## OPUS<sub>2</sub>

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

Day 13

May 17, 2023

Opus 2 - Official Court Reporters

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1	Wednesday, 17 May 2023	1	${\sf MR\ JUSTICE\ NICKLIN:\ Mr\ Curtin,\ you\ understand\ }\ you've$
2	(10.30 am)	2	seen the timetable. I'm anxious to give you as much
3	MR JUSTICE NICKLIN: Hello, Mr Curtin. Can you hear us all	3	time as you can to prepare your response to the
4	right? You are on mute at the moment.	4	claimants' submissions, so what I was suggesting was you
5	MR CURTIN: I can hear you perfectly, thank you.	5	get it by 6 o'clock on Friday, as being, if we are not
6	MR JUSTICE NICKLIN: Okay, good, excellent.	6	going to sit in court on Friday, then the claimant's
7	Right. Ms Bolton.	7	side can be working on that document. Ms Bolton is
8	Submissions by MS BOLTON	8	asking for 6 o'clock on Saturday. Do you have any views
9	MS BOLTON: My Lord, good morning. My Lord, if I may first	9	about that or anything you want to say to me about it?
10	of all hand up $$ I hope $$	10	MR CURTIN: It will considerably help me to have the
11	MR JUSTICE NICKLIN: I got it by email this morning, thank	11	claimant's submission, just in case $$ just in terms of
12	you, yes.	12	how I framework my own, but to me there are no $$ there
13	MS BOLTON: You have the timetable.	13	is no serious contention with the actual evidence, so
14	MR JUSTICE NICKLIN: Yes.	14	I've got no great (inaudible) Saturday 6 o'clock.
15	MS BOLTON: Do you also have the schedule?	15	I would prefer it Friday but if Saturday 6 o'clock is
16	MR JUSTICE NICKLIN: No.	16	what's on offer, then that gives me all of Sunday and
17	MS BOLTON: My Lord, what we have done, because we	17	Saturday evening to do that.
18	originally had schedules for every cause of action with	18	MS BOLTON: My Lord, if it helps, I also had a chat with
19	every incident but, given what your Lordship has said	19	Mr Curtin on Monday and suggested that he looked at the
20	about what you want to do over the next few days, what	20	opening and the headings and thought about what he
21	we have done is we have cut those schedules back to key	21	wanted to say under the headings, for some sort of
22	incidents we want to take your Lordship to and we have	22	structure, and tried to give some assistance on what he
23	combined the pleaded causes of action so that you are	23	wants to think about saying about each of those causes
24	not watching a video more than once.	24	of action.
25	MR JUSTICE NICKLIN: That's very sensible. Thank you very	25	So I had already pointed him in the direction of
	1		3
1	much.	1	what to think about. So I'm hoping we could at least
2	MS BOLTON: So that's how I propose to start.	2	have until Saturday.
3	MR JUSTICE NICKLIN: Okay. Can I just address an issue	3	MR JUSTICE NICKLIN: Okay, we will meet halfway. I'll say
4	about the timetable. It seems to me that Mr Curtin	4	Saturday at 2 o'clock.
5	would benefit from more to time to consider the	5	MS BOLTON: My Lord.
6	submissions, so if we are not sitting on Friday, the	6	MR CURTIN: Could I ask a question, please, my Lord.
7	quid pro quo for that would, to my mind, be you let	7	MR JUSTICE NICKLIN: Yes.
8	Mr Curtin have the closing submissions by 6 o'clock on	8	MR CURTIN: Some of the evidence I submitted or rather
9	Friday.	9	the $\ \mbox{I}$ don't know even what to call it, the bits of
10	MS BOLTON: My Lord, I think we might struggle to finish	10	evidence that I sent, such as Facebook posts, pictures,
11	them in that time. Could we ask for 6 o'clock on	11	some details about experiments, even though I haven't
12	Saturday, please.	12	introduced all of those parts $$ what I submitted as
13	MR JUSTICE NICKLIN: Well, it may be a case where you may	13	evidence and I wasn't cross—examined, for example there
14	have to $$ you know, division of labour. We are going	14	is one picture of me wearing a police helmet with
15	to spend the next two days, today and tomorrow, going	15	a megaphone in front of some police officers. We
16	through video evidence. You may need to send Ms Pratt	16	haven't talked about it but, in my submissions
17	off to do some of the lifting in relation to the	17	statement, can I at least refer to those $$ some of the
18	submissions.	18	items that I've put in as evidence?
19	MS BOLTON: Yes, I think it's purely, my Lord, that, whilst	19	MR JUSTICE NICKLIN: You can refer to them and, if Ms Bolton
20	we have already made a start, there is quite a lot to go	20	has an objection to them, she will let me know about it
21	through. There is quite a lot of transcript to go	21	and we can deal with that.
22	through, and we didn't know until Monday that we	22	MR CURTIN: Excellent, thank you. Yes.
23	wouldn't have the weekend and I think we might struggle	23	MR JUSTICE NICKLIN: Right. Okay.
24	a little bit. I wonder if we could at least have until	24	MR CURTIN: What I wish to do this morning is just observe
25	Saturday.	25	this procedure. I don't want to validate it . I haven't

