

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

B E T W E E N :

(1) ARLA FOODS LIMITED

(2) ARLA FOODS HATFIELD LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO ARE, WITHOUT THE CONSENT OF THE CLAIMANTS, ENTERING OR REMAINING ON LAND AND IN BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM (“the Sites”), THOSE BEING:

a. “THE AYLESBURY SITE” MEANING ARLA FOODS LIMITED’S SITE AT AYLESBURY DAIRY, SAMIAN WAY, ASTON CLINTON, AYLESBURY HP22 5EZ, AS MARKED IN RED ON THE PLANS AT ANNEXE 1 TO THE CLAIM FORM;

b. “THE OAKTHORPE SITE” MEANING ARLA FOODS LIMITED’S SITE AT OAKTHORPE DAIRY, CHEQUERS WAY, PALMERS GREEN, LONDON N13 6BU, AS MARKED IN RED ON THE PLANS AT ANNEXE 2 TO THE CLAIM FORM;

c. “THE HATFIELD SITE” MEANING ARLA FOODS HATFIELD LIMITED’S SITE AT HATFIELD DISTRIBUTION WAREHOUSE, 4000 MOSQUITO WAY, HATFIELD BUSINESS PARK, HATFIELD, HERTFORDSHIRE AL10 9US, AS MARKED IN RED ON THE PLANS AT ANNEXE 3 TO THE CLAIM FORM; AND

d. “THE STOURTON SITE” MEANING ARLA FOODS LIMITED’S DAIRY AT PONTEFRACT ROAD, LEEDS LS10 1AX AND NATIONAL DISTRIBUTION CENTRE AT LEODIS WAY, LEEDS LS10 1NN AS MARKED IN RED ON THE PLANS AT ANNEXE 4 TO THE CLAIM FORM

(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING FROM THE HIGHWAY THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(3) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(4) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING, OR OTHERWISE

INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF, OR ALONG THE ROADS LISTED AT ANNEXE 1A, 2A, 3A, AND 4A TO THE CLAIM FORM

(5) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO ANY VEHICLE WHICH IS ACCESSING OR EXITING THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(6) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO, ANY VEHICLE WHICH IS TRAVELLING TO OR FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(7) 34 OTHER NAMED DEFENDANTS LISTED AT SCHEDULE 1 OF THE INJUNCTION ORDER

Defendants

CLAIMANTS' SKELETON ARGUMENT
for the trial listed w/c 22 July 2024

Bundle references are in the format [**bundle/tab/page number**]

Recommended pre-reading:

- Witness statement of Samantha Sage [**B/15/1-52**]
- Second witness statement of Melanie Savage [**B/17/1-46**]
- Witness statement of Joanne Taylor [**B/1/1-32**]
- Third witness statement of Nicholas McQueen [**B/8/1-39**]
- Seventh witness statement of Nicholas McQueen [**B/12/1-21**]

INTRODUCTION

1. This is the Claimants' skeleton argument for the final hearing and disposal of the Claim against the named Defendants, and also the continuation of the injunction Order against Persons Unknown. The Claimants brought these proceedings against 34 named Defendants as well as six categories of Persons Unknown. The proceedings were brought to prohibit specific unlawful acts being committed against the Claimants' property and business

interests by animal rights activists associated with the protest group initially known as Animal Rebellion, which has since rebranded to Animal Rising.

2. The Claim for injunctive relief relies upon the following three causes of action:
 - i. trespass;
 - ii. interference with the Claimants' common law right to access the highway;
 - iii. obstruction of the highway amounting to public nuisance.
3. Many of named Defendants have now settled the proceeding by giving undertakings to the Court. Only ten Defendants remain, against whom the Claimants seek a final injunction Order, those being: D11, D12, D13, D14, D15, D29, D32, D33, D38 and D40. One further Defendant (D31) has given an undertaking, but the necessary consent Order is still awaited. As to the remaining named Defendants, it is understood that some of the named Defendants who have not settled the proceedings may have left the country. Accordingly, it is not anticipated that they will attend trial, but they have been served with notice of the trial date.
4. The Claim was brought by way of Part 8 proceedings and no Defendant has acknowledged service or filed any evidence to contest the Claim, despite directions to do so having been given at various stages throughout these proceedings (see [C/1/6], [C/4/7], [C/5/7], [C/7/3], [C/10/3]).
5. Alongside a final Order against the remaining named Defendants, the Claimants also seek the continuation of the injunction Order against Persons Unknown, for a period of 5 years with an annual review. The annual review will ensure that the effect of any change of circumstances that may occur and which would justify the discharge or variation of the injunction Order can be properly addressed by the Court. This is the appropriate approach to the Persons Unknown element of the injunction Order following the decision in *Wolverhampton City Council and Others v London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45 ('*Wolverhampton*'), and is the same approach that has been taken in the recent protest case of *Jockey Club Racecourses Ltd v Kidby & Others* [2024] EWHC 1786 (Ch) ('*Jockey Club*') (which case also distils the test and guidance in *Wolverhampton* into 12 considerations, as set out below in paragraphs 56 to 72 of this skeleton argument).

