function of trial judges to evaluate all the evidence before them in reaching their conclusions on the factual issues. That includes deciding what weight should be given to the evidence. I see nothing in the authorities that suggests that that obligation to assess the evidence falls away if it is 'uncontroverted'; uncontroverted evidence still has to be assessed to see what assistance can be derived from it, viewed in the context of the circumstances of the case as a whole. Uncontroverted evidence may be compelling, but it may not be: it may be inherently weak or unhelpful or of little weight for other reasons."

91. That is the case here. Ultimately, my duty as the Judge is to assess the evidence presented on the contempt application. In this case, the principal issue in dispute is whether Ms McGivern knew of the terms of the Injunction as a result of being permitted to review it on PC Shailes' laptop. I accept Ms McGivern's evidence on this. I have explained why I have not found PC Shailes' evidence to be reliable. I am not bound to reject Ms McGivern's evidence as a result of the cross-examination of PC Shailes. It was not Ms McGivern's case, in cross-examination, that PC Shailes was lying. Her case was that his evidence was not reliable. It may be that strict adherence with the rule may have suggested that Mr Underwood should have put one further question in cross-examination, to the effect that PC Shailes was mistaken in his recollection, but that is as far as the point goes. Ms Bolton did not, in fact, seek permission to recall PC Shailes to have Mr Underwood put this question to him. Perhaps that was a recognition of the futility of seeking to do so.

92. I accept Ms McGivern's evidence that, when she acted as alleged on 4 May 2022, she did not know that there was an injunction or its terms. At its highest, and as a result of conversations she had with protestors at the site, Ms McGivern wanted to find out whether there was an injunction in place. She attempted to ascertain from staff of the First Claimant whether there was any such order. They did not assist her. Her inquiry of the security officer (see [60] above) is consistent with that state of mind. It does not demonstrate knowledge of the Injunction and its terms. It may be that the actions of Ms McGivern in obstructing the two vehicles were not, as she accepted, her "*finest hour*", but in my judgment she was simply standing her ground in the hope that someone would come and respond to her inquiries. Objectively judged, Ms McGivern's alleged breaches of the Injunction were all trivial. She obstructed two vehicles for probably no more than 20 seconds on each occasion. She was in the exclusion zone, and she set foot, for a very short period, on the First Claimant's land.

93. At the hearing, I asked Ms Bolton whether the Claimants' contention was that, if I accepted Ms McGivern's evidence as to her lack of knowledge of the Injunction, then applying ***Cuciurean*** the Court should impose no penalty. Ms Bolton agreed. If the governing principles are those set out in ***Cuciurean***, then, based on my findings, the Court would impose no penalty on Ms McGivern, as the Claimants accept. If the law is as stated in ***Barking***, and the *Gammell* principle operates only upon those who knowingly breach an injunction, then the contempt application fails. I do not need to resolve this dispute because, for the reasons set out in this judgment, I have decided simply to dismiss the contempt application.

94. I have found it very difficult to understand the motive(s) behind the Claimants' tenacious pursuit of Ms McGivern and the way that the contempt application has been pursued. First there is the delay in commencing the proceedings. Then there is the failure to send any form of letter before action to Ms McGivern giving her the opportunity to give her response. Next, the Claimants' response to the evidence of Ms McGivern, provided first in a position statement and then in a witness statement, both verified by a statement of truth. The contempt application was pursued in the face of this evidence. The Claimants did so on a somewhat speculative basis relying upon the evidence of PC Shailes (inaccurately trailed first in the email from Mills & Reeve to the Court on 15 July 2022 – see [39] above) and which was only obtained after serving a witness summons, on the eve of the Contempt Application. Finally, the Claimants persisted in a cross-examination of Ms McGivern in which allegations of

the utmost seriousness were made suggesting, not only that had she, a solicitor, had deliberately breached a court injunction, but that she had brazenly and repeatedly lied for over a day in the witness box. The evidential support for this line of cross-examination was tissue thin.

95. In his skeleton argument, Mr Underwood QC submitted that the contempt application was an abuse of process. Certainly, allegations were made by some of the unrepresented Defendants that action had been taken against Ms McGivern because she was a lawyer helping some of the protestors. That would be the form of abuse of process by using proceedings for a collateral purpose. I can understand why they might suspect this, but Mr Underwood QC did not put any such suggestion to Ms Pressick when she gave evidence. I am unable to reach a conclusion as to the Claimants' motives for pursuing Ms McGivern. All I can say is I find them very difficult to understand.