1	done any work at all on the bundles. I don't know	1	MR JUSTICE NICKLIN: Just pause there. On the Canada Goose
2	what's coming. I'm merely here to observe and I don't	2	question, that's a good example of somebody who cannot
3	want to validate it that I'm here to represent persons	3	be identified by name but could be described by his
4	unknown in any way, shape or form.	4	behaviour. So he could become "Unknown protester 78
5	MR JUSTICE NICKLIN: Understood, Mr Curtin. I don't hold	5	who, on 27 June 2021, threw a crash barrier over the
6	you responsible for persons unknown. Carry on,	6	external fence".
7	Ms Bolton.	7	MS BOLTON: My Lord, yes. The difficulty is we have not
8	MS BOLTON: My Lord, I would like to start with —— I'm going	8	been able to identify him sufficiently to serve him.
9	to take your Lordship to a number of the incidents,	9	That has been one of the challenges —— is we could
10	starting with 27 June 2021, and there is four separately	10	describe him but we can't serve him.
11	pleaded incidents in the pleading comprising one large	11	MR JUSTICE NICKLIN: Well, if the theory of alternative
12	incident, which we have taken together, which concern	12	service holds good, he has been served by the methods
13	both trespass and harassment parasitic on the trespass.	13	that have been adopted and, if they are good enough to
14	My Lord, could we, please, go to video 1003.	14	serve persons unknown, then arguably, they are good
15	So you will see the start of this, my Lord, that	15	enough to serve him.
16	there are a group of the protesters and you will see the	16	MS BOLTON: My Lord, my difficulty with advancing that is
17	barriers in front of the gates. If we can, please, go	17	that we have a couple that were described at the
18	to 12 minutes into the —— actually, sorry, a little bit	18	beginning.
19	earlier, sorry. Can you keep going back just a moment.	19	MR JUSTICE NICKLIN: Yes.
20		20	
	I just want to show the chronology of events. Just		MS BOLTON: And we asked for them to be served by that
21	there, please.	21	method and, at the time, the law was slightly different
22	MR JUSTICE NICKLIN: Just pause it for a moment. Whose	22	and your Lordship said no. So he didn't get served.
23	railings are these?	23	I accept he is an example of somebody who could have
24	MS BOLTON: They are the claimant's, my Lord.	24	been described. He is served as a person unknown,
25	MR JUSTICE NICKLIN: Right. (video played).	25	I accept, but we couldn't have taken service of him any
	5		7
1	MS BOLTON: So, pausing there, my Lord, I've just taken you	1	further. I think this is one of the difficulties with
2	back to this bit so you can see how the barriers are	2	description and service, I accept, but we couldn't $$ as
3	originally dismantled. Could we now go to 12 minutes,	3	you know, we have found some where we have been able to
4	please.	4	identify a way of serving them and, where we have, we
5	MR JUSTICE NICKLIN: Just pause there. It would help me	5	have gone back and done it, even if it's much later, but
6	if I'm seeing $$ I don't recognise, not sufficiently $$	6	it has been quite challenging.
7	I can recognise some people but insofar as there are	7	Could we play on, please. (video played).
8	named identified defendants, it would help me if you can	8	Pausing there, again there is another person
9	tell me who they are.	9	involved in that incident there that again we have never
10	MS BOLTON: The lady on the left here is Ms Green, D8.	10	been able to identify.
11	MR JUSTICE NICKLIN: Right.	11	Play on, please. (video played).
12	MS BOLTON: I believe the lady on the right there is	12	If you could pause the video. My Lord, this
13	Ms Durant. In the background, not the gentleman in the	13	gentleman also doesn't appear in any of the additional
14	middle — in the background, I believe, is Mr Broughton.	14	footage that we have seen and reviewed and doesn't
	MR JUSTICE NICKLIN: I can recognise Mr Broughton.	15	9
15 16	MS BOLTON: Yes. To be clear, my Lord, they are the only	16	appear to have been caught on camera at any other time at the site.
17		17	So this was the first incident that the claimant
	three defendants who we know who they are in this video.		wanted to take your Lordship to, that obviously there
18	Apologies, Mr Maher is there as well and he is wearing	18	• • • • • • • • • • • • • • • • • • • •
19	the baseball cap in the front of the shot just there.	19	has been clear trespass, you have seen them enter even
20	MR JUSTICE NICKLIN: Right.	20	the metal strip area on several occasions. Obviously,
21	MS BOLTON: Right. If we could play on, please, (video	21	it's an aggravated incident in the sense of what was
22	played).	22	happening and it's also relied upon as harassment as
23	So pausing there, that gentleman, we have never been	23	a result of the conduct.
24	able to identify, my Lord. If we could play on, please,	24	MR JUSTICE NICKLIN: Who was harassed?
25	(video played).	25	MS BOLTON: Well, my Lord, we would say that it's targeting

1	those at MBR. They are trying to get them to come out.	1	MR JUSTICE NICKLIN: It helps to exemplify the really quite
2	They've asked them to come out and talk to them. They	2	artificial nature of the trespass because had they
3	are shouting at them.	3	stepped on to the land to place the barrier on your
4	MR JUSTICE NICKLIN: Do I have any witness statements from	4	land, then, arguably, that might have been covered by
5	anybody who was ——	5	some sort of implied licence.
6	MS BOLTON: My Lord, the witness evidence is Susan Pressick	6	MS BOLTON: Yes, but what they are not entitled to do, of
7	at paragraph 220.2. It's page 515, my Lord.	7	course, is to throw something over a gate on to the
8	MR JUSTICE NICKLIN: Does this give me any evidence of	8	land.
9	anybody actually being upset by what has taken place?	9	MR JUSTICE NICKLIN: Yes.
10	MS BOLTON: No, my Lord, it doesn't. I simply flag the	10	MS BOLTON: And what it didn't entitle them to do was to
11	pleaded causes of action on this but, no, I would accept	11	come forwards, kick the gate, bang the gate.
12	it doesn't do that. It obviously is a very clear	12	MR JUSTICE NICKLIN: No, no, I get that.
13	incident of trespass.	13	MS BOLTON: And to stand on the claimant's land to do those
14	MR JUSTICE NICKLIN: Yes. What should I make of the fact	14	things, which had nothing to do with the returning of
15	that, arguably, the placing of the barriers on what	15	the barriers .
16	would have been the highway —— I know that much can be	16	MR JUSTICE NICKLIN: Yes.
17	said about the manner in which those barriers were	17	MS BOLTON: The next incident I want to take you to is
18	returned to their owners but, if those people were	18	9 July 2021. There is a number of videos we need to
19	present, I suspect people acting on their behalf might	19	look at on this one. First of all, video 141.
20	have suggested that those barriers were unlawfully	20	MR CURTIN: Hello, can I make a little —— I'm unable to see
21	placed on the highway.	21	the videos but I'm able to record the number of videos
22	MS BOLTON: Well, my Lord, you will see in a number of the	22	and watch them later if I want. Should I be able to see
23	incidents to come that part of those barriers are used	23	the videos?
24	on a number of occasions when the police are present as	24	MS BOLTON: I believe Mr Curtin has the link.
		25	MR JUSTICE NICKLIN: We are just checking that, Mr Curtin.
25	well. So we would say that it was simply trying to give	23	WIR JOSTICE MICREIN: We are just checking that, Mr Curtin.
	9		11
1	some distance for staff $$	1	(Pause)
2	MR JUSTICE NICKLIN: I perfectly well understand why they	2	MS BOLTON: He needs to log on to the Opus link that he will
3	were put there, but there is a degree of sophistication	3	have been sent, not the CVP link.
4	in the analysis of causes of action here, that has	4	MR JUSTICE NICKLIN: Mr Curtin, there is a separate Opus
5	become even more elaborate ever since the ownership of	5	link that you need to follow.
6	the strip of land that was previously thought to be	6	Ring Central, I'm being told it may be called.
7	adopted highway. Now, when I'm watching this, what	7	MR CURTIN: Okay, I don't think it's going to be a factor.
8	I now know is the extent of the claimant's land was not	8	I won't log off and log on now. I'm happy to go ahead
9	even the claimant's understanding of their land at the	9	with it as it is because I'm fairly familiar with the
10	time. So there is a high degree of sophistication in	10	video.
11	the legal analysis of what legal rights are engaged here	11	MR JUSTICE NICKLIN: All right.
12	but, if you are being technical about it, those barriers	12	MS BOLTON: I don't think I've misunderstood Mr Curtin but
13	were obstructing the highway.	13	let's just be very clear, he is recording the video
14	MS BOLTON: Yes, my Lord, and if the protesters had simply	14	numbers as in writing them down.
15	moved them out of the way $$	15	MR JUSTICE NICKLIN: Yes, yes.
16	MR JUSTICE NICKLIN: Yes, I did say there could be some	16	MS BOLTON: He is not recording the hearing.
17	complaint about the manner in which they returned the	17	MR JUSTICE NICKLIN: No.
18	barriers to their owners but that's the vignette of this	18	MR CURTIN: No, no.
19	and it's the manner in which they do it, which might	19	MS BOLTON: I'm just checking, Mr Curtin.
20	have caused distress and alarm if anybody had seen it,	20	MR CURTIN: Yes.
21	but apart from that, it's a trespass.	21	MS BOLTON: I should say, my Lord, I'm not taking a point.
22	MS BOLTON: Yes, indeed. There is a number of points that	22	I'm just aware that sometimes a litigant in person may
23	arise from that. I fully accept, if they had simply	23	not realise.
24	moved them to the side, or even placed them by the	24	MR JUSTICE NICKLIN: No, Mr Curtin, I think you understand
25	claimant's gate, that they could have done that.	25	you can't record the hearing?

