Neutral Citation Number: [2021] EWHC 2996 (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: 10 November 2021

**Before** :

**THE HONOURABLE MR JUSTICE NICKLIN**

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**Between :**

**(1) MBR Acres Limited**
**(2) Jane Read**
(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**

**- and -**

**(1) Free the MBR Beagles**
**(formerly Stop Animal Cruelty Huntingdon)**
(an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles 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 MBR Acres Limited, Wyton, Huntingdon PE28 2DT 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)

**(2) Camp Beagle**
(an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle 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 MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the and the officers and employees of third party suppliers and service providers to MBR Acres Limited)
**(3) Mel Broughton**
**(4) Ronan Falsey**
**(5) Bethany Mayflower**
**(also known as Bethany May and/or Alexandra Taylor)**
**(6) Scott Paterson**
**(7) Helen Durant**
**(8) Bernadette Green**
**(9) Sam Morley**
**(10) Person(s) Unknown**
(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 MBR Acres Limited, Wyton, Huntingdon PE28 2DT 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)
**(11) John Curtin**
**(12) John Thibeault**
**(13) Sammi Laidlaw**
**(14) Pauline Hodson** **Defendants**

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**Caroline Bolton and Natalie Pratt** (instructed by **Mills & Reeve LLP**) for the **Claimants**
**James Nieto** (instructed by **Cohen Cramer Ltd**) for the
**Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants**
**Adam Tear** (of **Scott-Moncrieff & Associates Ltd**) for the **Seventh Defendant**
**The Eleventh and Fourteenth Defendants appeared in person**
**The Fourth and Twelfth Defendants did not appear and were not represented**

Hearing date: 4 October 2021
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# Approved Judgment

**The Honourable Mr Justice Nicklin :**

1. This judgment is divided into the following sections:

## A: Introduction

2. The judgment follows the arguments heard by the Court, on 4 October 2021, at the return date for an interim injunction application that was originally heard and granted in limited terms by Stacey J on 20 August 2021. The Defendants are all current or former protestors who have been demonstrating against the operations of the First Claimant at its site in Wyton, outside Huntingdon, Cambridgeshire ("the Wyton Site"). Relatively recently, there have been some protests at the Third Defendant's site in Humberside ("the B&K Site").

## B: The Claimants

3. The First and Third Claimants are subsidiaries of the Marshall Farm Group Ltd, incorporated in the US and trading as Marshall Bioresources. The First and Third Claimants breed animals for medical and clinical research at the Wyton and B&K Sites.

4. The First Claimant is licensed by the Secretary of State, under ss.2B-2C Animals (Scientific Procedures) Act 1986, to breed animals for supply to licensed entities authorised to conduct animal testing and research. It is presently a legal requirement, in the United Kingdom, that all potential new medicines intended for human use are tested on two species of mammal before they are tested on human volunteers in clinical trials.

5. The Second Claimant is an employee of the First Claimant and is its European Production Manager and Site Manager. In the proceedings, the Second Claimant also seeks to represent the officers and employees of the First Claimant, third-party suppliers, and service providers to the First Claimant pursuant to CPR 19.6.

6. The Fourth Claimant is an employee of the Third Claimant and is its Site Manager & UK Administration & European Quality Manager. The Fourth Claimant also seeks to represent the officers and employees of the Third Claimant, third-party suppliers, and service providers to the Third Claimant pursuant to CPR 19.6.

## C: The Defendants

7. As presently formulated, the Claimants' claims against the first two Defendants are sought to be maintained against alleged "unincorporated associations": "Free the MBR Beagles" and "Camp Beagle". The Claimants seek to sue two individuals, the Third and Fifth Defendants, as representatives of these two "unincorporated associations". I will return to the claims against the First and Second Defendants below (see Section J [52]-[67] below).

8. The Third to Ninth Defendants and Eleventh to Fourteenth Defendants are individuals who, the Claimants allege, have committed various civil wrongs as part of their protest and against whom they seek an interim (and ultimately, a final) injunction. The Eleventh to Fourteenth Defendants are new defendants that the Claimants have recently sought to add as defendants to the proceedings. The Tenth Defendants are "Persons Unknown" (see Section G [30]-[33] below).

## D: The Wyton Site and the injunction granted to Harlan Laboratories

9. The Wyton Site is in countryside, about 2 miles to the Northeast of Huntingdon, very close to RAF Wyton. The only entrance to the Wyton site is situated on a straight section of the B1090 with the national speed limit. The road is a single carriageway with verges on either side. Vehicles arriving or leaving from the Wyton Site pass through outer and inner mechanical gates. This facilitates what has been termed an 'airlock' between the two gates enabling the First Claimant's security personnel to control access to the Wyton Site. The outer gate is set back about 1 metre from edge of the First Claimant's land which means that anyone standing immediately in front of the outer gate is on the First Claimant's land. The perimeter of the Wyton Site is protected by high outer and inner wire fences. As well as the First Claimant, another biotechnology company is situated on the Wyton Site.

10. The First Claimant is not the first company to operate at the Wyton Site. Prior to January 2018, the Wyton Site was owner by a series of other companies. One of the former owners was Harlan Laboratories UK Limited ("Harlan"). It also used the Wyton Site to breed animals for medical and clinical research and it, too, became the target of protests. In July 2011, it commenced civil proceedings seeking an injunction to restrain certain activities of the protestors. The claims were brought under ss. 3 and 3A Protection from Harassment Act 1997 ("PfHA"). The defendants to the claim were (1) Stop Huntingdon Animal Cruelty; (2) the National Anti-Vivisection Alliance; and (3) "*Persons Unknown who are conducting protesting (sic) and/or unlawful activities against the Claimants*". Named individuals were sued as representatives of the First and Second Defendants as "unincorporated associations".

11. Various interim injunctions were granted against the Defendants before, on 7 December 2012, Lang J handed down a judgment granting the Claimants summary judgment against the Defendants and a final injunction ([2012] EWHC 3408 (QB)). None of the

Defendants was represented in those proceedings. The evidence in that case was different and the law has developed significantly since that order was granted.

12. As a result of the transfer of ownership of the business of Harlan, and the Wyton Site, the injunction granted by Lang J no longer has any effect. It does not restrict protest activities of those demonstrating against the Claimants in these proceedings. Hence, this new claim.

## E: The protest activities

13. The witness statements filed by the Claimants in support of their injunction application give a detailed account of the protestors' actions. In outline, since June 2021, the frequency of protests outside the Wyton Site has increased, as has the number of those attending the demonstration (although the number attending each day has fluctuated). From August 2021, there have been limited protests outside the B&K Site, and some telephone calls and emails to the Third Claimant, but the main focus of the protest activity – and most of the Claimants' evidence – concerns the First Claimant and demonstrations at the Wyton Site.

*(1) Wyton Site*

14. The main complaints raised by the Claimants are (1) repeated incidents of obstruction of people and vehicles entering and leaving the Wyton Site (frequently with associated abuse and holding placards in front of cars to obstruct the driver's view); and (2) the posting on Facebook of images of staff and vehicles, some footage of employees alleged to have been filmed covertly (on occasions together with what is alleged to be offensive comments). Particular flashpoints, which have led to increased protest activity, have been the occasions when live animals have been transported away from the Wyton Site.

15. The evidence shows that several protestors hold placards whilst demonstrating, and from time to time, banners have been fixed to the gate of the Wyton Site. The Claimants complain that, in fixing banners to the gate, the protestors have trespassed on the First Claimant's land. The messages on these placards and banners include, by way of example:

    (1) "*Dogs bred here to die*";

    (2) "*Puppy Killers*";

    (3) "*End animal experiments!*";

    (4) "*MBR Acres sell puppies to murderers. Please stop them*";

    (5) "*MBR Acres and their staff are FILTHY SCUM*";

    (6) "*MBR Acres Staff – You are Guilty of Cruelty to Beagles – You play your part in it!!!*";

    (7) "*We are not going to let these greedy pychopathic (sic) scumbags win*"; and

    (8) "*MBR Puppy Murdering Muthafukas*"

16. Examples, in the evidence, of what has been shouted at staff entering or leaving the Wyton Site include: "*Shame on you*", "*Evil bastard*", "*Fucking scum*", "*Total, total evil*", "*Animal abusers, MBR losers!*", "*Get another job!*" and "*Leave this job. You know it's wrong!*".

17. The key events relied upon by the Claimants at the Wyton Site are the following:

    (1) On 23 April 2021, covert filming equipment was discovered in the permitter fence at the Wyton Site. Videos apparently showing six employees of the First Claimant at work at the Wyton Site was posted on the Free the MBR Beagles Facebook page.

    (2) On 3 May 2021, ten people attended the Wyton Site and protested outside the gate and shouted at the staff.

    (3) On 27 June 2021, there was a large protest attended by some 50 people. Protestors blocked the gate, including with cars. The Seventh and Eighth Defendants are alleged to have damaged a gate sensor, causing irreparable damage. Protestors camped overnight outside the Wyton Site.

    (4) On 28 June 2021, the Fifth Defendant is alleged to have spat in a coffee cup and thrown the contents at the car of an employee.

    (5) On 29 June 2021, a photograph was posted on the Camp Beagle Facebook page showing a decapitated beagle which, it is claimed, "*wrongly asserted that the picture had been taken at the Wyton Site*".

    (6) On 1 July 2021, protestors are alleged to have videoed staff, and their vehicles, and footage was subsequently posted on the Camp Beagle Facebook page. From this date there has been a permanent encampment of protestors outside the Wyton Site.

    (7) On 2 July 2021, police attended the Wyton Site following reports that an angle grinder had been used on the gate.

    (8) On 9 July 2021, there was a large demonstration of between 150-200 protestors. A large number of police officers had to be deployed, including additional reinforcements, to enable staff to enter and leave the Wyton Site.

    (9) On 16 July 2021, protestors are alleged to have prevented a delivery vehicle entering the Wyton Site.

    (10) On 23 July 2021, an employee's car is alleged to have been damaged by protestors (who also attempted to open a rear door of the vehicle).

    (11) On 25 July 2021, protestors are alleged to have obstructed a vet's entry and exit from the Wyton Site.

    (12) On 27 July 2021, a notice was posted on the Free the MBR Beagles Facebook page encouraging staff to contact a recruitment agency to find a new job.

(13) On 29 and 30 July 2021 and 6 August 2021, three employees complained to the police that protestors had struck/damaged their cars when entering the Wyton Site.

(14) On 1 August 2021, there was another large-scale demonstration, numbering up to 260 protestors. The Claimants allege that the police struggled to contain the protestors and that reinforcements were required. Four protestors were arrested, including the Ninth Defendant. An employee complained to the police that a protestor had followed him from the Wyton Site onto the A14 road.

(15) On 10 August 2021, protestors are alleged to have obstructed a vehicle transporting animals from leaving the site. Police assistance was required to enable the vehicle to leave. The Fifth Defendant is alleged to have lain in the road to obstruct the vehicle.

(16) On 11 August 2021, protestors are alleged to have barricaded the gate to the Wyton Site with dog crates. An unknown protestor is alleged to have broken the gate intercom camera with a stone. The Third Defendant is alleged to have stood in front of vehicles attempting to drive along the road and shouted with a loudhailer.

(17) On 15 August 2021, there was a dual protest at both the Wyton and B&K Sites. Approximately 250 protestors are alleged to have attended and obstructed staff entering or leaving the Wyton Site. The evidence suggests that five protestors were arrested, but this has not been confirmed by the police. The Third Defendant gave a speech to the protestors using a loud hailer. His speech has been transcribed, it included the following:

> "That's who MBR are. They are monsters in the true sense of the word. Absolutely devoid of any feeling. No compassion. No sense of justice. Nothing. That's what's happening here today. That's why you're all angry. That's why I'm angry. The police can't be surprised with what's happening here. We're dealing with people who kill dogs. They send them to laboratories to be poisoned to death. They kill them if they're not fit for purpose. But they also kill them if they want to replace them with another model. In other words, your only use to them is what they think they can sell you for to laboratories. If they can't, you die. You die. Think about that in what happens next. This is what you're fighting for. To bring an end to this dark savage part of history. It has to end now. It really does have to end here and now. And MBR Acres, you're put on notice this is the end for you. It has to be the end. No one can justify this anymore. No one."

Complaint is made that this speech was made at the time when staff were due to leave the Wyton Site. It is alleged, police had to hold back protestors to enable vehicles to leave the site.

(18) On 22 August 2021, an employee reported to police that he had been followed home by a protestor. It is not alleged that this was done by any of the named defendants, and it is presently impossible to identify the individual alleged to have followed the employee.

(19) On 25 August 2021, the First Claimant had to deliver a consignment of animals. Protestors are alleged to have blocked vehicles leaving the Wyton Site. One person lay in the road, another chained herself to the side of the gate. The Fifth Defendant then parked her vehicle to obstruct the exit from the Wyton Site. The police apparently arrested her and seized the vehicle. The protestor that had chained herself to the gate was also arrested by police. Later, a video was posted on the Free the MBR Beagles Facebook page of footage, apparently recorded by a drone, showing several members of staff loading animals into vans. The Third Defendant later shared the video and posted:

> "Watch the matter of fact way the MBR workers load beagle puppies on to the vans that will take them to their deaths. This has been going on for decades. This has to end and now is the time to end it. The platitudes from the defenders of this sordid business would have us believe that without these dogs medical research would cease. Nothing could be further from the truth. The beagle puppies being loaded onto the vans are a pawn in a deadly game to sure (sic) up the crumbling foundations of animal research as a credible and necessary evil."

(20) Between 28-30 August 2021, it is alleged that a Free the MBR Beagles flyer was stuck to the kitchen window of an employee. Another employee was involved in an altercation with one of his neighbours, who assaulted him, allegedly because of the neighbour becoming angry by the work he did. The assault was reported to the police, and I was told that the neighbour has been arrested on suspicion of committing a public order offence and intimidation against people who work in animal research. Neither the neighbour, who has been arrested, nor the person who affixed the flyer to the employee's kitchen window has been identified.

(21) On 1 September 2021, the First Claimant's staff removed some banners that were obstructing the view from the gate at the Wyton Site. Less than half an hour after they were removed, it is alleged that protestors had reaffixed the banners. To do so, it is alleged that they again trespassed on the First Claimant's land. Separately, the protestors have strung up wooden disks and bunting across the gate which hit vehicles when they enter or leave the Wyton Site. Also on 1 September 2021, a protestor wrote "*Puppy Killers*" on the road, with an arrow pointing to the gate of the Wyton Site. It is alleged that some (unidentified) members of the First Claimant's staff were distressed about this. The words were washed away by rain.

(22) On 2 September 2021, a protestor shouted repeated abuse at one of the First Claimant's staff calling him "*scum*" and "*murderer*" and expressing the hope that he would die. It appears from the evidence that this person was arrested on 23 September 2021.

(23) On 4 September 2021, it is alleged that the Eleventh Defendant shouted abuse at staff whilst he was trespassing inside the Wyton Site. It is claimed that he had to be restrained by police.

(24) On 7 September 2021, the Claimants complain that a video was recorded, through a fence, of vans being loaded with animals and that the Third Defendant subsequently shared the video on Facebook with a comment:

> "This morning three vans loads of beagle puppies left MBR Acres on route to UK contract testing labs. Again, a large police blockade and escort was provided payed (sic) for by us. If your (sic) not enraged by the pointless suffering of these dogs then you should be. If your (sic) happy that your taxes are being used to fund a public service to provide private security for a US company then you shouldn't be. Either way what is happening at MBR Acres is unjustifiable and must end now. Don't sit on the fence get down and get involved. These dogs need you now."