6. Whilst *Wolverhampton* and the guidance it provides is considered at paragraphs 55 to 72 of this skeleton argument, it is important at the outset of this skeleton argument to have in mind what the Supreme Court considered to be the defining features of the newcomer injunction, that being:
- i. injunctions against Persons Unknown who are “newcomers” have not evolved from any other form of injunction, but are a “*wholly new type of injunction*” based in equity, giving the Court significant flexibility as to the scope of any order. The only limiting factor is that it must be just and convenient, being the test that the Court must apply when considering whether to grant an injunction, and which is now contained in section s37(1) Senior Courts Act 1981 (*Wolverhampton* at [17]);
 - ii. the past focus on whether a newcomer injunction is interim or final is unhelpful, and in substance newcomer injunctions are typically neither interim or final. It is not an injunction that ‘holds the ring’, but one granted for its medium to long term effect, even if time-limited (*Wolverhampton* at [139], [143(iv)] and [143(vii)]);
 - iii. the ‘newcomer injunction’ is an entirely new injunction and has not been developed to protect the integrity and effectiveness of some related process of the court, as would be the case for interim injunction sought under *American Cyanamid* principles to hold the ring pending joinder of the wrongdoers and a trial. The newcomer injunction is a form of enforcement of rights which are not seriously in dispute, rather than a means of dispute resolution (*Wolverhampton* at [144], 163) and [164]).

BACKGROUND

7. The First Claimant is the largest farmer-owned dairy co-operative in Europe, with the Second Claimant holding the leasehold title to one of the sites at which the First Claimant operates its business. On 31 August 2022, the Claimants made an application for a without notice interim injunction against defined categories of persons unknown, who support a protest group previously known as Animal Rebellion and now refers to itself as Animal Rising (a group previously associated with Extinction Rebellion). The application was

made because the Claimants apprehended that, from 3 September 2022, the Defendants would cause significant disruption to the highways outside the Claimants' premises, as well as on and outside the Claimants' premises, as part of climate change protests; that apprehension arose as Animal Rebellion had announced a planned two-weeks of protests focussed against the dairy industry, with the goal of ensuring that milk did not reach the supermarket shelves during that period. It later transpired that the Claimants' apprehension that protest and harm was imminent was well-founded, and proven correct, by reason of activities that occurred on the 4-5 September 2022 at its Aylesbury Site, and 8 September 2022 at the Hatfield Site, as summarised in the third witness statement of **Nicholas McQueen** [B/8/8-10 paras 24-32] and set out in detail throughout the witness statement of **Samantha Sage** [B/15/1-52] and the second witness statement of **Melanie Savage** [B/17/1-46].

8. The procedural chronology of these proceedings is now as follows:
 - i. The Claimants, on 31 August 2022, sought and obtained urgent and without notice interim injunctive relief to restrain apprehended unlawful acts of protest. The Order made by Bacon J can be found at [C/1/1-22];
 - ii. At a return date on 4 October 2022, Fancourt J continued that interim relief, and permitted the Claimants to add 30 named Defendants to the Claim, against whom the injunction Order was also granted. A copy of the 4 October 2022 Order can be found at [C/4/1-24]
 - iii. Following an Application made by the Claimants, which was dealt with by Fancourt J without a hearing, by way of an Order dated 25 October 2022 four further Defendants were added to the Claim, and the injunction Order granted against them also (with one of those Defendants being identified only by photograph and not by name). A copy of the 25 October 2022 Order can be found at [C/5/1-23];
 - iv. The Claimants, on 12 January 2023, made an Application seeking the adjournment of the final disposal of the Claim pending the expedited appeal to the Supreme Court in *Wolverhampton*. That adjournment was granted, but the return date retained. A copy of the Order made by Fancourt J can be found at [C/5.1/1-7];

- v. Following judgment in *Wolverhampton*, the Claimants sought and obtained directions to final hearing [C/7/1-7] (which were subsequently varied [C/10/1-5]) and dispensation from PD57AC [C/9/1-5].

