



MBR Acres Limited & Others v Free the MBR Beagles & Others

Day 13

May 17, 2023

Opus 2 - Official Court Reporters

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Wednesday, 17 May 2023

1 (10.30 am)  
 2 MR JUSTICE NICKLIN: Hello, Mr Curtin. Can you hear us all  
 3 right? You are on mute at the moment.  
 4 MR CURTIN: I can hear you perfectly, thank you.  
 5 MR JUSTICE NICKLIN: Okay, good, excellent.  
 6 Right. Ms Bolton.  
 7 Submissions by MS BOLTON  
 8 MS BOLTON: My Lord, good morning. My Lord, if I may first  
 9 of all hand up -- I hope --  
 10 MR JUSTICE NICKLIN: I got it by email this morning, thank  
 11 you, yes.  
 12 MS BOLTON: You have the timetable.  
 13 MR JUSTICE NICKLIN: Yes.  
 14 MS BOLTON: Do you also have the schedule?  
 15 MR JUSTICE NICKLIN: No.  
 16 MS BOLTON: My Lord, what we have done, because we  
 17 originally had schedules for every cause of action with  
 18 every incident but, given what your Lordship has said  
 19 about what you want to do over the next few days, what  
 20 we have done is we have cut those schedules back to key  
 21 incidents we want to take your Lordship to and we have  
 22 combined the pleaded causes of action so that you are  
 23 not watching a video more than once.  
 24 MR JUSTICE NICKLIN: That's very sensible. Thank you very

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1 much.  
 2 MS BOLTON: So that's how I propose to start.  
 3 MR JUSTICE NICKLIN: Okay. Can I just address an issue  
 4 about the timetable. It seems to me that Mr Curtin  
 5 would benefit from more to time to consider the  
 6 submissions, so if we are not sitting on Friday, the  
 7 quid pro quo for that would, to my mind, be you let  
 8 Mr Curtin have the closing submissions by 6 o'clock on  
 9 Friday.  
 10 MS BOLTON: My Lord, I think we might struggle to finish  
 11 them in that time. Could we ask for 6 o'clock on  
 12 Saturday, please.  
 13 MR JUSTICE NICKLIN: Well, it may be a case where you may  
 14 have to -- you know, division of labour. We are going  
 15 to spend the next two days, today and tomorrow, going  
 16 through video evidence. You may need to send Ms Pratt  
 17 off to do some of the lifting in relation to the  
 18 submissions.  
 19 MS BOLTON: Yes, I think it's purely, my Lord, that, whilst  
 20 we have already made a start, there is quite a lot to go  
 21 through. There is quite a lot of transcript to go  
 22 through, and we didn't know until Monday that we  
 23 wouldn't have the weekend and I think we might struggle  
 24 a little bit. I wonder if we could at least have until  
 25 Saturday.

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1 MR JUSTICE NICKLIN: Mr Curtin, you understand -- you've  
 2 seen the timetable. I'm anxious to give you as much  
 3 time as you can to prepare your response to the  
 4 claimants' submissions, so what I was suggesting was you  
 5 get it by 6 o'clock on Friday, as being, if we are not  
 6 going to sit in court on Friday, then the claimant's  
 7 side can be working on that document. Ms Bolton is  
 8 asking for 6 o'clock on Saturday. Do you have any views  
 9 about that or anything you want to say to me about it?  
 10 MR CURTIN: It will considerably help me to have the  
 11 claimant's submission, just in case -- just in terms of  
 12 how I framework my own, but to me there are no -- there  
 13 is no serious contention with the actual evidence, so  
 14 I've got no great (inaudible) Saturday 6 o'clock.  
 15 I would prefer it Friday but if Saturday 6 o'clock is  
 16 what's on offer, then that gives me all of Sunday and  
 17 Saturday evening to do that.  
 18 MS BOLTON: My Lord, if it helps, I also had a chat with  
 19 Mr Curtin on Monday and suggested that he looked at the  
 20 opening and the headings and thought about what he  
 21 wanted to say under the headings, for some sort of  
 22 structure, and tried to give some assistance on what he  
 23 wants to think about saying about each of those causes  
 24 of action.  
 25 So I had already pointed him in the direction of

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1 what to think about. So I'm hoping we could at least  
 2 have until Saturday.  
 3 MR JUSTICE NICKLIN: Okay, we will meet halfway. I'll say  
 4 Saturday at 2 o'clock.  
 5 MS BOLTON: My Lord.  
 6 MR CURTIN: Could I ask a question, please, my Lord.  
 7 MR JUSTICE NICKLIN: Yes.  
 8 MR CURTIN: Some of the evidence I submitted or rather  
 9 the -- I don't know even what to call it, the bits of  
 10 evidence that I sent, such as Facebook posts, pictures,  
 11 some details about experiments, even though I haven't  
 12 introduced all of those parts -- what I submitted as  
 13 evidence and I wasn't cross-examined, for example there  
 14 is one picture of me wearing a police helmet with  
 15 a megaphone in front of some police officers. We  
 16 haven't talked about it but, in my submissions  
 17 statement, can I at least refer to those -- some of the  
 18 items that I've put in as evidence?  
 19 MR JUSTICE NICKLIN: You can refer to them and, if Ms Bolton  
 20 has an objection to them, she will let me know about it  
 21 and we can deal with that.  
 22 MR CURTIN: Excellent, thank you. Yes.  
 23 MR JUSTICE NICKLIN: Right. Okay.  
 24 MR CURTIN: What I wish to do this morning is just observe  
 25 this procedure. I don't want to validate it. I haven't

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1 done any work at all on the bundles. I don't know  
 2 what's coming. I'm merely here to observe and I don't  
 3 want to validate it that I'm here to represent persons  
 4 unknown in any way, shape or form.  
 5 MR JUSTICE NICKLIN: Understood, Mr Curtin. I don't hold  
 6 you responsible for persons unknown. Carry on,  
 7 Ms Bolton.  
 8 MS BOLTON: My Lord, I would like to start with -- I'm going  
 9 to take your Lordship to a number of the incidents,  
 10 starting with 27 June 2021, and there is four separately  
 11 pleaded incidents in the pleading comprising one large  
 12 incident, which we have taken together, which concern  
 13 both trespass and harassment parasitic on the trespass.  
 14 My Lord, could we, please, go to video 1003.  
 15 So you will see the start of this, my Lord, that  
 16 there are a group of the protesters and you will see the  
 17 barriers in front of the gates. If we can, please, go  
 18 to 12 minutes into the -- actually, sorry, a little bit  
 19 earlier, sorry. Can you keep going back just a moment.  
 20 I just want to show the chronology of events. Just  
 21 there, please.  
 22 MR JUSTICE NICKLIN: Just pause it for a moment. Whose  
 23 railings are these?  
 24 MS BOLTON: They are the claimant's, my Lord.  
 25 MR JUSTICE NICKLIN: Right. (video played).

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1 MS BOLTON: So, pausing there, my Lord, I've just taken you  
 2 back to this bit so you can see how the barriers are  
 3 originally dismantled. Could we now go to 12 minutes,  
 4 please.  
 5 MR JUSTICE NICKLIN: Just pause there. It would help me --  
 6 if I'm seeing -- I don't recognise, not sufficiently --  
 7 I can recognise some people but insofar as there are  
 8 named identified defendants, it would help me if you can  
 9 tell me who they are.  
 10 MS BOLTON: The lady on the left here is Ms Green, D8.  
 11 MR JUSTICE NICKLIN: Right.  
 12 MS BOLTON: I believe the lady on the right there is  
 13 Ms Durant. In the background, not the gentleman in the  
 14 middle -- in the background, I believe, is Mr Broughton.  
 15 MR JUSTICE NICKLIN: I can recognise Mr Broughton.  
 16 MS BOLTON: Yes. To be clear, my Lord, they are the only  
 17 three defendants who we know who they are in this video.  
 18 Apologies, Mr Maher is there as well and he is wearing  
 19 the baseball cap in the front of the shot just there.  
 20 MR JUSTICE NICKLIN: Right.  
 21 MS BOLTON: Right. If we could play on, please, (video  
 22 played).  
 23 So pausing there, that gentleman, we have never been  
 24 able to identify, my Lord. If we could play on, please,  
 25 (video played).

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1 MR JUSTICE NICKLIN: Just pause there. On the Canada Goose  
 2 question, that's a good example of somebody who cannot  
 3 be identified by name but could be described by his  
 4 behaviour. So he could become "Unknown protester 78  
 5 who, on 27 June 2021, threw a crash barrier over the  
 6 external fence".  
 7 MS BOLTON: My Lord, yes. The difficulty is we have not  
 8 been able to identify him sufficiently to serve him.  
 9 That has been one of the challenges -- is we could  
 10 describe him but we can't serve him.  
 11 MR JUSTICE NICKLIN: Well, if the theory of alternative  
 12 service holds good, he has been served by the methods  
 13 that have been adopted and, if they are good enough to  
 14 serve persons unknown, then arguably, they are good  
 15 enough to serve him.  
 16 MS BOLTON: My Lord, my difficulty with advancing that is  
 17 that we have a couple that were described at the  
 18 beginning.  
 19 MR JUSTICE NICKLIN: Yes.  
 20 MS BOLTON: And we asked for them to be served by that  
 21 method and, at the time, the law was slightly different  
 22 and your Lordship said no. So he didn't get served.  
 23 I accept he is an example of somebody who could have  
 24 been described. He is served as a person unknown,  
 25 I accept, but we couldn't have taken service of him any

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1 further. I think this is one of the difficulties with  
 2 description and service, I accept, but we couldn't -- as  
 3 you know, we have found some where we have been able to  
 4 identify a way of serving them and, where we have, we  
 5 have gone back and done it, even if it's much later, but  
 6 it has been quite challenging.  
 7 Could we play on, please. (video played).  
 8 Pausing there, again there is another person  
 9 involved in that incident there that again we have never  
 10 been able to identify.  
 11 Play on, please. (video played).  
 12 If you could pause the video. My Lord, this  
 13 gentleman also doesn't appear in any of the additional  
 14 footage that we have seen and reviewed and doesn't  
 15 appear to have been caught on camera at any other time  
 16 at the site.  
 17 So this was the first incident that the claimant  
 18 wanted to take your Lordship to, that obviously there  
 19 has been clear trespass, you have seen them enter even  
 20 the metal strip area on several occasions. Obviously,  
 21 it's an aggravated incident in the sense of what was  
 22 happening and it's also relied upon as harassment as  
 23 a result of the conduct.  
 24 MR JUSTICE NICKLIN: Who was harassed?  
 25 MS BOLTON: Well, my Lord, we would say that it's targeting

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1 those at MBR. They are trying to get them to come out.  
 2 They've asked them to come out and talk to them. They  
 3 are shouting at them.  
 4 MR JUSTICE NICKLIN: Do I have any witness statements from  
 5 anybody who was --  
 6 MS BOLTON: My Lord, the witness evidence is Susan Pressick  
 7 at paragraph 220.2. It's page 515, my Lord.  
 8 MR JUSTICE NICKLIN: Does this give me any evidence of  
 9 anybody actually being upset by what has taken place?  
 10 MS BOLTON: No, my Lord, it doesn't. I simply flag the  
 11 pleaded causes of action on this but, no, I would accept  
 12 it doesn't do that. It obviously is a very clear  
 13 incident of trespass.  
 14 MR JUSTICE NICKLIN: Yes. What should I make of the fact  
 15 that, arguably, the placing of the barriers on what  
 16 would have been the highway -- I know that much can be  
 17 said about the manner in which those barriers were  
 18 returned to their owners but, if those people were  
 19 present, I suspect people acting on their behalf might  
 20 have suggested that those barriers were unlawfully  
 21 placed on the highway.  
 22 MS BOLTON: Well, my Lord, you will see in a number of the  
 23 incidents to come that part of those barriers are used  
 24 on a number of occasions when the police are present as  
 25 well. So we would say that it was simply trying to give

1 some distance for staff --  
 2 MR JUSTICE NICKLIN: I perfectly well understand why they  
 3 were put there, but there is a degree of sophistication  
 4 in the analysis of causes of action here, that has  
 5 become even more elaborate ever since the ownership of  
 6 the strip of land that was previously thought to be  
 7 adopted highway. Now, when I'm watching this, what  
 8 I now know is the extent of the claimant's land was not  
 9 even the claimant's understanding of their land at the  
 10 time. So there is a high degree of sophistication in  
 11 the legal analysis of what legal rights are engaged here  
 12 but, if you are being technical about it, those barriers  
 13 were obstructing the highway.  
 14 MS BOLTON: Yes, my Lord, and if the protesters had simply  
 15 moved them out of the way --  
 16 MR JUSTICE NICKLIN: Yes, I did say there could be some  
 17 complaint about the manner in which they returned the  
 18 barriers to their owners but that's the vignette of this  
 19 and it's the manner in which they do it, which might  
 20 have caused distress and alarm if anybody had seen it,  
 21 but apart from that, it's a trespass.  
 22 MS BOLTON: Yes, indeed. There is a number of points that  
 23 arise from that. I fully accept, if they had simply  
 24 moved them to the side, or even placed them by the  
 25 claimant's gate, that they could have done that.

1 MR JUSTICE NICKLIN: It helps to exemplify the really quite  
 2 artificial nature of the trespass because had they  
 3 stepped on to the land to place the barrier on your  
 4 land, then, arguably, that might have been covered by  
 5 some sort of implied licence.  
 6 MS BOLTON: Yes, but what they are not entitled to do, of  
 7 course, is to throw something over a gate on to the  
 8 land.  
 9 MR JUSTICE NICKLIN: Yes.  
 10 MS BOLTON: And what it didn't entitle them to do was to  
 11 come forwards, kick the gate, bang the gate.  
 12 MR JUSTICE NICKLIN: No, no, I get that.  
 13 MS BOLTON: And to stand on the claimant's land to do those  
 14 things, which had nothing to do with the returning of  
 15 the barriers.  
 16 MR JUSTICE NICKLIN: Yes.  
 17 MS BOLTON: The next incident I want to take you to is  
 18 9 July 2021. There is a number of videos we need to  
 19 look at on this one. First of all, video 141.  
 20 MR CURTIN: Hello, can I make a little -- I'm unable to see  
 21 the videos but I'm able to record the number of videos  
 22 and watch them later if I want. Should I be able to see  
 23 the videos?  
 24 MS BOLTON: I believe Mr Curtin has the link.  
 25 MR JUSTICE NICKLIN: We are just checking that, Mr Curtin.

1 (Pause)  
 2 MS BOLTON: He needs to log on to the Opus link that he will  
 3 have been sent, not the CVP link.  
 4 MR JUSTICE NICKLIN: Mr Curtin, there is a separate Opus  
 5 link that you need to follow.  
 6 Ring Central, I'm being told it may be called.  
 7 MR CURTIN: Okay, I don't think it's going to be a factor.  
 8 I won't log off and log on now. I'm happy to go ahead  
 9 with it as it is because I'm fairly familiar with the  
 10 video.  
 11 MR JUSTICE NICKLIN: All right.  
 12 MS BOLTON: I don't think I've misunderstood Mr Curtin but  
 13 let's just be very clear, he is recording the video  
 14 numbers as in writing them down.  
 15 MR JUSTICE NICKLIN: Yes, yes.  
 16 MS BOLTON: He is not recording the hearing.  
 17 MR JUSTICE NICKLIN: No.  
 18 MR CURTIN: No, no.  
 19 MS BOLTON: I'm just checking, Mr Curtin.  
 20 MR CURTIN: Yes.  
 21 MS BOLTON: I should say, my Lord, I'm not taking a point.  
 22 I'm just aware that sometimes a litigant in person may  
 23 not realise.  
 24 MR JUSTICE NICKLIN: No, Mr Curtin, I think you understand  
 25 you can't record the hearing?

1 MR CURTIN: Yes, yes.  
 2 MS BOLTON: Right.  
 3 MR CURTIN: I understand.  
 4 MS BOLTON: So, my Lord --  
 5 MR JUSTICE NICKLIN: This is 9 July, this one?  
 6 MS BOLTON: First of all, 9 July. This is relied upon for  
 7 obstruction of the highway, interference with the common  
 8 law right to access the highway and harassment parasitic  
 9 on those incidents. First of all, video 141. We can  
 10 see at the start of it there is a vehicle parked in  
 11 front of the gates. If we could, please, play from 2  
 12 minutes and 30 seconds, please (video played).  
 13 My Lord, you can see here that there are protesters  
 14 in the road. There is a vehicle still being moved off  
 15 of the access road and the police are actively having to  
 16 prevent people from moving forwards.  
 17 If we could then play at 18 minutes onwards, please.  
 18 (video played).  
 19 MR JUSTICE NICKLIN: Mr Curtin, could you put yourself on  
 20 mute, please. Thank you.  
 21 MR CURTIN: I'm sorry.  
 22 MR JUSTICE NICKLIN: It's all right.  
 23 MS BOLTON: You can see the difficulty the police are  
 24 having, before they are trying to get the staff out, in  
 25 keeping the protesters back and clearing the way.