(25) The evidence suggests that the Eleventh Defendant was arrested, on 15 September 2021, on suspicion of committing offences under s.4A Public Order Act 1986 (causing intentional harassment, alarm or distress) and/or s.146 Serious Organised Crime and Police Act 2005 (see [41] below). An article in a local newspaper quoted the Eleventh Defendant as saying that he had been released without charge "*on police bail*", presumably pending further investigations. The Eleventh Defendant has posted a video in which he says that the bail conditions imposed by the police prevent him going into Cambridgeshire. The Claimants contend that he has breached those bail conditions by continuing to attend demonstrations at the Wyton Site.

(26) On 17 September 2021, it is alleged that the Eleventh Defendant was seen trespassing on the First Claimant's land between an inner and outer fence around the Wyton Site. It is also alleged that on this date, the Eleventh Defendant offered a security guard at the Wyton Site "*big money for info or video footage of the dogs*". On 20 September 2021, it is alleged that the Eleventh Defendant asked a security guard to provide information about when the next shipment of animals was due to leave. No information was provided.

(27) On 21 September 2021, the Fourth Defendant re-posted a video on Facebook that had been posted by another user. The video included images of the Ninth Defendant wearing a blood-stained lab coat allegedly intimidating staff as they arrived at the Wyton Site. Later that evening, the Claimants complain that the Fourteenth Defendant posted the following on Facebook:

> "CAMP BEAGLE JUST KEEPS GETTING MORE AND MORE LOCAL AND NATIONAL AND WORLD SUPPORT. As the Workers at MBR carry on their pathetic shit shovelling job preparing those puppies to go out to laboratories for Torture and Death. WHO is the Vet who signs it all off. Pathetic people. GET A DECENT JOB. Something you can be proud of when your kids ask you what you did today mummy/daddy!!!!"

In Susan Pressick's Third Witness Statement, she says of this posting:

> "I cannot understand the abuse she has directed towards staff in those posts unless it is to instil fear and shame in them and to convince them to leave their employment and therefore impact our business."

(28) On 22 September 2021, protestors including the Fifth and Eleventh Defendants are alleged to have surrounded the vehicle of a contractor who was trying to leave the Wyton Site. When he refused to accept a flyer from them, it is alleged that he was abused and had to reverse his vehicle into the Wyton Site while the police were called. Subsequently, a video of the incident was posted on the Camp Beagle Facebook page with a comment:

> "Does @angliawater support the puppy killers? By the attitude of their driver who was rude, obnoxious and discourteous. All we wanted to do was give him a leaflet to give to his boss, which he refused!"

(29) On 23 September 2021, another consignment of live animals was shipped from the Wyton Site. It is alleged that a large group of protestors had to be restrained by the police. Several protestors shouted abuse at the drivers of the vans, including "*puppy killers*" and "*you dirty fucking cunts*". Once the vans had left, it is alleged that the protestors, including the Fifth and Twelfth Defendants, reacted badly, shouting threats, including "*we will not let you out tonight you fucking vermin*", and debris was left obstructing the exit. Police attendance was required. The Eleventh Defendant used a megaphone to address staff as they left the Wyton Site. He said:

> "What are you supposed to say? This is a normal business! Our job is to facilitate a normal business. But nobody else thinks this is a normal business. It's not normal. To hurt puppies deliberately! Day after day after day! It's not normal! If anyone here did it outside of here or outside of the lab, you'd arrest them and put them in prison! The court room would be packed! Outside the court room people would be booing! There's the puppy killers! There's the torturers! The sickos!"

As more vehicles left, the Eleventh Defendant shouted:

> "Here they come. Here come the filth! The shit shovelers! The puppy killers!… Shame on you… You'll never wash the blood away!"

Although police were present, it appears that officers decided not to arrest the Eleventh Defendant. For the reasons explained below (see [20]-[21]), and on the very limited evidence available to me, I am certainly in no position to say that this decision was wrong. The line between freedom of expression and harassment is sometimes very difficult to draw.

(30) In later posts about this incident on the Camp Beagle Facebook page, it is alleged that the Eleventh Defendant described the First Claimant as a "*dark evil company that's got dirty fingers in dirty pies*" adding "*this company is gonna get shut down. We're already looking into their filthy, corrupt, lying paperwork.*"

18. A clear picture emerges from the evidence, that the central complaint of the Claimants is the protestors' activities when people (particularly employees of the First Claimant) enter or leave the Wyton Site. At these times, protestors, including the named Defendants, have surrounded and/or obstructed the vehicles. Their ability to drive off is not only impaired by the physical obstruction of the protestors, but also because placards have been used, on occasions, to obstruct the view that the driver of the vehicle

has of the road and whether it is safe to pull out. These incidents have frequently led to confrontation between the protestors and those inside the vehicles, allegedly leaving them feeling harassed and intimidated.

19. Since the increase in protest activity from June 2021, there has been a regular police presence (with varying numbers of officers deployed) at the Wyton Site on most days. Many incidents have been reported to the police and several protestors have been arrested, including the Fourth, Sixth, Ninth and Eleventh Defendants. A report on BBC local news quoted Cambridgeshire Police as having confirmed that a total of 15 people had been arrested since the start of the protests, mainly for obstruction of the highway and criminal damage.

20. Overall, the picture that emerges from the evidence is of the police acting professionally and effectively in properly controlling the demonstrations and intervening when they judge that it is necessary and appropriate. Policing demonstrations is a very difficult job. One of the aspects that makes it so challenging is that if the police appear to be too heavy handed, the situation can rapidly deteriorate, with measures taken to reduce the threat to public order having the opposite effect.

21. An injunction granted by a civil court is unlikely to add to the powers that the police already have properly to keep the protest within lawful bounds (see [85] below). Certainly, the Claimants have provided no evidence that Cambridgeshire Police consider that their powers are inadequate in dealing with the protests at the Wyton Site or that a civil injunction would provide something valuable in addition to the powers they have.

*(2) B&K Site*

22. The key events relied upon by the Claimants in respect of protest against the Third Claimant are identified in the First Witness Statement of Susan Pressick dated 10 August 2021. They include:

    (1) On 25 June 2021, the Third Claimant received what Ms Pressick describes as three "*threatening*" telephone calls:

        a) at 12.30, an unidentified male caller said: "*MBR Acres will be closing them coming for you in Hull (sic). How do you sleep at night?*";

        b) at 12.31, another employee took a call from another unidentified male (who may have been the same person as the first caller) who said: "*MBR Acres will be closing them coming for you in Hull (sic). How do you sleep at night?*"; and

        c) at 12.35, an unidentified female caller rang to say that she wanted to talk about the Mirror Article (see [18] above). The caller stated: "*I'm very upset and angry, this is going viral between the age group of 20-30*".

    (2) On 26 June 2021 at around 20.22, a call was received from a man who said that he had "*seen Marshall Bio in the news*" (possibly a reference to an article published in *The Mirror* newspaper on 22 June 2021 ("the Mirror Article") see further [24]-[24] below) and that the Third Claimant was "*disgusting, absolutely disgusting*".

(3) On 4 July 2021, a group called Vivisection Exposed posted the following on Facebook:

> "Went to the hellhole that is B&K Universal today. We actually walked through as the gate was open. It looks like a concentration camp with electric wire fencing on top of the walls. Beagles and Guinea Pigs are bred here, to be sent to vivisectors.
>
> We didn't get many photos because security were present. We wanted to 'walk our Dog' and have a look around at the same time, and taking obvious photos would have definitely cut our walk short.
>
> B&K Universal is similar to MBR Acres, part of the same company. Wouldn't it be great to get them both shutdown!"

(4) On 7 July 2021, employees of the Third Defendant received three calls. In one, the male caller shouted "*totally scum*" before putting the phone down. In the second, the male caller said: "*MBR Acres will be closing them (sic) coming for you in Hull. How do you sleep at night?*" (apparently using precisely the same wording (including the odd grammar) as the calls on 25 June 2021). The third caller, who refused to give his name, made reference to the Mirror Article and said: "*How do you sleep at night, do you have pets?*".

(5) On 11 July 2021, the Third Claimant received several calls and an email. At 07.25, a woman called and repeatedly shouted, "*murdering cunts*". At 13.10, a woman called to ask whether she could pay money and rescue a dog. At 16.15, a man called to ask, "*how can you work killing animals*". At 20.02, an email was received with the subject: "*You piece of shits*" (sic). The email message was: "*You disgusting bunch of satans! How can You kill and abuse dogs! I hope your all get poisoned. What a piece of shits you are*" (text as it appeared). At 23.10, a man called to ask whether the Third Claimant was connected to the First Claimant.

(6) On 12 July 2021 there were further calls. At 09.56 a man telephoned to ask whether the Third Claimant could "*supply some beagle burgers for [his] BBQ this weekend*". At 09.57 a man told the person who answered his call: "*I hope you sleeping well at night you fucking rancid bitch*". At 10.05, a different caller rang to say: "*I cannot believe you can sleep at night, sick, disgusting, horrible, vile.*" There was a call from a young person who asked to speak to someone about animal cruelty and asked how they would feel if it was happening to their dogs. At 14.04, an email was received: "*You horrible evil cunts. Stop using animals for your experiments you horrible bastards*". At 23.14, a further email was received by the generic email address for the Third Claimant: "*You are sick disgusting and evil. I hope that everyone employed by this company is force fed chemicals until you all die. How anyone could sleep at night, knowing what you are subjecting these innocent animals to such horrible treatment. You truly are the lowest of humanity. You deserve the most painful death.*" A threatening message was also posted on LinkedIn to an ex-employee of the Third Claimant who forwarded it to the Third Claimant.

(7) On 13 July 2021, a young person called and asked whether he could buy a dog. He asked whether the Third Claimant sold beagles and then said that they should be ashamed of themselves. The same caller is believed to have called back a minute or so later to say that he hoped that the Third Claimant was proud of itself and "*why don't [you] go and suck your family*" (sic). There was a further call at 18.29 from someone who asked, "*how can [you] live with [yourselves] killing dogs*". A 20.05 an email was sent to the generic email address for the Third Claimant: "*Here's a question. How about I lock you and all your colleagues in tiny little cages and scold your skin off then leave you in a kennel with the floor covered in your blood because you're a calm natured breed. I hope every single one of you gets mowed the fuck down by an 18 wheeler and I truly do wish that all of you get boiled alive in a pit of your own piss and shit.*" At 23.05, there was a further email (the text appearing in capital letters): "*Could you please explain to me what this company is about? And why you think it is acceptable to breed animals to use them for testing then to be slaughtered?!? How would you like for someone to lock you in a cage for the short period of time your (sic) alive just to be tested on before your (sic) tortured then slaughtered?!?!*"

(8) On 14 July 2021, an email was received by the generic email address of the Third Claimant:

> "Hello,
>
> Raising puppies and dogs to only ever be used in a laboratory, pumping their little innocent bodies with harmful substance daily is inhumane. Whatever way you try to justify this, it is animal cruelty. The countless shows on TV about raising dogs with love and care and affection, the media constantly highlighting everyone's hard work to fight against animal cruelty, all whilst in the background you are using them as your test experiments.
>
> They cannot express to you consent. They cannot express to you their pain and their sadness. There is no amount of scientific evidence which can prove to me or the vast majority of the public that this is, or should be, legal.
>
> There are many other avenues and alternatives than testing on dogs. This should not be happening in 2021.
>
> I, like many others, will continue to raise awareness to put a stop to this.
>
> If you have a conscience you will make a change. Adapt. Be better. For the dogs."

(9) At 14.21 on 14 July 2021, a man called the switchboard and said: "*Hiya, do you think it's normal to breed dogs? You're a cunt*". Later that day there was a social media post asking whether people would be interested in protesting at the B&K site.

(10) On 5 August 2021, Free the MBR Beagles posted on their Facebook page the address of the B&K site suggesting a joint protest against the First and Third Claimants:

> "**TWO SITE PROTEST: SUNDAY 15 AUG**
>
> MBR Acres in Huntingdon has a sister site, B&K Universal near Hull.
>
> Between these two sites, both owned by Marshall Bioresources, they breed the entire beagle supply for the UK contract testing laboratories.
>
> Join us in a rally at both sites on Sunday 15th August. If these two sites can be closed, beagle breeding for toxicology testing in the UK will be finished.
>
> Details of both sites can be found in the event link found in the comments, and on our page."

(11) In respect of the dual protest on 15 August 2021 (see [17(17)] above), at its height, some 40 protestors attended the B&K Site. No complaint is made as to the demonstration itself, but a photograph of some of the protestors from the B&K Site was posted on the Free the MBR Beagles Facebook page. The posed group photograph shows around 18 people standing behind a banner "*End Animal Experiments*". One of the protestors is dressed in a dog costume, and some of the protestors are wearing facemasks.

23. The Third and Fourth Claimants allege that all incidents identified in the preceding paragraph are acts of harassment by "Persons Unknown". Yet, nowhere in the evidence (or even in the Particulars of Claim) is it alleged that any of the incidents has caused distress and/or alarm to any identified employee of the Third Claimant. That is before any assessment is made whether, objectively judged, the acts are capable of disclosing a course of conduct amounting to harassment (applying the relevant principles: see [91] below). It does not appear, from the evidence, that the Third Claimant (or any of the relevant employees) has reported any of these incidents to the police or, in respect of emails, that the Third Claimant has taken steps to try and identify the person who sent the relevant email. There is nothing to suggest that the Third Claimant has blocked the email address(es) from which allegedly abusive messages were sent. There is no suggestion in the evidence that any of the named Defendants in these proceedings were responsible for any of the communications received by the Third Claimant.

*(3) Media reports*

24. The protests at the Wyton Site have received coverage in the local and national media. One article, highlighted in the Claimants' evidence, appeared in the *Mirror* newspaper on 22 June 2021 ("The Mirror Article"). The article appeared under the headline, "*Whimpering dogs forced into cages on UK 'farm factory' ahead of lab experiments*". The online version of the article is still available on the *Mirror* website (www.mirror.co.uk/news/uk-news/panicked-dogs-bred-factory-farms-24368423) and is illustrated with both still and video images. The Mirror Article included comments from people and groups opposed to animal testing together with quotes from Marshall BioResources, including:

> "The overwhelming consensus of scientific opinion is that animals are needed in a small percentage of medical research projects and that results from testing in dogs, when combined with work in other species, provide data that best predict human responses to drugs. Governments internationally take note of this and legally demand the use of animals where science advises that it is necessary.

> This issue is revisited regularly because it is an important one, but it is worth remembering that we exist only because successive UK governments, including the current one, demand that all potential medicines are tested in animals before being given to humans and animals."

25. The Mirror website has allowed readers to comment on the Mirror Article and Video. As at 29 September 2021, some 179 comments had been posted.