Why the Claimants sought injunctive relief

9. By way of broad outline, the Claimants sought injunctive relief because they understood that protest groups were planning large scale disruption to the dairy industry, commencing on 3 September 2022, and that these protests would take place for an initial period of up to two weeks. The Claimants have, in the past, been subject to protest activities by Animal Rebellion, which have caused significant loss and harm to the First Claimant. Accordingly, the Claimants reasonably apprehended that they would be a target of the planned campaign that was due to commence in early September 2022, and indeed were targeted by this campaign on 4, 5 and 8 September 2022.
10. Accordingly, the apprehension that led the Claimants to seek an urgent injunction was in part caused by the fact that protestors associated with Animal Rebellion had previously targeted the Claimants' Aylesbury and Oakthorpe Sites.
11. It was apparent that the planned protest activity for September was to be on a significant scale. A strategy document publicised by Animal Rebellion with the title "This changes Everything- A Plant Based Future" set out the following:

*"The near term goal is fairly simple, this September **we will be disrupting the dairy supply across the UK** with 500 people over a 1-2 week period, cutting off the supply of milk to supermarkets and causing unignorable high-level disruption which will be **felt by tens of million of people** across the UK and be a sustained no.1 news story. This will result in **more than one thousand arrests** and put the damage and exploitation of animal agriculture at centre stage. We will then build on that momentum with a large-scale occupation in the centre of London."* (see the Animal Rebellion 'This changes Everything – A Plant Based Future' strategy document [Exhibit JT/1]) [E/61/1-6]

12. The First Claimant is the largest farmer-owned dairy co-operative in Europe (and the Second Claimant holds the leasehold title to one of the sites at which the First Claimant operates its business – that being the Hatfield Site); they are owned by approximately 9600 dairy farmers, with some 2400 of its famers located in the UK, and provide 40% of the milk supplied to supermarkets in the UK. Whilst the Claimants have several sites throughout the UK which produce a range of dairy products, this injunction is focused on protecting only four of the Claimants’ sites (one of those sites – the Stourton Site – being two sites combined), being those the sites that produce and distribute milk.
13. The Claimants accept that some people object to the dairy industry, as they consider that cattle contribute to global warming. Others object to the use of animal products for animal welfare reasons. The Claimants understand and accept the importance of the right to protest peacefully and lawfully, and the injunction Order, which the Claimants respectfully ask the Court to make, do not prohibit or restrict the same. The Claimants seek only to prohibit and restrict protest that goes beyond that which is peaceful and lawful on the basis that the Claimants will suffer significant harm.
14. The initial phases of the protests and the actions that threatened the Claimants’ businesses are explained in detail in the witness statement of **Joanne Taylor [B/1/12-25 paras 34-70]**; this evidenced the intention of the Defendants to cause significant disruption to the dairy industry, and why the Claimants are likely to be a target of protests both now and in the future. The third witness statement of **Nicholas McQueen [B/8/8-13 paras 24-36]** and **[B/8/15-23 paras 46-75]** summarises:
- i. the harm that the Claimants suffered as a result of the protests that occurred in September 2022 (see below for the detailed evidence in this regard);
 - ii. why the Claimants consider the harm would have been greater but for the injunction (see also the witness statement of **Samantha Sage [B/15/42 para 134]**);
 - iii. why it is important that the injunction is continued, and in particular the fact that Animal Rebellion have indicated that they will continue to target the dairy industry with their protests and have merely ‘paused’ their action against the Claimants and

others involved in the dairy industry (see also the witness statement of **Samantha Sage [B/15/41-47 paras 130-154]**).

15. The losses suffered by the Claimants by reason of the acts of protest that occurred in September 2022 are explained in detail in:

- i. the witness statement of **Samantha Sage [B/15/37-39 paras 112-123]** in relation to the Aylesbury Site. Those losses include, but are not limited to, the loss of 621,229 litres of raw milk product at a cost of £415,421.23, £21,630 in destruction costs, £9704 by reason of reject milk due to contamination and £5540 to replace damaged HGV tyres;
- ii. the second witness statement of **Melanie Savage [B/17/39-42 paras 163-169]** in relation to the Hatfield Site. Those losses include, but are not limited to, the loss of 433 HGV tyres at a cost of £173,200 and £71,362.75 in operational losses.

16. Further, the seventh witness statement of **Nicholas McQueen [B/12/15-20 paras 32-50]** also again explains:

- i. why the Claimants consider they would be experiencing further acts of unlawful protest and resulting loss absent the protection of the Injunction Orders; and
- ii. why is important that the Injunction Orders are continued.

RELEVANT LAW

The relevant legal tests

17. As against the remaining named Defendants, the tests the Court must consider when granting a final injunction Order are:

- i. the test for precautionary relief as formulated by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 (*'Vastint'*), as applied in *Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd* [2022]

EWHC 1703 (Pat) (Koninklijke’) and approved by the Court of Appeal in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] **EWCA Civ 13 (Barking & Dagenham)** at [83]. The application of this test to the facts of this case can be found at paragraphs 42 to 54 below; and

- ii. whether it is just and convenient to make the Order sought.