96. In my judgment this contempt application has been wholly frivolous, and it borders on vexatious. The breaches alleged were trivial or wholly technical. Apart from a technical trespass, it is difficult to identify any civil wrong that was committed by Ms McGivern. At worst, obstructing the vehicles for a short period might be regarded as provocative, but there were no aggravating features. As the Claimants must have appreciated, this was not the sort of conduct that the Injunction was ever intended to catch. The Court does not grant injunctions to parties to litigation to be used as a weapon against those perceived to be opponents. At its commencement, this contempt application was based almost entirely upon deemed notice of the terms of the Injunction by operation of the alternative service order. Once Ms McGivern had provided evidence confirmed by a statement of truth that she had no knowledge of the Injunction, the Claimants should have taken stock as to the prospect of success of the contempt application and, particularly, whether there was a real prospect of the Court imposing any sanction for the alleged breaches. Instead of doing so, the Claimants embarked on what proved to be a hopeless attempt to impeach Ms McGivern's transparently honest evidence by witness summonsing a police officer. This was not a proportionate or even rational way to approach litigation of this seriousness.

97. Ms Bolton's final submission was that the Claimants were "*entitled*" to bring the contempt application against Ms McGivern; "*entitled*" to spend two days of Court time and resources pursuing an application that, on an objective assessment of the evidence, was only ever likely to end with the imposition of no penalty; and "*entitled*" to put a solicitor through the ordeal of a potentially career-ending contempt application and all the disruption that it has caused to Ms McGivern's work and the impact it has had on this litigation. There is no such "*entitlement*". The contempt application against Ms McGivern will be dismissed and will be certified as being totally without merit.

98. CPR 23.12 provides that, where a Court dismisses an application and it considers that the application is totally without merit, the Court must go on to consider whether it is appropriate to make a civil restraint order. The rule does not expressly refer to contempt applications made under Part 81, and CPR 81 does not contain a similar provision. Equally, Part 81 does not contain any express power to strike out a contempt application, and it would be surprising if the Court were not able to utilise its powers under CPR 3.4 to strike out a contempt application that disclosed no reasonable grounds for bringing the application or a contempt application that was an abuse of the court's process.

99. Nevertheless, CPR PD 3C §2.1 provides that a limited civil restraint order can be made only where a party has made two or more applications that are totally without merit. This is the first totally without merit application made by the Claimants in these proceedings.

100. The effect of a limited civil restraint order is to restrain the party made subject to it from making *any* further applications in the proceedings without first obtaining the permission of the Court. I asked Ms Bolton at the hearing whether the Court had jurisdiction to impose a requirement that the Claimants could only issue further contempt applications against "Persons Unknown" if they first obtained the permission of the Court. Ms Bolton initially submitted that the Court did have jurisdiction to impose such a requirement but to do so would be unfair and inappropriate. She submitted it would only be appropriate if the Claimants were found to be bringing multiple baseless contempt applications. After the lunch adjournment, Ms Bolton's position hardened. She submitted that the Court in fact did not have jurisdiction to impose a permission requirement. She argued that CPR Part 81 provided expressly that certain types of contempt application could only be brought with the permission of the Court. Allegations of contempt based upon breach of a court injunction were not subject to that permission regime. The Court could not impose a permission requirement otherwise than in accordance with Part 81.

101. For the reasons I have explained in this judgment, depending upon its terms, a "Persons Unknown" injunction can have the potential to catch in its net people that were never intended by the Court to be caught. Ms McGivern is an example, but others were discussed at the hearing, including the passing motorist who stops temporarily in outside the gates of the Wyton Site and who inadvertently obstructs a vehicle that is leaving the premises. By dint of the operation of the definition of "Persons Unknown" and the deemed notice of the terms of the Injunction under the alternative service order, that motorist, like Ms McGivern, ends up potentially having to face a contempt application. In ordinary cases, the Court might usually expect that a litigant who had obtained such an injunction would consider carefully whether it was proportionate and/or a sensible use of the Court's and the parties' resources for contempt proceedings to be brought against someone who had inadvertently contravened the terms of the injunction. The Claimants have demonstrated that, even with the benefit of professional advice and representation, the Court cannot rely upon them to perform that task appropriately.

102. I am satisfied that the Court does have the power, ultimately as part of its case management powers to protect its processes from being abused and its resources being wasted, to impose a permission requirement. I reject the submission that the Court is powerless and must simply adjudicate upon such contempt applications that the Claimants seek to bring. "Persons Unknown" injunctions are recognised to be exceptional specifically because they have the potential to catch newcomers. I do not consider that it is an undue hardship that these Claimants should be required to satisfy the Court that a contempt application they wish to bring (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it.

103. Although the conditions for the making of a limited civil restraint order are not met, the imposition of a requirement that the Claimants must obtain the permission of the Court

before bringing any further contempt applications against "Persons Unknown" is not a limited civil restraint order, it restricts only this specific form of application. The Claimants will remain free to issue and pursue applications in the underlying proceedings. I am satisfied that the imposition of a targeted restriction on the Claimants' ability to bring such contempt applications is a necessary and proportionate step to protect the Court (and the respondents to any future contempt applications) from proceedings that have no real prospect of success and/or serve no legitimate purpose.

104. I will therefore make an order requiring the Claimants to obtain the permission of the Court before they bring any further contempt application against anyone alleged to be in the category of "Persons Unknown" and to have breached the Injunction.