26. Some photographs, included in the Mirror Article, were credited to "Stop Animal Cruelty Huntingdon". Above the headline in the online version of the Mirror Article is an embedded video with the description: "*Distressed dogs are being experimented on in Cambridge warehouse*" ("the Mirror Video"). It is 2 minutes 26 seconds long. The video begins with what appears to be footage recorded by a drone flying over a warehouse, with sub-titles: "*In the heart of the British countryside dogs are being factory farmed for painful toxicity experiments that take place in laboratories across the UK.*" The soundtrack is of dogs barking. "*These dogs are kept indoors for their entire lives, their loud distressed cries and traumatised barking can be heard clearly outside the buildings at MBR Acres, Cambridgeshire.*" Footage, apparently taken from a camera placed on the ground outside the Wyton Site, shows crates of dogs being manoeuvred by workers whose faces have been blurred. "*To transport the dogs within the site they are picked up by the scruff of their necks and placed into overcrowded crates*". Footage is then shown, apparently recorded from a camera that may have been hidden in undergrowth outside the Wyton Site, of workers (again unidentifiable) loading the dogs into crates which are wheeled away. "*At 16 weeks old the dogs are transported to UK laboratories for cruel, painful procedures, including being force-fed chemicals for up to 90 days with no pain relief or anaesthetic*". Footage is then shown of crates being loaded onto a lorry, again the recording appears to have been made from a camera that may have been secreted in or around the permitter fence of the Wyton Site. "*MBR Acres agrees that their dogs are trained to be laboratory ready, including presenting their paws for injections and accepting gas masks on their faces.*" The remaining footage, which does not appear to be connected to the First Claimant (or to have been obtained from the Wyton Site), includes images of animal testing. The final caption is: "*Please ask your MP to sign EDM 175 for a science hearing to stop the false claims about human medicine which maintain this cruelty*". The video concludes with a credit: "*Special thanks to Stop Animal Cruelty Huntingdon for the footage filmed at MBR Acres*".

27. It is no part of the Court's function, at least at this stage, nor is it in a position, to determine whether the claims made in the Mirror Article and in the Mirror Video are true. The importance to the present application is that the Mirror Article and Mirror Video show that animal testing is a topic of real controversy, upon which strong views are held, and is a matter of significant public debate.

## F: The civil proceedings

28. Although the activities complained of have been taking place since April 2021, the claim against the Defendants was not commenced until 13 August 2021. On that date, the Claimants issued a Part 8 Claim Form. The brief details of the Claimants' claim were set out in eighteen paragraphs. In summary, these set out the acts of harassment and trespass alleged against the Defendants. In paragraph 18, the Claimants summarised their claim as follows:

> "Accordingly, the Claimants claims (sic) a permanent and interim injunction Order pursuant to section 3 and 3A of the Protection from Harassment Act 1997 and section 37 Supreme Court Act 1981 to prohibit breaches and apprehended breaches of section 1(1A) of the Protection from Harassment Act 1997, and/or trespass, and/or sections 145 and 146 of the Serious Organised Crime and Police Act 2005 in terms attached to the draft Order attached to this Claim Form at Appendix 1".

29. The day before the Claim Form was issued, the Claimants sought and obtained an order for alternative service of the Claim Form on the First to Tenth Defendants. The Claim Form was accompanied by 7 ring binders of documents containing the Claimants' evidence in support of the Part 8 claim, which was required to be served on the Defendants: CPR 8.5(1).

## G: The claim against "Persons Unknown"

30. As already noted (see [8] above), the Tenth Defendants are "Persons Unknown". In the Claim Form, the "Persons Unknown" are defined 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 MBR Acres Limited, Wyton, Huntingdon PE28 2DT 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"

31. It is now well-established that, in a civil claim against "Persons Unknown", the "Persons Unknown" must be defined carefully by reference to conduct which is alleged to be unlawful: ***Canada Goose UK Retail Ltd*** **[2020] 1 WLR 2802** ("***Canada Goose CA***") [82(2)] (see [77(2)] below).

32. The use of "and/or" in the definition of the "Persons Unknown" adopted by the Claimants means every person who is protesting in the identified area falls into the definition, whether or not s/he is alleged to be guilty of any wrongdoing. Further, the phrase "*engaging in unlawful activities*" is too vague and would include criminal offences (see further [45] below). Beyond, perhaps, what appeared in paragraph 18 in the details of claim, there is no attempt to define "*unlawful activities*" in the Claim Form. The injunction order does include a definition of "*unlawful activities*", but this cannot affect the definition of "Persons Unknown" in the Claim Form. The definition of "Persons Unknown" in the Claim Form will require some amendment before the claim can continue.

33. Interim injunctions granted against "Persons Unknown" are subject to specific safeguards (see [78] below).

## H: The interim injunction: 20 August 2021

34. On the same date as the Claim Form was issued, the Claimants issued an Application Notice seeking an interim injunction. A hearing, with a time estimate of ½ day was fixed for 20 August 2021.

35. On 20 August 2021, Stacey J heard the application for an interim injunction. The hearing was attended by representatives of the Claimants and the Third, Fourth, Fifth, Seventh, Eighth and Ninth Defendants. The Claimants had sought an extensive interim injunction, largely modelled on the injunction previously granted to Harlan. The Judge refused to grant an order in these wide terms and instead granted a limited injunction until a return date could be fixed. The material terms of the injunction she granted were:

> "3. The Defendants whether by themselves or by instructing, encouraging any other person, must not pursue a course of conduct which amounts to harassment of the Protected Persons within the meaning of Sections 1 and/or 1(1A) Protection from Harassment Act 1997.
>
> 4. The Defendants must not enter the following premises owned, leased and/or occupied by the First and Third Claimant: [the Wyton Site and the B&K Site].
>
> 5. The Defendants be restrained from doing, causing, permitting, instructing or encouraging or assisting any of the following: Assaulting, harassing, molesting, threatening or otherwise interfering with any Protected Person or causing criminal damage to the property of a Protected Person…"

36. "Protected Persons" were defined in the injunction order as: (1) the Second Claimant; (2) the Fourth Claimant; (3) the officers, employees and contractors of the First and Third Claimants; (4) the officers, employees and contractors of the First and Third Claimants' suppliers and service providers; and (5) the families or agents of the officers, employees and contractors referred to above. "*Supplier*", in turn, was defined as "*any third party that directly or indirectly supplies any goods to the First or Third Defendant*"; and "*service provider*" was defined as "*any third party that directly or indirectly provides any services to the First or Third Defendant*".

37. The Judge adjourned the Claimants' application for an interim injunction to be heard by a Judge of the Media & Communications List. The hearing was subsequently fixed for 4 October 2021.

## I: Transfer to Part 7 and the Particulars of Claim

38. On 25 August 2021, I transferred the claim to Part 7, allocated it to the Media & Communications List, and gave directions for the service on the Defendants of Particulars of Claim (complying with CPR Practice Direction 53B §10.3) and the appropriate response pack. The claim should not have been commenced using Part 8. The claim included a claim for alleged harassment by speech, and the terms of the injunction that the Claimants were seeking represented restrictions on both freedom of expression and the right to protest. CPR Practice Direction 53B §10.2 expressly disapplies CPR 65.28(1), and requires a claim, which is or includes a claim for harassment by speech, to be commenced under the Part 7 procedure. Even had CPR Practice Direction 53B not mandated the use of Part 7, the claim being brought by the Claimants was unsuitable for Part 8. First, there was a significant likelihood of significant disputes of fact. Second, in claims involving multiple defendants, there is a need for clarity as to what is being alleged against each individual defendant. Part 8 claims against multiple defendants can lead to a situation where a mass of evidence is

served without any identification of what is being alleged against each defendant. That is not likely to serve the overriding objective of ensuring that the proceedings are dealt with justly and at proportionate cost, that the parties are on an equal footing and can participate fully in proceedings.

39. Particulars of Claim were served on 20 September 2021. In the evidence served originally with the Part 8 Claim Form, the Claimants' solicitor, Eric France, had identified the following claims against the Defendants, in addition to the claim for harassment: (1) private nuisance (obstructing access to the Wyton Site); (2) criminal damage (e.g. to the camera sensor at the gate); (3) offences of "*watching or besetting*" contrary to s.7(4) Conspiracy and Protection of Property Act 1875 and/or s.241(1) Trade Union and Labour Relations (Consolidation) Act 1992; and (4) assault. These claims were not included in the Claim Form or Particulars of Claim and appear to have been abandoned by the Claimants. In the Particulars of Claim, the Claimants' claim against the Defendants is now put only on the following bases:

    (1) harassment, contrary to ss.1 and 1(1A) ("PfHA"); the alleged acts of harassment being set out in Schedules 1 and 2 to the Particulars of Claim;

    (2) breaches of ss.145-146 Serious Organised Crime and Police Act 2005 ("SOCPA 2005"); and

    (3) trespass onto the land of the First and Third Claimants, including, in particular, flying drones over the First Claimant's land without permission.

40. I need say nothing more about the claims for harassment and trespass at this stage. Although not without some elements of complexity, these are well-known torts. However, the claim under ss.145-146 SOCPA 2005 is unusual and requires some consideration.

41. So far as material, ss.145-146 SOCPA 2005 provide as follows:

> **145 Interference with contractual relationships so as to harm animal research organisation**
>
> (1) A person (A) commits an offence if, with the intention of harming an animal research organisation, he—
>
> (a) does a relevant act, or
>
> (b) threatens that he or somebody else will do a relevant act,
>
> in circumstances in which that act or threat is intended or likely to cause a second person (B) to take any of the steps in subsection (2).
>
> (2) The steps are—
>
> (a) not to perform any contractual obligation owed by B to a third person (C) (whether or not such non-performance amounts to a breach of contract);
>
> (b) to terminate any contract B has with C;

(c) not to enter into a contract with C.

(3) For the purposes of this section, a "relevant act" is—

(a) an act amounting to a criminal offence, or

(b) a tortious act causing B to suffer loss or damage of any description;

but paragraph (b) does not include an act which is actionable on the ground only that it induces another person to break a contract with B.

(4) For the purposes of this section, "contract" includes any other arrangement (and "contractual" is to be read accordingly).

(5) For the purposes of this section, to "harm" an animal research organisation means—

(a) to cause the organisation to suffer loss or damage of any description, or

(b) to prevent or hinder the carrying out by the organisation of any of its activities…

**146 Intimidation of persons connected with animal research organisation**

(1) A person (A) commits an offence if, with the intention of causing a second person (B) to abstain from doing something which B is entitled to do (or to do something which B is entitled to abstain from doing)—

(a) A threatens B that A or somebody else will do a relevant act, and

(b) A does so wholly or mainly because B is a person falling within subsection (2).

(2) A person falls within this subsection if he is—

(a) an employee or officer of an animal research organisation;

(b) a student at an educational establishment that is an animal research organisation;

(c) a lessor or licensor of any premises occupied by an animal research organisation;

(d) a person with a financial interest in, or who provides financial assistance to, an animal research organisation;

(e) a customer or supplier of an animal research organisation;

(f) a person who is contemplating becoming someone within paragraph (c), (d) or (e);

(g) a person who is, or is contemplating becoming, a customer or supplier of someone within paragraph (c), (d), (e) or (f);

(h) an employee or officer of someone within paragraph (c), (d), (e), (f) or (g);

(i) a person with a financial interest in, or who provides financial assistance to, someone within paragraph (c), (d), (e), (f) or (g);

(j) a spouse, civil partner, friend or relative of, or a person who is known personally to, someone within any of paragraphs (a) to (i);

(k) a person who is, or is contemplating becoming, a customer or supplier of someone within paragraph (a), (b), (h), (i) or (j); or

(l) an employer of someone within paragraph (j).

(3) For the purposes of this section, an "officer" of an animal research organisation or a person includes—

(a) where the organisation or person is a body corporate, a director, manager or secretary;

(b) where the organisation or person is a charity, a charity trustee (within the meaning of the Charities Act 2011);

(c) where the organisation or person is a partnership, a partner.

(4) For the purposes of this section—

(a) a person is a customer or supplier of another person if he purchases goods, services or facilities from, or (as the case may be) supplies goods, services or facilities to, that other; and

(b) "supplier" includes a person who supplies services in pursuance of any enactment that requires or authorises such services to be provided.

(5) For the purposes of this section, a "relevant act" is—

(a) an act amounting to a criminal offence, or

(b) a tortious act causing B or another person to suffer loss or damage of any description.

(6) The Secretary of State may by order amend this section so as to include within subsection (2) any description of persons framed by reference to their connection with—

(a) an animal research organisation, or

(b) any description of persons for the time being mentioned in that subsection…

42. A person convicted of an offence under ss.145 and/or 146 is liable, on summary conviction, to imprisonment for a term not exceeding 12 months and/or to a fine not exceeding the statutory maximum, or, on conviction on indictment, to imprisonment for a term not exceeding five years and/or to a fine: s.147(1). Prosecutions for offences

under these sections require the consent of the Director of Public Prosecutions: s.147(2).

43. Relevant "*animal research organisations*" are defined in s.148. There appears to be no dispute that the First and Third Claimants fall within this definition and are therefore protected by the offences provided by ss.145-146.

44. Whilst ss.145-146 provide criminal offences, they do not provide a tort or other civil remedy. In both the Application Notice for the interim injunction, dated 13 August 2021, and the Particulars of Claim, the Claimants sought to "*restrain further offences pursuant to ss.145-146 Serious Organised Crime and Police Act 2005*". Further, in their evidence and written submissions, the Claimants appeared to argue that breach of ss.145-146 was both a criminal offence and a tort.

45. These submissions are simply wrong, as I think Ms Bolton accepted at the hearing. Sections 145-146 create criminal offences. They do not provide a civil cause of action. Further, unless the consent of the Attorney General is obtained, a claimant cannot enforce the criminal law by way of civil injunction: ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435, 477E-F** *per* Lord Wilberforce. The Claimants cannot base any civil claim on alleged contravention(s) of ss.145-146, and the parts of the Claimants' Particulars of Claim that purport to do so, should be removed.

46. In terms of damage, in their Particulars of Claim, the Claimants allege that the First Claimant's losses have included:

    (1) a waste collection sub-contractor has suspended waste collection at the Wyton Site and refused to recommence the same (although it appears from the evidence filed since the Particulars of Claim were filed that the company did attend the site to collect waste on 9 September 2021);

    (2) a third-party supplier has declined to attend the Wyton Site "*due to the possible negative press that [it] would receive*";

    (3) the inability to transport animals from the Wyton Site to customers; and

    (4) damage to a gate sensor and separately an intercom camera.

47. The Second Claimant (in a representative capacity) alleges that there has been a deterioration in the mental health and well-being of the First Claimant's staff, increased incidence of staff absence through illness, and three members of staff (one full-time and two agency) having resigned, one of which resignations is alleged to have been caused "*directly by the acts complained of*".

48. No particular losses are identified by, or claimed on behalf of, the Third and Fourth Claimants, but it is contended that they "*apprehend*" that they may suffer loss and damage similar to that of the First and Second Claimants.

49. The Particulars of Claim are not easy to follow. As noted already, attached to the statement of case are several schedules. Whilst the acts of alleged harassment are generally identified and described in the body of the Particulars of Claim, the detail of the particular allegations against individual Defendants (and "Persons Unknown")

is substantially provided only in the Schedules. The acts of alleged harassment of the First and Second Claimants are set out in Schedule 1, and the acts of alleged harassment of the Third and Fourth Claimants are set out in Schedule 2. Schedule 1 refers to all Defendants, Schedule 2 refers only to the First and Tenth Defendants. Each Schedule cross-refers to four separate and substantial witness statements. Those witness statements, in turn, themselves refer to extensive exhibits. To understand what is being alleged against any individual defendant in respect of any alleged incident, it is necessary to undertake an extensive cross-referencing exercise that involves at least three stages. As a concise statement of the facts alleged against each Defendant, the Particulars of Claim singularly fail.

50. But there are also more fundamental issues with this statement of case.

(1) A claim of harassment under s.1(1A) PfHA needs to be clearly and precisely pleaded. It needs to identify the course of conduct (a) which involves harassment of two or more persons; (b) which the relevant defendant knows or ought to know involves harassment of those persons; and (c) by which he intends to persuade any person (whether or not one of those mentioned) to do or not do the things identified in s.1(1A)(c).