1	MR CURTIN: Yes, yes.	1	Then if we could now $$ that's the staff that have
2	MS BOLTON: Right.	2	come out after 52 minutes. If we can now go to, please,
3	MR CURTIN: I understand.	3	one hour and 28 minutes. (video played).
4	MS BOLTON: So, my Lord ——	4	At this stage, there is fewer protesters, my Lord,
5	MR JUSTICE NICKLIN: This is 9 July, this one?	5	but this is for security to leave. So if we could play
6	MS BOLTON: First of all, 9 July. This is relied upon for	6	on, please. (video played).
7	obstruction of the highway, interference with the common	7	So pausing there, we have D18 present, my Lord.
8	law right to access the highway and harassment parasitic	8	Yes, I was looking at the right person. So it's the
9	on those incidents. First of all, video 141. We can	9	person who is to the right of the first policeman,
LO	see at the start of it there is a vehicle parked in	10	holding a placard, just behind her —— and when I say the
L1	front of the gates. If we could, please, play from 2	11	policeman, my Lord, I'm talking about the policeman —
L2	minutes and 30 seconds, please (video played).	12	not the one that's in the middle of the road but on the
L3	My Lord, you can see here that there are protesters	13	side of the access drive —— and then just behind her is
L4	in the road. There is a vehicle still being moved off	14	Mr Patterson, and then you can see Ms Asplin's red hair
L5	of the access road and the police are actively having to	15	just further back.
L6	prevent people from moving forwards.	16	MR JUSTICE NICKLIN: Yes.
L7	If we could then play at 18 minutes onwards, please.	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
L8	(video played).	19	
L9	MR JUSTICE NICKLIN: Mr Curtin, could you put yourself on		moment. We can't quite see him at the moment but, if
20	mute, please. Thank you.	20	you look at the second policeman in the line, stopping
21	MR CURTIN: I'm sorry.	21	people coming forwards, there is a person with a blue
22	MR JUSTICE NICKLIN: It's all right.	22	t—shirt and in a moment that's Mr Maher. If we could
23	MS BOLTON: You can see the difficulty the police are	23	play on, please. (video played).
24	having, before they are trying to get the staff out, in	24	If we could look now, please, at video 815, this is
25	keeping the protesters back and clearing the way.	25	the dash cam from Employee F's car. It's in two parts.
	13		15
1	Yes, it has been rightly pointed out to me, my Lord,	1	(video played).
2	you can see the car just inside of the image, waiting to	2	Sorry, it's the Production Manager's car, my Lord,
3	come out and the difficulty that that's causing the	3	but it's Employee F's dash cam.
4	police. My Lord, I'm going to play this through to 22	4	MR JUSTICE NICKLIN: Is the date wrong?
5	minutes.	5	MS BOLTON: My Lord, yes, it's two days out.
6	MR JUSTICE NICKLIN: Okay. (video played).	6	MR JUSTICE NICKLIN: Okay.
7	MS BOLTON: My Lord, you will see that the car bonnet has	7	MS BOLTON: Ms Pratt is rightly pointing out to me it's in
8	disappeared. My Lord, you will now see that the police	8	his witness statement.
9	are trying to push people back $$ if we can pause there,	9	MR CURTIN: Could I ask what video that is, please, the
LO	please —— and at this stage the cars have had to abort	10	number?
L1	coming out and have reversed back in, which we are going	11	MS BOLTON: 815.
L2	to look at in a moment. Then if we look, it takes to 52	12	MR CURTIN: Thank you. (video played).
L3	minutes and 50 seconds, if we could go to now, please,	13	MS BOLTON: If we could play 829, where that continues,
L4	in this video.	14	please. (video played).
L5	MR JUSTICE NICKLIN: Am I right that there were no arrests	15	My Lord, 830 is just more of waiting behind the
L6	at this incident?	16	gate, my Lord, so I don't think we need to go to 830,
L7	MS BOLTON: I'm not sure, my Lord.	17	but 814, please. This is showing the successful attempt
L8	MR JUSTICE NICKLIN: I've just had a quick look at	18	to leave part way through the video. (video played).
L9	Superintendent Sissons' evidence and his first	19	My Lord, you will see we are now at 5.45 for the
20	incident —— there is one on 6 July and then the next is	20	time stamp.
21	on 15 August.	21	Pausing, there, my Lord, that's the police saying,
22	Anyway, you can check that, but I just looked at it	22	"Don't stop, go to the right, good luck." That's the
23	to cross—reference that.	23	instructions to the driver.
24	MS BOLTON: If we could play at 52 minutes and 50 seconds,	24	So if we can play on, please, (video played).
25	please. (video played).	25	If we can now go to 2.23, we are going to see
	picase. (viaco piayea).	ر ک	ii we can now go to 2.23, we are going to see