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1 Yes, it has been rightly pointed out to me, my Lord,  
 2 you can see the car just inside of the image, waiting to  
 3 come out and the difficulty that that's causing the  
 4 police. My Lord, I'm going to play this through to 22  
 5 minutes.  
 6 MR JUSTICE NICKLIN: Okay. (video played).  
 7 MS BOLTON: My Lord, you will see that the car bonnet has  
 8 disappeared. My Lord, you will now see that the police  
 9 are trying to push people back -- if we can pause there,  
 10 please -- and at this stage the cars have had to abort  
 11 coming out and have reversed back in, which we are going  
 12 to look at in a moment. Then if we look, it takes to 52  
 13 minutes and 50 seconds, if we could go to now, please,  
 14 in this video.  
 15 MR JUSTICE NICKLIN: Am I right that there were no arrests  
 16 at this incident?  
 17 MS BOLTON: I'm not sure, my Lord.  
 18 MR JUSTICE NICKLIN: I've just had a quick look at  
 19 Superintendent Sissons' evidence and his first  
 20 incident -- there is one on 6 July and then the next is  
 21 on 15 August.  
 22 Anyway, you can check that, but I just looked at it  
 23 to cross-reference that.  
 24 MS BOLTON: If we could play at 52 minutes and 50 seconds,  
 25 please. (video played).

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1 Then if we could now -- that's the staff that have  
 2 come out after 52 minutes. If we can now go to, please,  
 3 one hour and 28 minutes. (video played).  
 4 At this stage, there is fewer protesters, my Lord,  
 5 but this is for security to leave. So if we could play  
 6 on, please. (video played).  
 7 So pausing there, we have D18 present, my Lord.  
 8 Yes, I was looking at the right person. So it's the  
 9 person who is to the right of the first policeman,  
 10 holding a placard, just behind her -- and when I say the  
 11 policeman, my Lord, I'm talking about the policeman --  
 12 not the one that's in the middle of the road but on the  
 13 side of the access drive -- and then just behind her is  
 14 Mr Patterson, and then you can see Ms Asplin's red hair  
 15 just further back.  
 16 MR JUSTICE NICKLIN: Yes.  
 17 MS BOLTON: I can't see Ms Durant in this part of the  
 18 footage but she is present. I can't see her at the  
 19 moment. We can't quite see him at the moment but, if  
 20 you look at the second policeman in the line, stopping  
 21 people coming forwards, there is a person with a blue  
 22 t-shirt and in a moment that's Mr Maher. If we could  
 23 play on, please. (video played).  
 24 If we could look now, please, at video 815, this is  
 25 the dash cam from Employee F's car. It's in two parts.

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1 (video played).  
 2 Sorry, it's the Production Manager's car, my Lord,  
 3 but it's Employee F's dash cam.  
 4 MR JUSTICE NICKLIN: Is the date wrong?  
 5 MS BOLTON: My Lord, yes, it's two days out.  
 6 MR JUSTICE NICKLIN: Okay.  
 7 MS BOLTON: Ms Pratt is rightly pointing out to me it's in  
 8 his witness statement.  
 9 MR CURTIN: Could I ask what video that is, please, the  
 10 number?  
 11 MS BOLTON: 815.  
 12 MR CURTIN: Thank you. (video played).  
 13 MS BOLTON: If we could play 829, where that continues,  
 14 please. (video played).  
 15 My Lord, 830 is just more of waiting behind the  
 16 gate, my Lord, so I don't think we need to go to 830,  
 17 but 814, please. This is showing the successful attempt  
 18 to leave part way through the video. (video played).  
 19 My Lord, you will see we are now at 5.45 for the  
 20 time stamp.  
 21 Pausing, there, my Lord, that's the police saying,  
 22 "Don't stop, go to the right, good luck." That's the  
 23 instructions to the driver.  
 24 So if we can play on, please, (video played).  
 25 If we can now go to 2.23, we are going to see

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1 further up the road in this car. Play there, please.  
 2 (video played).  
 3 You can see that the police were forced to shut the  
 4 road at that point.  
 5 So that's the 13th — sorry, not the 13th, that's  
 6 the 9 July incident, my Lord, and you will see we have  
 7 set out where the obstruction is and the interference is  
 8 noted in the employees' witness statements and, as  
 9 I say, that's obviously an incident that's relied on as  
 10 obstruction, common law right of interference and  
 11 harassment as a result of the obstruction.  
 12 MR JUSTICE NICKLIN: Obstruction of the highway needs proof  
 13 of damage, a common law right of interference is per se?  
 14 MS BOLTON: Yes.  
 15 MR JUSTICE NICKLIN: Right.  
 16 MS BOLTON: My Lord, the next incident is 13 July 2022.  
 17 Again, this is obstruction of the highway, common law  
 18 right of interference and access — the access land,  
 19 trespass and harassment. So it's trespass on the part  
 20 that we have pleaded as an alternative as interference  
 21 with the common law right now, my Lord, because we  
 22 didn't understand the extent of the land at the time.  
 23 My Lord, I think probably we need to go to video 24.  
 24 MR JUSTICE NICKLIN: Right. (video played).  
 25 MS BOLTON: Pausing there, my Lord, we can see that that's

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1 Ms Hodson.  
 2 MR JUSTICE NICKLIN: This is a familiar incident. We have  
 3 watched this before.  
 4 MS BOLTON: Yes. We have looked at this one with Mr Curtin,  
 5 so I'm just going to play this video, my Lord, and not  
 6 all of the other videos.  
 7 MR JUSTICE NICKLIN: That's fine.  
 8 MS BOLTON: If we can play on, please, (video played).  
 9 Pausing there, my Lord, that's Mr Morley and  
 10 Mr Patterson in front of the vehicle there as well.  
 11 Play on, please. (video played).  
 12 Pausing there, my Lord, you will see that there is  
 13 a group of people around the car. Some of them we can  
 14 identify and we have listed those in the schedule; the  
 15 others we can't.  
 16 MR JUSTICE NICKLIN: How many have you not been able to  
 17 identify?  
 18 MS BOLTON: I think there is at least three or four there  
 19 that we can't identify. If we play on, it becomes  
 20 easier to see as people move around. (video played).  
 21 So that's Mr Maher. So pausing there, that's  
 22 Mr Maher on the left.  
 23 MR JUSTICE NICKLIN: Yes.  
 24 MS BOLTON: Play on, please, (video played).  
 25 Pausing there, the person over the other side,

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1 though, in the khaki shorts, we don't know who that is.  
 2 There is somebody at the bell mouth, we don't know who  
 3 they are. That's in the white t-shirt, my Lord, as the  
 4 car is going past now. We have attempted, because some  
 5 of the incidents are quite large and there isn't  
 6 sometimes even a way of describing, what we have done is  
 7 we have identified who we can see because some of the  
 8 particularly big incidents, it's quite difficult to even  
 9 count.  
 10 If we can play on, please, (video played).  
 11 Pausing there, again there is another person to the  
 12 left of Mr Morley, or right if you are looking at it  
 13 from the screen, and again we don't know who that is  
 14 either. Play on, please. (video played).  
 15 Again, pausing there, there is a person at the back  
 16 with — I think that's "Shame on you." Again we don't  
 17 know who that is either. We can play on, please.  
 18 (video played).  
 19 Also pausing there, my Lord, you will also see that  
 20 the tent is on the access road, so somebody appears to  
 21 be camping on the access road as well. If we could play  
 22 on, please, (video played).  
 23 Sorry, if we can just play on, because I think what  
 24 I was about to point out has just gone out of shot.  
 25 Pausing there, there is somebody else on the bell

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1 mouth there, to the right, near where the car is coming  
 2 past. Again we don't know who that is. Play on,  
 3 please, (video played).  
 4 Pausing there, my Lord, you can see that we have  
 5 a person unknown in a baseball cap and a white T-shirt,  
 6 who was obviously standing at the front there with  
 7 Mr Morley, who is now filming close up at the car on the  
 8 side. Again we don't know who that is. We can play on,  
 9 please, (video played).  
 10 My Lord, just pausing there, please, she just moved  
 11 to the side but defendant number 5, Ms Mayflower, is  
 12 also — she has just moved to the other side of the  
 13 car — holding a placard. That's her standing there.  
 14 We can play on, please. (video played).  
 15 Pausing there, you can see that more clearly there  
 16 now, my Lord. Play on, please. (video played).  
 17 So pausing there, we know that we have got people  
 18 further back we can't identify but what we have there,  
 19 we have managed to identify everyone in that front line  
 20 bar one. Play on, please. (video played).  
 21 Then the next incident, my Lord, is 17 July and, in  
 22 particular — this is again obstruction of the highway,  
 23 interference with the common law right to access the  
 24 highway, an access land trespass and harassment  
 25 parasitic on the other causes of action. In particular,

20

1 if we can go to, please, video 170 and at 1 minute,  
 2 please. (video played).  
 3 Pausing there, we have persons unknown standing in  
 4 front of the gate as the gate opens. Please play on.  
 5 (video played).  
 6 Pausing there, we have the 5th defendant,  
 7 Ms Mayflower, on the left here, and just behind her is  
 8 Ms Marley. I think that's going to become clear in  
 9 a moment but if we can play on, please, (video played).  
 10 Pausing there, you can see Mr Morley behind with the  
 11 flag in his hand. Most of that first row, though, bar  
 12 Ms Mayflower, are a person unknown. Ah, yes, I see, you  
 13 are going to see Ms Jaffray in a moment. So she is  
 14 behind Mr Morley at the moment with a black placard  
 15 quite low down. If we can play on, please. (video  
 16 played).  
 17 MR JUSTICE NICKLIN: Just pause there, please. The man with  
 18 the blue shorts that we can see closest to the camera,  
 19 that's a person unknown, isn't it?  
 20 MS BOLTON: Yes.  
 21 MR JUSTICE NICKLIN: Just taking him as an example, he is  
 22 not shouting, so leave aside the question about  
 23 obstruction, he is in a different category because he is  
 24 not doing anything particular beyond holding his  
 25 placard.

21

1 MS BOLTON: My Lord, well, as you know, we have different  
 2 categories of persons unknown. He is obstructing and  
 3 that in itself is a category we rely upon.  
 4 MR JUSTICE NICKLIN: Yes. But let's focus on that because  
 5 this helps demonstrate some of the difficulties of this  
 6 exercise. If that gentleman had stood where he is  
 7 currently standing throughout the whole incident and  
 8 simply held a placard, he wouldn't — well, leave aside  
 9 that now he is trespassing. He isn't obstructing.  
 10 MS BOLTON: There is two points, my Lord. If he is standing  
 11 where he is as part of that protest, he is interfering,  
 12 first of all, with the common law right to access the  
 13 highway.  
 14 MR JUSTICE NICKLIN: Why?  
 15 MS BOLTON: Because that isn't free access, the cars are  
 16 having to slow down, they are having to come out very  
 17 carefully. That isn't simply standing back with  
 18 a placard.  
 19 Secondly, on the obstruction point, that's going to  
 20 be a matter for your assessment because, if we go back  
 21 to the DPP v Jones case and what those whose — putting  
 22 aside the dissenting views but even the views of the  
 23 majority of the Supreme Court who made that decision,  
 24 it's right that, again, they talk about where you are,  
 25 how you are using the highway, it's not simply a case of

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1 are you standing in front of a car. Are you obstructing  
 2 free passage. In my submission, that is still part of  
 3 obstruction of free passage.  
 4 MR JUSTICE NICKLIN: I test all of this by reference to what  
 5 injunction would I grant, and the injunction has to be  
 6 calibrated in a way that it makes clear to the people  
 7 what they can and can't do and then it mustn't chill the  
 8 protest right because, if the persons unknown had  
 9 a representative, that representative would say, "He is  
 10 not doing anything wrong there." And if there is  
 11 a momentary obstruction of that vehicle's view of the  
 12 carriageway to the left, then that is not sufficient to  
 13 interfere or curtail with the protest right because  
 14 otherwise — the risk is that the injunction operates in  
 15 a way that people say, "I don't know what obstruct  
 16 a vehicle means. If that includes momentary interfering  
 17 with somebody's free passage on to the carriageway, that  
 18 could then lead to people feeling that they couldn't  
 19 stand anywhere on the carriageway within, let's say,  
 20 20 metres either side of the gateway." That would not  
 21 be an injunction that I would grant against an  
 22 individual absent some really aggravating features and  
 23 yet it's one that I'm being asked to grant against the  
 24 whole world.  
 25 MS BOLTON: These are points that I will be making in legal

23

1 submission. I think that is a little bit where some of  
 2 the obstruction of the highways cases perhaps have  
 3 blurred some lines, in that I think where it's the  
 4 carriageway, that is quite significant, and I think  
 5 that's what Jones is making a distinction on — is it's  
 6 one thing to stand further back on the grass verge,  
 7 which was the case there, and hold a placard, it's  
 8 another thing to be interfering with the primary use of  
 9 the highway, which is to pass and repass, and I think  
 10 one of the things that then —  
 11 MR JUSTICE NICKLIN: Well, to an extent, all protests  
 12 interfere with that right.  
 13 MS BOLTON: I think it's the difference between, if you are  
 14 standing on the grass verge — for instance — this is  
 15 a good example: if the cars had come out of the site and  
 16 there was a large number of protesters who were standing  
 17 on the grass verge along the main road, that may very  
 18 well cause cars to slow down just because there is  
 19 people. That's absolutely fair enough. But where  
 20 people are stepping into the carriageway and altering  
 21 a car's course and slowing free passage and interfering  
 22 with free passage, that is obstruction, and I think  
 23 that's the line that Jones is trying to draw.  
 24 MR JUSTICE NICKLIN: Yes, and when you are looking at  
 25 historic events, well — I wouldn't say it's easy but

24

1 it's easier to focus on actual video evidence and say,  
 2 "Right, that person is obstructing, that person isn't."  
 3 MS BOLTON: Yes.  
 4 MR JUSTICE NICKLIN: But flipping that into an injunction  
 5 that's looking ahead, how am I going to draw those  
 6 lines?  
 7 MS BOLTON: Well, my Lord, that's something that I intend to  
 8 submit to you. We have had discussions about the  
 9 exclusion zone. We both know that the law on exclusion  
 10 zones, final orders is certainly not particularly in  
 11 favour of it. It doesn't rule it out but it's not  
 12 always -- it's not particularly encouraged in most  
 13 cases.  
 14 In this case, my submissions will be that a limited  
 15 level of exclusion will draw that line and make it clear  
 16 and I'm going to be asking your Lordship, whilst we are  
 17 looking at this evidence, to consider whether anybody  
 18 should be on the access road at all. I'm not suggesting  
 19 that it should be to the extent that it is on the  
 20 interim order. But what we do want to try, in my  
 21 submission, to avoid and what the claimant is anxious  
 22 over is that the cars can get out and on to the  
 23 carriageway without having to drive on to the other side  
 24 of the road and that the other thing that might need to  
 25 be considered -- and it's something which comes out

1 again in Jones, is reference to grass verges, because  
 2 it's all part of the highway -- is whether at the bell  
 3 mouth, whether you really want people standing right on  
 4 the grass verge or right at the edge of the access road,  
 5 because that does cause an obstruction and interference  
 6 in itself. So from the point of view of -- we can see,  
 7 as we go through the evidence, that, with some limited  
 8 exceptions, which, following committals, calm down  
 9 completely, what the injunction has done is it has  
 10 prevented this crowding, and your Lordship identified it  
 11 as a flashpoint, and in drawing an injunction, my  
 12 submissions are going to be that it's finding a way to  
 13 maintain --  
 14 MR JUSTICE NICKLIN: Yes, you need to --  
 15 MS BOLTON: -- keep that flashpoint calm that will be  
 16 important.  
 17 MR JUSTICE NICKLIN: There are many virtues of the exclusion  
 18 zone. The thing that can be said most in its favour is  
 19 it's clear.  
 20 MS BOLTON: Yes.  
 21 MR JUSTICE NICKLIN: What argument can be advanced against  
 22 it is that it prohibits lawful behaviour, so we can --  
 23 a convenient motif for this is Mr Curtin has provided it  
 24 with his laying flowers at the gate.  
 25 If he simply wanted to do that as an exercise of