18. In respect of Persons Unknown the relevant legal tests are:

- i. Whether it is just and convenient to make the Order; and
- ii. The test in *Wolverhampton* which, in the context of protestor cases, has recently been restated by Sir Anthony Mann in *Jockey Club* at [17]-[18] (which case also acknowledges and considers the two recent protestor cases before Ritchie J, namely *High Speed Two (HS2) v Persons Unknown* [2024] **EWHC 1277 (KB)** and *Valero Energy Ltd v Persons Unknown* [2024] **EWHC 134 (KB)**, and the decision of Farbey J in *Exolum Pipeline System Ltd v Persons Unknown* [2024] **EWHC 1015 (KB)**). The application of this test to the facts of this case can be found at paragraphs 56 to 72 below.

Causes of action

19. The Claimants bring this claim on three bases:

- i. Trespass;
- ii. Interference with the Claimants’ common law right to access the highway;
- iii. Public nuisance (that being the obstruction of the highway).

Trespass

20. In relation to trespass, there is no issue of balancing the Claimants’ rights with the Defendants’ rights of freedom of expression or freedom of assembly (Articles 10 and 11 of the ECHR). The Defendants do not have any right to trespass on the Claimants’ land.

Trespass is unlawful, such that there are no arguments that could be raised on behalf of the Defendants in this regard.

21. Further, and in any event, the Claimants respectfully remind the Court of *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 at [36]-[37], in which Longmore LJ found that articles 10 and 11 of the ECHR do not include a right to trespass when exercising those rights.
22. Further, trespass is a blatant and significant interference with the Claimants' rights under Article 1 of the First Protocol. The exercising of rights under articles 10 and 11 cannot normally justify a trespass *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 357 at [9(1)] to [9(2)], per Warby LJ.
23. The Claimants have good grounds for apprehending trespass to its Aylesbury, Oakthorpe, Hatfield and Stourton Sites, especially considering the harm that the Claimants have suffered by reason of trespass in the past, as set out in the Claimants' evidence.

Common law right to access the highway

24. The common law right to Access the Highway was explained by Lord Atkin in *Marshall v Blackpool Corp* [1935] AC 16 at p22.
25. The common law right to access the highway is also summarised at **paragraph 19-178** of *Clerk & Lindsell 24ed*. In that summary, it is noted that an interference with the right is actionable per se, and if an interference is such as to cause loss to business (such as by preventing lorries distributing milk products entering or leaving the premises), damages can be obtained. Morgan J in *Ineos Upstream Ltd & Ors v Persons Unknown & Ors* [2017] EWHC 2945 (Ch) acknowledged the existence of a private landowner's right to access the highway from his adjoining land as distinct from the right of the landowner to use the highway itself as a member of the public (see [42], [101], [107], [150]).
26. All of the Sites in these proceedings adjoin the highway. As such, the Claimants and their licensees and assigns enjoy the aforementioned common law right to access the highway and, accordingly, interference with this right is an actionable tort. It was submitted by the

Claimants in their skeleton argument for the without notice hearing in these proceedings that: “*it is arguable that no balancing act is to be undertaken between these rights and the Article 10 and 11 rights of the Defendants, however, it is accepted that this point is not settled law and, accordingly, the Court should at this interim stage, consider whether it is a legitimate and proportionate interference with the Defendants rights of freedom of expression and freedom of assembly to prohibit the Defendants from obstructing the Claimants common law right to access the highway.*” This point is still relevant in the context of Persons Unknown and the Claimants’ obligations of full and frank disclosure, as the Order against Persons Unknown remains a without notice order (*Wolverhampton* [139] and [143(ii)]).

27. The decision of Julian Knowles J in *High Speed Two (HS2) Limited v Four Categories of Persons Unknown & Monaghan & Others* [2022] EWHC 2360 (KB) at paragraph [196] further suggests that no such balancing act applies where much, if not all, of the relevant protest is taking place on private land, as is the case with a claim under this cause of action.
28. In any event, interference with the Claimants’ common law right to access the highway is an interference with a proprietary right, and not a non-proprietary use right (such as the right to pass and re-pass along the highway). Accordingly, the Claimants submit that it is unsurprising that the treatment of an interference with the right should be aligned with trespass (where no balancing act is performed, as set out above), rather than with an obstruction of the highway (where a balancing act is performed).

Public nuisance by obstruction of the highway

29. It is well-established law that some obstructions of the highway will amount to a public nuisance. Public nuisance caused by way of the obstruction of the highway was considered in *Ineos Upstream Ltd & Ors v Persons Unknown & Ors* [2017] EWHC 2945 (Ch) at [42]-[46] and [64]-[65].
30. Further, [44] goes on to state that:

The notes to para 325 contain references to cases where the test for obstruction is variously described. Thus, it has been said that any wrongful act or omission upon or

near a highway whereby the public is prevented from freely, safely and conveniently passing along the highway is a nuisance. An obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle.