(2) In the body of the Particulars of Claim and in the Schedules, the Claimants repeatedly adopt the same formula when identifying the alleged acts of harassment upon which they rely. For example, as against the Seventh Defendant, under the column heading in Schedule 1 "*Particulars of harassment and/or breaches of ss.145-146 SOCPA 2005 (both a crime and/or a tort causing loss and damage)*" it is alleged that, on 27 June 2021, she:

> "… caused alarm and distress to Staff by participating in a large-scale aggressive protest, which included shouting at Staff and surrounding Staff cars when entering and leaving the Wyton Site… [The Seventh Defendant] took such action in an attempt to intimidate and harass the Staff of [the First Claimant] for the purpose of convincing them not to work for [the First Claimant] and/or to hinder the activities of [the First Claimant] by interfering with its contractual relationships with its Staff."

A similar approach is adopted in main body of the Particulars of Claim (see e.g. Paragraph 31(i)). (Paragraph 29 of the Particulars of Claim states that those who fall within the class of the Second Claimant are referred to, collectively, as "Staff".)

(3) There are several objections to this style of pleading:

a) First, particulars of alleged breaches of ss.145-146 SOCPA 2005 are irrelevant (see [45] above), as are the averments that the actions of the relevant defendant were an "*attempt to hinder the activities of the First Claimant by interfering with its contractual relationships with its Staff*". Inclusion of irrelevant particulars in the Claimants' statement of case is likely to obstruct the just disposal of the proceedings and renders them liable to be struck out: CPR 3.4(2)(b).

b) Second, the particulars do not properly include essential information necessary to establish a claim in harassment as required by CPR Practice Direction §10.3. A failure to do so will render the statement of case liable to be struck out under CPR 3.4(2)(a). For example, an assessment of whether the alleged "*shouting*" of the Seventh Defendant amounts to harassment will require identification of the words that she is alleged to have shouted. If there is something in the way in which the words were spoken that is alleged to supply the element of harassment, then this must be identified and pleaded. Equally, the person(s) caused alarm and distress must be identified (even if their names are formally withheld in the statement of case). (Later in the claim it may be necessary for arrangements to be made as to the terms on which the names of individuals that have been withheld in the Particulars of Claim are provided to the Defendants).

c) Third, if, as appears to be the case, the Claimants wish to maintain a claim which relies (at least in part) on s.7(3A) PfHA, then proper particulars of the conduct that is alleged to have been aided, abetted, counselled or procured by another must be given, together with sufficient particulars of the Claimants' case against each Defendant under s.7(3A)(a) and (b). It is not enough simply to plead a series of allegedly harassing acts, by several individual Defendants (including the protean class of "Persons Unknown"), without giving proper particulars required by s.7(3A) if that subsection is to be relied upon.

51. As I indicated to Ms Bolton at the hearing, the Claimants will need to go back to the drawing board and replead the Particulars of Claim. Particulars of Claim should succinctly plead the essential facts, not evidence. I fear that the current structure of the Particulars of Claim – and the extensive and labyrinthine cross-referencing to witness statements and exhibits – owes much to the fact that the claim was originally wrongly commenced under Part 8. The object of the exercise however is clear. The revised Particulars of Claim must set out, for each Defendant, each act of alleged harassment that is relied upon together with the necessary and required particulars to support such a claim. The document should be self-contained and must not cross-refer to witness statements. Ultimately it will be for the Claimants and their advisors to decide whether these details are best provided in the body of the Particulars of Claim or in a Schedule. Having had to wrestle with the current versions of the Schedules, I think these have clear downsides. But, however the claim is set out, the objective is clear. Ultimately, if the claim is disputed, each individual named Defendant is going to have to file a Defence, which complies with CPR Practice Direction §10.4, specifically admitting or denying each act alleged to constitute the course of conduct amounting to harassment. The Particulars of Claim (and any Schedules) must be in a form that readily and fairly facilitates this.

## J: Claim against First and Second Defendants on a representative basis

52. "Free the MBR Beagles" has a Facebook page ("the Free the Beagles Facebook Page"). The evidence of the Claimants is that, until it was given its current name on or around 1 July 2021, the Free the Beagles Facebook Page was previously called "Stop Animal Cruelty Huntingdon", which was created on 10 September 2019. As at 3 August 2021,

5,019 people had "liked" the Free the Beagles Facebook Page and it had 5,364 followers.

53. "Camp Beagle" also has a Facebook page, which was set up on 29 June 2021 ("the Camp Beagle Facebook Page"). As at 3 August 2021, 7,046 people had "liked" the Camp Beagle Facebook Page and it had 7,536 followers.

54. The Claimants' case is that the Third and Fifth Defendants are individuals who operate and control, respectively, the Free the Beagles and Camp Beagle Facebook Pages. The Third and Fifth Defendants have not filed any evidence disputing this.

55. Using the functionality offered by the platform, Facebook users can post messages and images to the Free the Beagles and Camp Beagle Facebook Pages. Users can also "like" and "share" content that is posted on the relevant Facebook Page. A user can become a "follower" of the Free the Beagles Facebook Page and/or Camp Beagle Facebook Page simply by clicking a link. S/he is not required to complete any formal application to join and there are no membership "rules" for either group.

56. In the Particulars of Claim, the Claimants assert, baldly, that the First and Second Defendants are "unincorporated associations". Similarly, in his witness statement, Mr France states, "*Free the MBR Beagles… is a Facebook Group and is [an] unincorporated association used to promote protest activities around the [Wyton] Site*". The same assertion is made in respect of Camp Beagle. No details are given as to these "unincorporated associations" either in the Particulars of Claim or the Claimants' evidence. The evidence of the existence of this "unincorporated association" is limited to the existence and activities of the Free the Beagles and Camp Beagle Facebook Pages. In her oral submissions, Ms Bolton referred to the fact that there had been efforts to raise funds via the Facebook pages. At the hearing, the Third and Fifth Defendants confirmed that they did not wish to represent the First and Second Defendants in the proceedings.

57. The Claimant seeks to bring the claim against the First and Second Defendants on a representative basis under CPR 19.6, which provides:

> "(1) Where more than one person has the same interest in a claim-
>
> (a) the claim may be begun; or
>
> (b) the court may order that the claim be continued,
>
> by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.
>
> (2) The court may direct that a person may not act as a representative.
>
> (3) Any party may apply to the court for an order under paragraph (2).
>
> (4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule –
>
> (a) is binding on all persons represented in the claim; but

(b) may only be enforced by or against a person who is not a party to the claim with the permission of the court…"

58. Ms Bolton submits that the Claimants should be permitted to bring a claim against the First and Second Defendants as "unincorporated associations" with the Third and Fifth Defendants, respectively, as their representatives. She contends that this type of representative claim has been permitted in previous "protest" cases, and cites the ***Harlan Laboratories*** case (see [11] above) and ***Michaels (Furriers) Ltd -v- Askew***, *The Times*, 25 June 1983.

59. In ***Harlan Laboratories*** [13], Lang J followed the decision of the Court of Appeal in ***Michael (Furriers) Ltd*** in which Dunn LJ held that:

> "… where a number of unidentified persons are causing injury and damage by unlawful acts of one kind or another, and there is an arguable case that they belong to a single organisation or class which encourages action of the type complained of, and their actions can be linked to that organisation, then the rule enables the court to do justice in the particular case."

and Purchas LJ had stated that the "unincorporated association" sued as a representative defendant was:

> "… an identifiable if informal organisation of people having the same interest in the proceedings, namely an interest in furthering the campaign against the fur trade and/or by defending proceedings designed to inhibit the furtherance of that campaign."

60. Although the authorities caution that the Court should not take an unduly restrictive assessment of whether the party has the "*same interest*" under CPR 19.6(1), fundamentally the Court should only permit a claim to be brought by or against a representative party if to do so will achieve justice. In ***Emerald Supplies Ltd -v- British Airways plc*** **[2011] Ch 345**, the Court of Appeal upheld a decision striking out a claim brought on a representative basis against the defendant. Mummery LJ, giving the judgment of the Court, set out the principles:

> [62] … The fundamental requirement for a representative action is that those represented in the action have 'the same interest' in it. At all stages of the proceedings, and not just at the date of judgment at the end, it must be possible to say of any particular person whether or not they qualify for membership of the represented class of persons by virtue of having 'the same interest' as Emerald.
>
> [63] This does not mean that the membership of the group must remain constant and closed throughout. It may indeed fluctuate. It does not have to be possible to compile a complete list when the litigation begins as to who is in the class or group represented. The problem in this case is not with changing membership. It is a prior question how to determine whether or not a person is a member of the represented class at all. Judgment in the action for a declaration would have to be obtained before it could be said of any person that they would qualify as someone entitled to damages against BA. The proceedings could not accurately be described or regarded as a representative action until the question of liability had been tried and

> a judgment on liability given. It defies logic and common sense to treat as representative an action, if the issue of liability to the claimants sought to be represented would have to be decided before it could be known whether or not a person was a member of the represented class bound by the judgment.
>
> [64] A second difficulty is that the members of the represented class do not have the same interest in recovering damages for breach of competition law if a defence is available in answer to the claims of some of them, but not to the claims of others: for example, if BA could successfully run a particular defence against those who had passed on the inflated price, but not against others. If there is liability to some customers and not to others they have different interests, not the same interest, in the action.
>
> [65] In brief, the essential point is that the requirement of identity of interest of the members of the represented class for the proper constitution of the action means that it must be representative at every stage, not just at the end point of judgment. If represented persons are to be bound by a judgment that judgment must have been obtained in proceedings that were properly constituted as a representative action *before* the judgment was obtained. In this case a judgment on liability has to be obtained before it is known whether the interests of the persons whom the claimants seek to represent are the same. It cannot be right in principle that the case on liability has to be tried and decided before it can be known who is bound by the judgment. Nor can it be right that, with Micawberish optimism, Emerald can embark on and continue proceedings in the hope that in due course it may turn out that its claims are representative of persons with the same interest."

61. More recently, in ***Jalla -v- Shell International Trading and Shipping Co Ltd*** **[2020] EWHC 2213 (TCC)**, Stuart-Smith J carried out an extensive review of the relevant authorities and extracted several key principles in [60], which included:

    (1) the purpose of a representative action is to accommodate multiple parties who have the same interest in such a way as to go as far as possible towards justice rather than to deny it altogether. This is done by adopting a structure which can "*fairly and honestly try the right*"; and

    (2) the existence of potential defences affecting some represented parties' claims but not those of others tends to militate against representative proceedings being appropriate. The existence of individual defences calls into question whether the action really is a claim for relief that is beneficial for all or is a collection of individual claims sharing some common issues of fact or law.

62. The Court of Appeal dismissed an appeal from Stuart-Smith J's judgment in ***Jalla -v- Shell International Trading and Shipping Co Ltd*** **[2021] EWCA Civ 1389**. No challenge was made to the Judge's distillation of the principles set out above. Coulson LJ, giving the judgment of the Court of Appeal, identified the key authorities in [33]-[50], and the applicable principles in [51], including, for present purposes, the following:

    (1) A representative action is a particular form of multi-party proceeding with very specific features. One such feature concerns the congruity of interest between

representative and represented. Another is the need for certainty at the outset about the membership of the represented class.

(2) The starting point (or threshold) for any representative action is that the representing parties must have "*the same interest in a claim*" as the parties that they represent.

(3) "*The same interest*" is a statutory requirement which cannot be abrogated or modified; it is "*a non-bendable rule*".

(4) The reason why the represented parties need to have the same interest in a claim as the representative claimant is because the represented parties are bound by the result of the representative action: referred to as "*the binding effect of the proceedings*".

(5) Membership of the represented class must be capable of being ascertained at the outset of the proceedings: "*It cannot be right in principle that the case on liability has to be tried and decided before it can be known who is bound by the judgment*".

63. In my judgment, the same fundamental problem arises with the Claimants' attempts to bring a claim against the First and Second Defendants on a representative basis. The class of defendants against whom the Claimants seek to bring a claim on a representative basis do not have the "*same interest*". Even were it possible to identify the members of "Free the MBR Beagles" or "Camp Beagle" – perhaps on the basis that "followers" would be treated as "members" of the "unincorporated association", they have not all (and could not all be alleged to have) committed the same wrong. The alleged acts upon which the Claimants seek to establish liability are fact specific and vary protestor by protestor. Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case: ***DPP -v- Ziegler*** **[2021] 3 WLR 179** [59] *per* Lord Hamblen and Lord Stephens. Further, the membership of these "unincorporated associations" is likely to change with new members joining as time goes on; the protest is a continuing one.

64. Whether civil liability can be established against any individual protestor – and whether an injunction should be granted and, if so, in what terms – will require an investigation of the evidence against that person. It would be unjust to grant a judgment against a representative defendant when the class includes people who have done nothing wrong and is likely to include "newcomers". The fact that an order following judgment cannot be "enforced" against a member of the class without the Court's permission is not an adequate safeguard. The Court should not grant a judgment or order against a class of person which includes (or will include) those who, if their individual circumstances were investigated, would not be liable at all. As Coulson LJ noted, succinctly, in ***Jalla*** [61]: "*the existence of the manifestly different interests of the represented parties mean that it is not a representative action in the first place.*"

65. There is no claim that there was any co-ordination of unlawful activities or that the members of these "unincorporated associations" acted otherwise as joint tortfeasors. The Free the Beagles and Camp Beagle Facebook Pages are simply examples of modern campaigning platforms; a method of communication that did not exist at the time of the

***Michael (Furriers) Ltd*** case. The relevant Facebook Pages are the method used, principally by the Third and Fifth Defendants, to publicise, promote and encourage protest against the First and Third Claimants. There is no evidence that these Facebook groups are intended to (or do) encourage or incite anyone to break the law. The existence of the Facebook groups in this case no more demonstrates the existence of an underlying organisation or association than any other coagulation of people around a political cause. The fact that there have been recent fundraising efforts does not significantly alter the position, not least because the fundraising appears to have been to defend these proceedings. To the extent that the Claimants allege that material has been published on the Free the Beagles and/or Camp Beagle Facebook Pages, that amounts to harassment (or other civil wrong), then they must bring their claims against the Third and Fifth Defendants (and any other Defendants) who they contend are responsible for what has been posted there.

66. The Third and Fifth Defendants have not volunteered to represent the First and Second Defendants in these proceedings; they do not want to do so. Of course, their wishes are not determinative of whether an order should be made under CPR 19.6, but it is clearly a factor. In my judgment, the Claimants are attempting attempt to corral the protestors into these "unincorporated associations" and to force the Third and Fifth Defendants to "represent" them in these proceedings. That is simply an attempt at self-serving expedience. The claim against the First and Second Defendants is, in reality, an attempt to obtain a "persons unknown" injunction by another route. It seeks to obtain the remedy of injunction against a protean class of largely unknown people whose only connection with each other is their alleged shared support of a political cause through a Facebook group. Based on evidence of alleged wrongdoing by only a small fraction of the protestors, the Claimants seek to obtain a wide-ranging injunction to restrict the activities of all members of the "unincorporated association" as an entire class. For these reasons, even had I been satisfied that the Claimants could meet the "same interest" test in CPR 19.6(1), I would have refused to permit a claim to be brought against the First and Second Defendants on a representative basis.

67. In consequence, I direct, pursuant to CPR 19.6(2) that the First and Second Defendants may not be sued in a representative capacity. Subject to any further submissions, I consider that the claim against the First and Second Defendants should be stayed.