1 a protest ritual, as a symbolic act of, "I'm laying  
 2 these flowers here to commemorate those dogs who have  
 3 lost their lives in the last week," there could be  
 4 absolutely no objection to that.  
 5 MS BOLTON: My Lord, there could be because that would be  
 6 a blatant trespass.  
 7 MR JUSTICE NICKLIN: Okay, leave the trespass out of it. Up  
 8 to the point -- so he lays the flowers, slightly to the  
 9 left of the gateway, and he makes up a small memorial.  
 10 There could be no objection to that, but my order would  
 11 prohibit that.  
 12 MS BOLTON: My Lord, that's happening anyway. The videos  
 13 will show that flowers are being thrown at cars and  
 14 lorries, they are being thrown into -- no one has  
 15 brought any committal on that. We accept that they can  
 16 do that --  
 17 MR JUSTICE NICKLIN: The court doesn't give you the right to  
 18 decide by dint of an injunction who will be permitted to  
 19 go into the exclusion zone. If I grant an exclusion  
 20 zone, it's an exclusion zone and everybody is out of it.  
 21 So that's the difficulty with it, because the exclusion  
 22 zone, although I'm not blind to the fact that it is the  
 23 answer to the uncertainty, which is the risk of the  
 24 chilling effect -- if I grant an injunction that says --  
 25 either against Mr Curtin or against persons unknown,

1 that says, "You must not obstruct vehicles when they are  
 2 accessing the Wyton site," that is direct, it only  
 3 prohibits unlawful activity. The difficulty with it is  
 4 what that means. The difficulty of transitory  
 5 interference, which would never in itself give rise to  
 6 a legal action but then gets -- graduates immediately,  
 7 potentially, into a contempt application.  
 8 MS BOLTON: My Lord, it seems to me that -- obviously the  
 9 court has the power to -- there is two points: one, we  
 10 would say that incursions on to the access road at any  
 11 time that vehicles are trying to enter or exit is an  
 12 interference. We would say it's also an obstruction.  
 13 It's clearly an interference.  
 14 What Mr Curtin is asking to do, to put flowers by  
 15 the gate. We say the gate, no, because that is trespass  
 16 and the claimant does have the right to say, "No, we  
 17 don't want you putting flowers at the gate," but if what  
 18 your Lordship is asking is should an injunction prevent  
 19 Mr Curtin from laying flowers at the side of the access  
 20 road, for argument's sake, when there are no vehicles  
 21 entering or exiting, I don't think anybody has any issue  
 22 with that. I think what the claimant's position would  
 23 be is this: first of all, we don't want people on the  
 24 access road because we say that that is the clearest way  
 25 to prevent further torts from happening; and, secondly,



1 we don't want people obscuring views at the bell mouth.  
 2 As to does it matter if Mr Curtin lays those flowers  
 3 at the edge of the access road or in the middle of the  
 4 access road, we would say that to fairly strike the  
 5 balance of making it clear, he should have to put them  
 6 at the edge of the access road. We are not ---  
 7 MR JUSTICE NICKLIN: That just brings in the whole question,  
 8 you see, the court wouldn't ordinarily get anywhere near  
 9 regulating that conduct and the only reason that I'm  
 10 having to contemplate it is because you are asking for  
 11 a persons unknown injunction, which means I've got to be  
 12 alive to the fact that what you are asking me to do is  
 13 impose an order that will apply to everybody.  
 14 MS BOLTON: No, my Lord, it's not simply because of the  
 15 persons unknown order; the example there of Mr Curtin.  
 16 MR JUSTICE NICKLIN: Leave Mr Curtin. Mr Curtin is easy.  
 17 If the court takes the view that the evidence discloses  
 18 that, in the past, Mr Curtin has obstructed vehicles and  
 19 that there is a credible basis on which to believe that,  
 20 if not restrained by injunction, he will do so in the  
 21 future, then that's straightforward, and I've done the  
 22 careful balancing of his case on the basis of the  
 23 evidence, on the basis of his evidence, and I've reached  
 24 a decision, and I can carry out the  
 25 proportionality/necessity assessment that's required in

1 his case.  
 2 Mr Curtin, I'm only using your name. I could use  
 3 anybody. You are just a useful example of a known  
 4 person, rather than the persons unknown. So it's not  
 5 concerning you, I'm just using yours as an example to  
 6 demonstrate the point.  
 7 MR CURTIN: Yes. I'm listening.  
 8 MR JUSTICE NICKLIN: That's easy. It's not easy. Actually,  
 9 this case has shown that even looking at Mr Curtin's  
 10 case provides a level of complexity and analysis that's  
 11 required as to exactly what he is doing, what his  
 12 justification for it is, et cetera. So that's --- I will  
 13 say it's easier to deal with a real case than it is to  
 14 try and imagine a panoply of people and their activities  
 15 and what order could be justified prospectively against  
 16 these people.  
 17 MS BOLTON: The revolving cast of people, my Lord, are  
 18 a part of the reason why that prohibition is justified.  
 19 This gentleman you've looked at here was stood in front  
 20 of the cars. He has now moved to the side. We are  
 21 going to see a number of videos where different people  
 22 take that action. From a persons unknown category, this  
 23 can't be viewed as in any way de minimis. De minimis  
 24 might be somebody slowing somebody down in the highway  
 25 because they have stepped around something or stepped

1 out. It's not deliberate actions of this nature which  
 2 keep happening and we have to look at it from, if the  
 3 claimant was here saying, "Well, I've got one example of  
 4 a persons unknown but the rest of the time it's only  
 5 a handful of people, all of whom we know. The rest of  
 6 the time that's not the case," that may be different.  
 7 But it's not. What the evidence will show is that it is  
 8 a cast of different people on different occasions, very  
 9 specifically obstructing and interfering with the right,  
 10 and we say that, yes, it may well be that an exclusion  
 11 zone of some sort, if that was the way the court wished  
 12 to go, may very well prohibit some people from stepping  
 13 into that area, who would never have dreamed of stepping  
 14 in front of a car. But that's the balancing exercise on  
 15 whether it should go that far or whether it should  
 16 specifically just say that you don't obstruct and step  
 17 in front of vehicles.  
 18 MR JUSTICE NICKLIN: You see, the thing that troubles me the  
 19 most about this is what right do I as a judge have to  
 20 strike that balance.  
 21 MS BOLTON: Because the law has said you do, my Lord.  
 22 MR JUSTICE NICKLIN: Really?  
 23 MS BOLTON: Yes. And that's becoming ---  
 24 MR JUSTICE NICKLIN: You see, on exclusion zone, you  
 25 recognise, an exclusion zone against persons unknown is

1 an unusual order. It is difficult to justify by  
 2 reference to the causes of action because by definition  
 3 it reaches into areas that are not a civil wrong.  
 4 MS BOLTON: Yes.  
 5 MR JUSTICE NICKLIN: So it prohibits behaviour that's not  
 6 a civil wrong.  
 7 MS BOLTON: Yes.  
 8 MR JUSTICE NICKLIN: And I'm doing that against everybody  
 9 and so what I'm effectively doing is --- by analogy ---  
 10 I am imposing a PSPO outside the Wyton site. That's the  
 11 effect of it.  
 12 MS BOLTON: And the Court of Appeal in INEOS recognised that  
 13 there may be times when you have to make that order and  
 14 again --- sorry, no, it's the clarification of INEOS in  
 15 Cuadrilla, recognising that you have to make --- it's  
 16 Lord Justice Leggatt --- that you sometimes have to  
 17 strike that balance in a way that will include  
 18 prohibiting lawful conduct to get the balance right and  
 19 to make the injunction effective.  
 20 MR JUSTICE NICKLIN: Yes, I understand --- this is what's  
 21 happened in this case.  
 22 MS BOLTON: Yes.  
 23 MR JUSTICE NICKLIN: As an interim measure, in order to calm  
 24 things down while the court tries to resolve the matter,  
 25 as a matter of practical expediency, sometimes the best

1 way of doing it -- and it seems to have worked in this  
 2 case substantially -- is to impose an exclusion zone  
 3 because it's like -- it's like separating two people in  
 4 a bar brawl, saying, "You stand over there, you stand  
 5 over there."  
 6 MS BOLTON: Yes.  
 7 MR JUSTICE NICKLIN: And then everybody needs to calm down  
 8 and we will have a look at what the rights are.  
 9 Imposing it as a final order against persons  
 10 unknown, including newcomers, is essentially imposing  
 11 a PSPO but without any of the PSPO safeguards, in  
 12 particular the democratic element which goes into  
 13 a PSPO, which is the consultation.  
 14 MS BOLTON: My Lord, I make a couple of points on that.  
 15 First of all, it isn't law that's confined only to  
 16 interim orders, as the case law stands at present.  
 17 MR JUSTICE NICKLIN: I know. In theory I could do anything.  
 18 MS BOLTON: Yes. Secondly, that gentleman there does have  
 19 the right to come back to the court and say, "You  
 20 haven't determined my rights yet, and I want you to  
 21 consider this."  
 22 MR JUSTICE NICKLIN: Okay, I think that's illusory.  
 23 MS BOLTON: But that is available to him to do, as it is to  
 24 any litigant where -- to any person where rights are  
 25 decided where they haven't been --

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1 MR JUSTICE NICKLIN: Let's talk about what happens to that  
 2 gentleman in the event that he is unsuccessful. He is  
 3 then thumped with an enormous costs order.  
 4 MS BOLTON: My Lord, I think that's a matter of discretion  
 5 for the court. In the same way that the court has  
 6 regulated --  
 7 MR JUSTICE NICKLIN: I've heard the evidence from Mr Curtin,  
 8 which says that one of the things that prays on the mind  
 9 of the protesters -- and this isn't a surprise, it has  
 10 come up in other cases -- is the risk that they will be  
 11 practically wiped out by a costs order if they dare set  
 12 foot in the court.  
 13 MS BOLTON: But your Lordship has already made costs capping  
 14 orders in this case and the court does have the  
 15 discretion on costs as to how it approaches costs.  
 16 MR JUSTICE NICKLIN: I know, and if I had a reliable channel  
 17 of communication, whereby I could assure protesters that  
 18 they didn't need to fear as much as they do what might  
 19 happen to them if they come to court, then that might  
 20 assuage some of their concerns but one of the things  
 21 that makes it, it seems to me, illusory about the  
 22 notional idea that any of these individuals in the  
 23 future might be able to come to court 13 and ask me or  
 24 another judge to vary a persons unknown injunction, one  
 25 of the things that might discourage him or her from

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1 coming to court 13 might be their view that there was  
 2 a significant costs risk of doing so.  
 3 MS BOLTON: My Lord, I would make a number of points on  
 4 that. One, that is something the court still can  
 5 control through an order, any order it makes, in the  
 6 same way as it has done in this litigation. Secondly,  
 7 I think that this is something else that is going to  
 8 soon -- well, I will be very surprised if it doesn't  
 9 feature in the Supreme Court's decision because it was  
 10 a representation made on behalf of the Friends of the  
 11 Earth. And so I think -- and obviously there has been  
 12 difficulties because the cost capping regime had changed  
 13 but this is something I'm fairly sure we are going to  
 14 hear about in a judgment, whenever it is handed down.  
 15 MR JUSTICE NICKLIN: Okay. I am just -- I'm sorry that I'm  
 16 interrupting in this way.  
 17 MS BOLTON: I understand --  
 18 MR JUSTICE NICKLIN: It's helpful when we have got a video  
 19 on the screen for you to understand what I'm thinking  
 20 about in terms of how does this all work.  
 21 MS BOLTON: Yes.  
 22 MR JUSTICE NICKLIN: Because it's by reference to the  
 23 evidence that I will have to make these ultimate  
 24 decisions. So when we are looking at the evidence, when  
 25 these points occur to me, I wanted to just raise them

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1 with you, but I'll try and sit quietly now and we can go  
 2 through the rest of the evidence.  
 3 Oh, it's time for a break, you are quite right.  
 4 MS BOLTON: It is indeed.  
 5 MR JUSTICE NICKLIN: Right. We will come back at ten past  
 6 12. Thanks very much.  
 7 (11.52 am)  
 8 (A short break)  
 9 (12.09 pm)  
 10 MR JUSTICE NICKLIN: Right.  
 11 MR CURTIN: My Lord.  
 12 MR JUSTICE NICKLIN: Hello, Mr Curtin.  
 13 MR CURTIN: Am I allowed to address you on one point? My  
 14 intention is just is to -- I said I didn't intend to  
 15 partake in these proceedings but just to -- I just  
 16 wanted to give you one typical example, for example, the  
 17 idea of the obstruction, there has been many times  
 18 during the injunction, where, say, they get lorry  
 19 deliveries of sawdust from, I think, Poland and they get  
 20 their food from Germany. There is many times in the  
 21 injunction where, say, a lorry arrives, it has its  
 22 indicator on and I've felt unable to address that lorry  
 23 driver in any way apart from shouting at him. I haven't  
 24 been able to -- for example -- say the Anglia Water,  
 25 which I testified didn't go so well. If that had been

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1 a milder version of that, three people who just want to  
 2 flag a vehicle down for a very brief moment in time,  
 3 "Here you are. Do you know where you're going? Here's  
 4 a leaflet ." I just want to put that in as  
 5 a hypothetical thing for consideration --  
 6 MR JUSTICE NICKLIN: I had already thought of that incident,  
 7 myself, Mr Curtin, and the extent to which, if  
 8 a protester tries to engage a vehicle that's visiting  
 9 the facility , to encourage them to take a leaflet,  
 10 whether that is or isn't obstructing the vehicle -- we  
 11 will come on to this because it will be a point that we  
 12 need to discuss in the final submissions. Okay.  
 13 MR CURTIN: This isn't a pattern I'll follow. I'll only do  
 14 it if I feel it's absolutely essential to say something.  
 15 MR JUSTICE NICKLIN: It's all right, Mr Curtin. Thank you  
 16 very much.  
 17 Right, Ms Bolton, carry on.  
 18 MS BOLTON: My Lord, I'm not going to spend any more time on  
 19 the incident of 17 July because you've seen it when we  
 20 were going through Mr Curtin's evidence.  
 21 MR JUSTICE NICKLIN: Yes.  
 22 MS BOLTON: We are going to turn to the incident of 22 July,  
 23 which is an obstruction of the highway incident and  
 24 harassment parasitic on the obstruction. If we can play  
 25 the video briefly from the beginning, please. (video

1 played).  
 2 Pausing there, that's Mr Broughton, and, my Lord,  
 3 they are saying they are going to get this treatment  
 4 every day. I think the car starts to come out at 1  
 5 minute and 10 seconds, if we can go to that, please.  
 6 (video played).  
 7 Pausing there, that's Mr Morley and a person unknown  
 8 in front of that vehicle. Play on, please, (video  
 9 played).  
 10 Pausing there, you will see that that car -- that  
 11 the gap is closing and that car is having to come out  
 12 very slowly. If we can play on, please. (video  
 13 played).  
 14 Pausing there, and we can now see we have people in  
 15 front of the car, not staying clear from the car. We  
 16 don't know who those people are. Play on, please.  
 17 (video played).  
 18 I believe that, pausing there, the lady in the  
 19 orange jacket is Ms Mayflower and the gentleman walking  
 20 back in is Mr Morley. There are a number of other  
 21 people surrounding the car. Play on, please. (video  
 22 played).  
 23 Pausing here, this is Employee Q's car, my Lord.  
 24 That's one of the employees, the evidence is that she  
 25 left as a result of the impact the protests were having

1 on her. If we could play on, please. (video played).  
 2 Pausing there, and again the person being pulled  
 3 from the grass verge and joining the protest there, you  
 4 will see, is wearing a balaclava. If we can play on,  
 5 please, (video played).  
 6 So, my Lord, we would say that that is a good  
 7 example of a significant obstruction of the highway  
 8 involving many people, of which it's simply not possible  
 9 to identify large numbers of those people.  
 10 MR JUSTICE NICKLIN: But that obstruction of the highway,  
 11 there are several aspects of that. The first is you  
 12 would need to show a loss before you could bring a claim  
 13 in relation to that.  
 14 MS BOLTON: Yes.  
 15 MR JUSTICE NICKLIN: Where is that?  
 16 MS BOLTON: The loss, my Lord, that's pleaded, which is  
 17 appropriate, is it's particular loss, which is -- it can  
 18 be a form of general damage but it has to be particular  
 19 to those people who are suffering the obstruction and  
 20 the claimant, and that is both in the sense of loss of,  
 21 one, the delay; two, the loss of staff; three, the  
 22 occupational health risk --  
 23 MR JUSTICE NICKLIN: You need to show that was caused by  
 24 that incident.  
 25 MS BOLTON: We have pleaded that all of these are caused by