31. The parties in ***Ineos*** assumed that the same basic principles applied to public nuisance and to the criminal offence of obstructing the Highway. To that end, at [65], Morgan J set out that, for there to be an offence under the **Highways Act 1980, s137(1)**, it must be shown that:

(1) There is an obstruction of the highway which is more than de minimis; occupation of part of a road, thus interfering with people having the use of the whole road, is an obstruction;

(2) The obstruction must be wilful, ie. deliberate;

(3) The obstruction must be without lawful authority or excuse; ‘without lawful excuse’ may be the same thing as ‘unreasonably’ or it may be that it must in addition be shown that the obstruction is unreasonable.

32. The question of whether assembly on the highway was lawful was considered by the House of Lords in ***DPP v Jones* [1999] 2 AC 240** (***Jones***). At pp245G-255A, Lord Irvine said:

The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I have set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway.

33. In ***DPP v Ziegler and Others* [2021] UKSC 23; [2022] AC 408** (***Ziegler***) the Supreme Court was required to consider whether deliberately obstructive conduct was capable of

constituting a lawful excuse for the purposes of s137(1). The relevant paragraphs of the judgment are [62]-[87], which makes it plain that any interference with the protestors article 10 and 11 rights must be proportionate.

34. It is apparent from [27]-[29] of Lord Reed's Judgment in *Reference by the Attorney General for Northern Ireland-Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] 2 WLR 33, that the Supreme Court considered that *Ziegler* may have been taken out of context, and may have been misunderstood to have weakened the protection to the right to pass and repass without obstruction, as confirmed in *Jones*. Accordingly, the law is such that:

- i. there is a right to peaceful assembly on the highway;
- ii. that right does not extend so far as to allow the committing of a public nuisance;
- iii. that public nuisance may arise by the unreasonable obstruction of the highway by impeding the primary right of the public to pass and repass;
- iv. whether an obstruction of the highway is unreasonable is a question of fact, but will generally require that the obstruction is more than de minimis, and must be wilful.

35. Accordingly, when considering restraining public nuisance on the highway, the Court must ask itself whether the relief sought is both necessary and proportionate, and the Court must strive to strike a fair balance between the rights of the protestors, the Claimants and the general interest of the community (*Shell UK Oil Products Limited v Persons Unknown* [2022] EWHC 1215 (QB) at [56] per Johnson J).

36. Their Lordships in *Zeigler* (at [72]) adopted the non-exhaustive list of factors to consider when evaluating proportionality, as set out by Lord Neuberger MR in *City of London Corporation v Samede* [2012] EWCA Civ 160 ('*Samede*') at [39]-[41]. Paraphrasing that content, those factors are:

- i. the extent to which the continuation of the protest would breach domestic law;
- ii. the importance of the precise location to the protestors;
- iii. the duration of the protest;
- iv. the degree to which the protestors occupy the land;

- v. the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public;
- vi. whether the views giving rise to the protest relate to ‘very important issues’ and whether they are ‘views which many would see as being of considerable breadth, depth and relevance’; and
- vii. whether the protestors ‘believed in the views that they were expressing’.

37. For context, in *Ziegler*, the protestors were opposed to the arms trade. They held a peaceful protest at the Defence and Security International arms fair at the Excel Centre in London by laying down on one side of, and ‘locking-on’ to, an approach road leading to the Excel Centre for approximately 90 minutes before they were removed by Police Officers. The Order directing convictions against the defendant protestors (under the **Highways Act 1980, s137**) were set aside, and the dismissal of the charges was restored.

38. The Claimants submit that, having regard to the factors set out in *Samede* as applied in *Ziegler*, the relief sought in this Claim is both necessary and proportionate.

39. Considering that evidence in light of the *Ziegler* and *Samede* factors, it is submitted:

- i. the obstructions of the highway will not be a one-off one-hour occurrence (unlike *Ziegler*). There has already been historic incidents lasting several hours, and these protests are apprehended to continue. The obstruction feared would be persistent and cause serious harm;
- ii. the protests are likely to block entire roads, as was the case at the Aylesbury Site in 2021, when the A41 was closed for most of the 24 hour protest period (see the witness statement of **Joanne Taylor** at **paragraph [B/1/22 para 61]**), and the further incident at the Aylesbury site on 4 September 2022, when protestors blocked College Road from around 5.30am to 1.30pm (see the witness statement of **Samantha Sage [B/15/9 para 25]**). On both occasions this made the road completely impassable to all, including the Claimants and other members of the public (again, unlike *Ziegler*). Further, the A41 slip road was again affected during the 4 September 2022 protest;

- iii. the road outside the Sites give immediate access to major roads, or are in close proximity to major roads. Therefore, the obstructions affect the public at large, and not just a narrow section of the public seeking to use the Sites. Further, if the protestors succeed, there would be no milk on the supermarket shelves, with limited stock for some time thereafter, which would have a significant impact on the public generally (see the witness statement of **Joanne Taylor [B/1/28 para 77(ii)]**);
- iv. In *Ziegler*, there was an alternative route of access to the Excel Centre that was not blocked by the protestors. Contrastingly, it is apprehended that the Sites will be completely blocked, as was the case when protests occurred at the Aylesbury Site in 2021 and September 2022.