1	further up the road in this car. Play there, please.	1	though, in the khaki shorts, we don't know who that is.
2	(video played).	2	There is somebody at the bell mouth, we don't know who
3	You can see that the police were forced to shut the	3	they are. That's in the white $t-$ shirt, my Lord, as the
4	road at that point.	4	car is going past now. We have attempted, because som
5	So that's the 13th $$ sorry, not the 13th, that's	5	of the incidents are quite large and there isn't
6	the 9 July incident, my Lord, and you will see we have	6	sometimes even a way of describing, what we have done is
7	set out where the obstruction is and the interference is	7	we have identified who we can see because some of the
8	noted in the employees' witness statements and, as	8	particularly big incidents, it's quite difficult to even
9	I say, that's obviously an incident that's relied on as	9	count.
10	obstruction, common law right of interference and	10	If we can play on, please, (video played).
11	harassment as a result of the obstruction.	11	Pausing there, again there is another person to the
12	MR JUSTICE NICKLIN: Obstruction of the highway needs proof	12	left of Mr Morley, or right if you are looking at it
13	of damage, a common law right of interference is per se?	13	from the screen, and again we don't know who that is
14	MS BOLTON: Yes.	14	either . Play on, please . (video played).
15	MR JUSTICE NICKLIN: Right.	15	Again, pausing there, there is a person at the back
16	MS BOLTON: My Lord, the next incident is 13 July 2022.	16	with $$ I think that's "Shame on you." Again we don't
17	Again, this is obstruction of the highway, common law	17	know who that is either. We can play on, please.
18	right of interference and access $$ the access land,	18	(video played).
19	trespass and harassment. So it's trespass on the part	19	Also pausing there, my Lord, you will also see that
20	that we have pleaded as an alternative as interference	20	the tent is on the access road, so somebody appears to
21	with the common law right now, my Lord, because we	21	be camping on the access road as well. If we could play
22	didn't understand the extent of the land at the time.	22	on, please, (video played).
23	My Lord, I think probably we need to go to video 24.	23	Sorry, if we can just play on, because I think what
24	MR JUSTICE NICKLIN: Right. (video played).	24	I was about to point out has just gone out of shot.
25	MS BOLTON: Pausing there, my Lord, we can see that that's	25	Pausing there, there is somebody else on the bell
	17		19
1	Ms Hodson.	1	mouth there, to the right, near where the car is coming
2	MR JUSTICE NICKLIN: This is a familiar incident. We have	2	past. Again we don't know who that is. Play on,
3	watched this before.	3	please, (video played).
4	MS BOLTON: Yes. We have looked at this one with Mr Curtin,	4	Pausing there, my Lord, you can see that we have
5	so I'm just going to play this video, my Lord, and not	5	a person unknown in a baseball cap and a white T-shirt,
6	all of the other videos.	6	who was obviously standing at the front there with
7	MR JUSTICE NICKLIN: That's fine.	7	Mr Morley, who is now filming close up at the car on the
8	MS BOLTON: If we can play on, please, (video played).	8	side. Again we don't know who that is. We can play on
9	Pausing there, my Lord, that's Mr Morley and	9	please, (video played).
10	Mr Patterson in front of the vehicle there as well.	10	My Lord, just pausing there, please, she just moved
11	Play on, please. (video played).	11	to the side but defendant number 5, Ms Mayflower, is
12	Pausing there, my Lord, you will see that there is	12	also $$ she has just moved to the other side of the
13	a group of people around the car. Some of them we can	13	car $$ holding a placard. That's her standing there.
14	identify and we have listed those in the schedule; the	14	We can play on, please. (video played).
15	others we can't.	15	Pausing there, you can see that more clearly there
16	MR JUSTICE NICKLIN: How many have you not been able to	16	now, my Lord. Play on, please. (video played).
17	identify?	17	So pausing there, we know that we have got people
18	MS BOLTON: I think there is at least three or four there	18	further back we can't identify but what we have there,
19	that we can't identify . If we play on, it becomes	19	we have managed to identify everyone in that front line
20	easier to see as people move around. (video played).	20	bar one. Play on, please. (video played).
21	So that's Mr Maher. So pausing there, that's	21	Then the next incident, my Lord, is 17 July and, in
22	Mr Maher on the left.	22	particular $$ this is again obstruction of the highway,
23	MR JUSTICE NICKLIN: Yes.	23	interference with the common law right to access the
24	MS BOLTON: Play on, please, (video played).	24	highway, an access land trespass and harassment

25

25

Pausing there, the person over the other side,

parasitic on the other causes of action. In particular,

are you standing in front of a car. Are you obstructing

historic events, well -- I wouldn't say it's easy but

1

if we can go to, please, video 170 and at 1 minute,

how you are using the highway, it's not simply a case of

1	if we can go to, please, video 170 and at 1 minute,	1	are you standing in front of a car. Are you obstructing
2	please. (video played).	2	free passage. In my submission, that is still part of
3	Pausing there, we have persons unknown standing in	3	obstruction of free passage.
4	front of the gate as the gate opens. Please play on.	4	MR JUSTICE NICKLIN: I test all of this by reference to what
5	(video played).	5	injunction would I grant, and the injunction has to be
6	Pausing there, we have the 5th defendant,	6	calibrated in a way that it makes clear to the people
7	Ms Mayflower, on the left here, and just behind her is	7	what they can and can't do and then it mustn't chill the
8	Ms Marley. I think that's going to become clear in	8	protest right because, if the persons unknown had
9	a moment but if we can play on, please, (video played).	9	a representative, that representative would say, "He is
10	Pausing there, you can see Mr Morley behind with the	10	not doing anything wrong there." And if there is
11	flag in his hand. Most of that first row, though, bar	11	a momentary obstruction of that vehicle's view of the
12	Ms Mayflower, are a person unknown. Ah, yes, I see, you	12	carriageway to the left , then that is not sufficient to
13	are going to see Ms Jaffray in a moment. So she is	13	
	,		interfere or curtail with the protest right because
14	behind Mr Morley at the moment with a black placard	14	otherwise —— the risk is that the injunction operates in
15	quite low down. If we can play on, please. (video	15	a way that people say, "I don't know what obstruct
16	played).	16	a vehicle means. If that includes momentary interfering
17	MR JUSTICE NICKLIN: Just pause there, please. The man with	17	with somebody's free passage on to the carriageway, that
18	the blue shorts that we can see closest to the camera,	18	could then lead to people feeling that they couldn't
19	that's a person unknown, isn't it?	19	stand anywhere on the carriageway within, let's say,
20	MS BOLTON: Yes.	20	20 metres either side of the gateway." That would not
21	MR JUSTICE NICKLIN: Just taking him as an example, he is	21	be an injunction that I would grant against an
22	not shouting, so leave aside the question about	22	individual absent some really aggravating features and
23	obstruction, he is in a different category because he is	23	yet it's one that I'm being asked to grant against the
24	not doing anything particular beyond holding his	24	whole world.
25	placard.	25	MS BOLTON: These are points that I will be making in legal
	21		23
1	MS BOLTON: My Lord, well, as you know, we have different	1	submission. I think that is a little bit where some of
2	categories of persons unknown. He is obstructing and	2	the obstruction of the highways cases perhaps have
3	that in itself is a category we rely upon.	3	blurred some lines, in that I think where it's the
4	MR JUSTICE NICKLIN: Yes. But let's focus on that because	4	carriageway, that is quite significant, and I think
5	this helps demonstrate some of the difficulties of this	5	that's what Jones is making a distinction on $$ is it's
6	exercise. If that gentleman had stood where he is	6	one thing to stand further back on the grass verge,
7	currently standing throughout the whole incident and	7	which was the case there, and hold a placard, it's
8	simply held a placard, he wouldn't — well, leave aside	8	another thing to be interfering with the primary use of
9	that now he is trespassing. He isn't obstructing.	9	the highway, which is to pass and repass, and I think
10	MS BOLTON: There is two points, my Lord. If he is standing	10	one of the things that then $$
11	where he is as part of that protest, he is interfering,	11	MR JUSTICE NICKLIN: Well, to an extent, all protests
12	first of all, with the common law right to access the	12	interfere with that right.
13	highway.	13	MS BOLTON: I think it's the difference between, if you are
14	MR JUSTICE NICKLIN: Why?	14	standing on the grass verge —— for instance —— this is
15	MS BOLTON: Because that isn't free access, the cars are	15	a good example: if the cars had come out of the site and
16	having to slow down, they are having to come out very	16	there was a large number of protesters who were standing
17	carefully . That isn't simply standing back with	17	on the grass verge along the main road, that may very
18	a placard.	18	well cause cars to slow down just because there is
19	Secondly, on the obstruction point, that's going to	19	people. That's absolutely fair enough. But where
20	be a matter for your assessment because, if we go back	20	people are stepping into the carriageway and altering
21	to the DPP v Jones case and what those whose —— putting	21	a car's course and slowing free passage and interfering
22	aside the dissenting views but even the views of the	22	with free passage, that is obstruction, and I think
23	majority of the Supreme Court who made that decision,	23	that's the line that Jones is trying to draw.
	talle otolaa aleea meesto alees alees to to to to	O 4	MD HIGHIGE NICKLING Voc. 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
24	it's right that, again, they talk about where you are,	24	MR JUSTICE NICKLIN: Yes, and when you are looking at