1 these obstructive incidents because of the impact it has  
 2 had on the staff. So all of those are incidents, we  
 3 say, where we have suffered particular damage because it  
 4 is the claimants that are the target of this.  
 5 MR JUSTICE NICKLIN: So you are ultimately seeking an  
 6 injunction from me that would make that -- what I've  
 7 just watched unlawful?  
 8 MS BOLTON: My Lord, that is unlawful, in my submission.  
 9 MR JUSTICE NICKLIN: Well, you see, the police are there.  
 10 Are you saying the police are not doing their job  
 11 properly?  
 12 MS BOLTON: It's not for me to comment on why the police  
 13 don't arrest every person involved.  
 14 MR JUSTICE NICKLIN: Probably because the police have a very  
 15 difficult job to do, which is to balance the competing  
 16 rights, which is there is a large number of people who  
 17 want to exercise their protest right. They are all --  
 18 the police -- well, my inference would be the police  
 19 have taken a decision, operationally, that they are  
 20 going to tolerate a degree of obstruction of the highway  
 21 in pursuit of this protest because they judged, probably  
 22 rightly, it won't go on all that long and it's  
 23 a proportionate policing measure not to seek to  
 24 interfere beyond that. They might take out individual  
 25 people, if they see any particular commission of other

1 criminal offences, but that's the police doing their  
 2 job.  
 3 MS BOLTON: It's not the police that determine a civil  
 4 wrong, it's in this claim whether there is a civil wrong  
 5 being committed that --  
 6 MR JUSTICE NICKLIN: Yes, but in that incredibly important  
 7 function of the police -- there couldn't be probably  
 8 a more important role for the police in policing  
 9 demonstrations than to set that balance correctly, and  
 10 you are asking for me to set aside that balancing  
 11 exercise and, without any further knowledge, in the  
 12 future just to prohibit it.  
 13 MS BOLTON: Well, my Lord, I make a number of points on  
 14 that. First of all, it's the police that encouraged the  
 15 claimant to seek an injunction. Secondly, the police --  
 16 MR JUSTICE NICKLIN: Where is the evidence of that?  
 17 MS BOLTON: I think that's Ms Pressick's evidence, my Lord.  
 18 Secondly, the police have indicated that the injunction  
 19 has assisted them. That was in Superintendent Sissons'  
 20 first witness statement.  
 21 MR JUSTICE NICKLIN: Superintendent Sissons, yes.  
 22 MS BOLTON: Thirdly, it comes back to this point that's made  
 23 in the Abortion Services case by the Supreme Court, that  
 24 the delineation between whether it should be dealt with  
 25 by criminal or civil isn't helpful, and Ziegler is using

1 the example of what then happens with the  
 2 Insulate Britain protests, if instead they go the route  
 3 of civil injunction. What we have to look at is, is  
 4 there a wrong and is there a remedy that can fit that  
 5 wrong, because that's the situation we are in, and you  
 6 heard at the beginning of that protest this is what they  
 7 are going to get every day and, if there hadn't been an  
 8 injunction --  
 9 MR JUSTICE NICKLIN: They didn't do that every day, even  
 10 before the injunction.  
 11 MS BOLTON: There was a significant amount of it before --  
 12 MR JUSTICE NICKLIN: There were several flashpoint days,  
 13 where there were a significant number of people, but  
 14 that was not the norm.  
 15 MS BOLTON: Well, my Lord, there are a number of days --  
 16 nobody should have to go to work through that, day in,  
 17 day out, or even weekly. But that is a significant  
 18 obstruction. It isn't a case of a one-off protest, it's  
 19 a case of relentless protesting, that has gone on, as  
 20 Mr Curtin gave evidence, for a significant period of  
 21 time, and what was happening was not a one-off incident.  
 22 That is a significant obstruction and that, plainly,  
 23 looking at the law under the DPP v Jones -- that's  
 24 plainly obstructing the right to pass and reposs. That  
 25 isn't part of a lawful protest.

1 MR JUSTICE NICKLIN: Well ...  
 2 MS BOLTON: Bear in mind --  
 3 MR JUSTICE NICKLIN: Whether it is or isn't a lawful protest  
 4 and whether it is or isn't an obstruction of the highway  
 5 is a fact-specific question, always.  
 6 MS BOLTON: It is indeed, and we do need to bear in mind  
 7 that the police at the time is -- the police were very  
 8 much acting following the decision in Ziegler because  
 9 Ziegler was very much taken as a catch-all approach that  
 10 is to be considered. Abortion Services have made it  
 11 clear that's not and Jones wasn't cited in Ziegler. So  
 12 that also has to be looked at in the context of at the  
 13 time as well because, at the time, police were very  
 14 nervous about where the line rested after Ziegler, it  
 15 was clearly somewhere different to what they had  
 16 understood previously.  
 17 I think we have to look at the fact that we are  
 18 looking at historic events where law has changed again  
 19 since then.  
 20 MR JUSTICE NICKLIN: I don't think it's changed from the  
 21 basic proposition, which is the decision the police have  
 22 to make on any protest occasion is what is the correct  
 23 policing response to this, bearing in mind the  
 24 underpinned rights of Article 10 and Article 11, and the  
 25 police -- the law has not changed to say that the law

1 says that what I've just watched on the video is  
 2 unlawful.  
 3 MS BOLTON: My Lord, if you look at DPP v Jones, what you've  
 4 just seen is unlawful. That's the point the court is  
 5 making. It may not be an obstruction to stand on the  
 6 grass verge, which is part of the highway; it will be to  
 7 prevent the usual passing and re-passing. Your rights  
 8 don't go past that and --  
 9 MR JUSTICE NICKLIN: Then it's an academic question because  
 10 then it's a question of enforcement.  
 11 MS BOLTON: My Lord, indeed, and what we have seen is an  
 12 injunction that has had a significant impact on those  
 13 wrongs because we haven't seen them of that scale, save  
 14 a couple of incidents which, following committal  
 15 proceedings, haven't reoccurred on that scale.  
 16 MR JUSTICE NICKLIN: Okay.  
 17 MS BOLTON: My Lord, the next incident is 27 July 2021,  
 18 which is obstruction of the highway, interference with  
 19 the common law right to access the highway, and  
 20 harassment. It's video 57, please. (video played).  
 21 Pausing there, again we see the difficulty that the  
 22 vehicles are having accessing the highway. We have  
 23 a person unknown -- it looks like their head is  
 24 covered -- standing on the highway, and we have  
 25 obviously got people very close to the vehicle and

1 leaning across the vehicle.  
 2 MR JUSTICE NICKLIN: Just pause there. Which of the people  
 3 in this group of people do you say are interfering with  
 4 the common law right?  
 5 MS BOLTON: Well, my Lord, there is a flag across the  
 6 vehicle's windscreen.  
 7 MR JUSTICE NICKLIN: Okay, that's one person.  
 8 MS BOLTON: The whole of the access road has been narrowed,  
 9 which is interfering with the car's access on to the  
 10 highway, and people are standing in the way.  
 11 MR JUSTICE NICKLIN: Let's just work from left to right.  
 12 The first person with the pink tabard.  
 13 MS BOLTON: Yes, because she is on the bell mouth, my Lord,  
 14 right by where the car needs to pull out.  
 15 MR JUSTICE NICKLIN: So that's everybody then on this side  
 16 of the vehicle?  
 17 MS BOLTON: Yes.  
 18 MR JUSTICE NICKLIN: The gentleman standing on the opposite  
 19 side of the carriageway?  
 20 MS BOLTON: Yes, my Lord, because that's where the car needs  
 21 to go.  
 22 MR JUSTICE NICKLIN: So everybody in this picture?  
 23 MS BOLTON: Not everybody, my Lord, there is obviously  
 24 people further back, where the tents are, but, yes, this  
 25 is a clear interference with the common law right to

1 access the highway.  
 2 MR JUSTICE NICKLIN: Right, and how would I define that in  
 3 an injunction?  
 4 MS BOLTON: In the same way that your Lordship --  
 5 MR JUSTICE NICKLIN: If the lady in the pink tabard stood  
 6 2 metres further back, would she be interfering with it  
 7 or not?  
 8 MS BOLTON: If she stood 2 metres back and not on the  
 9 carriageway, my Lord. For instance, if that lady was  
 10 the other side of that cone, there could be no objection  
 11 to that. If she is standing back -- because the bell  
 12 mouth comes out further than that -- you can see round  
 13 her. There is no issue there.  
 14 And something that I made clear in my opening  
 15 submissions, we accept that any -- if there was to be an  
 16 exclusion zone, it's not going to be in the same terms  
 17 for a final order as it is for the interim injunction.  
 18 That may very well be too wide. But we said keeping  
 19 people off the access road is likely to draw the line in  
 20 the right place.  
 21 If we can play on, please, (video played).  
 22 My Lord, apologies, it has just been pointed out to  
 23 me we have only identified D7 on that particular video  
 24 but Mr Morley is also present, in the spearmint T-shirt,  
 25 on that video.

1 Next incident, my Lord, is 28 July. And again this  
 2 is obstruction of the highway and access land trespass  
 3 and harassment parasitic on the other causes of action,  
 4 and that's video 62. You will be able to see the fifth,  
 5 the 9th and the 18th defendant in this video. So that's  
 6 Mr Morley, Ms Mayflower and D18, Lou Marley. (video  
 7 played).  
 8 Again, that's Employee Q's car, my Lord, being  
 9 targeted, one of the staff that left as a result of the  
 10 protests.  
 11 MR JUSTICE NICKLIN: Is there an explanation for why the  
 12 preceding cars are allowed to go in pretty freely?  
 13 MS BOLTON: No, my Lord, there isn't. I think Mr Maher is  
 14 there as well, my Lord.  
 15 MR JUSTICE NICKLIN: Right. Leave aside Employee Q's car  
 16 that was obviously obstructed; you are saying the other  
 17 vehicles have been -- what, there has been an  
 18 interference with the right of access to the land?  
 19 MS BOLTON: My Lord, indeed, because that is still part of  
 20 the highway and you would see that even the narrowing of  
 21 the channel was causing cars to back up because it's  
 22 slowing everybody down --  
 23 MR JUSTICE NICKLIN: Is that not de minimis?  
 24 MS BOLTON: My Lord, the incident isn't de minimis because  
 25 for a start -- I make two points. No, it's not de

1 minimis because it's not a fleeting obstruction, it's  
 2 a regular obstruction. This is the fifth obstruction  
 3 that month that we are taking your Lordship to.  
 4 MR JUSTICE NICKLIN: Yes. Hang on a minute.  
 5 MS BOLTON: And bear in mind these are a selection of  
 6 incidents. We will be giving you --  
 7 MR JUSTICE NICKLIN: I know that.  
 8 MS BOLTON: -- a large quantity more.  
 9 MR JUSTICE NICKLIN: But if I were asked to look at this  
 10 incident and say, was the right of access interfered  
 11 with here, on this occasion, apart from that one car,  
 12 which for some reason has been surrounded, the other  
 13 cars passed relatively freely into the facility, not as  
 14 freely as if the people hadn't been there but --  
 15 MS BOLTON: Again, my Lord, that's the point, it's still  
 16 interfering with the right to pass and repass. It then  
 17 becomes more aggravated towards the end of the incident,  
 18 where a car then gets completely surrounded, and that's  
 19 the problem. And what has changed is, because people  
 20 are not in that position where they are interfering  
 21 already with the right to pass and repass, we are not  
 22 getting that surrounding of cars.  
 23 MR JUSTICE NICKLIN: Right.  
 24 MS BOLTON: My Lord, the next incident is 7 August, my Lord,  
 25 which is obstruction of the highway, the interference

1 with the common law right to access the highway and an  
 2 access land trespass and harassment parasitic on the  
 3 other causes of action.  
 4 My Lord, there is two videos. Video 75. If we  
 5 could watch from the start to 1 minute and 40 seconds,  
 6 please. (video played).  
 7 You will see just there that's Ms Laidlaw, my Lord,  
 8 and that's Ms Hodson coming forwards. So they are the  
 9 two in the front. We don't know who the people are  
 10 behind them. And that's both Employee Q's car again, my  
 11 Lord, and Employee F's car in that incident. If I could  
 12 go to video 76 on this incident, please. (video  
 13 played).  
 14 Again, my Lord, you can see again a vehicle is  
 15 having to be moved off the road for them to come out.  
 16 So, my Lord, that's the incident of 7 August. There  
 17 is then a further incident on 8 August. If we could go  
 18 to video 143, please. (video played).  
 19 Pausing there, we can see we have Mr Maher. We are  
 20 going to see a number of the other named defendants in  
 21 this ...  
 22 That's Lou Marley in the black T-shirt, further  
 23 along from Mr Maher. If we could play on, please.  
 24 (video played).  
 25 And that's Ms Mayflower coming forwards, D5. That's

1 Ms James coming forwards. Pause there, please. That's  
 2 a smoke flare that has been let off, my Lord, and we are  
 3 going to see it a bit more clearly in a moment,  
 4 underneath Employee AA's vehicle, or being put towards  
 5 Employee AA's vehicle, which is the vehicle that's held  
 6 up at present. If we could play on, please. (video  
 7 played).  
 8 Pausing there, this is again Employee Q's car, my  
 9 Lord. So Employee AA has had the smoke flare let off  
 10 and is finally getting through after three minutes. If  
 11 we can play on, please. (video played).  
 12 So pausing there, as you can see, my Lord, we have  
 13 got a combination of all of the causes of action that we  
 14 are relying on happening here. We have got trespass, we  
 15 have got obstruction, we have got interference with the  
 16 common law right, and we would say we have harassment as  
 17 a result of all of those incidents that are occurring.  
 18 We can play on, please. (video played).  
 19 Pausing there, you can still see Employee Q is  
 20 trying get on to the actual carriageway. Play on,  
 21 please. (video played).  
 22 So pausing there, my Lord, you've seen that the  
 23 police have had a discussion with -- that's Employee F's  
 24 car -- Mr Hardy and now the car has reversed back inside  
 25 and elected to abort trying to get out initially. If we

1 can play on, please (video played).  
 2 Pausing there, "We control the gates," being  
 3 shouted. Play on, please. (video played).  
 4 Pausing there, my Lord, you will remember in  
 5 cross-examination, Mr Hardy was asked whether he was  
 6 terrified by people surrounding his vehicle. That's his  
 7 vehicle there. If we can play on, please. (video  
 8 played).  
 9 Thank you. I'm going to skip over the next video  
 10 and go --  
 11 MR JUSTICE NICKLIN: Just pausing on that before we move on,  
 12 you make the point about Mr Hardy being distressed by  
 13 the surrounding of his vehicle. If I were looking at  
 14 individual claims against individual -- those -- the  
 15 individual -- we pick them out, we give them a number, 1  
 16 to 10, and then the question would be for me at a trial  
 17 to decide whether that individual was responsible for an  
 18 act of harassment. But each of those would require an  
 19 analysis of what that person did. Some of those  
 20 people -- leave aside the moment of trespass -- some of  
 21 these people just stood with a placard. Did no  
 22 shouting.  
 23 MS BOLTON: Yes, my Lord. We are not looking to prohibit  
 24 people standing off the access road with a placard. We  
 25 are not asking for that. I totally accept that -- and

1 what's interesting is, when you listen to the protest  
 2 messages and what people are shouting, they can shout  
 3 that from the grass verge, they can shout from where  
 4 they stand at the moment with the injunction. There is  
 5 no need --  
 6 MR JUSTICE NICKLIN: I get that. I don't have any issue  
 7 with that. I'm trying to avoid looking at this through  
 8 the prism of the trespass at the moment and the  
 9 exclusion zone. I'm looking at the even more difficult  
 10 question of harassment, which, in the various things  
 11 I have to consider, it makes trespass look  
 12 straightforward, obstruction more difficult --  
 13 obstruction and interference with the access to land,  
 14 those are more complicated than trespass, and then right  
 15 up there in the complexity stakes is harassment.  
 16 MS BOLTON: Yes. My Lord, I just want to take you to one of  
 17 the other two videos on this incident. I don't think we  
 18 need to look at 173 but if we could have a look at video  
 19 671, which is taken from inside Employee Q's car.  
 20 (video played).  
 21 Pausing there, that's banging on Employee Q's car,  
 22 my Lord. We can play on, please. (video played).  
 23 So again, my Lord, you can see that that's -- and  
 24 I think you could hear Employee Q say on that video,  
 25 "I can't see anything" as she was trying to get out.