40. It is accepted that the protestors sincerely hold their views, however, the Claimants do not seek to prohibit peaceful protest, and nothing in the injunction Order prohibits a protestor standing on the pavement with a placard, making noise or shouting their message loudly through a loud hailer; the injunction Order prevents only real and significant harm caused by unlawful acts.

41. The harm to both the Claimants and the public if the highway is obstructed as apprehended by the Claimants would be significant. In *Thurrock Council & Anr v Adams & Ors [2022] EWHC 1324 (QB)*, another protest case where significant disruption had occurred and was further planned, the Court at the return date hearing granted the continuation of an injunction, which included prohibition preventing protest on the highway. At [70], and with the benefit of significant legal argument, the Court expressly recognised that the exercise of article 10 and 11 rights cannot justify the imperilling of the public.

APPLICATION OF THE LEGAL TESTS: VASTINT

42. The questions set out *Vastint* and *Koniklijke*, as approved by the Court of Appeal in *Barking & Dagenham* can be answered as follows.

Are the Claimants' rights threatened?

43. The answer to this is clearly “yes” as confirmed by:

- i. the protests that occurred at the Claimants’ Aylesbury and Hatfield Sites between 4-8 September 2022, and historic protests at the Aylesbury and Oakthorpe Sites;
- ii. the fact that Animal Rebellion have previously confirmed they intend to continue direct action protest, including against the dairy industry: see the third witness statement of **Nicholas McQueen** at [B/8/12-13 para 35] and [B/8/19-23 paras 61-75] and the seventh witness statement of **Nicholas McQueen** [B/12/17-20 paras 39-50];
- iii. the fact that Animal Rebellion continue to engage in a programme of direct action, including against the farming industry, and are recruiting new members: see seventh witness statement of **Nicholas McQueen** [B/12/12-15 para 31 and B/12/18-20 paras 45-50] and the witness statement of **Samantha Sage** [B/15/42-43 paras 131-132 and B/15/47 para 151];
- iv. the Animal Rebellion Strategy Document set out at [E/61/1-6];
- v. in relation to the named Defendants, the clear propensity of those persons to commit acts of the kind complained of and apprehended: see witness statement of **Samantha Sage** [B/15/44-46 paras 141-142, 144-148] and the second witness statement of **Melanie Savage** [B/17/174 para 174] in relation to the remaining live named Defendants;
- vi. the Report from Securitas entitled ‘SITREP: AR ‘Stop the Supply of Dairy dated 26 August 2022 [E/39/1-4];
- vii. the fact that Animal Rebellion object to the business operated by the Claimants, and that the group and its supporters cannot prevent milk reaching the supermarket shelves (or achieve its aim of transitioning to a plant-based food system), without targeting the Claimants’ Sites, as the Claimants provide 40% of the milk in the UK;

- viii. the direct action tactics which are encouraged and known to be a common feature of such protests, including trespass, locking-on and obstruction of highways – all of which will cause (and have in the past caused) the harm apprehended by the Claimants.

Can it be reasonably apprehended that the Defendants will commit the threatened harm unless restrained by an injunction?

44. The answer is “yes”. This is supported by the following:

- i. the direct action that took place at the Claimants’ Aylesbury and Hatfield Sites between 4-8 September 2022;
- ii. the more extensive action that took place at a number of the Muller sites between 4-8 September 2022 (see the third witness statement of **Nicholas McQueen [B/8/11-12 paras 34 (ii)-(iii), (v) and (vii)]**);
- iii. the current programme of direct action being undertaken by Animal Rebellion and its supporters and the active recruitment of new activists to the cause (see the seventh witness statement of **Nicholas McQueen [B/12/12-15 para 31 and B/12/18-20 paras 45-50]** and the witness statement of **Samantha Sage [B/15/42-43 paras 131-132 and B/15/46-47 para 151]**);
- iv. The historic actions of direct-action protest by Defendants against the First Claimant at the Aylesbury and Oakthorpe Sites (see the witness statement of **Joanne Taylor [B/1/121-25 paras 58-70]** and the witness statement of **David Dons [B/3/8-9 paras 23-26]**) and the known approach of Animal Rebellion of direct action.

45. In the *Koniklijke* case the Defendant claimed that it would not undertake the acts the Claimant sought to restrain, and yet still the Court granted relief, and did not simply accept the submission, again indicating that where there is a risk of significant harm, the court will draw inferences from the material before the court and it will be a powerful factor in granting precautionary relief.

What is the attitude of the Defendants?