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            it's easier to focus on actual video evidence and say,
                                                                                   1
                                                                                             a protest ritual, as a symbolic act of, "I'm laying
 2
           "Right, that person is obstructing, that person isn't."
                                                                                   2
                                                                                             these flowers here to commemorate those dogs who have
 3
        MS BOLTON: Yes
                                                                                   3
                                                                                             lost their lives in the last week," there could be
        MR JUSTICE NICKLIN: But flipping that into an injunction
 4
                                                                                   4
                                                                                             absolutely no objection to that.
                                                                                         MS BOLTON: My Lord, there could be because that would be
 5
           that's looking ahead, how am I going to draw those
                                                                                   5
 6
                                                                                             a blatant trespass.
           lines?
                                                                                   6
                                                                                   7
                                                                                         MR JUSTICE NICKLIN: Okay, leave the trespass out of it. Up
 7
        MS BOLTON: Well, my Lord, that's something that I intend to
 8
           submit to you. We have had discussions about the
                                                                                   8
                                                                                             to the point -- so he lays the flowers, slightly to the
 9
           exclusion zone. We both know that the law on exclusion
                                                                                   9
                                                                                             left of the gateway, and he makes up a small memorial.
10
                                                                                 10
           zones, final orders is certainly not particularly in
                                                                                             There could be no objection to that, but my order would
11
           favour of it. It doesn't rule it out but it's not
                                                                                 11
                                                                                             prohibit that.
12
                                                                                 12
           always — it's not particularly encouraged in most
                                                                                         MS BOLTON: My Lord, that's happening anyway. The videos
13
                                                                                 13
                                                                                              will show that flowers are being thrown at cars and
                                                                                 14
14
               In this case, my submissions will be that a limited
                                                                                              lorries, they are being thrown into -- no one has
15
            level of exclusion will draw that line and make it clear
                                                                                 15
                                                                                             brought any committal on that. We accept that they can
16
                                                                                 16
           and I'm going to be asking your Lordship, whilst we are
                                                                                             do that --
17
                                                                                 17
                                                                                         MR JUSTICE NICKLIN: The court doesn't give you the right to
           looking at this evidence, to consider whether anybody
18
           should be on the access road at all. I'm not suggesting
                                                                                 18
                                                                                             decide by dint of an injunction who will be permitted to
19
           that it should be to the extent that it is on the
                                                                                 19
                                                                                             go into the exclusion zone. If I grant an exclusion
2.0
                                                                                 2.0
                                                                                             zone, it's an exclusion zone and everybody is out of it.
           interim order. But what we do want to try, in my
21
           submission, to avoid and what the claimant is anxious
                                                                                 21
                                                                                             So that's the difficulty with it, because the exclusion
22
           over is that the cars can get out and on to the
                                                                                 22
                                                                                             zone, although I'm not blind to the fact that it is the
2.3
                                                                                 23
           carriageway without having to drive on to the other side
                                                                                             answer to the uncertainty, which is the risk of the
2.4
           of the road and that the other thing that might need to
                                                                                 2.4
                                                                                              chilling effect -- if I grant an injunction that says --
           be considered -- and it's something which comes out
                                                                                 2.5
                                                                                             either against Mr Curtin or against persons unknown,
                                                                                                                      27
                                                                                             that says, "You must not obstruct vehicles when they are
 1
           again in Jones, is reference to grass verges, because
                                                                                   1
                                                                                             accessing the Wyton site," that is direct, it only
 2
           it's all part of the highway -- is whether at the bell
                                                                                   2
 3
           mouth, whether you really want people standing right on
                                                                                   3
                                                                                             prohibits unlawful activity. The difficulty with it is
           the grass verge or right at the edge of the access road,
                                                                                             what that means. The difficulty of transitory
 5
           because that does cause an obstruction and interference
                                                                                   5
                                                                                             interference, which would never in itself give rise to
           in itself . So from the point of view of -- we can see,
                                                                                   6
                                                                                             a legal action but then gets -- graduates immediately,
 6
                                                                                   7
 7
           as we go through the evidence, that, with some limited
                                                                                             potentially, into a contempt application.
                                                                                         \operatorname{MS} BOLTON: My Lord, it seems to me that -- obviously the
 8
           exceptions, which, following committals, calm down
                                                                                   8
 9
                                                                                   9
                                                                                             court has the power to -- there is two points: one, we
           completely, what the injunction has done is it has
10
           prevented this crowding, and your Lordship identified it
                                                                                 10
                                                                                             would say that incursions on to the access road at any
11
           as a flashpoint, and in drawing an injunction, my
                                                                                 11
                                                                                             time that vehicles are trying to enter or exit is an
12
           submissions are going to be that it's finding a way to
                                                                                 12
                                                                                             interference. We would say it's also an obstruction.
13
                                                                                 13
           maintain --
                                                                                             It's clearly an interference.
14
        MR JUSTICE NICKLIN: Yes, you need to --
                                                                                 14
                                                                                                 What Mr Curtin is asking to do, to put flowers by
15
                                                                                 15
        MS BOLTON: -- keep that flashpoint calm that will be
                                                                                             the gate. We say the gate, no, because that is trespass
16
                                                                                 16
                                                                                             and the claimant does have the right to say, "No, we
           important.
17
        MR JUSTICE NICKLIN: There are many virtues of the exclusion
                                                                                 17
                                                                                             don't want you putting flowers at the gate," but if what
18
           zone. The thing that can be said most in its favour is
                                                                                 18
                                                                                             your Lordship is asking is should an injunction prevent
19
           it's clear
                                                                                 19
                                                                                             Mr Curtin from laying flowers at the side of the access
2.0
        MS BOLTON: Yes
                                                                                 2.0
                                                                                             road, for argument's sake, when there are no vehicles
21
        MR JUSTICE NICKLIN: What argument can be advanced against
                                                                                 2.1
                                                                                             entering or exiting. I don't think anybody has any issue
2.2
           it is that it prohibits lawful behaviour, so we can --
                                                                                 2.2
                                                                                             with that. I think what the claimant's position would
2.3
                                                                                 23
           a convenient motif for this is Mr Curtin has provided it
                                                                                             be is this: first of all, we don't want people on the
2.4
           with his laying flowers at the gate.
                                                                                 2.4
                                                                                             access road because we say that that is the clearest way
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25