## K: Terms of the interim injunction sought by the Claimants

68. In my order of 25 August 2021, I directed that, by 17 September 2021, the Claimants should file and serve upon the Defendants a copy of the injunction order that they would invite the Court to impose at the return date on 4 October 2021. The Claimants complied with that order, and I have set out the material terms of the injunction order sought by the Claimants in the Appendix to this judgment. The terms of the draft are largely modelled on the injunction granted previously to Harlan, but, as I have noted (see [11] above), the evidence in the case was different and the law has developed significantly since that decision.

69. The principal causes of action relied upon by the Claimants in support of their injunction application are (1) harassment; and (2) trespass.

## L: Summary judgment application by the Seventh Defendant

70. On 23 September 2021, the Seventh Defendant filed an Application Notice seeking summary judgment under Part 24 against the Claimants. It was supported by a witness statement of the Seventh Defendant, dated 23 September 2021. In summary, the Seventh Defendant contended that the Claimants only alleged that she was guilty of two acts of harassment, one of which was the alleged criminal damage to a sensor of the gate at the Wyton Site (see [50(2)] above). She argues that the Claimants have no real prospect of demonstrating that she is guilty of harassment under PfHA and that the claim against her should be dismissed. Ms Bolton rightly points out that the application for summary judgment was not served 14 days before the hearing, as required by CPR 24.4(3).

71. Separately, Mr Tear, on behalf of the Seventh Defendant, filed written submissions, also dated 23 September 2021, complaining that the Particulars of Claim had been served late and they had not been properly verified with a statement of truth by the Second Claimant. The Particulars of Claim, verified by a statement of truth by the Second Claimant, were not served until 20 September 2021, whereas they were ordered to be filed and served by 17 September 2021. In response, the Claimants have issued and served a further Application Notice, dated 27 September 2021, seeking relief from sanction in respect of the late service of the properly verified Particulars of Claim.

72. As time was limited on 4 October 2021, I indicated that I would not hear these separate applications at the hearing and that, if necessary, they could be determined when judgment was handed down (or subsequently). Given the conclusion that I have reached about the need for the Particulars of Claim to be redrafted (see [51] above), it may be that these further applications will not require determination at the hand-down (or at all).

## M: Application to adjourn by the Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants

73. On 30 September 2021, solicitors for the Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants issued an Application Notice seeking to adjourn the hearing on 4 October 2021. As explained in the witness statement of their solicitor, Gemma Bowkett, the grounds of the application were that the relevant Defendants had only "formally" instructed solicitors on 29 September 2021 and there was insufficient time for the solicitors to prepare before the hearing on 4 October 2021. The Fifth and Eighth Defendants were notified that their emergency applications for legal aid had been refused on 28 September 2021.

74. The application for an adjournment was opposed by the Claimants. They submitted that several of the Defendants seeking the adjournment had attended the hearing before Stacey J on 20 August 2021. They had known from that point that the Court would fix a return date at which the Claimants' application for an interim injunction would be considered further. The belated 'formal' instruction of solicitors should not disrupt the hearing that had been fixed for several weeks.

75. A pragmatic solution was found at the hearing on 4 October 2021. Whether or not the application for an injunction against the Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants was adjourned, the Court would have to consider the application

against the other named Defendants and against "Persons Unknown". Substantially, therefore, the Court was going to have to adjudicate on the overall dispute and the merits of the Claimants' injunction application. It was therefore agreed that any order that the Court might make against the Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants would be without prejudice to their being permitted to make a further application to vary or discharge the order. In other words, for the Third, Fifth, Sixth, Eighth, Ninth and Thirteenth Defendants, they would have an opportunity to ask the Court to reconsider the terms of any injunction granted against them, without having to demonstrate a change of circumstances which they would otherwise have been required to show had the Court heard and determined the injunction application *inter partes*.

## N: Interim injunctions

*(1) The need for precision in injunction orders*

76. The terms of any injunction must be precise; so as to enable the respondent to know what it is he is to be prevented from doing: ***Lawrence David Ltd -v- Ashton*** **[1989] 1 FSR 87, 95** *per* Balcombe LJ; ***Boyd -v- Ineos Upstream Ltd*** **[2019] 4 WLR 100** [34(5)] *per* Longmore LJ. As a general rule, an injunction should not be drafted in such wide terms that it prohibits lawful conduct, but the court does retain the power to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case: ***Ineos*** [34(4)]; ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29** [50] *per* Leggatt LJ.

*(2) Interim injunctions against "Persons Unknown"*

77. Interim injunctions can be granted against properly described "persons unknown". In ***Canada Goose CA*** [82], relying upon the decisions in ***Cameron -v- Liverpool Insurance Co Ltd*** **[2019] 1 WLR 147** and ***Ineos***, the Court of Appeal drew together the principles that apply to such injunctions ("the *Canada Goose* principles"):

> "(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
>
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
>
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction…"

78. The Court should be inherently cautious about granting an injunction against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance: ***Ineos*** [31]. Where an interim injunction is granted against "Persons Unknown", because the order will have the potential to extend beyond the immediate parties to the claim when the injunction is granted, the Court should consider imposing of certain additional safeguards: see ***LB Barking -v- Persons Unknown*** **[2021] EWHC 1201 (QB)** [248]. The following would apply in this claim:

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

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

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

(4) If an interim injunction is granted:

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

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

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

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

a) if the "Persons Unknown" have not been identified sufficiently that they fall within Category 1 "Persons Unknown" (defined in [11(2)] ***LB Barking***), to apply to discharge the interim injunction against "Persons Unknown" and discontinue the claim under CPR 38.2(2)(a); and

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

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

79. The Claimants have already begun the process of identifying people that fall into Category 1 "Persons Unknown". Exhibited to Ms Pressick's Third Witness Statement are photographs of some 76 individuals. Most of these Ms Pressick has been unable to name. Nevertheless, they are persons who can be identified by photograph and, pending discovery of their names, can be given an identifying cipher (UD1, UD2, UD3, etc.). The Claimants' claim against each can be set out in the Particulars of Claim and, ultimately, the Court can adjudicate – after a trial or sooner disposal – whether the Claimants should be granted judgment against that defendant and, if so, what remedies should be granted. As the Claimants will be filing a new Particulars of Claim (see [51] above), this will give them the opportunity to particularise the claim they wish to advance against these identified, but unnamed, defendants.

*(3) s.12 Human Rights Act 1998*

80. When considering whether to grant an interim injunction, the Court will usually apply the well-established test from ***American Cyanamid -v- Ethicon Ltd (No.1)*** **[1975] AC 396**: (a) is there a serious issue to be tried? (b) would damages be an adequate remedy? (c) does the balance of convenience favour the grant of an injunction?

81. A more exacting test is required in certain types of case. Where the injunction sought would interfere with freedom of expression, the test is not that under ***American Cyanamid*** but that provided in s.12(3) Human Rights Act 1998. s.12 provides:

> **"12 Freedom of expression.**
>
> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified.
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
>
> (a) the extent to which—
>
> (i) the material has, or is about to, become available to the public; or
>
> (ii) it is, or would be, in the public interest for the material to be published;
>
> (b) any relevant privacy code.
>
> (5) In this section—
>
> "court" includes a tribunal; and
>
> "relief" includes any remedy or order (other than in criminal proceedings)."

82. "*Likely*" in s.12(3) means "*more likely than not*": ***Cream Holdings Ltd -v- Banerjee*** **[2005] 1 AC 253**; ***YXB -v- TNO*** **[2015] EWHC 826 (QB)** [9]. "*Publication*" in s.12(3) is not restricted to commercial publication; it applies to any method of communication that would engage Article 10 including protest slogans and placards displayed in person or online: ***Birmingham City Council -v- Afsar*** **[2019] EWHC 1560** [60]-[61].

*(4) Interim injunctions against demonstrations*

83. Where freedom of expression is exercised in the context of protest, Article 11 is also engaged. Both Articles 10 and 11 are qualified rights that can be restricted, amongst other things, "*for the protection of the rights and freedom of others*". In some instances, the Article 8 rights of individuals who are the targets of the protest may be engaged. In ***Canada Goose UK Retail Ltd -v- Persons Unknown*** **[2020] 1 WLR 417** ("***Canada Goose 1***"), I set out the following principles (with citation of most authority omitted):

> [98] In a democratic society, those who demonstrate seek to effect change in several ways. For example, to campaign for changes to the law, to persuade other citizens to support their cause or to persuade others to cease activities or modify their behaviour. History provides many examples of individuals whose powerful advocacy achieved significant change, but almost without exception, those individuals could not have succeeded alone. They depended upon inspiring the support of others, often in large numbers. In demonstrations and protests, as in democracy more widely, numbers matter. As an exercise of democratic autonomy and self-fulfilment, each individual must be permitted to add his/her voice in support of a cause, for example by signing a petition to Parliament or by joining a demonstration. It is not for a public authority to determine what number of demonstrators is "enough" or "sufficient". To impose such a limit would effectively curtail the democratic rights of those who wished to demonstrate but who fell outside the permitted number. Further, if the number of demonstrators were to be restricted, who would set the limit, on what basis, and how are those "permitted" to demonstrate to be chosen?
>
> [99] As to the assessment of competing human rights, I would summarise the principles as follows:
>
> (1) Freedom of expression (*a fortiori* when part of lawful protest) is one of the core rights protected by the Convention. It "*constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment*"…
>
> (2) The qualifications in Article 10(2) must therefore be "*construed strictly and the need of any restrictions must be established convincingly*"…
>
> (3) Any interference with the Article 10/11 rights must:
>
> a) be prescribed by law;
>
> b) be necessary in a democratic society (necessity being "*convincingly established*"); and
>
> c) pursue one or more of the legitimate aims specified in Article 10(2) or 11(2), as the case may be.
>
> (4) "Necessary" means that the interference complained of corresponded to a "*pressing social need*"; it is not synonymous with "*indispensable*" but neither has it the flexibility of such expressions as "*admissible*",

"*ordinary*", "*useful*", "*reasonable*" or "*desirable*"… Something that is merely "*expedient*" cannot be described as "*necessary*".

(5) When Convention rights come into conflict, the approach to be adopted is …:

a) neither Article has as such precedence over the other;

b) an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary;

c) the justifications for interfering with or restricting each right must be taken into account; and

d) the proportionality test must be applied to each.

(6) When the Court considers whether an interference with a fundamental right is proportionate, it adopts a three-stage analysis:

a) First, whether the objective which is sought to be achieved — the pressing social need — is sufficiently important to justify limiting the fundamental right.

b) Second, whether the means chosen to limit that right are rational, fair and not arbitrary.

c) Third, whether the means used impair the right as minimally as is reasonably possible; in other words, could a lesser measure be used to achieve the legitimate aim…

(7) Article 10 protects not only 'information' or 'ideas' that are favourably received, or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb… In the memorable words of Sedley LJ (***Redmond-Bate -v- DPP*** **[2000] HRLR 249** [20]):

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

Applied to Article 11 rights, a freedom to demonstrate inoffensively, in an 'approved' manner, or upon terms suggested by the subject of the demonstration (e.g. no more than 15 people, protesting once a week for up to 2 hours), might not be thought to have much value either… [T]he right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in Article 11(2)…:

> "Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims

> that it is seeking to promote … Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or words used may appear to the authorities - do a disservice to democracy and often even in danger it …"

(8) Article 11 protects the right to "peaceful assembly". It applies to all gatherings except those where the organisers and participants have an intention to incite violence or otherwise reject the foundations of a democratic society. An individual protestor does not lose the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour…

(9) An obstruction of the highway in the course of a demonstration does not fall outside the scope of the Convention, but the fact and extent of any obstruction caused may well be a relevant factor at the stage of assessing whether any interference with the Article 10/11 rights is necessary and proportionate…

84. As to the importance and extent of the protection of the right of assembly/protest under Article 11, see the discussion in [90]-[99] of ***Canada Goose 1***.

85. It may be relevant to the exercise of the Court's discretion whether to grant an injunction, and if so in what terms, to ask whether the injunction materially adds to restrictions that are already imposed by the law (e.g. by the criminal law). The police have an extensive array of powers available to assist them properly control demonstrations (see ***Canada Goose 1*** [102]). Police officers, at the scene, are best placed to judge whether the behaviour of protestors has crossed the line and become a public order issue of such seriousness that it requires intervention. Perhaps more importantly:

> "Selected and proportionate use of these powers, adjudged to be necessary and targeted at particular individuals, by police officers making decisions based on an assessment 'on the ground', is immeasurably more likely to strike the proper balance between the demonstrators' rights of freedom of expression/assembly and the legitimate rights of others, than a court attempting to frame a civil injunction prospectively against unknown 'protestors'": ***Canada Goose 1*** [103].

## O: Harassment: the Law

86. Largely, the behaviour complained of by the Claimants is alleged harassment by speech, including during the protests and by email, telephone calls and posting online.

87. s.1 ("PfHA") provides, so far as material:

> "(1) A person must not pursue a course of conduct —
>
> (a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct —

(a) which involves harassment of two or more persons, and

(b) which he knows or ought to know involves harassment of those persons, and

(c) by which he intends to persuade any person (whether or not one of those mentioned above)—

(i) not to do something that he is entitled or required to do, or

(ii) to do something that he is not under any obligation to do.

(2) For the purposes of this section …, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows -

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

88. A breach of ss.1(1) and/or (1A) is a criminal offence: s.2. Sections 3 and 3A PfHA provide that any actual or apprehended breach of ss.1(1) and (1A) may be the subject of a civil claim by anyone who is or may be the victim of the course of conduct. A corporate entity is not a "person" capable of being harassed under s.1(1): s.7(5) and ***Daiichi UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2004] 1 WLR 1503**. However, a company may sue in a representative capacity on behalf of employees of the company if that is the most convenient and expeditious way of enabling the court to protect their interests: ***Emerson Developments Ltd -v- Avery*** **[2004] EWHC 194 (QB)** [2]. Alternatively, claims for an injunction under s.3A may be brought by a company in its own right: ***Harlan Laboratories UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2012] EWHC 3408 (QB)** [5]-[9]; ***Astrellas Pharma v Stop Huntingdon Animal Cruelty*** **[2011] EWCA Civ 752** [7].

89. Section 7 provides, so far as material:

"(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

(3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—

(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) "Conduct" includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

90. A defendant has a defence if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s.1(3)).

91. Assessing whether conduct amounts to harassment, and whether any defendant has a defence under s.1(3), can be difficult and is always highly fact specific. In ***Hayden -v- Dickenson*** **[2020] EWHC 3291 (QB)** [44], I reviewed the relevant authorities and identified the following principles (with citations mostly omitted):

"i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; '*a persistent and deliberate course of targeted oppression*'…

ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2… A course of conduct must be grave before the offence or tort of harassment is proved…

iii) The provision, in s.7(2) PfHA, that '*references to harassing a person include alarming the person or causing the person distress*' is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it… It does not follow that any course of conduct which causes alarm or distress

therefore amounts to harassment; that would be illogical and produce perverse results…

iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective… '*The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant*'…

v) Those who are '*targeted*' by the alleged harassment can include others '*who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it*'…

vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted…

vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes '*alarming the person or causing the person distress*'. However, Article 10 expressly protects speech that offends, shocks and disturbs. '*Freedom only to speak inoffensively is not worth having*'…

viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality… The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the '*ultimate balancing test*' identified in ***In re S*** [17] …

ix) The context and manner in which the information is published are all-important… The harassing element of oppression is likely to come more from the manner in which the words are published than their content…

x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment…

xi) Neither is it determinative that the published information is, or is alleged to be, true… '*No individual is entitled to impose on any other person an*

> *unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do*'… That is not to say that truth or falsity of the information is irrelevant… The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction… On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger… The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.
>
> xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional…"

That summary of the law was approved by the Divisional Court in ***Scottow -v- CPS*** **[2021] 1 WLR 1828** [24].