1 There is the obstruction as in standing in front and the  
 2 interference with the common law right to access the  
 3 highway but also there is a visibility issue because the  
 4 staff simply can't see out to start to move forwards  
 5 anyway.  
 6 MR JUSTICE NICKLIN: Okay, lunchtime?  
 7 MS BOLTON: Lunchtime, my Lord.  
 8 MR JUSTICE NICKLIN: Thank you very much. 2 o'clock then.  
 9 (1.00 pm)  
 10 (The short adjournment)  
 11 (2.00 pm)  
 12 MR JUSTICE NICKLIN: Yes, Ms Bolton, where next?  
 13 MS BOLTON: My Lord, before I proceed, I did take some  
 14 instructions over the lunchtime adjournment over the  
 15 point your Lordship made about the person unknown  
 16 applying after an order has been made and the fear of  
 17 a costs order.  
 18 MR JUSTICE NICKLIN: Yes.  
 19 MS BOLTON: My Lord, it seems to me that one of the things  
 20 the court could do -- and the claimant would be content  
 21 with -- is to draft something into the order that says  
 22 there will be no costs against an applicant without the  
 23 permission of the court. So the court could effectively  
 24 assess, if something was entirely unreasonable, that it  
 25 orders costs but, otherwise, there is no costs

1 implication for that person.  
 2 MR JUSTICE NICKLIN: Okay.  
 3 MS BOLTON: The claimants would have no objection to that.  
 4 MR JUSTICE NICKLIN: Why don't you draft something that you  
 5 think would meet that concern and then we can look at it  
 6 when we come to the final submissions.  
 7 MS BOLTON: My Lord.  
 8 MR JUSTICE NICKLIN: Thank you very much.  
 9 MS BOLTON: My Lord, the next incident is 11 August.  
 10 MR JUSTICE NICKLIN: Yes.  
 11 MS BOLTON: Again this is an obstruction of the highway,  
 12 interference with the common law right and harassment.  
 13 MR JUSTICE NICKLIN: Yes.  
 14 MS BOLTON: I'm conscious these are long videos, so I'm  
 15 going to move them on as much as I can.  
 16 MR JUSTICE NICKLIN: Okay.  
 17 MS BOLTON: But if we can just start for a moment with video  
 18 114, please, so you can see at this point the barricade  
 19 in front of the gates, of the crates. If we then move  
 20 into seven minutes, please, the police are just going to  
 21 start to deconstruct the crates so that staff can get  
 22 out.  
 23 MR JUSTICE NICKLIN: Yes. (video played).  
 24 MS BOLTON: And you can see that there is police further up  
 25 the road because they are trying to effectively control

1 the access.  
 2 Then if we move to 10 minutes and 15 seconds,  
 3 please. (video played).  
 4 We can see here it's Employee P in the lead car and  
 5 you can see people have come across and you can see the  
 6 cars -- there is protesters and there is placards where  
 7 the car is trying to come out on to the highway. The  
 8 car is having to go completely over the other side of  
 9 the road.  
 10 Then if we can go to video 116, this was captured by  
 11 D19. (video played).  
 12 We see the police want to clear ...  
 13 So pausing there, there has been a barricade, which  
 14 the protesters have put in place and they are refusing  
 15 to move. So the police deconstruct the barricade and,  
 16 if we could go to 14 minutes and 45 seconds, please.  
 17 (video played).  
 18 So you can see you've got people sitting on the  
 19 crates.  
 20 Then if we can go to 21 minutes and 55 seconds,  
 21 please. (video played).  
 22 My Lord, this goes on, as you will have seen from  
 23 the other camera angle. If we can then pick up D19's  
 24 video at 117.  
 25 MR JUSTICE NICKLIN: Who videoed this?

1 MS BOLTON: That's Ms Windler.  
 2 MR JUSTICE NICKLIN: Right. (video played).  
 3 MS BOLTON: That's Mr Broughton, my Lord.  
 4 My Lord, this continues. If we can move on to about  
 5 five minutes, please, if we can move on to about ten  
 6 minutes, sorry, into the video. (video played).  
 7 If we can continue for another five minutes, please,  
 8 into 15 minutes.  
 9 (video played).  
 10 On to 20 minutes, please. (video played).  
 11 So we are still not able to get past, and if we can  
 12 go to 24 minutes, please. (video played).  
 13 Thank you. If we can stop there.  
 14 So again, my Lord, this was a significant  
 15 obstruction incident, significant interference in the  
 16 common law right to access the highway, and we would  
 17 submit it's also one we rely on as harassment parasitic  
 18 on those two other causes of action.  
 19 The next incident, my Lord, is 13 August, 2021, and  
 20 again this is obstruction of the highway, an access land  
 21 trespass and harassment, and the video is video 154.  
 22 (video played).  
 23 This was where a convoy of staff cars were  
 24 intercepted on the main carriageway, around 70 metres  
 25 from the access road, and escorted to the site, and it

1 takes about 40 minutes for all vehicles to travel along  
 2 the highway and into the site.  
 3 You will see D4, D3 and D18 but also persons unknown  
 4 instrumental in the incident. And if we can look at  
 5 video 154, first of all at the beginning. (video  
 6 played).  
 7 You can see where the vehicles are held up, just up  
 8 the road, and if we move forward to five minutes, we get  
 9 an idea of the slow progress and the surrounding of the  
 10 cars. And then again if we move to ten minutes, please,  
 11 and then 15 minutes and then 20 minutes and then 25  
 12 minutes and then 30 minutes, please, we will now see the  
 13 protesters have come on to the access road. You've got  
 14 Mr Broughton and Ms Marley next to each other on the  
 15 access road there, my Lord. Then if we go to 32 minutes  
 16 and 30 seconds, please. And the gentleman with the blue  
 17 hoodie, who is behind Mr Broughton, that's Mr Falsey.  
 18 I'm being reminded that right at the end there,  
 19 Ms Laidlaw was on the access land as well, my Lord.  
 20 There is also a video 944. (video played).  
 21 If we just go forwards a little bit, please, and  
 22 what that's doing is showing that there is a number of  
 23 people involved; it's not just named defendants. It's  
 24 zooming in on people, trying to identify those that can  
 25 be identified. But we can't tell who everybody is.

1 That's Mr Falsey there with Mr Broughton again, my Lord.  
 2 If we can move forward a little bit, please. That's  
 3 Ms Laidlaw.  
 4 Thank you.  
 5 My Lord, the next incident is 15 August 2021. This  
 6 is an obstruction of the highway and common law right --  
 7 interference with the common law right incident.  
 8 MR JUSTICE NICKLIN: Well, assuming it's the same incident,  
 9 this apparently led to an arrest of somebody for  
 10 obstruction of the highway but the case was dismissed.  
 11 MS BOLTON: Yes.  
 12 MR JUSTICE NICKLIN: Do you know who (inaudible) was?  
 13 MS BOLTON: Apologies, my Lord, this is the exit, so it's  
 14 not the same incident where the arrest takes place.  
 15 MR JUSTICE NICKLIN: Okay. Do you know who the arrest  
 16 relates to?  
 17 MS BOLTON: I don't think we do. I'll seek clarification,  
 18 but I don't think we do.  
 19 MR JUSTICE NICKLIN: Have you asked the police to provide  
 20 you with this information?  
 21 MS BOLTON: My Lord, the police have provided some of the  
 22 information, and that's featured in some of our  
 23 evidence, but I don't think they have provided us with  
 24 everything, no.  
 25 MR JUSTICE NICKLIN: Okay. Because I can't think of any

1 objection to people who have been arrested, charged and  
 2 brought before the court -- there can be really no  
 3 objection to being provided with that information. If  
 4 they were reluctant to do so, it would have been,  
 5 I suspect, a candidate for Freedom of Information Act  
 6 request.  
 7 MS BOLTON: I think, my Lord, that they've provided the  
 8 information, though, to the court.  
 9 MR JUSTICE NICKLIN: I only ever required them to provide --  
 10 not a name but an identifying individual -- sorry,  
 11 a letter. They have all been given letters by  
 12 Superintendent Sissons.  
 13 MS BOLTON: Yes. I will seek clarification on whether we  
 14 know who was arrested on that day.  
 15 MR JUSTICE NICKLIN: Okay. Because if they have been  
 16 arrested -- I mean, as a broad rule of thumb,  
 17 particularly on the videos I've just watched, the people  
 18 who have been arrested must have been behaving pretty  
 19 badly. So they would have been candidates for being  
 20 joined to the proceedings if they weren't already in the  
 21 proceedings.  
 22 MS BOLTON: My Lord, yes. I know that some prosecutions on  
 23 obstruction of the highway failed because the CPS had  
 24 some difficulties understanding where the highway was  
 25 and where private land was and I think there was some

1 muddles there, and that's not relating to the trespass  
 2 point of the access land.  
 3 MR JUSTICE NICKLIN: Yes, okay.  
 4 MS BOLTON: I think some prosecutions failed on the basis  
 5 that they weren't clear on matters such as that.  
 6 Video 216, please, for 15 August. (video played).  
 7 If we move to 1 minute and 13 seconds, please, that  
 8 gives you, my Lord, some idea of the people on the --  
 9 what is part of the access road there, where the police  
 10 are trying to move people back to get the staff out.  
 11 If we can move to two minutes, please, because I'm  
 12 conscious we have seen this video. (video played).  
 13 So pausing there, you can hear the police asking the  
 14 protesters to move back. Please play on. (video  
 15 played).  
 16 If we can move on, please, to three minutes. (video  
 17 played).  
 18 And then on to three and a half minutes, please.  
 19 (video played). Pausing there, you can see the police  
 20 are still trying to get people to move back. And then  
 21 if we can go to four minutes, please. (video played).  
 22 That's a Facebook video, my Lord, that was posted by  
 23 an individual who called themselves Scott V Gan. We  
 24 don't know who it was in the video asking, "Where is the  
 25 vet? Show us the vet." But, as you can see again,



1 that's a significant obstruction. The police are trying  
 2 to move people forwards and they are making very slow  
 3 progress.  
 4 MR JUSTICE NICKLIN: 15 August is a good example of — the  
 5 policing response depends on various factors, one of  
 6 which is how many people are present, and so, if 400  
 7 people turn up one afternoon wanting to protest, the  
 8 question is where are they going to go. There is going  
 9 to be, by sheer dint of numbers — there is going to be  
 10 a degree of interference with the highway and access to  
 11 the land, simply as a matter of physics that they are  
 12 physically present in a confined space and what do the  
 13 police do about them. Leave aside whether I grant an  
 14 injunction. So suddenly 400 people, who want to  
 15 exercise their protest right, simply, because they  
 16 attend with all the other people, potentially find  
 17 themselves in breach of a High Court injunction.  
 18 MS BOLTON: My Lord, you can see what's happened. You've  
 19 heard the staff talking about it on the dash cam. The  
 20 police indicate, when there is a very large protest,  
 21 which way they want them to turn.  
 22 MR JUSTICE NICKLIN: Yes.  
 23 MS BOLTON: So there is a way of people moving out of the  
 24 way but they're not trying to.  
 25 MR JUSTICE NICKLIN: Sure, but if I were to grant an

1 injunction in the terms you are outlining to me, that  
 2 event wouldn't be possible.  
 3 MS BOLTON: My Lord, if that event requires people to crowd  
 4 the highway, that's not lawful.  
 5 MR JUSTICE NICKLIN: Okay. So who is to decide which of the  
 6 protesters is going to be able to exercise their protest  
 7 right that day or not?  
 8 MS BOLTON: That's the point of the persons unknown order,  
 9 my Lord.  
 10 MR JUSTICE NICKLIN: No, I don't think it is because it goes  
 11 back to what was wrong with the original Harlan  
 12 injunction. Capping the numbers at 25 is arbitrary. It  
 13 cannot be justified as either necessary or  
 14 proportionate. In a similar but slightly more fuzzy  
 15 way, if I were to grant an injunction in the terms that  
 16 you are seeking, there comes a point at which the next  
 17 person to turn up cannot exercise their protest right  
 18 because there is nowhere for them to go.  
 19 MS BOLTON: Well, my Lord, there would come a point — well,  
 20 that's not the case because a person can exercise their  
 21 protest right.  
 22 MR JUSTICE NICKLIN: They can stand in Huntingdon High  
 23 Street, yes.  
 24 MS BOLTON: If they line the whole of the road, they line  
 25 the whole of the road. Unless — yes, there are

1 protests sometimes, which are a procession going  
 2 through — they notify the police of the numbers, it's  
 3 all organised, but that isn't what's happening here.  
 4 This is an obstruction of vehicles, the targeting of  
 5 vehicles.  
 6 MR JUSTICE NICKLIN: Well, that's how you characterise it,  
 7 but the larger the number of people, the more difficult  
 8 it is to say that anybody is targeting. You can see  
 9 some of these people in the crowd, they are fairly young  
 10 people, who may have been attracted by the idea that  
 11 they wanted to join a demonstration to make their voice  
 12 heard about their opposition to — the idea that all of  
 13 those people are targeting the staff is pretty fanciful.  
 14 MS BOLTON: Not all of those people would be caught by the  
 15 injunction. It's very clear that there are a number of  
 16 people who are not in the way of the police. They are  
 17 not going to be caught by the injunction. It's the  
 18 people who are standing in the road —  
 19 MR JUSTICE NICKLIN: Yes, the difficulty — and well  
 20 recognised in the protest authorities is the chilling  
 21 effect, which is, if I grant an injunction, some people  
 22 will say, "I'm not going there because there is an  
 23 injunction in place and it's too risky."  
 24 MS BOLTON: It doesn't become a chilling effect to say you  
 25 shouldn't obstruct cars. You can't simply override —

1 MR JUSTICE NICKLIN: I'm mindful of the fact that one of  
 2 your allegations against Mr Curtin is that when he  
 3 crosses the road, he is obstructing a car.  
 4 MS BOLTON: Mr Curtin was crossing the road in front of an  
 5 employee who had just left the site.  
 6 MR JUSTICE NICKLIN: You contend it's an obstruction.  
 7 MS BOLTON: Our contention is he is looking directly at her,  
 8 he is walking out in front —  
 9 MR JUSTICE NICKLIN: I've got the point. That just shows  
 10 you how not everybody's definition of what obstruction  
 11 is is the same.  
 12 MS BOLTON: My Lord, how that is characterised —  
 13 MR JUSTICE NICKLIN: If you've got 400 people, how are they  
 14 going to demonstrate outside the Wyton site without  
 15 causing at least some obstruction to the carriageway?  
 16 MS BOLTON: They stand on the grass verge, my Lord.  
 17 MR JUSTICE NICKLIN: 400 people?  
 18 MS BOLTON: My Lord, that's the point. If it's 400 people,  
 19 then, yes, some of them will have to line the grass  
 20 verge. If they are wanting to protest as the staff come  
 21 out, they will still get their ability to do so because  
 22 the staff will have to drive past them. What they won't  
 23 be is obstructed and held up and surrounded. That's  
 24 what we are asking not to happen, and the court has  
 25 a balance to strike. If the court says, well, there

1 could be 400 people, so you can't have an injunction  
 2 preventing obstruction, then what you are also saying is  
 3 it's completely proportionate -- the weight that tips  
 4 against that is, otherwise, this conduct --  
 5 MR JUSTICE NICKLIN: What it shows is how almost impossible  
 6 it is for a civil court to strike that balance in  
 7 advance of the event that we are talking about.  
 8 MS BOLTON: Civil courts have repeatedly had to strike that  
 9 balance, my Lord, quite frequently in recent times.  
 10 That balance had to be struck as a result of Insulate  
 11 Britain, as a result of Just Stop Oil, as a result of  
 12 Animal Rebellion. All of them have engaged in  
 13 obstruction of the highway and significant incidents --  
 14 MR JUSTICE NICKLIN: Yes, but those were efforts where the  
 15 whole purpose was to obstruct the highway, not an  
 16 incidental product of the protest.  
 17 MS BOLTON: No, my Lord, that's not the case for all of  
 18 those protests but it is the case that the court has to  
 19 strike that balance and, in any event, the same point  
 20 arises. If 400 people turn up, they won't be able to  
 21 all stand on the grass verge in a close area together,  
 22 but it doesn't stop the injunction being granted. The  
 23 question is are you obstructing the highway, are you  
 24 preventing the use of the primary purpose of the  
 25 highway, which is to pass and repass. That is clearly