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If he simply wanted to do that as an exercise of

to prevent further torts from happening; and, secondly,

1	we don't want people obscuring views at the bell mouth.	1	out. It's not deliberate actions of this nature which
2	As to does it matter if Mr Curtin lays those flowers	2	keep happening and we have to look at it from, if the
3	at the edge of the access road or in the middle of the	3	claimant was here saying, "Well, I've got one example of
4	access road, we would say that to fairly strike the	4	a persons unknown but the rest of the time it's only
5	balance of making it clear, he should have to put them	5	a handful of people, all of whom we know. The rest of
6	at the edge of the access road. We are not $$	6	the time that's not the case," that may be different.
7	MR JUSTICE NICKLIN: That just brings in the whole question,	7	But it's not. What the evidence will show is that it is
8	you see, the court wouldn't ordinarily get anywhere near	8	a cast of different people on different occasions, very
9	regulating that conduct and the only reason that I'm	9	specifically obstructing and interfering with the right,
LO	having to contemplate it is because you are asking for	10	and we say that, yes, it may well be that an exclusion
L1	a persons unknown injunction, which means I've got to be	11	zone of some sort, if that was the way the court wished
L2	alive to the fact that what you are asking me to do is	12	to go, may very well prohibit some people from stepping
L3	impose an order that will apply to everybody.	13	into that area, who would never have dreamed of stepping
		14	in front of a car. But that's the balancing exercise on
L4	MS BOLTON: No, my Lord, it's not simply because of the		
L5	persons unknown order; the example there of Mr Curtin.	15	whether it should go that far or whether it should
L6	MR JUSTICE NICKLIN: Leave Mr Curtin. Mr Curtin is easy.	16	specifically just say that you don't obstruct and step
L7	If the court takes the view that the evidence discloses	17	in front of vehicles.
L8	that, in the past, Mr Curtin has obstructed vehicles and	18	MR JUSTICE NICKLIN: You see, the thing that troubles me the
L9	that there is a credible basis on which to believe that,	19	most about this is what right do I as a judge have to
20	if not restrained by injunction, he will do so in the	20	strike that balance.
21	future, then that's straightforward, and I've done the	21	MS BOLTON: Because the law has said you do, my Lord.
22	careful balancing of his case on the basis of the	22	MR JUSTICE NICKLIN: Really?
23	evidence, on the basis of his evidence, and I've reached	23	MS BOLTON: Yes. And that's becoming ——
24	a decision, and I can carry out the	24	MR JUSTICE NICKLIN: You see, on exclusion zone, you
25	proportionality/necessity assessment that's required in	25	recognise, an exclusion zone against persons unknown is
	29		31
1	his case.	1	an unusual order. It is difficult to justify by
2	Mr Curtin, I'm only using your name. I could use	2	reference to the causes of action because by definition
3	anybody. You are just a useful example of a known	3	it reaches into areas that are not a civil wrong.
4	person, rather than the persons unknown. So it's not	4	MS BOLTON: Yes.
5	concerning you, I'm just using yours as an example to	5	MR JUSTICE NICKLIN: So it prohibits behaviour that's not
6	demonstrate the point.	6	a civil wrong.
7	MR CURTIN: Yes. I'm listening.	7	MS BOLTON: Yes.
8	MR JUSTICE NICKLIN: That's easy. It's not easy. Actually,	8	MR JUSTICE NICKLIN: And I'm doing that against everybody
9	this case has shown that even looking at Mr Curtin's	9	and so what I'm effectively doing is $$ by analogy $$
LO	case provides a level of complexity and analysis that's	10	I am imposing a PSPO outside the Wyton site. That's the
L1	required as to exactly what he is doing, what his	11	effect of it.
L2	justification for it is, et cetera. So that's —— I will	12	MS BOLTON: And the Court of Appeal in INEOS recognised that
L3	say it's easier to deal with a real case than it is to	13	there may be times when you have to make that order and
L4	try and imagine a panoply of people and their activities	14	again — sorry, no, it's the clarification of INEOS in
L5	and what order could be justified prospectively against	15	Cuadrilla, recognising that you have to make —— it's
L6	these people.	16	Lord Justice Leggatt —— that you sometimes have to
L7	MS BOLTON: The revolving cast of people, my Lord, are	17	strike that balance in a way that will include
L 8	a part of the reason why that prohibition is justified .	18	prohibiting lawful conduct to get the balance right and
L9	This gentleman you've looked at here was stood in front	19	
20	of the cars. He has now moved to the side. We are	20	to make the injunction effective .  MR JUSTICE NICKLIN: Yes, I understand —— this is what's
21		21	
	going to see a number of videos where different people	21	happened in this case.  MS BOLTON: Yes.
22	take that action. From a persons unknown category, this	23	
23	can't be viewed as in any way de minimis. De minimis	23	MR JUSTICE NICKLIN: As an interim measure, in order to calm
24	might be somebody slowing somebody down in the highway	∠ 4	things down while the court tries to resolve the matter,