92. Injunctions restraining the unlawful occupation of land are relatively straightforward. Once the applicant's right to exclude or remove people from the land is established, and the land clearly defined, the issue of whether the person is or would be committing a civil wrong is binary and usually easily resolved: is the person on the land or not? By contrast, interim injunctions sought to restrain alleged harassment by speech, particularly in the context of protests, are inherently problematic. That is because, as the principles I have set out above demonstrate, whether some act amounts to harassment is highly fact and context specific. The publication of the same words can amount to harassment in some circumstances, but not in others. In ***Merlin Entertainments LPC -v- Cave*** **[2014] EWHC 3036 (QB)** [40], Elisabeth Laing J gave the example of an allegation that someone was an adulterer. Repeated publication, for example on Twitter, that the person was an adulterer might not amount to harassment, whereas pursuing the person down the street shouting "*you are an adulterer*" through a megaphone might well supply the necessary element of oppression to amount to harassment. Yet, "*if the respondent used a megaphone to broadcast his remarks in a town square 200 miles away from the applicant, it is hard to see how that conduct would bear the description 'harassment' (in the ordinary sense of that word)*": ***Khan (formerly JMO) -v- Khan (formerly KTA)*** **[2018] EWHC 241 (QB)** [69].

93. Where the context of the alleged harassment is a protest or demonstration, there is likely to be a fundamental tension between the exercise of each demonstrator's freedom of expression and the target(s) of the demonstration. Since Article 10 protects speech that offends, shocks and/or disturbs, the Court will be very cautious about granting an injunction the terms of which would interfere with the message that the protestors wish to convey. Any injunction the terms of which interfere with *what* protestors want to say would have to satisfy the requirements of necessity and proportionality (see ***Canada Goose 1*** [99(2)-(4)] – cited in [83] above) (as well as s.12 Human Rights Act 1998 – see [81]-[82] above). It would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on subjective claims by individuals that they feel offended or insulted. The test for harassment is objective: ***Trimingham -v- Associated***

***Newspapers Ltd*** **[2012] 4 All ER 717** [267] *per* Tugendhat J; ***Sube -v- News Group Newspapers Ltd*** **[2020] EMLR 25** [68(2)] *per* Warby J. Sometimes, being upset or offended by the speech or protest of others is the price to be paid for living in a democratic society. In ***Tabernacle -v- Secretary of State for Defence*** **[2009] EWCA Civ 23** [43], Laws LJ observed:

> "Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them."

94. ***Ineos*** was a protest case. The claimants were 10 companies who were involved in fracking in the UK. They obtained injunctions, without notice, against "persons unknown" who were (or were expected to become) protesters at various fracking sites. The injunctions were granted to prevent various acts, including trespass. At first instance, Morgan J had declined to order injunctions based on apprehended harassment under the PfHA, "*largely because of the lack of clarity of that term for the purposes of being included in an injunction*": ***Ineos -v- Persons Unknown*** **[2017] EWHC 2945 (Ch)** [102]. On appeal, Longmore LJ noted the particular difficulties of framing interim injunctions in the context of protests:

> [39] Those important points about the width and the clarity of the injunctions are critical when it comes to considering the injunctions relating to public rights of way and the supply chain in connection with conspiracy to cause damage by unlawful means. They are perhaps most clearly seen in relation to the supply chain. The judge has made an immensely detailed order (in no doubt a highly laudable attempt to ensure that the terms of the injunction correspond to the threatened tort) but has produced an order that is, in my view, both too wide and insufficiently clear. In short, he has attempted to do the impossible. He has, for example, restrained the fifth defendants from combining together to commit the act or offence of obstructing free passage along a public highway (or to access to or from a public highway) by … slow walking in front of the vehicles with the object of slowing them down and with the intention of causing inconvenience and delay or … otherwise unreasonably and/or without lawful authority or excuse obstructing the highway with the intention of causing inconvenience and delay, all with the intention of damaging the claimants.
>
> [40] As Ms Williams pointed out in her submissions, … there are several problems with a *quia timet* order in this form. First, it is of the essence of the tort that it must cause damage. While that cannot of itself be an objection to the grant of *quia timet* relief, the requirement that it cause damage can only be incorporated into the order by reference to the defendants' intention which, as Sir Andrew Morritt said in [***Hampshire Waste Services Ltd -v- Intending Trespassers upon Chineham Incinerator Site*** **[2004] Env LR 9** [9]], depends on the subjective intention of the individual which is not necessarily known to the outside world (and in particular to the claimants) and is susceptible of change and, for that reason, should not be incorporated into the order. Secondly, the concept of slow walking in front of vehicles or, more generally, obstructing the highway may not result in any damage to the claimants at all. Thirdly, slow walking is not itself defined and is too wide: how slow is slow? Any speed slower than a normal walking speed of two miles per hour? One does not know. Fourthly, the concept of 'unreasonably'

> obstructing the highway is not susceptible of advance definition. It is, of course, the law that for an obstruction of the highway to be unlawful it must be an unreasonable obstruction (see ***DPP -v- Jones*** **[1999] 2 AC 240**), but that is a question of fact and degree that can only be assessed in an actual situation and not in advance. A person faced with such an injunction may well be chilled into not obstructing the highway at all. Fifthly, it is wrong to build the concept of 'without lawful authority or excuse' into an injunction since an ordinary person exercising legitimate rights of protest is most unlikely to have any clear idea of what would constitute lawful authority or excuse. If he is not clear about what he can and cannot do, that may well have a chilling effect also.
>
> [41] Many of the same objections apply to the injunction granted in relation to the exclusion zones shaded purple on the plans annexed to the order… The defendants are restrained from (a) blocking the highway when done with a view to slowing down or stopping traffic; (b) slow walking; and (c) unreasonably; and/or without lawful authority or excuse preventing the claimants from access to or egress from any of the sites. These orders are likewise too wide and too uncertain in ambit to be properly the subject of *quia timet* relief.
>
> [42] Mr Alan Maclean QC for the claimants submitted that the court should grant advance relief of this kind in appropriate cases in order to save time and much energy later devoted to legal proceedings after the events have happened. But it is only when events have happened which can in retrospect be seen to have been illegal that, in my view, wide-ranging injunctions of the kind granted against the third and fifth defendants should be granted. The citizen's right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example."

95. In contrast to an order prohibiting trespass, an injunction targeting alleged "harassment" by protestors is *a fortiori*. As I noted in ***Canada Goose 1*** [78]:

> "… Harassment injunctions against protestors raise much more complicated issues. The subject matter of the action is not a property right. The issue is not binary. Whether someone is guilty of harassment and, if so, whether s/he has a defence under s.1(3) PfHA is a complicated and inherently fact specific decision… It for these reasons that Morgan J refused to grant relief against alleged harassment in ***Ineos***… The same problem presented itself in relation to obstruction of the highway: see underlined passage in ***Ineos*** [40] above. A *quia timet* interim injunction which prohibits the respondent from "*carrying out a course of conduct amounting to harassment*" falls foul of the objection identified by Longmore LJ in [39]-[40]. There can be (and often is) reasonable disagreement between lawyers as to what amounts to harassment… The terms of an injunction should not leave it to a layperson to make that difficult assessment him/herself, on pain of imprisonment if s/he gets it wrong. The position is not saved if the prohibition continues "*… including in particular the following acts*" which are then specified. The order must specify the particular acts, clearly and unambiguously, which the court is prohibiting."

96. As Longmore LJ noted (in [40] of ***Ineos***) the Court must avoid imposing interim injunctions the ambit and terms of which are likely to have a chilling effect on otherwise

lawful protest. In human rights terms, injunctions that have this effect will usually represent a disproportionate interference with the engaged Article 10/11 rights. Further, the Court will also consider what other measures, short of an injunction, are available. This may include expecting those who object to the allegedly harassing speech/protest to have taken at least some measures of self-help before resorting to the Court for an injunction, for example blocking people on social media: ***Hayden -v- Dickenson*** [73]-[74]. Until such time as the other available measures, that can reasonably be expected to be taken to counter the alleged harassment, are shown to be ineffective, an interim injunction is not necessary. This may also include a consideration of the availability of other means of redress, including, in particular, powers of the police to control the activities of protestors: see [100]-[104] ***Canada Goose 1***.

**P: Parties' Submissions**

97. On behalf of the Claimants, Ms Bolton submits that they have no interest in prohibiting peaceful protest by the Defendants and the Claimants recognise the rights of others to protest peacefully. She contends, however, that the Court can, and should, grant an interim injunction (in the terms set out in the Appendix to this judgment) to prohibit significant harassment, abuse and intimidation of the Claimants and to restrain trespass on the Wyton and B&K Sites. In respect of the Wyton Site, Ms Bolton contends that the Defendants' unlawful activities have become "*a relentless aspect of the Defendants' campaign*" against the First Claimant.

98. A particular complaint, identified by Ms Bolton, is that the Defendants are currently seeking to dictate who should be permitted to access the Wyton Site. This has led to frequent incidents of employees' cars being surrounded and the occupants allegedly being harassed and intimidated. On occasions, police intervention has been required to enable vehicles to enter and leave the Wyton Site. Ms Bolton also complains of alleged "*surveillance*" of the Wyton Site by drones and cameras, as a result of which some of the First Claimant's staff have been photographed and filmed and some of their images have been posted online.

99. Ms Bolton submits that the goal of the Defendants is to cause the staff to leave their jobs with the First Claimant and to force an end the activities of the First and Third Claimants. Included as part of this campaign are activities targeted at third-party service providers to encourage them to cease business with the First Claimant. Accordingly, she submits, an injunction in the terms sought, which provides for designated protest zones, is required to prevent the Defendants' unlawful conduct.

100. Mr Tear's written submissions, on behalf of the Seventh Defendant, largely concentrated upon the lack of substance to the allegations made against the Seventh Defendant and their inability to support an injunction in the terms sought against the Seventh Defendant. Apart from the allegation of criminal damage to the gate sensor, the pleaded claim against the Seventh Defendant is that she had (1) "*caused alarm and distress to Staff by participating in a large-scale aggressive protest which included shouting at Staff and the surrounding (sic) Staff cars when entering and leaving the Wyton Site*"; and (2) "*caused alarm and distress to Staff by streaming a series of live videos on Facebook, which she filmed at the Wyton Site… in an attempt to intimidate and harass the Staff of [the First Claimant] for the purpose of convincing them not to work for [the First Claimant]…*". Mr Tear contends that the evidence filed by the Claimants does not identify any member of staff who was alleged to have been caused

alarm or distress by the Seventh Defendant's protest. In any event, judged objectively, the conduct alleged against the Seventh Defendant does not cross the threshold of seriousness to amount to harassment (see [91] above). The claim of harassment against her is bound to fail. Any alleged trespass by the Seventh Defendant is, Mr Tear submits, *de minimis*. The Court, he argues, should not grant any injunction against the Seventh Defendant.

101. Mr Nieto, on behalf of the Third, Fifth, Eighth, Ninth and Thirteenth Defendants submitted that the Exclusion Zone should be limited to an area that was strictly necessary. He also invited the Court to consider the detail of the claim against the Eighth Defendant, which he submitted was very weak and would not survive an application for summary judgment. Finally, Mr Nieto asked the Court to direct that the Claimants should file individual Particulars of Claim for each Defendant.

102. The Eleventh and Fourteenth Defendants both appeared in person at the hearing and made short submissions explaining to me how important their right to protest was to them. The Eleventh Defendant told me that representatives from the Highways Agency have regularly vistied the protest at the Wyton Site and that there have been discussions with the demonstrators and certain conditions have been stipulated about the location of the protestors. The Fourteenth Defendant was concerned about the width of the Exclusion Zone and the impact it would have on Camp Beagle.

## Q: Decision

103. I indicated at the hearing that I was not going to grant an injunction in the extensive terms sought by the Claimants, but that I would grant a very limited injunction which would impose an exclusion zone around the immediate entrance to the Wyton Site and prohibit people from entering onto the land at the Wyton Site. I now explain my reasons for reaching this conclusion.

104. In my judgment, the terms of the injunction sought by the Claimants (a) are neither necessary nor proportionate restrictions on the Defendants' rights of freedom of expression and protest; and (b) include relief against particular Defendants which goes far beyond what the Claimants' evidence demonstrates the individuals have done in the past.

105. Before turning to deal with individual paragraphs of the injunction order that the Claimants seek, I can deal with some general points.

*(1) The claim against the First and Second Defendants*

106. As I have refused to permit the Claimants' claim against the First and Second Defendants as representative parties, I refuse to grant any injunction against the First and Second Defendants.

*(2) The definition of "Persons Unknown", "unlawful activities" and "Defendants"*

107. I have noted above the definition of "Persons Unknown" in the Claim Form and the lack of a definition of "*unlawful activities*" (see [33] above). In the draft injunction order, a definition of "*unlawful activities*" does appear – together with a purported definition of the term "*defendants*" – in paragraph 7. This paragraph has not been well

drafted, as paragraph 7.4 is not, in fact a definition of "Defendants" but a definition of "*unlawful activities*". The definition of "*unlawful activities*" includes "*any person who acts in breach of sections 146-148 (sic) Serious Organised Crime & Police Act 2005*". As the injunction order sought by the Claimants does not seek to restrain "*unlawful activities*", the purpose of this definition is unclear, save perhaps impermissibly to vary the definition of "Persons Unknown" from that which appears in the Claim Form.

108. I do not consider that is appropriate to provide a definition of "defendants" in an injunction order. The defendants are the Defendants to the claim. It is wrong in principle, by dint of a definition in an injunction order, to extend the reach of an injunction beyond the parties to the claim. As I have refused to grant an injunction against the First and Second Defendants, the point does not arise, but paragraph 7.1 of the injunction order purports to extend the reach of the injunction beyond even the "*members*" of the alleged "*unincorporated associations*" additionally to restrain those who are "*supporters*" of Free the MBR Beagles and/or Camp Beagle. This would have potentially extended the reach of the injunction order to persons who were not parties to the proceedings. I would have refused to grant an order that had this effect.

109. Given the limited order that I will grant, the definitions given in Schedule A will be trimmed back in any event, but the purported definition of "*defendants*" and "*unlawful activities*" must be removed.

*(3) Injunction to prevent trespass onto land of the First and/or Third Claimants*

110. I am satisfied that the Claimants are entitled to an injunction to restrain the Defendants from entering any part of the land at the Wyton Site, including the area immediately in front of the gate (which will, in any event, become part of a wider exclusion zone – see [116]-[121] below). This part of the claim is straightforward. The First Claimant is the landowner. It is entitled to exclude people from entering onto its land without permission. The evidence shows that, to a greater or lesser extent, each of the named Defendants and "Persons Unknown" have repeatedly trespassed on the First Claimant's land immediately outside the gate at the Wyton Site. There is also evidence that the Eleventh Defendant has entered the land between the outer and inner perimeter fences (see [17(26)] above). Whilst the Defendants are entitled to protest, they are not entitled to enter onto the First Claimant's land, without permission, for that or any other reason. Once the injunction is granted, the Defendants will effectively be prevented from fixing or placing banners and/or placards or any other items to the gate to the Wyton Site.