1 happening here.  
 2 MR JUSTICE NICKLIN: Yes.  
 3 MS BOLTON: And take away that protection and we only need  
 4 to look at how many incidents we have looked at in just  
 5 over a month, and they are just the worst incidents,  
 6 they are not all of the incidents.  
 7 MR JUSTICE NICKLIN: I'm not blind to the fact that you have  
 8 now achieved remedies against those people who you  
 9 regard as the worst examples that you have been able to  
 10 identify. So those people have been taken out of the  
 11 equation.  
 12 MS BOLTON: Yes.  
 13 MR JUSTICE NICKLIN: So we are dealing with others. You  
 14 see, it's back to Canada Goose and what the Court of  
 15 Appeal says, which is the civil courts may not have the  
 16 answer for regulating protest.  
 17 MS BOLTON: But, my Lord, Canada Goose was a very different  
 18 case to this case. This is a case where staff, every  
 19 day, when they are trying to access and leave a site,  
 20 will be obstructed on a highway without the protection  
 21 of an injunction. There is a protest camp there. There  
 22 are people monitoring when they come and go. Before  
 23 your interim order was made, this was a daily  
 24 occurrence. This wasn't something which was simply  
 25 happening once or twice on an organised demonstration,

1 this was a significant problem, and even to say it  
 2 should be left to the police, the cost of that alone --  
 3 MR JUSTICE NICKLIN: That's a society concern.  
 4 MS BOLTON: It isn't, my Lord, if we say, well, we have  
 5 identified the named defendants, everybody else will  
 6 either have to be dealt with on an ad hoc basis by the  
 7 police, that makes the situation unworkable. That  
 8 wouldn't be justice. That would be to leave the  
 9 claimants with no real remedy to protect their rights.  
 10 They have these rights, they have the right not to have  
 11 their land trespassed on. They have the right to access  
 12 the highway without interference. They have the right  
 13 to drive along the highway.  
 14 MR JUSTICE NICKLIN: Have the right to access land. You  
 15 almost put it forward as an unqualified right. It's  
 16 subject to no -- I mean, I have the absolute right.  
 17 MS BOLTON: They have the right -- it's that point in Jones.  
 18 You cannot override the primary purpose. The Article 10  
 19 and 11 rights don't do that. They are rights to  
 20 peaceful -- and this is where things seem to have become  
 21 a little bit blurred with Ziegler. Jones is saying you  
 22 have the right to peaceful assembly on the highway.  
 23 They are not talking about the carriageway there. They  
 24 are talking about you have the right to assemble on the  
 25 highway but if your assembly is preventing the primary

1 purpose of the highway, to pass and repass, then you are  
 2 obstructing. That's not lawful.  
 3 MR JUSTICE NICKLIN: I really don't think it's as simple as  
 4 that. It's not as simple as that.  
 5 MS BOLTON: In my submission, my Lord, that is what Jones is  
 6 saying. That is what Abortion Services is saying has  
 7 been overlooked in Ziegler and that Ziegler is not  
 8 a universal principle.  
 9 MR JUSTICE NICKLIN: You make it sound as if the abortion  
 10 clinic has suddenly said, okay, that's totally wrong,  
 11 this is the answer. It is not as simple as that. It is  
 12 a slight recalibration in the abortion clinic case. It  
 13 does not overthrow Ziegler. It interprets Ziegler in  
 14 a way that emphasises another aspect.  
 15 The fundamental difficulty and complication in the  
 16 law remains, which is the highway is for everybody and  
 17 it can be used for many different purposes, including  
 18 protest. The extent to which that protest then  
 19 interferes with other people's use of a highway or their  
 20 rights is a process of calibrating the interference  
 21 between the engaged interests.  
 22 You can't just simply say, "Oh, well, you are  
 23 obstructing Mr Jones in his vehicle. Therefore it's  
 24 unlawful." It is not as simple as that.  
 25 MS BOLTON: My Lord, in my submission, that's not the

1 approach that the Supreme Court is saying. The  
 2 Supreme Court is saying you can peacefully assemble on  
 3 the highway, provided you are not interfering with the  
 4 primary purpose of the highway, to pass and repass.  
 5 MR JUSTICE NICKLIN: Unless you are talking about an  
 6 isolated stretch of a carriageway in the Outer Hebrides  
 7 or a stretch of carriageway at three in the morning, you  
 8 can't meaningfully talk about exercising any use of the  
 9 highway for protest purposes if that's not going to pose  
 10 at least some sort of short-term obstruction to other  
 11 people who might want to use it.  
 12 MS BOLTON: This is where the blurring comes between highway  
 13 and carriageway, because the purpose of the -- the  
 14 highway is the carriageway and the grass verge and in  
 15 this case part of the access road. The point being --  
 16 and one of the examples given in Jones is you could have  
 17 a picnic on the grass verge but you probably can't camp  
 18 there. But the carriage -- but if you interfere -- and  
 19 they even go as far as to say it's possible that even  
 20 not being on the carriageway could cause a problem to  
 21 pass and repass, if it was a narrow pathway, but  
 22 generally the focus -- and this is where it has gone  
 23 a little bit wrong, in my respectful submission, in the  
 24 past, is the focus is on the pass and repass is  
 25 primarily a carriageway point, and it's probably not

1 helped in the authorities that there has been a general  
 2 discussion of the highway, when in fact the concern is  
 3 the carriageway and the rest of the highway will only be  
 4 a concern in more extreme examples.  
 5 There is going to be an interference with a person's  
 6 right to pass and repass if people are stood in a long  
 7 procession on a grass verge because there is a degree of  
 8 interference, yes, because any driver with any common  
 9 sense will slow down. There is people on the side, just  
 10 like if you are in a built-up area. So if you were  
 11 in -- for instance, this would normally be a 60-mile an  
 12 hour zone but for the temporary speed limit that has  
 13 been put in because of the protest camp, you wouldn't  
 14 drive past people at that speed if they were standing on  
 15 the grass verge. When we talk about de minimis  
 16 interference, there is interference but that would be de  
 17 minimis, that would be reasonable, that would be wilful,  
 18 or any of those matters.  
 19 But where we are talking about standing on the  
 20 highway and preventing cars from passing, that's  
 21 interfering with the primary purpose and that's the one  
 22 thing that peaceful assembly doesn't allow, and that's  
 23 the point in Jones, that the Supreme Court in  
 24 Abortion Services is saying this wasn't cited and is  
 25 quoting those parts of Jones that are relevant to that

1 point, both from Lord Irvine and Lord Clyde. And that's  
 2 where the recalibration is needed because -- and the  
 3 second point about Ziegler --  
 4 MR JUSTICE NICKLIN: If you enforce that rule in the way  
 5 that you are suggesting, you take the carriageway out of  
 6 people's -- a zone where people can protest. They can't  
 7 protest on private land, so you are slowly whittling  
 8 away where any citizen can meaningfully exercise his or  
 9 her protest.  
 10 MS BOLTON: But you are not, my Lord, because the highway --  
 11 and this is a very good example of it -- includes all of  
 12 those grass verges, will normally include the pavement,  
 13 in most areas, and nobody is talking about stopping the  
 14 one-off procession here. If I had brought this evidence  
 15 as there was one procession --  
 16 MR JUSTICE NICKLIN: I get all of this.  
 17 MS BOLTON: -- once a year, that would be de minimis.  
 18 MR JUSTICE NICKLIN: The problem is all of these cases are  
 19 backward looking, all of them. All of the Supreme  
 20 Court -- well, Abortion is an odd case because it comes  
 21 by a very odd route but the rest of the cases are  
 22 backward looking and they are criminal cases and they  
 23 question how is the court properly to direct itself as  
 24 to the assessment of whether somebody is guilty of  
 25 obstructing the highway or not. That's a real world

1 example.  
 2 It's incredibly complicated and, in a democratic  
 3 society, there is an incredibly important role of the  
 4 police and the prosecution services deciding whether  
 5 it's in the public interest to prosecute. So if there  
 6 is a moment of community outrage, for example we can all  
 7 think back to the demonstration about Sarah Everard, and  
 8 then there was counter demonstrations because of the  
 9 police response to arresting some of the protesters.  
 10 If there is an almost inevitable, predictable,  
 11 instinctive community response and citizens gather  
 12 outside a police station and they block a carriageway,  
 13 okay, you may say that on the basis of the authorities  
 14 they are technically guilty of a criminal offence of  
 15 obstructing the highway. The likelihood of any of those  
 16 people being arrested, still less prosecuted for that,  
 17 is pretty remote because the people who are responsible  
 18 for assessing whether to prosecute will take a view as  
 19 to whether it's in the public interest and they will  
 20 factor in all the various considerations, the extent of  
 21 the interruption, whether there was any violence, all  
 22 the sort of things that the CPS will take into account.  
 23 That's our democratic institutions working as they  
 24 should because there is just as much an importance in  
 25 deciding the calibrated response to any unlawful act and

1 whether a prosecution ensues. Ziegler is an example of  
 2 when somebody is actually prosecuted and a challenge to  
 3 whether or not it was a lawful obstruction in those  
 4 particular circumstances.  
 5 You are asking me to impose by way of civil  
 6 injunction a prospective restriction, which doesn't  
 7 admit of any consideration of the individual  
 8 circumstances.  
 9 MS BOLTON: My Lord, it does, and what we are asking --  
 10 MR JUSTICE NICKLIN: Okay, so what happens if there is some  
 11 perceived outrage? Let's imagine -- I'm speaking wholly  
 12 hypothetically. Imagine that there is an inspection by  
 13 the relevant authorities of MBR Acres and then there is  
 14 a prosecution takes place for failure to comply with  
 15 some health and safety regulations at the Wyton site.  
 16 It could well be that that sort of event would provoke  
 17 a very significant protest and a large number of people  
 18 might turn up. If I've already granted an injunction,  
 19 they could end up straying into the path of a contempt  
 20 application, whereas I wasn't even asked to consider  
 21 that as a circumstance that might take place, leading to  
 22 a large number of people wanting to protest. That's the  
 23 problem. With all of the backward-looking exercise,  
 24 it's difficult enough, and Ziegler might be thought --  
 25 and what's happened to Ziegler after the event might be

1 thought to demonstrate how the law is struggling with  
 2 calibrating that response even in relation to things  
 3 that have already happened.  
 4 You are asking me to try and calibrate the response  
 5 in advance.  
 6 MS BOLTON: My Lord, I'm asking you to provide a response  
 7 based on the evidence, which isn't the evidence of  
 8 a claimant who has been prosecuted at MBR Acres.  
 9 MR JUSTICE NICKLIN: I know, but you are asking me to do  
 10 something which will set in the future the rules about  
 11 what will happen.  
 12 MS BOLTON: That will always be the case with  
 13 a precautionary relief injunction.  
 14 MR JUSTICE NICKLIN: If it's granted against persons  
 15 unknown.  
 16 MS BOLTON: My Lord, indeed, but that will always be the  
 17 case, and the basis and assessment for whether you grant  
 18 that injunction is already set out in the case law and  
 19 it's not to look forward and say what if they were  
 20 prosecuted in the future in a hypothetical situation,  
 21 it's to look at what has happened and what is the harm  
 22 it's causing and what is the harm it will continue to  
 23 cause.  
 24 MR JUSTICE NICKLIN: It's absolutely essential for me to  
 25 decide as an exercise of discretion the extent to which

1 any injunction I grant interferes with the protest  
 2 rights.  
 3 MS BOLTON: My Lord, you have to consider the interference  
 4 with protest rights but protest rights can't override  
 5 the primary purpose of the highway. That has been made  
 6 very clear by the Supreme Court. What we have to recall  
 7 with Ziegler as well is even just looking at Ziegler on  
 8 its own, Ziegler wasn't a case where people couldn't  
 9 access the Excel Centre or leave the Excel Centre, it  
 10 was only a very limited obstruction. Those staff can't  
 11 get out any other way.  
 12 MR JUSTICE NICKLIN: I thought Ziegler was an example of  
 13 complete blockage for a period.  
 14 MS BOLTON: No, it was one side of the road. That was part  
 15 of what was disproportionate about it. It was a one-off  
 16 protest, blocking one access on one side, and they were  
 17 arrested for obstruction of the highway. That's part of  
 18 the problem with Ziegler: when you look at the facts,  
 19 it's a very limited interference. People could still  
 20 come and go to the Excel Centre by road. They just  
 21 couldn't get past on that particular side of the road.  
 22 That's the difficulty that Ziegler has been -- and  
 23 one of the things that Lord Reed is saying in  
 24 Abortion Services, it has been given this universal  
 25 application. It was very specific on the facts of that

1 case and, when you look at it, it was a one-off protest  
 2 at a particular event. What it wasn't was an entirely  
 3 blocking the highway, day in, day out, and targeting  
 4 staff of a particular company. That's the very  
 5 different nature of what we are dealing with here.  
 6 So not only was Jones not cited in Ziegler but  
 7 Ziegler was a very different type of obstruction case  
 8 with the ultimate decision being fairly -- the  
 9 difficulty, I think, that the Supreme Court had in  
 10 Abortion Services with it is it's being viewed as giving  
 11 a general principle and wasn't citing what the Supreme  
 12 Court sees as the appropriate authority on that but in  
 13 itself it's a very different case anyway and its outcome  
 14 as that particular case on its facts is understandable.  
 15 I don't have any difficulty with understanding why  
 16 the court reached the decision it did in Ziegler. It  
 17 would be, in my submission -- it would be the equivalent  
 18 of, in this case, us saying, well, we don't want people  
 19 on the grass verge over the other side of the road.  
 20 They weren't stopping access to the Excel Centre.  
 21 MR JUSTICE NICKLIN: The thing about obstruction of the  
 22 highway, it always was subject to you having a lawful  
 23 excuse and that was always fact specific.  
 24 MS BOLTON: Yes, you may have a lawful excuse but that's  
 25 not -- you can't say, "I have Article 11 rights. That's

1 my lawful excuse.” You can have your Article 11 rights  
 2 balanced but you can always have a lawful excuse.  
 3 MR JUSTICE NICKLIN: But what you are trying to get me to do  
 4 is to decide now that there will be no lawful excuse and  
 5 therefore you are prohibited from obstructing the  
 6 highway.  
 7 MS BOLTON: And if I was asking the court to do that on  
 8 a pure precautionary basis, with no evidence as  
 9 extensive as what we are putting before the court,  
 10 I could understand that that would be a very, very steep  
 11 hill to climb. But we are not. We are demonstrating  
 12 that there have been significant unlawful obstructions  
 13 and there is no reasonable excuse for those.  
 14 That is why we are asking. And we can see that  
 15 people are still protesting at the site, there is still  
 16 a protest camp at the site. There is still people  
 17 holding placards and shouting but what they are not  
 18 doing is standing in front of cars, preventing people  
 19 from getting home or getting to their place of work.  
 20 MR JUSTICE NICKLIN: Yes.  
 21 MS BOLTON: And that is the rights we are asking the court  
 22 to protect.  
 23 MR JUSTICE NICKLIN: Yes.  
 24 MS BOLTON: My Lord, the next incident is 16 September 2021.  
 25 Again it's an obstruction of the highway, an access land

1 trespass and harassment. The obstruction is on the way  
 2 into the site, both at the bell mouth and on the access  
 3 road, and some obstruction near the gate. If we can  
 4 look at video 325, please, at around — we can see the  
 5 protesters on the bell mouth, and if we can move to 52  
 6 seconds, please. (video played).  
 7 So, my Lord, again you can see, the protester who is  
 8 coming in there, it's creating a very narrow channel.  
 9 There is someone on a loudhailer and there is people  
 10 standing in front of the cars as they are trying to  
 11 access the site.  
 12 And the lady with the blond hair and the placard,  
 13 that the nose of the car is just starting to come past,  
 14 is Ms Jaffray and that's Ms Laidlaw, with the dog in her  
 15 arms, on the carriageway. I think that's actually  
 16 Mr Curtin with the loudhailer there, my Lord.  
 17 MR CURTIN: It might be.  
 18 MS BOLTON: If we could also look at video 326, please, this  
 19 shows the incident from a different perspective. (video  
 20 played). It's Mr Broughton on the access road, my Lord.  
 21 MR JUSTICE NICKLIN: Have you painted a line now where  
 22 the —  
 23 MS BOLTON: Yes, my Lord. And my Lord, I need to take  
 24 instructions on this but I suspect, if it was required  
 25 for "Private Property" or something to be painted on it,

1 that could also be achieved.  
 2 So you will see the traffic that's starting to queue  
 3 up as the staff are being held up coming into the —  
 4 that's Mr Ahmed who has just come into the middle, in  
 5 front of the car. And I'm just trying to identify  
 6 Mr Falsey. He has got the placard, talking to the  
 7 police officer. You can see people standing right in  
 8 front of the car, stopping them going in. You can see  
 9 the traffic that is backing up, up the road.  
 10 You've obviously got access land trespass as well,  
 11 my Lord. We have an unknown standing in front of the  
 12 car.  
 13 So thank you.  
 14 My Lord, so that's the incident on 16 September. My  
 15 Lord, the next incident is 22 September. That's the  
 16 Anglia Water incident. I wonder if we could just go to  
 17 it very shortly so that you can see there are a number  
 18 of persons unknown, or are you happy —  
 19 MR JUSTICE NICKLIN: No, that's fine I've got it.  
 20 MS BOLTON: You have seen that. My Lord, the next incident  
 21 is 20 November 2021. This was a committal incident for  
 22 the 12th and 13th defendants and the incident lasts for  
 23 approximately 55 minutes. Just to refresh the court's  
 24 memory, video 451, please. (video played).  
 25 Of course, we have the exclusion zone at this stage.