25

25

because they have stepped around something or stepped

as a matter of practical expediency, sometimes the best

1	way of doing it $$ and it seems to have worked in this	1	coming to court 13 might be their view that there was
2	case substantially $$ is to impose an exclusion zone	2	a significant costs risk of doing so.
3	because it's like $$ it's like separating two people in	3	MS BOLTON: My Lord, I would make a number of points on
4	a bar brawl, saying, "You stand over there, you stand	4	that. One, that is something the court still can
5	over there."	5	control through an order, any order it makes, in the
6	MS BOLTON: Yes.	6	same way as it has done in this litigation . Secondly,
7	MR JUSTICE NICKLIN: And then everybody needs to calm down	7	I think that this is something else that is going to
8	and we will have a look at what the rights are.	8	soon —— well, I will be very surprised if it doesn't
9	Imposing it as a final order against persons	9	feature in the Supreme Court's decision because it was
10	unknown, including newcomers, is essentially imposing	10	a representation made on behalf of the Friends of the
11	a PSPO but without any of the PSPO safeguards, in	11	Earth. And so I think $$ and obviously there has been
12	particular the democratic element which goes into	12	difficulties because the cost capping regime had changed
13	a PSPO, which is the consultation.	13	but this is something I'm fairly sure we are going to
14	MS BOLTON: My Lord, I make a couple of points on that.	14	hear about in a judgment, whenever it is handed down.
15	First of all, it isn't law that's confined only to	15	MR JUSTICE NICKLIN: Okay. I am just —— I'm sorry that I'r
16	interim orders, as the case law stands at present.	16	interrupting in this way.
17	MR JUSTICE NICKLIN: I know. In theory I could do anything.	17	MS BOLTON: I understand ——
18	MS BOLTON: Yes. Secondly, that gentleman there does have	18	MR JUSTICE NICKLIN: It's helpful when we have got a video
19	the right to come back to the court and say, "You	19	on the screen for you to understand what I'm thinking
20	haven't determined my rights yet, and I want you to	20	about in terms of how does this all work.
21	consider this ."	21	MS BOLTON: Yes.
22	MR JUSTICE NICKLIN: Okay, I think that's illusory.	22	MR JUSTICE NICKLIN: Because it's by reference to the
23	MS BOLTON: But that is available to him to do, as it is to	23	evidence that I will have to make these ultimate
24	any litigant where $$ to any person where rights are	24	decisions. So when we are looking at the evidence, when
25	decided where they haven't been ——	25	these points occur to me, I wanted to just raise them
	33		35
1	MR JUSTICE NICKLIN: Let's talk about what happens to that	1	with you, but I'll try and sit quietly now and we can go
2	gentleman in the event that he is unsuccessful. He is	2	through the rest of the evidence.
3	then thumped with an enormous costs order.	3	Oh, it's time for a break, you are quite right.
4	MS BOLTON: My Lord, I think that's a matter of discretion	4	MS BOLTON: It is indeed.
5	for the court. In the same way that the court has	5	MR JUSTICE NICKLIN: Right. We will come back at ten past
6	regulated $$	6	12. Thanks very much.
7	MR JUSTICE NICKLIN: I've heard the evidence from Mr Curtin,	7	(11.52 am)
8	which says that one of the things that prays on the mind	8	(A short break)
9	of the protesters $$ and this isn't a surprise, it has	9	(12.09 pm)
10	come up in other cases $$ is the risk that they will be	10	MR JUSTICE NICKLIN: Right.
11	practically wiped out by a costs order if they dare set	11	MR CURTIN: My Lord.
12	foot in the court.	12	MR JUSTICE NICKLIN: Hello, Mr Curtin.
13	MS BOLTON: But your Lordship has already made costs capping	13	MR CURTIN: Am I allowed to address you on one point? My
14	orders in this case and the court does have the	14	intention is just is to $$ I said I didn't intend to
15	discretion on costs as to how it approaches costs.	15	partake in these proceedings but just to $$ I just
16	MR JUSTICE NICKLIN: I know, and if I had a reliable channel	16	wanted to give you one typical example, for example, the
17	of communication, whereby I could assure protesters that	17	idea of the obstruction, there has been many times
18	they didn't need to fear as much as they do what might	18	during the injunction, where, say, they get lorry
19	happen to them if they come to court, then that might	19	deliveries of sawdust from, I think, Poland and they get
20	assuage some of their concerns but one of the things	20	their food from Germany. There is many times in the
21	that makes it, it seems to me, illusory about the	21	injunction where, say, a lorry arrives, it has its
22	notional idea that any of these individuals in the	22	indicator on and I've felt unable to address that lorry
23	future might be able to come to court 13 and ask me or	23	driver in any way apart from shouting at him. I haven't
24	another judge to vary a persons unknown injunction, one	24	been able to $$ for example $$ say the Anglia Water,
25	of the things that might discourage him or her from	25	which I testified didn't go so well. If that had been

1	a milder version of that, three people who just want to	1	on her. If we could play on, please. (video played).
2	flag a vehicle down for a very brief moment in time,	2	Pausing there, and again the person being pulled
3	"Here you are. Do you know where you're going? Here's	3	from the grass verge and joining the protest there, you
4	a leaflet ." I just want to put that in as	4	will see, is wearing a balaclava. If we can play on,
5	a hypothetical thing for consideration $$	5	please, (video played).
6	MR JUSTICE NICKLIN: I had already thought of that incident,	6	So, my Lord, we would say that that is a good
7	myself, Mr Curtin, and the extent to which, if	7	example of a significant obstruction of the highway
8	a protester tries to engage a vehicle that's visiting	8	involving many people, of which it's simply not possible
9	the facility , to encourage them to take a leaflet,	9	to identify large numbers of those people.
10	whether that is or isn't obstructing the vehicle $$ we	10	MR JUSTICE NICKLIN: But that obstruction of the highway,
11	will come on to this because it will be a point that we	11	there are several aspects of that. The first is you
12	need to discuss in the final submissions. Okay.	12	would need to show a loss before you could bring a claim
13	MR CURTIN: This isn't a pattern I'll follow. I'll only do	13	in relation to that.
14	it if I feel it's absolutely essential to say something.	14	MS BOLTON: Yes.
15	MR JUSTICE NICKLIN: It's all right, Mr Curtin. Thank you	15	MR JUSTICE NICKLIN: Where is that?
16	very much.	16	MS BOLTON: The loss, my Lord, that's pleaded, which is
17	Right, Ms Bolton, carry on.	17	appropriate, is it's particular loss, which is —— it can
18	MS BOLTON: My Lord, I'm not going to spend any more time on	18	be a form of general damage but it has to be particular
19	the incident of 17 July because you've seen it when we	19	to those people who are suffering the obstruction and
20	were going through Mr Curtin's evidence.	20	the claimant, and that is both in the sense of loss of,
21	MR JUSTICE NICKLIN: Yes.	21	one, the delay; two, the loss of staff; three, the
22	MS BOLTON: We are going to turn to the incident of 22 July,	22	occupational health risk ——
23	which is an obstruction of the highway incident and	23	MR JUSTICE NICKLIN: You need to show that was caused by
24	harassment parasitic on the obstruction. If we can play	24	that incident.
25	the video briefly from the beginning, please. (video	25	MS BOLTON: We have pleaded that all of these are caused by
23	the video briefly from the beginning, please. (video	23	1913 BOLTON. We have picaded that all of these are caused by
	37		39
1	played).	1	these obstructive incidents because of the impact it has
2	Pausing there, that's Mr Broughton, and, my Lord,	2	had on the staff. So all of those are incidents, we
3	they are saying they are going to get this treatment	3	say, where we have suffered particular damage because it
4	every day. I think the car starts to come out at 1	4	is the claimants that are the target of this.
5	minute and 10 seconds, if we can go to that, please.	5	MR JUSTICE NICKLIN: So you are ultimately seeking an
6	(video played).	6	injunction from me that would make that —— what I've
7	Pausing there, that's Mr Morley and a person unknown	7	just watched unlawful?
8	in front of that vehicle. Play on, please, (video	8	MS BOLTON: My Lord, that is unlawful, in my submission.
9	played).	9	MR JUSTICE NICKLIN: Well, you see, the police are there.
10	Pausing there, you will see that that car —— that	10	Are you saying the police are not doing their job
11	the gap is closing and that car is having to come out	11	properly?
12	very slowly. If we can play on, please. (video	12	MS BOLTON: It's not for me to comment on why the police
13	played).	13	don't arrest every person involved.
14	Pausing there, and we can now see we have people in	14	MR JUSTICE NICKLIN: Probably because the police have a very
15	front of the car, not staying clear from the car. We	15	difficult job to do, which is to balance the competing
16	don't know who those people are. Play on, please.	16	rights, which is there is a large number of people who
17	(video played).	17	want to exercise their protest right. They are all —
18	I believe that, pausing there, the lady in the	18	the police —— well, my inference would be the police
19	orange jacket is Ms Mayflower and the gentleman walking	19	have taken a decision, operationally, that they are
20	back in is Mr Morley. There are a number of other	20	going to tolerate a degree of obstruction of the highway
21	people surrounding the car. Play on, please. (video	21	in pursuit of this protest because they judged, probably
22	played).	22	rightly, it won't go on all that long and it's
23	Pausing here, this is Employee Q's car, my Lord.	23	a proportionate policing measure not to seek to
24	That's one of the employees, the evidence is that she	24	interfere beyond that. They might take out individual
25	left as a result of the impact the protests were having	25	people, if they see any particular commission of other
	and the second s		property and an appearance of the state of t