111. The First Claimant also seeks an injunction to prohibit the flying of drones over the Wyton Site (see paragraph 4.16 of the draft injunction). Ms Bolton submitted that the First Claimant was entitled to restrain this activity as an alleged trespass. Such a claim is not straightforward. The claim is not based on alleged harassment or nuisance caused by the drone flights (cf. ***Fearn -v- The Board of Trustees of the Tate Gallery*** **[2020] Ch 621**). There is no suggestion in the evidence that the action of drones being flown over the site has caused harassment to anyone, is dangerous or risks causing harm. Indeed, it appears that the First Claimant (and its staff) were unaware of drones flying over the site until footage apparently captured by them appeared online, including in the Mirror Video. The question whether the flying of a drone over a piece of land (and if so, at what height) is an actionable trespass appears, surprisingly, to be one that the law has yet definitively to answer.

112. In 1977, Griffiths J held that a property owner's rights in land extended only to a limited extent above the land: ***Bernstein -v- Skyviews Ltd*** **[1978] 1 QB 479, 487-488**:

> "I can find no support in authority for the view that a landowner's rights in the air space above his property extend to an unlimited height. In ***Wandsworth Board of Works -v- United Telephone Co Ltd***… Bowen LJ described the maxim, *usque ad coelum*, as a fanciful phrase, to which I would add that if applied literally it is a fanciful notion leading to the absurdity of a trespass at common law being committed by a satellite every time it passes over a suburban garden. The academic writers speak with one voice in rejecting the uncritical and literal application of the maxim: see by way of example only *Winfield and Jolowicz on Tort*…, *Salmond on Torts*…, *Shawcross & Beaumont on Air Law*…, *McNair, The Law of the Air*… and *Halsbury's Laws of England*… I accept their collective approach as correct. The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and declaring that above that height he has no greater rights in the air space than any other member of the public."

113. This is an interesting question, and it is one that is best left to be resolved in a case when it actually falls for determination. I venture to suggest that the law of trespass may not be the only relevant tort, and that it is better for the coherent development of the law if the full range of potential causes of action is considered. It can hardly be doubted that the law would provide a remedy against someone who used a drone to obtain (*a fortiori*, to publish) footage of a person getting undressed in the bedroom of his/her home. The entitlement to a remedy would not depend upon whether the drone was trespassing in the airspace of the homeowner's land. It would appear to be a straightforward claim for misuse of private information.

114. As demonstrated by the facts in this case, the First Claimant's real complaint is not that the use of drones is causing annoyance, but that they have been used, it is alleged, to obtain photographs and video footage of activities (and employees) at the Wyton Site. Whether or not a claimant can have an objection to (a) the obtaining of photographs/video by drone use; and/or (b) the publication or use of photographs/video so obtained, may potentially raise issues of breach of confidence and/or misuse of private information. In that instance, much will turn on what has been filmed/photographed and what it shows: see e.g. discussion in ***Tillery Valley Foods -v- Channel Four Television*** **[2004] EWHC 1075 (Ch)** [11] in the context of a claim for breach of confidence for covert filming in a workplace by an undercover journalist.

115. For present purposes, and at this stage, I am not satisfied that the balance of convenience favours the grant of an injunction to prohibit drone usage over the Wyton Site. The claim in trespass is legally uncertain. No other cause of action has been identified that could justify an injunction. As I say, the main focus of the First Claimant's complaint is directed at the footage that the drone has obtained. That raises very different issues, far divorced from trespass. For pure trespass, occasioned by a drone flight, I am satisfied that damages would be an adequate remedy. The use of footage obtained by a drone – as the Mirror Article and Mirror Video demonstrate - engages potentially weighty Article 10 considerations.

*(4) Exclusion Zone*

116. I am also satisfied that an interim injunction should be granted against the Third to Fourteenth Defendants to prohibit them from:

(1) entering into an exclusion zone, which will extend to around 10 metres either side of the entrance to the Wyton Site and to the centre of the carriageway of the B1090 ("the Exclusion Zone"); and/or

(2) placing or causing any obstruction in the Exclusion Zone to those entering or leaving the Wyton Site whether in vehicles or on foot.

The precise dimensions of the Exclusion Zone can be finalised once this judgment is handed down. It will be clearly marked on an appropriately scaled map attached to the injunction order. An exception will need to be provided for people to be able to drive a vehicle along the road, but that will be limited to exercising a right of way. Stopping or otherwise causing an obstruction, whether by a vehicle or otherwise, will be prohibited. There was a suggestion at the hearing that the limits of the Exclusion Zone could be marked by posts in the verge, so that the scope for argument on the ground is reduced. That seems sensible, but it is not something that I will require as a term of the injunction.

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 PfHA. 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.

119. Importantly, the terms of the injunction will leave the Defendants free to protest anywhere other than within the Exclusion Zone. At this stage, the Claimants' evidence does not demonstrate that it is necessary to impose any further restrictions on the methods of protest or the message(s) that the protestors wish to convey. The police will either be on hand, or can be called, if the behaviour of protestors threatens to get out of hand. Ultimately, the Claimants or Defendants can return to court and seek a variation to the injunction order if there is evidence that would justify different restrictions.

120. Mr Tear raised a point at the hearing about there being certain protestors who are disabled and in wheelchairs or who use walking aids. He submitted that they would find it difficult to demonstrate at all if they were prohibited from entering the Exclusion Zone. As I indicated at the hearing, subject to an appropriate form of wording being identified, I would be willing to grant a very limited exception to permit a person who is disabled and unable to demonstrate at the Wyton Site otherwise than within the Exclusion Zone, to protest in a designated area within the Exclusion Zone, on condition that the relevant person provided:

    (1) evidence that s/he would not be able to demonstrate at the Wyton Site otherwise than within the Exclusion Zone; and

    (2) an undertaking to the Court that, whilst in the Exclusion Zone s/he would not obstruct those seeking to enter or leave the Wyton Site or trespass on the Wyton Site, including the land immediately in front of the entrance gate.

121. The evidence of the protest activities at the B&K Site, alone, would not have justified any injunction order. Nevertheless, I am satisfied that a similar exclusion zone should be imposed at the B&K Site. The reasons for this are that the two sites have been linked by the protestors and have been targeted for the same reason. There is an obvious risk that if I do not grant a similar exclusion order at the B&K Site, then the absence of similar restrictions is likely to be exploited and it will only be a matter of time before the Court is asked to impose a similar injunction at the B&K site. In this instance, prevention is better than cure. A significant factor in my willingness to impose a similar exclusion zone at the B&K site is the very limited extent to which the restriction will interfere with the protestors' right to demonstrate where they wish. The order will not prohibit demonstrations at the B&K site, it will simply prohibit demonstrators from entering a designated zone. This should enable those who wish to access the Wyton and B&K Sites to come and go, without obstruction or hindrance, and should avoid the confrontation flashpoints which have been the main concern of the Claimants.

*(5) Controlling the methods of protest*

122. I am not satisfied on the evidence at this stage that it is either necessary or proportionate to impose further restrictions on the methods of protest used by the Defendants. As I explored with Ms Bolton at the hearing, by reference to some of the protestors' placards, it is very difficult to draw the line between lawful protest and unlawful harassment by reference solely to what is said. Ms Bolton accepted that merely displaying a placard with the words "*MBR Acres and their staff are FILTHY SCUM*" (see [15(5)] above) on the opposite side of the road from the entrance to the Wyton Site would not be harassment. She was also inclined to accept that it would not be harassment if protestors shouted the same words at employees as they arrived or left the Wyton Site, provided their access was not obstructed or impeded. Ms Bolton submitted that it was the act of

surrounding the vehicles as they tried to enter the Wyton Site and shouting at the employees that amounted to harassment. On this latter point, she may be right. But if it is the act of surrounding of the vehicle that supplies the necessary element of oppression for harassment, that demonstrates that any injunction must target restraint of that activity rather than seeking to prohibit expression of the message on the placard.

123. Paragraph 5 of the draft injunction seeks the imposition of a series of extensive restrictions imposed on the method of demonstration. It purports to restrict the number of demonstrators (no more than 25 people), the number of people who can hand out leaflets (no more than 2), the zones in which they can demonstrate, how often they can demonstrate (once a week), the duration of the protest (no more than 3 hours) and what the demonstrators can wear (no face-coverings or "*blood-spattered clothing*"). Further, the Claimants seek the imposition of a requirement that "the Defendants" (which, by dint of the definition of "Persons Unknown" includes anyone who wants to protest against the First and Third Claimants at the Wyton and B&K Sites) must notify the police and the First and Third Claimants by telephone, 24 hours in advance, of their intention to protest at the Wyton or B&K sites, giving details of their name, car registration number, and details of the location and duration of the protest. In addition, the Court is being asked by the Claimants to limit peaceful procession to once a year, by no more than 100 people.

124. Put shortly, at this stage, the Claimants have not satisfied me that they are likely to obtain an injunction in the terms that they seek at a final trial. Indeed, I am satisfied that the restrictions sought go too far. The restrictions are arbitrary (e.g. the number of demonstrators and the frequency and duration of protest) and the evidence presented by the Claimants simply goes nowhere near demonstrating the these restrictions are necessary or proportionate. On their face, they appear to be neither. In ***Canada Goose 1***, the Claimants similarly sought an injunction to limit the number of protestors in a designated "protest zone". I said this in respect of such a limitation [163]:

> "… the interim injunction (and in particular the size and location of the Exclusion Zones) practically limits the number of people who can demonstrate outside the Store to 12. This figure is arbitrary; not justified by any evidence; disproportionate (in the sense there is no evidence that permitting a larger group would not achieve the same object); assumes that all demonstrators share the same objectives and so could be 'represented' by 12 people; and wrong in principle… Who is to decide who should be one of the permitted 12 demonstrators? Is it 'first-come-first-served'? What if other protestors do not agree with the message being advanced by the 12 'authorised' protestors?"

125. The same issues would arise if the Court were to grant an injunction in the terms sought by the Claimants. An order which requires protestors to demonstrate only in a designated zone may cause other problems. The proposed "designated protest area" appears to be a section of the verge on the roadside opposite the entrance to the Wyton Site. The evidence does not show who owns this land. I should be cautious before imposing an injunction that *requires* protestors to occupy a particular location when it is not clear to me whether lawfully they could do so. This fact, together with the other issues I have identified, leads me to the conclusion that the better approach is to impose the Exclusion Zone.

126. The notification requirements proposed in paragraphs 5.9-5.11 of the order sought by the Claimants go well beyond what Parliament has provided in ss.11-16 Public Order Act 1986 for public processions, which were themselves matters of significant controversy at the time the statute was enacted. The Claimants have not satisfied me that there is any legal foundation for the Court to impose an injunction requiring a protestor, as a price of exercising his/her right of freedom of expression/assembly, to provide his/her name (and various other details) to the First and/or Third Claimants. The draft order is silent on what use the First and Third Claimants could make of this data once it had been provided.

127. The restrictions imposed on public processions in the draft injunction similarly go beyond what the Public Order Act 1986 permits. It is to be remembered that, under those statutory provisions, the police have powers to prohibit or to impose conditions on public processions and to impose conditions on public assemblies. There is no suggestion in the evidence that Cambridgeshire Police has thought that any conditions should be imposed, but they are much better placed than the Court to decide whether such restrictions are necessary.

128. Nor do I consider it necessary or proportionate, at this stage, to impose restrictions on what the protestors can wear or their use of instruments or loud hailers. The evidence shows that the Eleventh Defendant has used a loud hailer to address other protestors (see [17(17)] above). I do not consider that the Claimants are likely to show at trial that this use of a loud hailer (or similar) should be restrained as harassment. On the contrary, it appears likely to fall comfortably within his (and the audience's) Article 10 rights.

*(6) The particular paragraphs of the injunction sought by the Claimants*

129. Turning to the individual paragraphs of the injunction sought by the Claimants (see Appendix):

    (1) I refuse an injunction in the terms of paragraphs 4.1, 4.4 and 4.11 as the Claimants' evidence does not demonstrate a sufficient threat that, absent an injunction, the Defendants would engage in this behaviour. Apart from the incident of spitting into a coffee cup and throwing the contents at a car, alleged against the Fifth Defendant (see [17(4)] above), no named Defendant is alleged to have assaulted any of the First Defendant's staff and the assault following the altercation with a neighbour cannot be linked to any protestor (see [17(20)] above). As against "persons unknown", the evidence is limited to some incidents of cars being struck/damaged by demonstrators (see [17(10) and (13)] above). There have been no physical assaults on individuals by protestors. As I have indicated, and for the reasons explained in more detail above (see [116]-[121]), I will instead grant a more limited form of injunction imposing an Exclusion Zone around the exit to the Wyton Site. The Claimants have presented no evidence that could justify an order in the terms of paragraph 4.11.

    (2) I refuse an injunction in the terms of paragraphs 4.2 and 4.3 as being neither necessary nor proportionate. The terms of these paragraphs are far too broad and do not properly or effectively target the alleged harassing behaviour. If granted, an injunction in these terms would place undue restrictions on lawful acts of protest/freedom of expression and there would also be a risk of a chilling of the rights of freedom of expression/protest (see [96] above). Further, applying the

test under s.12(3) Human Rights Act 1998 to those parts of these injunctions that seek to restrain freedom of expression, I am not satisfied that the Claimants are likely to obtain an order in these terms following trial.

(3) I refuse an injunction in the terms of paragraph 4.5. Whilst there is evidence that some protestors have photographed vehicles entering and leaving the Wyton Site, that is not, without more, an act capable of amounting to harassment. There is no clear evidence that information obtained from such photographs – for example vehicle registration details – has been used to identify and then to harass individual employees. There is only one example in the evidence of any direct action being taken against someone believed to be an employee of the First Claimant away from the Wyton Site (the flyer stuck to the kitchen window – see [17(20)] above). But there is no evidence to link this to any protestor, and it does not establish that the address of the employee was discovered because of information obtained from vehicle registration details. The two incidents where employees have been followed by unidentified individuals (see [17(14) and (18)] above) were not a result of any photographing of vehicles and subsequent posting online.

(4) I refuse an injunction in the terms of paragraph 4.6.

a) The restriction is far too wide and embraces practically every conceivable method of communication. Save what has been shouted by protestors at people entering or leaving the Wyton Site as part of the demonstration, the Claimants have identified no "*abusive of threatening communication*" directed at any employee of the First Claimant.

b) Some comments were published generally online (e.g. [17(19), (24), (27), (28) and (30)] and [22(3), (10) and (11)] above) not directed at the First or Third Claimant or any of their employees. I reject Ms Pressick's suggestion that comments posted online were "*directed*" towards staff (see [17(27)] above). Unless staff members had sought out these posts in the relevant Facebook groups, they would not have seen them.

c) In my judgment, the evidence of such communications directed at employees of the Third Claimant (see [22] above) is particularly weak; does not identify a single identifiable person who could be restrained; and does not identify a single employee who is said to be have been caused distress and/or alarm by the communications s/he received. The evidence shows that communications were generally directed at the Third Claimant as a company, not at any individual employee.

d) In the absence of any evidence from someone who claims to have been caused alarm or distress as a result of having seen the photograph of the protestors who had attended a demonstration at the B&K Site ([22(11)] above), it is difficult to take seriously the submission that this could possibly amount to harassment.

e) Many of the telephone calls appear to fall comfortably within the ambit of freedom of expression (e.g. [22(1), (2), (3) and (8)]). The response to a person calling to ask if he can purchase some "*beagle burgers*"

([22(6)] above) is simply to terminate the call, not to seek an injunction against "Persons Unknown". For those occasions where the language used was abusive, the initial remedy is again self-help: terminate the call or delete the email and to block the sender's address. In more serious and persistent cases, abusive/malicious communications can be reported to the police for investigation and any appropriate action.

f) In short, the Claimants' evidence does not justify an injunction in the terms sought or any similar injunction. Applying the test under s.12(3), I am not satisfied that the Claimants are likely to obtain an order in these terms following trial.