46. The Defendants are a collection of individuals; they openly confirm a common intention to engage in direct action protest and disrupt the supply of milk to the public to bring awareness to their climate change and animal welfare campaign. They are calling on activists to use direct action and act in an unlawful manner against a lawful business (which also supports the Application for precautionary relief) in full recognition that they may be arrested for breaking the law; indeed, in an earlier iteration of the ‘commitment to action form’ (**[Exhibit JT/1)** **[E/63/1-3]** activists were asked to commit to at least one arrest.
47. The Defendants’ recent direct action against the Claimants also demonstrates a clear determination to act unlawfully against the Claimants to bring awareness to this climate change and animal welfare campaign.

How easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention

48. The answer is that it is not easy to undo the harm ex post the harm. The financial harm from the recent direct action has been significant and, but for the injunction, the Claimants submit the financial harm would have been more significant.
49. The losses caused by the September 2022 protests are explained in detail in the witness statement of **Samantha Sage [B/15/37-39 paras 111-123]** and the second witness statement of **Melanie Savage [B/17/39-42 paras 163-169]**. Those losses include, but are not limited to, the loss of 621,229 litres of raw milk at the Aylesbury Site, which contributed to financial loss in the sum of £415,42123 by reason of written off product, and the loss of 433 HGV tyres at the Hatfield Site as a cost of £173,200 along with operation losses in the sum of £71,362.35.
50. Further, the 24 hour protest at one of the Aylesbury Site in 2021 caused the Claimants £175,000 in loss (see the witness statement of **Joanne Taylor [B/1/24 para 67]**).

51. There is a real risk of physical harm to staff or the protestors if acts of trespass and obstruction continue to occur, particularly as a tactic used by climate change protestors is to climb onto structures and lorries, and to enter the highway to stop lorries.
52. Further, this is not a mandatory injunction, but a prohibitory injunction. Whilst the test for precautionary relief is the same, as the authorities make clear, the stringency of the test for precautionary relief is more relevant when considering a mandatory injunction, as opposed to an interim prohibitory injunction pending trial.

What other steps have Claimants taken to ensure that the infringement does not occur?

53. As confirmed in *Vastint*, this is only a consideration where the infringement of the Claimants' rights is entirely anticipatory; however, at the time the Claimants applied for the without notice injunction they had previously suffered harm caused by Animal Rebellion protests at both the Aylesbury and Oakthorpe Sites. Further, since the injunction was granted, they have suffered further significant harm.
54. In any event, the Claimants have invested in further security and also in measures to mitigate the effect of the protests (see the witness statement of **Joanne Taylor [B/1/29-31 para 79-81]**, and the witness statement of Anne-Frances Ball **[B/4/11-12 para 40]**). The updated position on security measures is explain in the witness statement of **Samantha Sage [B/15/48-49 paras 156-158]** and the second witness statement of **Melanie Savage [B/17/44-45 paras 176-177]**
55. Accordingly, the Claimants submit that they satisfy the test for precautionary relief and section 37 of the Senior Courts Act 1981.

APPLICATION OF WOLVERHAMPTON AND JOCKEY CLUB

56. In the *Jockey Club* at paragraphs [14]-[22], Sir Anthony Mann applied the test in *Wolverhampton*, and restated the principles and guidance therein and applied them in context of protestor cases, referring in particular to paragraphs [139], [142], [167], [188], [219], [220]-[222], [225], [226], [230] and [232] of *Wolverhampton*. Applying the test as set out the *Jockey Club*, the Claimants submit the following:

Is there a compelling justification for the relief sought?

57. It is plain from the evidence that there is still a compelling case that without the protection of the injunction the Claimants will suffer further acts of trespass, interference with their common law right to access the highway and obstruction of the highway from newcomers, and that those acts will cause significant harm to the Claimants, as already experienced in 2021 and 2022 (explained in detail in the witness statement of **Samantha Sage [B/15/37-39 paras 111-123]**, the second witness statement of Melanie Savage **[B/17/39-42 paras 163-169]** and the witness statement of **Joanne Taylor [B/1/24 para 67]**).

Is there a practical alternative to the injunction?

58. The Claimants had already taken additional security measures ahead of the last wave of protests, as explained in the witness statement of **Joanne Taylor [B/1/30 para 79]** and the witness statement of Anne-Frances Ball **[B/4/11-12 para 40]**. There may be criminal sanctions for the sort of activities which are threatened, but as Sir Anthony Mann acknowledged in *Jockey Club* at [21(ii)] the Claimants “*..are not the prosecuting authority and it is impractical to suppose that [criminal sanctions] are a deterrent in themselves. If they were the threat would not be real. An injunction is the only practical answer.*”

Are there any other steps the Claimants could take to prevent the wrong?

59. As recognised by Sir Anthony Mann, it is not practical to suppose that the activities of the protestors can be completely prevented by any sensible levels of policing, stewarding or byelaws [(21(ii) and 21(iii))].