1 So the staff are having to drive on the other side of  
 2 the road. This is Employee F and Employee Q again.  
 3 So we can see that both cars are still being pursued  
 4 by protesters. One is being surrounded further up the  
 5 road and this one is — they are trying to get this one  
 6 free. Now those that have been involved in holding up  
 7 Employee F are coming back towards Employee Q's car as  
 8 well.  
 9 My Lord, you've seen this video before, so if I can  
 10 take the court to video 706, this is captured from  
 11 inside Employee Q's car. (video played).  
 12 My Lord, that's Victoria Asplin in front. Thank  
 13 you.  
 14 So, my Lord, that continues, as you've seen from the  
 15 other incidents.  
 16 Then we have got video 794. This is a TCM digital  
 17 video. (video played).  
 18 If we can move forwards to 15 minutes, please.  
 19 MR JUSTICE NICKLIN: The blurring of the number plates has  
 20 been done by the person who has put the footage out. Is  
 21 that right?  
 22 MS BOLTON: I don't think it was us, my Lord, no.  
 23 MR JUSTICE NICKLIN: You haven't blurred the number plates  
 24 in anything else.  
 25 MS BOLTON: I don't think so. I don't think it's us, no.

1 (video played).  
 2 So we can see at this stage Employee Q's car, 15  
 3 minutes on, is still surrounded. And then 28 minutes  
 4 and 30 seconds, please. (video played).  
 5 Again Employee Q's car is still surrounded. Then 33  
 6 minutes and 27 seconds, please. (video played).  
 7 So if we can pause there, so you can hear the police  
 8 there saying, "Get off the highway, stop blocking the  
 9 highway."  
 10 MR JUSTICE NICKLIN: You don't dispute the police have an  
 11 absolute battery of powers to deal with this?  
 12 MS BOLTON: My Lord, what the police can't do is keep coming  
 13 day after day after day to every individual who turns up  
 14 and obstructs cars. That's not -- again, they can't  
 15 stand outside MBR Acres forever, and that's what was  
 16 happening before the injunction. I understand the  
 17 difference where there is a one-off protest but that  
 18 isn't what's happening here. This is relentless. And  
 19 that's the situation, right up until the point where  
 20 there is an order and then we still have a fixed  
 21 campaign at the site but this has stopped, and that's  
 22 the difference, we have some incidents but nowhere near  
 23 the magnitude of what was happening without the order in  
 24 place. That's the difference.  
 25 My Lord, the next one is video --

1 MR JUSTICE NICKLIN: This incident led me to change the  
 2 injunction.  
 3 MS BOLTON: This incident, my Lord, led to you changing the  
 4 injunction. This incident was also an incident for  
 5 which people were committed for breach of the injunction  
 6 and, at that point, matters significantly calmed down.  
 7 So it shows the difference that has made. Police were  
 8 there from the start. It didn't stop this. The  
 9 injunction stopped this. There was significant impact  
 10 on those employees and the claimants' civil rights until  
 11 that point. All of these people can still protest. The  
 12 difference is the claimant can go about their business  
 13 and the claimant's staff can come and go from work.  
 14 That's what's changed.  
 15 Video 795, my Lord. 50 minutes and 30 seconds,  
 16 please. (video played).  
 17 Pausing there -- thank you -- what that's showing,  
 18 my Lord, is the police tactic that had to be used to  
 19 even get Employee Q free, of the police having to all  
 20 lock arms and form a corridor around her so that her car  
 21 could actually get out.  
 22 MR JUSTICE NICKLIN: Yes. It's not any function of mine to  
 23 criticise the police but one different way of doing this  
 24 would be to start arresting people. Once you started  
 25 arresting people, the message would get out. But, you

1 know, I'm not criticising the police. The police have  
 2 a difficult job to do. And they have to judge on the  
 3 ground what is the correct policing response to the  
 4 particular circumstance and the process. That will be  
 5 informed by the number of people who are there, the  
 6 number of officers that are available, the number of  
 7 back-up officers that could be called upon, the physical  
 8 resources the police have at their disposal, how they  
 9 judge the situation with the protesters, at what level  
 10 they judge them to be -- potentially it could flare up.  
 11 That will inform the policing response.  
 12 All of those are factors, and so I am absolutely not  
 13 sitting in court 13 saying they should have started  
 14 arresting people, but that's --  
 15 MS BOLTON: But, my Lord, respectfully, the claimant is in  
 16 the same position. They can't make the police do that.  
 17 They are having civil wrongs -- significant civil wrongs  
 18 committed against them and your Lordship granted  
 19 a remedy at an interim stage and extended that remedy  
 20 following this incident, and that has been highly  
 21 effective, and that has allowed these people to come and  
 22 go from work, it has allowed the first claimant to  
 23 continue its lawful activities and that is what's made  
 24 the difference here. There have been arrests, there  
 25 have been problems with some of the prosecutions, but

1 it's quite clear -- it will be clear as we go through  
 2 the evidence -- that that is the timeline and that is  
 3 where things have significantly changed.  
 4 But what it hasn't done is it hasn't prevented  
 5 people from protesting. People are still camping there.  
 6 People are still standing by the side of the road,  
 7 people are still chanting and shouting and holding up  
 8 their banners. What they are not doing is standing in  
 9 the road, stopping people getting away from work or  
 10 stopping them getting into work.  
 11 MR JUSTICE NICKLIN: Yes.  
 12 MS BOLTON: My Lord, is that a good place for a break?  
 13 MR JUSTICE NICKLIN: Oh, yes, it is, thank you very much.  
 14 Right, we will come back at 25 to four, please.  
 15 (3.19 pm)  
 16 (A short break)  
 17 (3.39 pm)  
 18 MR JUSTICE NICKLIN: Right. Carry on, Ms Bolton.  
 19 MS BOLTON: My Lord, the next incident is -- and this is  
 20 where the incidents change, following the committal  
 21 proceedings and the changes to the injunction order.  
 22 The incidents start to change in their nature. So we  
 23 have 12 April 2022. We have an obstruction of the  
 24 highway, and this is evidence provided by both  
 25 Employee B, Employee AA, Employee C and Employee A. If

1 we can look at, first of all, video 181, which is  
 2 Employee AA's car being obstructed by persons unknown  
 3 with a beagle on the highway. (video played).  
 4 MR JUSTICE NICKLIN: So the lady with the dog?  
 5 MS BOLTON: My Lord, yes. I want you to have a look at the  
 6 ...  
 7 MR JUSTICE NICKLIN: Right.  
 8 MS BOLTON: So the cars slow down, the car progresses again,  
 9 another person comes out and the person kicks the car.  
 10 You can also see that from video 180 from 40  
 11 seconds — sorry, apologies, different incident. Video  
 12 180, the rear camera of the same employee's dash cam,  
 13 apologies, on the same day, and if we can go from 40  
 14 seconds, please. (video played).  
 15 So that's the same person with the beagle. And you  
 16 will have seen also how the cars behind are being held  
 17 up as well.  
 18 And then video 182. We can watch from one minute,  
 19 please. (video played).  
 20 Pausing for a moment, on its own, initially this  
 21 looks like a slightly strange incident because it looks  
 22 like at first somebody is generally slowing down the  
 23 traffic for a reason but, as it progresses, my Lord, you  
 24 will see what then happens. (video played).  
 25 My Lord, that's the same person unknown that was

1 involved in the incident — thank you, sorry — the  
 2 incident earlier in the day, who had stepped out and  
 3 kicked the car. So again we are starting to see random  
 4 stepping-out, putting a dog out, kicking a car, and you  
 5 will see that this has become very much a persons  
 6 unknown activity following the November committals.  
 7 So if we can then —  
 8 MR JUSTICE NICKLIN: Let's pause and just think about that  
 9 incident because I'm just thinking through the  
 10 safeguard. Let's assume I grant an injunction against  
 11 persons unknown, the safeguards are, one, you have to  
 12 show it's a protestor; two, you have to get the  
 13 permission of the court to bring the application.  
 14 MS BOLTON: Yes.  
 15 MR JUSTICE NICKLIN: So there is a level of seriousness  
 16 before the court says okay. It gives the court an  
 17 opportunity to say, well, if that had stood alone,  
 18 I would never have granted an injunction to prohibit  
 19 that conduct.  
 20 MS BOLTON: Yes.  
 21 MR JUSTICE NICKLIN: So it's only in cases where the court  
 22 is satisfied that it's somebody who is doing this as  
 23 part of a protest action.  
 24 MS BOLTON: Yes.  
 25 MR JUSTICE NICKLIN: Right, carry on.

1 MS BOLTON: Yes. My Lord, the next incident is 5 May 2022.  
 2 MR JUSTICE NICKLIN: Was this vehicle registration number  
 3 apparent from that clip?  
 4 MS BOLTON: Can we go back, please.  
 5 MR JUSTICE NICKLIN: I'm just wondering whether you reported  
 6 it to the police.  
 7 Yes.  
 8 MS BOLTON: Let's have a look. Yes, that is clear. I don't  
 9 know and I will find out, my Lord.  
 10 The difficulty is, my Lord, we can provide it to the  
 11 police but what the police won't do is provide  
 12 information past that unless they take any action.  
 13 MR JUSTICE NICKLIN: Because by far away the optimum  
 14 solution, both for the court and for the claimants, is  
 15 an in personam order against individuals because it's  
 16 that that — I mean, if you tell me — I don't dispute  
 17 what you say — this person, if he has done it twice in  
 18 a day — once might be considered — not kicking the car  
 19 but this incident, if seen on its own, is a bit odd but,  
 20 if you take it with what's happened in the morning, then  
 21 it becomes to look slightly more sinister.  
 22 MS BOLTON: Yes, it's a bit like the lady with the beagle as  
 23 well, my Lord. The first time, she could just have been  
 24 crossing the road and got in the way. The second time  
 25 it becomes apparent that she is standing in the way of

1 the cars with the dog, which is ...  
 2 MR JUSTICE NICKLIN: Okay.  
 3 MS BOLTON: 5 May. This is not a — it is a video,  
 4 apologies, it's also in the persons unknown bundle at  
 5 988 and 989. This is the incident of Mr Manning's home  
 6 being spray painted and L and K — in the case of  
 7 Mr Manning, the person was identified and was prosecuted  
 8 and she was protesting — sorry, only one person was  
 9 identified, I'm being reminded. There were two people  
 10 present. So if we look at the videos, it's video 187.  
 11 MR JUSTICE NICKLIN: What is the name of the person who got  
 12 prosecuted?  
 13 MS BOLTON: Tony Midwinter, my Lord.  
 14 MR JUSTICE NICKLIN: And she was added, wasn't she?  
 15 MS BOLTON: She wasn't added, my Lord, for the simple reason  
 16 that she was prosecuted and, whilst she was protesting  
 17 at the site, there is nothing else, when we have gone  
 18 through the videos, that she had done wrong, save from  
 19 the point of view — there is no evidence of  
 20 obstruction.  
 21 MR JUSTICE NICKLIN: What was her sentence?  
 22 MS BOLTON: Unfortunately, she got a fine, my Lord, and —  
 23 MR JUSTICE NICKLIN: Did it go to the magistrates or to the  
 24 Crown Court?  
 25 MS BOLTON: Magistrates. She pleaded guilty. It's a matter

1 for the Magistrates' Court. Slightly disappointing that  
 2 perhaps she wasn't prevented from --  
 3 MR JUSTICE NICKLIN: You probably don't know the whole  
 4 story.  
 5 MS BOLTON: Exactly, I don't.  
 6 MR JUSTICE NICKLIN: If she had no previous convictions, the  
 7 fact it stayed in the Magistrates' Court indicates it  
 8 was less than £2,500 damage.  
 9 MS BOLTON: Yes.  
 10 MR JUSTICE NICKLIN: The prosecutor may not have been  
 11 aware -- no, they would have been, obviously, from the  
 12 nature of what was scrawled on the wall that it was  
 13 linked to the --  
 14 MS BOLTON: Yes.  
 15 MR JUSTICE NICKLIN: And he had been targeted because of his  
 16 role at the --  
 17 MS BOLTON: Yes.  
 18 MR JUSTICE NICKLIN: Yes.  
 19 MS BOLTON: There had been -- my understanding is a number  
 20 of offences have been prosecuted. There have been,  
 21 shall we call them, technical difficulties. As  
 22 your Lordship will be aware, in criminal cases they are  
 23 important.  
 24 MR JUSTICE NICKLIN: Good.  
 25 MS BOLTON: There have been a number of matters where that

1 has been the case.  
 2 MR JUSTICE NICKLIN: Okay.  
 3 MS BOLTON: So if we could look at video 187, please.  
 4 (video played).  
 5 And also video 704, please. (video played).  
 6 So, my Lord, there was two people but only one was  
 7 identified because she had very distinctive tattoos that  
 8 could be seen on the camera. They thought they had  
 9 sprayed the camera but the spray paint over the camera  
 10 didn't work, so that was how somebody was identified  
 11 from that. And Mr Manning noticed her on the videos at  
 12 the Wyton site and that's how the link was made.  
 13 MR JUSTICE NICKLIN: Didn't she scrawl -- what did she  
 14 scrawl on the wall?  
 15 MS BOLTON: My Lord, it's in the bundle at -- it's persons  
 16 unknown, page 10544. Sorry, there is one digit too  
 17 many. It should be 1054. No? I think we have got the  
 18 wrong reference there. It's 1044. So "scum", my Lord.  
 19 MR JUSTICE NICKLIN: Oh, right.  
 20 MS BOLTON: And then the other one was for the other staff  
 21 who were also targeted at the same time but we don't  
 22 know if by the same person. One is at page 1667. And  
 23 that's "Puppy killer scum. MBR scum. Puppy killer.  
 24 Kills beagles at MBR Acres." The redactions have been  
 25 done by the claimants there to protect names.

1 MR JUSTICE NICKLIN: Yes.  
 2 MS BOLTON: And who was responsible for the other employees'  
 3 properties being targeted we don't know. We only picked  
 4 up the one because of Mr Manning's camera and the person  
 5 had identifiable features.  
 6 The next incident was 9 May, which is again  
 7 a harassment incident, my Lord, and this concerned  
 8 Employee J and this was an unknown item, possibly food,  
 9 being thrown at Employee J's car outside the Wyton site,  
 10 and you will find that -- it's described at  
 11 paragraphs 105 to 109 of Employee J's witness statement,  
 12 at page 1632 in the persons unknown bundle, and it's  
 13 exhibit 1647. And that's -- they are leaving the Wyton  
 14 site.  
 15 MR JUSTICE NICKLIN: Could you show 1647 as well, please.  
 16 MS BOLTON: So we are not sure what it was but it does look  
 17 like it might have been food.  
 18 MR JUSTICE NICKLIN: Yes.  
 19 MS BOLTON: We then have 9 June 2022, and this is a trespass  
 20 incident and this is persons unknown entering the  
 21 driveway and painting the MBR banners attached to the  
 22 gate. If we look at video 914, please. (video played)  
 23 And if we go to 1 minute and 41 seconds, please.  
 24 Then if we can go to video 969, please. (video  
 25 played). This is the second paint being applied.