(5) I will grant an injunction the terms of which will have a similar effect to that sought by paragraphs 4.7-4.10 as part of the imposition of the Exclusion Zone.

(6) Save for the injunction enforcing an Exclusion Zone, I refuse an injunction in the terms of paragraph 4.12. There have been no protests at the home(s) of any "Protected Persons" or anywhere else apart from the Wyton and B&K Sites. There is no evidence to suggest a credible threat that, absent an injunction, there would be such protests.

(7) I refuse an injunction in the terms of paragraph 4.13. There is scant evidence of publication of the names and addresses of any "Protected Person". There is some evidence of people showing an interest in and attempts to obtain such information, but there is no suggestion that they have succeeded. In any event, a total ban on publication of the details identified in paragraph 4.13 is neither a necessary nor proportionate restriction on freedom of expression. The evidence falls a long way short of demonstrating either. Applying the test under s.12(3), I am not satisfied that the Claimants are likely to obtain an order in these terms following trial.

(8) I refuse an injunction in the terms of paragraph 4.14. This paragraph is far too vague and is not justified by the evidence provided by the Claimant. Insofar as this is an attempt to enforce, by civil injunction, the terms of ss.145-146 SOCPA 2005, that is impermissible (see [45] above). Alternatively, insofar as this paragraph is seeking to enforce s.1(1A)(c) PfHA, then that disregards the fact that s.1(1A)(c) must be established together with s.1(1A)(a) and (b) before a cause of action can be established. The law does not prohibit attempts to persuade people to stop working for the First and Third Claimants or campaigning for their closure. It is only if that persuasion crosses the line and becomes harassment (under PfHA) or the campaigning resorts to the commission of a criminal offence or a tortious act, causing loss or damage (within the terms of ss.145-146 SOCPA 2005), that it becomes unlawful.

(9) I refuse an injunction in the terms of paragraphs 4.15 and 4.16. I have dealt with the issue of drones above (see [111]-[113] above). The attempt to prohibit the taking of other photographs is even more ambitious and has a weaker legal foundation. On the evidence, it appears that one or more cameras may have been hidden in the permitter fence and/or on the ground (see [17(1) and (24)] above). If (as appears to be the case on the evidence) there has been no trespass by the (unidentified) person(s) who positioned the camera(s), then the Claimants would

have to find another cause of action to maintain any objection to the publication of the videos/photographs captured by the camera(s). Suffice to say, at this stage, I am not persuaded that the Claimants have a sufficient basis (legally or evidentially) to justify an order in the terms sought or anything similar.

(10) I refuse to grant an injunction in the terms of paragraph 5, or anything similar, for the reasons set out in [123]-[125] above. Rather than impose an order that requires the protestors to demonstrate only in a designated zone, I will instead impose the Exclusion Zone.

## R: Next steps

130. When this judgment is handed down, there will be a hearing at which the Court will determine the precise terms of the injunction order to be imposed in accordance with the decisions I have made. The injunction order granted by Stacey J will be discharged and a new order put in its place. As a term of the grant of this injunction, the Claimants will be required to provide an undertaking to the Court in the terms identified in [78(4)(a)] above. The Claimants will need to amend the description of the Tenth Defendant "Persons Unknown" (see [32] above). I encourage the parties to try to reach agreement, or at least to narrow the areas of dispute prior to the hearing.

131. In addition, I will give directions for:

(1) filing and service of revised Particulars of Claim – which will need to (a) remove the claims against the First and Second Defendants and the claims based on ss.145-146 SOCPA 2005 ([45] above); and (b) particularise properly the claims being made against (i) each remaining Defendant ([50]-[51] above); and (ii) the identified (but presently unnamed) defendants against whom the Claimants seek relief ([79]);

(2) filing and service of defences on behalf of the individual named Defendants (excluding the First and Second Defendants);

(3) filing, by the Claimants, of (a) certificates of service of the Claim Form and Particulars of Claim on the Defendants; and (b) a further witness statement explaining their efforts to identify the "Persons Unknown" Defendants (see [78(5)] above);

(4) issue, service and filing of applications by the parties (a) to add further named Defendants to the Claim; and/or (b) for default judgment; and/or (c) for summary judgment; and/or (d) to discontinue the claim as against named Defendants and/or Persons Unknown (see [78(5)] above); and

(5) a further hearing at which the Court will (a) determine the applications issued under paragraph (4) above; (b) give further case management directions. At this hearing, if the Claimants have not sought permission to discontinue the claim against "Persons Unknown", they will need to explain why it has not been possible for them to identify the further defendants to the claim (even if they cannot be named) and why there remains a justification for pursuing a claim against "Persons Unknown".

## Appendix – Draft/injunction order sought by the Claimants

## "IT IS ORDERED THAT:

1. This order shall be construed in accordance with the definitions set out in Schedule A at the end of the order.

2. …

## THE INJUNCTION ORDER

## IT IS ORDERED THAT UNTIL FURTHER ORDER:

3. The Defendants must not enter any premises they know or have reasons to believe to be owned, leased, or, occupied by the First and Third Claimant, or instruct or encourage any other person, group or organisation to do the same. This prohibition includes but is not limited to the following premises owned, leased and/or occupied by the First and Third Claimant:

    3.1. The First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the "**Wyton Site**"); and

    3.2. The Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (the "**Hull Site**").

4. The Defendants be restrained from doing, causing, permitting, instructing or encouraging or assisting any of the following:

    4.1. Assaulting or molesting any Protected Person (a Protected Person is defined in Schedule A of the Order);

    4.2. Threatening, intimidating, abusing, or otherwise interfering with any Protected Person (a Protected Person is defined in Schedule A of the Order), whether verbally, by gesture, by physical act, written words, images, posters, banners, or placards, or any other means;

    4.3. Pursuing a course of conduct that includes: assaulting, threatening, intimidating, abusing, molesting, or otherwise interfering with any Protected Person (a Protected Person is defined in Schedule A of the Order), or the First and Third Claimant, whether verbally, by gesture, by physical act, written words, images, posters, banners or placards, or any other means;

    4.4. Throwing items at any person or vehicle exiting or entering the Wyton Site or the Hull Site or entering or leaving the area marked with black hatching on the plans attached at Annexure 1 and Annexure 2.

    4.5. Photographing or videoing any Protected Person, or his vehicle or any premises or house belonging to or occupied by any Protected Person or otherwise recording registration details of Protected Persons vehicles (save that, for the avoidance of doubt, Protestors may photograph or video each other and Police Officers);

4.6. Making:

4.6.1 any abusive or threatening communication whether orally, by telephone, in writing, by facsimile, by email or other electronic or digital means to any Protected Person which shall include repetitive telephone calls, facsimiles, social network and/or social media communications or emails;

4.6.2 any communications whatsoever to any Protected Person at their homes, or on their private telephones, emails or social media and/or social networking sites.

4.7. Parking any vehicle, or placing any other item (including any banners) anywhere in the area marked with black hatching on the plan at Annexure 1, which for the avoidance of doubt includes the drive access between the highway and the gates of the First Claimant's Wyton's site.

4.8. Entering the area marked on the plan at Annexure 1 with black hatching, save in accordance with paragraphs 5.4 and 5.5 below.

4.9. Approaching any vehicle entering or exiting the area marked on the plan at Annexure 1 with black hatching, save in accordance with paragraph 5.4 and 5.5 below.

4.10. Obstructing the path of any vehicle entering or existing the area marked on the plan at Annexure 1 with black hatching, (save that for the avoidance of doubt it will not be a breach of the injunction where a vehicle is obstructed as a result of an emergency).

4.11. Knowingly entering onto, or remaining on any premises or home belonging to or occupied by any Protected Person.

4.12. Knowingly picketing, demonstrating, or conducting any other protests or protesting related activities:

4.12.1 within 100 metres of any premises occupied as a home by any Protected Person;

4.12.2 within 50 metres of any business premises occupied by any officers or employees of any of the Claimants' suppliers or service providers.

4.12.3 within the areas of land identified on the plans annexed at Annexure 1 and coloured in pink, blue, yellow and black hatching being exclusion zones and being land situated in the immediate vicinity of the First Claimant's premises at the Wyton Site, save than in accordance with the provisions set out in paragraph 5 of this Order;

4.12.4 within the areas of land identified at Annexure 2 on the aerial image of the Hull Site and coloured in yellow and pink being the exclusion zones and being land situated in the immediate vicinity of the Third Claimant's premises at the Hull Site, save than in accordance with the provisions set out in paragraph 5 of this Order;

4.13. Publishing or procuring publication by any means whatsoever whether directly or indirectly by a third party publisher acting as agent or otherwise names, addresses, telephone numbers, fax numbers, email addresses, images, car or other vehicle registration numbers, or any other material serving to identify or harass a Protected Person (including the publishing of offensive images or comments on social networking sites and/or social media) or to publish his personal details;

4.14. Compelling or coercing any Protected Person against his will from doing something he is entitled or required to do or to do something that he is not under any obligation to do or instructing or encouraging any other person to do the same;

4.15. Knowingly taking photographs of the Wyton Site or Hull Site or persons within the sites, either:

4.15.1 through the fences or gates at those Sites and/or

4.15.2 over walls at those Sites; and/or

4.15.3 by the use of drones;

4.16. Knowingly flying drones over or within 100 metres of:

4.16.1 the Wyton Site for whatever purpose as coloured pink at Annexure 1 on the attached plans; and

4.16.2 the Hull Site for whatever purpose as coloured yellow at Annexure 2 of the attached plans..

5. Demonstrations (including leafleting) in relation to the First Claimant's and Third Claimant's premises referred to above in paragraph 3.1 and 3.2 of this Order shall be prohibited save for once every week in the following terms:

5.1. the number of protesters present at such demonstrations shall not exceed 25 individuals (including two leafleters); and

5.2. the maximum duration for all demonstrations (including leafleting) shall not exceed three hours between 12pm and 3pm;

5.3. subject to sub-paragraph 5.4 and 5.12 demonstrations may only occur within the Designated Protest Area marked and coloured:

5.3.1 in dark green on the Plans for the Wyton Site annexed at Annexure 1 and located on the opposite side of the Highway to the Wyton's Site;

5.3.2 red on the aerial image of the Hull Site annexed at Annexure 2;

5.4. two protesters may hand out leaflets in the Leafleting Zones. Leafleting may only occur within the Leafleting Zones, marked in circles on the plans attached to Annexure 1 and Annexure 2 and shall be limited to:

5.4.1 in respect of the Wyton Site, one leafleter in each north Leafleting Zone and in each south Leafleting Zone in the circles marked in dark green;

5.4.2 in respect of the Hull Site, one leafleter in each west Leafleting Zone and in each east Leafleting Zone in the circles marked in green;

5.5. the Defendants may enter the exclusion zone for the sole purpose of gaining access to the Designated Protest Area and the said Defendants shall not place any banners, placards or signs which may be carried by them in the exclusion zone and may place these solely within the Designated Protest Area without obstructing pedestrians, vehicles, and/or other persons using or accessing the highway;

5.6. the Defendants shall not park their vehicles within the boundaries of the exclusion zone except in cases of emergency other than in marked car parking spaces specifically allocated to members of the public;

5.7. the Defendants may not use any instruments whatsoever (whether or not so designed) for the making of artificial or musical noise or to amplify sound including loud hailers within the exclusion zones;

5.8. the Defendants may not wear balaclavas or face coverings (save for the purpose of adhering to genuinely held religious convictions/beliefs or in prevailing cold weather), masks and/or blood splattered clothing or costumes (save that this provision shall not apply to imitated or simulated blood) within the exclusion zones;

5.9. Not less than 24 hours before any proposed demonstrations, the Defendants shall have first notified the Police and the First and Third Claimants by telephone as follows:

5.9.1 in relation to the Wyton Site:

(i) Police telephone: [number to be inserted]

(ii) First Claimant's telephone: [number given]

5.9.2 in relation to the Hull Site:

(i) Police telephone: [number to be inserted]

(ii) Third Claimant's telephone: [number given]

5.10. When notifying the police in accordance with sub-paragraph 5.9 above the Defendants must include the name of the group or groups that intend to take part, the registration number of any vehicles, the proposed number of Defendants, the site, the proposed start and end time of any protest, and a contact telephone number for the notifier;

5.11. When notifying the Claimants in accordance with sub-paragraph 5.9 above the Protesters must include the name of the group or groups and the site, date and time of the demonstration;

5.12. Provided further that not more than once every 12 months a lawful, peaceful procession or assembly on the public highway may respectively enter the

exclusion zones marked: (1) blue on the plan for the Wyton Site at Annexure 1; and (2) pink for the plan of the Hull Site at Annexure 2 of the Order referred to in paragraph 4.12.3 and 4.12.4 above on a Saturday, Sunday or a Bank Holiday on terms that:

5.12.1 there be continuing compliance with ss. 11, 12 and 14 Public Order Act 1986;

5.12.2 the numbers of protesters present shall not exceed 100 individuals;

5.12.3 in all other respects the terms of this Order shall apply;

5.12.4 notice of any intended procession or assembly shall be given at least 14 days in advance to the relevant police area and at least 90 days in advance to the relevant Highway Authority in the event that any such procession or assembly may involve the closure or restriction of any public highway; and

5.12.5 any procession or assembly is consequential in time to any other proposed procession or assembly directed against any other companies located within the same police area.

6. This Order is binding on all Defendants pursuant to CPR 19.6(4)(a).

….

**SCHEDULE A**

**DEFINITIONS**

This Order shall be construed in accordance with the following Definitions:

1. References to "**he**", "**him**" or "**his**" shall be taken as meaning "**she**", "**her**" or "**hers**" where appropriate.

2. "**Exclusion Zone**" shall mean any areas in which Protesting Activities are prohibited or curtailed by this Order or otherwise.

3. "**Designated Protest Areas**" ("**DPAS**") shall be the areas marked as such and delineated in dark green on the Plans for the Wyton Site at Annexure 1 and red on the Hull Site at Annexure 2.

4. "**Leafleting Zones**" ("**LZS**") shall be the areas marked by dots on the Plans.

5. "**Supplier**" shall mean any third party that directly or indirectly supplies any goods to the First or Third Claimant.

6. "**Service Provider**" shall mean any third party that directly or indirectly provides any services to the First or Third Claimant.

7. "**Defendant**" or "**Defendants**" shall mean:

7.1. the members, participants or supporters of FMB and Camp Beagle whether by themselves, their servants, agents or otherwise;

7.2. the Third to Ninth and Eleventh to Fourteenth Defendants;

7.3. the Tenth Defendant being Persons Unknown (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 MBR Acres Limited, Wyton, Huntingdon PE28 2DT 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)

7.4. "Unlawful Activities" by Persons Unknown would include but is not limited to:

7.4.1 any person who is acting in concert with any of the Defendants to do any act prohibited by this Order and who has notice of the terms of the Claim and acts in breach of this Order whether by himself, his servants, agents, or otherwise;

7.4.2 any person who acts in breach of sections 146-148 Serious Organised Crime & Police Act 2005;

8. "**Protected Persons**" shall mean any of the following while in England and Wales:

8.1. the Second Claimant;

8.2. the Fourth Claimant;

8.3. the officers, employees and contractors of the First and Third Claimants;

8.4. the officers, employees and contractors of First and Third Claimants' suppliers and service providers;

8.5. the families or agents of the officers, employees and contractors referred to above; and

8.6. any person other than a Defendant who is seeking to visit any premises referred to in this Order, or any premises or home belonging to or occupied by any Protected Person…"