Have the Claimants complied with the duty of full and frank disclosure?

60. The Claimants have complied with their duty of full and frank disclosure.

The evidence should err on the side of caution and the court, not the applicant, should be the judge of relevance of the evidence

61. The Claimants submit that this requirement is satisfied, and comprehensive evidence has been presented by the Claimants.

Have the actual or intended respondents to the application been identified as precisely as possible?

62. The Claimants have defined six categories of Persons Unknown as precisely as possible to ensure that it is clear as to who will and will not fall within the categories of Persons Unknown, and to ensure that only those that engage in unlawful protest are caught by the categories of Persons Unknown. Further, each of the named Defendants fell initially into one or more of the categories of Persons Unknown when they attended the Aylesbury and/or Hatfield Sites in September 2022, and were then subsequently added to the proceedings as named Defendants.

Is the injunction clear in its terms and confined to the minimum necessary to achieve its proper purpose?

63. The injunction sought is restricted to what is necessary to achieve its proper purpose; it extends no further in its terms than the three interim injunction orders granted first by Bacon J and latterly by Fancourt J. These three injunctions were truly interim in nature, having been granted prior to *Wolverhampton*, and were only intended to the ‘hold the ring’ when granted. The Claimants take a proportionate approach and now seek no more than the same terms as those obtained in the earlier orders, notwithstanding that the Claimants could seek stronger terms in light of breaches of the interim Orders and this being the full determination of the application against Persons Unknown.

Is there a strict temporal and territorial limit?

64. The territorial limits are defined clearly by reference to the maps and plans that are annexed to the Orders (see [C/6/1-23] for the current injunction Order, by way of example).

65. The Claimants seek an order for 5 years with an annual review. That same Order was granted in *Jockey Club* and has also been recently granted in the King’s Bench Division in relation to threatened acts of trespass by climate change protestors at various airports across

the country. A shorter duration would only lead to repeated and costly injunction applications by the Claimants (as recognised by Sir Anthony Mann in *Jockey Club* at [21(ix)]).

Have reasonable steps been taken to bring the application to the attention of those likely to be affected?

66. The Claimants have served all documents in this Claim, including the application for relief and notice of this hearing, on both the named Defendants and Persons Unknown in accordance with the alternative service Orders made. Certificates of service will be produced at the hearing.

Is the proposed notice of the Order likely to be effective?

67. It is submitted that the proposed notice of the Order is such that those concerned can reasonably be taken to have had notice of the proceedings and Orders made; both Bacon J and Fancourt J were satisfied of the same when making those alternative service orders.

Has the Claimant provided a generous liberty to apply clause?

68. The Claimants have provided a generous liberty to apply clause, which permits a newcomer to apply to vary or discharge the Order on 48 hours' notice.

Should a cross-undertaking in damages be given?

69. At earlier stages in these proceedings, the Claimants have provided a cross-undertaking in damages. The Order sought at this hearing is final as against the named Defendants, so no further undertaking should be required.

70. Further, as against a newcomer, the injunction only prohibits acts that are in any event unlawful. Accordingly, it is submitted that the Court ought to reach the same conclusion as Sir Anthony Mann in *Jockey Club*, and not require the Claimants to provide a cross-undertaking in damages (see [21(xiv)]).

Does section 12(3) of the Human Rights Act 1998 apply?

71. When considering an interim injunction (as opposed to a without notice newcomer injunction), the Court would ordinarily consider whether or not section 12(3) of the Human Rights Act 1998 applies.
72. Assuming the Court still considers it appropriate to consider section 12(3), the Claimants remind the Court that they do not seek to limit the Defendants' article 10 rights by restricting publication (even in its widest definition), such that section 12(3) is not engaged. Leaving aside the technicality that the Order sought is not an interim injunction, which is the focus of section 12(3), it is also the case that the Claimants only seek to restrict *where* a Defendant may express themselves, as compared to *what* that Defendant may say (with only the latter being caught by s12(3)). See, *Shell UK Oil Products Limited v Persons Unknown* [2022] EWHC 1215 (QB) at [66]-[76] per Johnson J and *Thurrock Council & Anr v Adams & Ors* [2022] EWHC 1324 (QB) at [83] per HHJ Simon sitting as a Judge of the High Court.
73. Even if the Court was inclined towards the view that any of the prohibitions were caught by section 12(3), the Claimants submit that, on the weight of evidence before the Court, the Court can be satisfied that the Claimants are 'likely' to obtain the relief sought at final hearing (if there were one), as the acts undertaken are not lawful and interference significantly with the rights of others.

CONCLUSION

74. Accordingly, for the reasons set out above, the Court is respectfully asked to grant the final relief sought against the named Defendants and continue the injunction Order in the terms sought against Persons Unknown.

**CAROLINE BOLTON
NATALIE PRATT
Radcliffe Chambers**

17 July 2024