1 So, my Lord, again it's a trespass incident with  
 2 aggravating features.  
 3 19 June 2022. These are matters which are still  
 4 subject to criminal proceedings and these are the  
 5 trespass break-ins by persons unknown, who are believed  
 6 to be associated with Animal Rebellion. My Lord, video  
 7 927, it's two minutes in, please. You will see movement  
 8 in the bushes, a ladder appearing and eight persons  
 9 unknown come over the fence. (video played).  
 10 MR CURTIN: My Lord.  
 11 MR JUSTICE NICKLIN: Yes.  
 12 MR CURTIN: Just since it's a persons unknown, my  
 13 understanding -- and remember, I'm not attempting to  
 14 interfere (inaudible) -- is that the Animal Rebellion  
 15 people, they are a very distinct organisation. I think  
 16 one of their claims to fame is that they operate openly.  
 17 So I'm sure, if the claimants perhaps made the efforts  
 18 to contact Animal Rebellion, they would possibly be  
 19 forthcoming with their names. That's my understanding  
 20 of the nature of their project, and they haven't made  
 21 any secret of it and their names have appeared in the  
 22 media, et cetera.  
 23 MS BOLTON: My Lord, as I understand it, some of these  
 24 people were, on one of the incidents, arrested and then  
 25 released and have since -- there has been a further



1 investigation . I think the police have decided to  
 2 pursue it on a different basis . So we don't have the  
 3 names.  
 4 As to Mr Curtin saying Animal Rebellion willingly  
 5 give up their names, they certainly do not do that, and  
 6 I can say that with some confidence because I've  
 7 represented Arla Foods. But this is ---  
 8 MR JUSTICE NICKLIN: According to Superintendent Sissons'  
 9 table, there are two people awaiting trial for  
 10 aggravated trespass.  
 11 MS BOLTON: Yes.  
 12 MR JUSTICE NICKLIN: Which trial will take place  
 13 24 July 2023, or is listed to try on that day.  
 14 MS BOLTON: Yes.  
 15 MR JUSTICE NICKLIN: So their names won't be a secret.  
 16 MR CURTIN: My Lord, there were three people that went to  
 17 the police station, they gave their identities to the  
 18 police. I think two weeks later, the CPS gave an  
 19 official announcement that they weren't going to proceed  
 20 with the charges and they gave an official reason and  
 21 that was lack of evidence, and the three people who had  
 22 gone down the police station to give their names were  
 23 astounded.  
 24 MS BOLTON: I believe, my Lord, what happened was that they  
 25 were prosecuted --- they were arrested originally under

1 a different piece of legislation . It was then decided  
 2 that that hadn't been very successful in prosecutions so  
 3 far and that they had to be released whilst the evidence  
 4 was gathered for them to be rearrested.  
 5 MR JUSTICE NICKLIN: What happened was a postal requisition.  
 6 So you can either bring somebody before a criminal court  
 7 by arrest and charge or summons, which is now called  
 8 postal requisition . So according to  
 9 Superintendent Sissons' table, these two people have  
 10 arrived at court as a result of postal requisition . In  
 11 relation to the second of the two individuals, it says:  
 12 "Arrested for four offences, which was aggravated  
 13 trespass and assault police three counts. CPS, NFA, no  
 14 further action all but aggravated trespass offence,  
 15 postal requisition , trial on 24 July 2023."  
 16 MS BOLTON: My Lord, to be clear, it has been a slightly  
 17 frustrating incident in the sense that, apart from  
 18 anything else, we don't want to interfere with the  
 19 police's prosecution but there have been serious  
 20 offences and breaches of the injunction here.  
 21 MR JUSTICE NICKLIN: I don't see why you don't just ---  
 22 MS BOLTON: Issue a committal application.  
 23 MR JUSTICE NICKLIN: Not necessarily.  
 24 MS BOLTON: Because if they are going to be punished by ---  
 25 MR JUSTICE NICKLIN: I was thinking about joining them to

1 the proceedings rather than a committal application.  
 2 MS BOLTON: You can see the date of the incident, my Lord.  
 3 MR JUSTICE NICKLIN: Yes.  
 4 MS BOLTON: We have had some difficulty in getting  
 5 information we would like and then, in addition to that,  
 6 query whether ---  
 7 MR JUSTICE NICKLIN: You can wait and see what happens in  
 8 the prosecution.  
 9 MS BOLTON: Indeed, and query whether we should be bringing  
 10 committal proceedings but it seems that we shouldn't be  
 11 competing with the deadline for prosecution.  
 12 MR JUSTICE NICKLIN: No, there is no point because it's  
 13 highly unlikely that a civil court, where a criminal  
 14 court has heard and determined and sentenced somebody  
 15 for a breach of a criminal offence, that the civil court  
 16 will add materially to that punishment.  
 17 MS BOLTON: Indeed.  
 18 MR JUSTICE NICKLIN: So there is every reason why you should  
 19 wait and see what the result of that is . The limitation  
 20 period is not going to be remotely troubled in relation  
 21 to this . So you can wait and see what happens and, if  
 22 you want to bring proceedings afterwards, you can.  
 23 MS BOLTON: My Lord, indeed.  
 24 MR JUSTICE NICKLIN: I say proceedings, I don't mean  
 25 a contempt proceeding. I can see that there might be

1 arguments that you can't bring a contempt proceeding  
 2 after they have been acquitted by a criminal court.  
 3 MS BOLTON: No.  
 4 MR JUSTICE NICKLIN: But I don't see what's in the way of  
 5 you bringing civil proceedings against them.  
 6 MS BOLTON: No.  
 7 MR JUSTICE NICKLIN: And obtaining an order, if you are  
 8 entitled to, on the evidence.  
 9 MS BOLTON: My Lord, it is on our radar, we are simply  
 10 trying not to interfere with the police at the moment.  
 11 MR JUSTICE NICKLIN: That's fine, understood.  
 12 This is the occasion which led to some dogs being ---  
 13 MS BOLTON: No, this was actually part of what would appear  
 14 to have been now a surveillance operation because what  
 15 happens is a few days later --- sorry, it's the --- it may  
 16 even have been the next day. Let me check the date of  
 17 that incident. It's not the next day, it's a few days  
 18 later. I'm just checking I've got the right incident.  
 19 (Pause)  
 20 Sorry, my Lord, I'm --- Ms Pratt is right, I'm  
 21 looking at the wrong incident on the table. So it is  
 22 the next day. First of all, if we go to --- first of all  
 23 finishing with this incident, so you've seen them coming  
 24 over the fence --- we are then at video 933 --- and we see  
 25 the police enter through the gate at 4 minutes and 38

1 seconds, please.  
 2 MR JUSTICE NICKLIN: Yes. (video played).  
 3 MS BOLTON: And, of course, my Lord, you are probably aware,  
 4 when police attend an incident of this nature, there  
 5 needs to be a certain number of police there before they  
 6 will go and even try and arrest anybody or get involved.  
 7 So this has been going on for a while, and if we get to  
 8 38 minutes and 15 seconds, please. (video played).  
 9 We have a glimpse of one of those who have broken in  
 10 on the other side there, the gate. You can see them  
 11 walking away from the gate.  
 12 Then video 776 at 57 seconds, please. (video  
 13 played).  
 14 So pausing there, my Lord, that's a reference to the  
 15 fact that those who broke in offered to leave the site  
 16 if they were given 25% of the dogs on that day.  
 17 The next day, my Lord, is 20 June, and that's when  
 18 there is a further break-in and five dogs are stolen,  
 19 and the entry is recorded in video 928 from 1 minute and  
 20 15 seconds. (video played).  
 21 You see a minibus pulling up. What happens when  
 22 people enter the site, my Lord, is the dogs — what has  
 23 not been caught on camera and isn't in a part of the  
 24 site where the camera can pick it up is the perimeter  
 25 fence that has been cut in a blind spot and the dogs are

1 passed out through that cut-out part of the perimeter  
 2 fence. So whilst people go over the front gates, there  
 3 is also people cutting the side fence and passing the  
 4 dogs through a cut part of the side fence.  
 5 If we go to 10 minutes and 40 seconds, please.  
 6 (video played).  
 7 Pausing there, please, and whilst the police are  
 8 dealing with those at the front, of course the dogs were  
 9 being passed out the side.  
 10 So that's the trespass incident.  
 11 MR JUSTICE NICKLIN: In relation to these individuals, do  
 12 you have any evidence that any of them have been  
 13 protesters at the site?  
 14 MS BOLTON: My Lord, the only thing that we have seen  
 15 recently — and we don't — because we don't — to be  
 16 honest, we don't have enough information about them at  
 17 present. So it may be that they have, but we don't  
 18 know. The only information and the only link we have  
 19 seen is their Twitter campaign footage is, along with  
 20 two other protesters, calling for justice for  
 21 Mr Broughton, who is on remand.  
 22 So that's the only link that we know of. When we  
 23 have more information on their identity, it may very  
 24 well be that when we look at videos, we will see it.  
 25 MR JUSTICE NICKLIN: The issue is this, which is unless they

1 are at the Wyton site, they are not served.  
 2 MS BOLTON: Indeed.  
 3 MR JUSTICE NICKLIN: So the alternative service order, you  
 4 know — I know that in a lot of the persons unknown  
 5 litigation, once the alternative service order is  
 6 granted, everybody forgets about it.  
 7 MS BOLTON: Yes.  
 8 MR JUSTICE NICKLIN: But that's one of the most — well, if  
 9 there is any element of limit and restraint in this  
 10 area, it's by reference to the service of the claim form  
 11 and, if these people haven't been served with a claim  
 12 form, then, (a) they are not subject to the injunction  
 13 order and nobody who in the future did this would be  
 14 subject to it either.  
 15 MS BOLTON: They would be subject to the injunction order if  
 16 they attended after an order has been made, my Lord.  
 17 They would be in breach of the order. But as to whether  
 18 they are people who have been served with the claim, at  
 19 the moment we don't know. What we do know is at this  
 20 point there is an order in place that binds persons  
 21 unknown and prohibits trespass and they are trespassing.  
 22 So they are breaching the order at a time when the order  
 23 is present.  
 24 So that is — the difficulty here is, as we have  
 25 said, we don't want to interfere —

1 MR JUSTICE NICKLIN: That just makes the whole alternative  
 2 service order just — that just moves it totally into  
 3 the realms of fiction at that point.  
 4 MS BOLTON: That has always been the approach with trespass,  
 5 my Lord.  
 6 MR JUSTICE NICKLIN: Well —  
 7 MS BOLTON: The trespass injunctions —  
 8 MR JUSTICE NICKLIN: Not really. The old school trespass  
 9 injunctions were directed at the current occupiers of  
 10 the land. They did have the beneficial effect of  
 11 actually catching anybody who moved in as well but this  
 12 is a totally different beast. This is trying to make  
 13 people subject to civil proceedings of which they've got  
 14 absolutely zero notice.  
 15 MS BOLTON: But that's exactly the same as the other  
 16 protester injunctions, where people have been committed  
 17 on trespass. Trespass is one of the ones where the  
 18 one — the clearest notice that can be given because it  
 19 can be posted on the edge of a claimant's land and, two,  
 20 in this case it's not only now on the claimant's land  
 21 but it's also on the side fences. There are large  
 22 postings everywhere, so nobody is in any doubt that  
 23 there is an injunction in place.  
 24 MR JUSTICE NICKLIN: Did these people stop to have a look at  
 25 the notice board?

1 MS BOLTON: As your Lordship knows, that's not how it works.  
 2 It works on the basis that they have been served, and in  
 3 the case going forwards of trespass, that will be dealt  
 4 with on the basis that it will be right on the  
 5 perimeter -- it is on the perimeter at the moment -- as  
 6 well as on the notice board.  
 7 So anybody trespassing would have that notice.  
 8 Considering that --  
 9 MR JUSTICE NICKLIN: This goes back to Cameron: has such  
 10 opportunity as there can reasonably be expected to --  
 11 whatever the wording is -- to be expected to be able to  
 12 respond to the proceedings. These people haven't had  
 13 any chance to respond to these proceedings.  
 14 MS BOLTON: We don't even know yet if these are the same  
 15 people who were there the day before.  
 16 MR JUSTICE NICKLIN: Does that make it any better?  
 17 MS BOLTON: Yes, it does because, as we know, we saw one of  
 18 them being interviewed outside the front of the site.  
 19 The police were involved. They have been served and  
 20 they were at the site. If they have come back a second  
 21 time --  
 22 MR JUSTICE NICKLIN: When were they served?  
 23 MS BOLTON: They are served by the fact that they are  
 24 persons unknown.  
 25 MR JUSTICE NICKLIN: Okay.

1 MS BOLTON: This is a trespass that's very clear and it has  
 2 happened on two occasions, potentially three. We won't  
 3 know that --  
 4 MR JUSTICE NICKLIN: If they are the same people, then they  
 5 get gammelled(?) on the first visit, that will make the  
 6 second visit a breach.  
 7 MS BOLTON: Yes, and if they are not, my Lord, then, yes, we  
 8 just don't have the information at the moment on these  
 9 individuals. We just don't know. As I say, we are  
 10 trying not to get in the way of the police investigation  
 11 but what we do see is three Animal Rebellion break-ins  
 12 and one --  
 13 MR JUSTICE NICKLIN: But this is a criminal offence.  
 14 MS BOLTON: Yes, one of the reasons I'm also bringing this  
 15 to the court's attention, my Lord, is they're climbing  
 16 over the gate and they're cutting the fence and what we  
 17 see as we go through the footage is plainly everyone  
 18 knew where to go, and this is another point on  
 19 surveillance.  
 20 MR JUSTICE NICKLIN: Where do I get that evidence from?  
 21 MS BOLTON: We are coming to more, my Lord, on this.  
 22 MR JUSTICE NICKLIN: Right.  
 23 MS BOLTON: But that's the point I would make. Again, it's  
 24 another reason why the claimant is very anxious about  
 25 drones being flown over the site and monitoring the site

1 because it's not necessarily the person filming it but  
 2 the people who can access it that can be helpful to  
 3 these kind of incidents which have now happened on three  
 4 occasions. And the next one is a much bigger incident  
 5 as well.  
 6 MR JUSTICE NICKLIN: Well, then, you would need a persons  
 7 unknown injunction that stops people carrying out  
 8 surveillance of your site, if that's -- and I don't know  
 9 what the cause of action for that would be but ...  
 10 MS BOLTON: My Lord, we accept the limitations of the -- we  
 11 accept that a drone trespass has to be over the site.  
 12 We do accept the limitations of it but that is one of  
 13 the reasons why we have been seeking it, is because  
 14 we --  
 15 MR JUSTICE NICKLIN: Okay, let's have a look at the rest.  
 16 (video played).  
 17 MS BOLTON: So, pausing there, there is nothing more on this  
 18 video, my Lord, other than the police dealing with the  
 19 front whilst something else is happening somewhere else  
 20 on the site.  
 21 MR JUSTICE NICKLIN: Okay.  
 22 MS BOLTON: So the next incident, my Lord, is 2 July 2022.  
 23 And that's an obstruction of the highway and access land  
 24 trespass and that's Mr Manning's vehicle being  
 25 surrounded by persons unknown, as he attempts to enter

1 the Wyton site, and that's video 754. (video played).  
 2 MR JUSTICE NICKLIN: Why are there such a large number of  
 3 police present?  
 4 MS BOLTON: I'm not clear why there is such a large number  
 5 of police there that day, my Lord. It's an incident  
 6 that's happening very early in the morning. I don't  
 7 know if this is nervousness after the break-ins.  
 8 I don't know. I'll try and find out a little bit more  
 9 about the incident, my Lord. All I know is that  
 10 Mr Manning was obstructed.  
 11 Then the next one is an interference with the common  
 12 law right to access the highway and trespass. And  
 13 that's video 1005. (video played).  
 14 If we can move on 15 minutes, please. (video  
 15 played) sorry, if we can go back just to maybe -- let's  
 16 try there, yes, please. (Video played).  
 17 Pausing there, what's happening, my Lord, is these  
 18 two people are chaining themselves to the gate.  
 19 MR JUSTICE NICKLIN: Themselves to the gate?  
 20 MS BOLTON: Sorry, they are chaining the gate together.  
 21 Sorry, wrong incident. And what then happens is -- the  
 22 reason for it is there is an animal transport van  
 23 inside, and if we move to 17 minutes and 27 seconds,  
 24 please, (video played), you can just see the van inside.  
 25 Pausing there, so we have got the police vehicles

1 now turned up, my Lord, and if we can play on, please.  
2 (video played).

3 My Lord, you can see people moving into the road,  
4 further up.

5 So pausing there, my Lord, so we have obviously  
6 had -- clearly there has been a trespass, there has also  
7 been an interference with the right of access on to the  
8 highway. We can hear and we can see that there is  
9 general protesters around the area but what the people  
10 who approach, their faces are covered, we don't know who  
11 they are, and this is very much in line with what has  
12 happened since the injunction, which is it's the masked,  
13 covered-faced person stepping up and locking the gates.

14 The access is clearer but the persons unknown  
15 element, of those who can't be identified is, plainly,  
16 we would say, being deployed more.

17 My Lord, is that a good place for us to stop?

18 MR JUSTICE NICKLIN: Yes, it is. Right. Tomorrow then at  
19 10.30, please. Thank you very much.

20 (4.37 pm)

21 (The court adjourned until 10.30 am the following day)

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