1	criminal offences, but that's the police doing their	1	MR JUSTICE NICKLIN: Well
2	job.	2	MS BOLTON: Bear in mind $$
3	MS BOLTON: It's not the police that determine a civil	3	MR JUSTICE NICKLIN: Whether it is or isn't a lawful protest
4	wrong, it's in this claim whether there is a civil wrong	4	and whether it is or isn't an obstruction of the highway
5	being committed that $$	5	is a fact-specific question, always.
6	MR JUSTICE NICKLIN: Yes, but in that incredibly important	6	MS BOLTON: It is indeed, and we do need to bear in mind
7	function of the police $$ there couldn't be probably	7	that the police at the time is $$ the police were very
8	a more important role for the police in policing	8	much acting following the decision in Ziegler because
9	demonstrations than to set that balance correctly, and	9	Ziegler was very much taken as a catch—all approach that
10	you are asking for me to set aside that balancing	10	is to be considered. Abortion Services have made it
11	exercise and, without any further knowledge, in the	11	clear that's not and Jones wasn't cited in Ziegler. So
12	future just to prohibit it.	12	that also has to be looked at in the context of at the
13	MS BOLTON: Well, my Lord, I make a number of points on	13	time as well because, at the time, police were very
14	that. First of all, it's the police that encouraged the	14	nervous about where the line rested after Ziegler, it
15	claimant to seek an injunction . Secondly, the police $$	15	was clearly somewhere different to what they had
16	MR JUSTICE NICKLIN: Where is the evidence of that?	16	understood previously.
17	MS BOLTON: I think that's Ms Pressick's evidence, my Lord.	17	I think we have to look at the fact that we are
18	Secondly, the police have indicated that the injunction	18	looking at historic events where law has changed again
19	has assisted them. That was in Superintendent Sissons'	19	since then.
20	first witness statement.	20	MR JUSTICE NICKLIN: I don't think it's changed from the
21	MR JUSTICE NICKLIN: Superintendent Sissons, yes.	21	basic proposition, which is the decision the police have
22	MS BOLTON: Thirdly, it comes back to this point that's made	22	to make on any protest occasion is what is the correct
23	in the Abortion Services case by the Supreme Court, that	23	policing response to this, bearing in mind the
24	the delineation between whether it should be dealt with	24	underpinned rights of Article 10 and Article 11, and the
25	by criminal or civil isn't helpful, and Ziegler is using	25	police $$ the law has not changed to say that the law
	41		43
1	the example of what then happens with the	1	says that what I've just watched on the video is
2	Insulate Britain protests, if instead they go the route	2	unlawful.
3	of civil injunction. What we have to look at is, is	3	MS BOLTON: My Lord, if you look at DPP v Jones, what you've
4	there a wrong and is there a remedy that can fit that	4	just seen is unlawful. That's the point the court is
5	wrong, because that's the situation we are in, and you	5	making. It may not be an obstruction to stand on the
6	heard at the beginning of that protest this is what they	6	grass verge, which is part of the highway; it will be to
7	are going to get every day and, if there hadn't been an	7	prevent the usual passing and repassing. Your rights
8	injunction ——	8	don't go past that and $$
9	MR JUSTICE NICKLIN: They didn't do that every day, even	9	MR JUSTICE NICKLIN: Then it's an academic question because
10	before the injunction.	10	then it's a question of enforcement.
11	MS BOLTON: There was a significant amount of it before $$	11	MS BOLTON: My Lord, indeed, and what we have seen is an
12	MR JUSTICE NICKLIN: There were several flashpoint days,	12	injunction that has had a significant impact on those
13	where there were a significant number of people, but	13	wrongs because we haven't seen them of that scale, save
14	that was not the norm.	14	a couple of incidents which, following committal
15	MS BOLTON: Well, my Lord, there are a number of days $$	15	proceedings, haven't reoccurred on that scale.
16	nobody should have to go to work through that, day in,	16	MR JUSTICE NICKLIN: Okay.
17	day out, or even weekly. But that is a significant	17	MS BOLTON: My Lord, the next incident is 27 July 2021,
18	obstruction. It isn't a case of a one—off protest, it's	18	which is obstruction of the highway, interference with
19	a case of relentless protesting, that has gone on, as	19	the common law right to access the highway, and
20	Mr Curtin gave evidence, for a significant period of	20	harassment. It's video 57, please. (video played).
21	time, and what was happening was not a one—off incident.	21	Pausing there, again we see the difficulty that the
22	That is a significant obstruction and that, plainly,	22	vehicles are having accessing the highway. We have
23	looking at the law under the DPP v Jones —— that's	23	a person unknown $$ it looks like their head is
24	plainly obstructing the right to pass and repass. That	24	covered $$ standing on the highway, and we have
25	isn't part of a lawful protest.	25	obviously got people very close to the vehicle and

1	leaning across the vehicle.	1	Next incident, my Lord, is 28 July. And again this
2	MR JUSTICE NICKLIN: Just pause there. Which of the people	2	is obstruction of the highway and access land trespass
3	in this group of people do you say are interfering with	3	and harassment parasitic on the other causes of action,
4	the common law right?	4	and that's video 62. You will be able to see the fifth,
5	MS BOLTON: Well, my Lord, there is a flag across the	5	the 9th and the 18th defendant in this video. So that's
6	vehicle's windscreen.	6	Mr Morley, Ms Mayflower and D18, Lou Marley. (video
7	MR JUSTICE NICKLIN: Okay, that's one person.	7	played).
8	MS BOLTON: The whole of the access road has been narrowed,	8	Again, that's Employee Q's car, my Lord, being
9	which is interfering with the car's access on to the	9	targeted, one of the staff that left as a result of the
10	highway, and people are standing in the way.	10	protests.
11	MR JUSTICE NICKLIN: Let's just work from left to right.	11	MR JUSTICE NICKLIN: Is there an explanation for why the
12	The first person with the pink tabard.	12	preceding cars are allowed to go in pretty freely?
13	MS BOLTON: Yes, because she is on the bell mouth, my Lord,	13	MS BOLTON: No, my Lord, there isn't. I think Mr Maher is
14	right by where the car needs to pull out.	14	there as well, my Lord.
15	MR JUSTICE NICKLIN: So that's everybody then on this side	15	MR JUSTICE NICKLIN: Right. Leave aside Employee Q's car
16	of the vehicle?	16	that was obviously obstructed; you are saying the other
17	MS BOLTON: Yes.	17	vehicles have been $$ what, there has been an
18	MR JUSTICE NICKLIN: The gentleman standing on the opposite	18	interference with the right of access to the land?
19	side of the carriageway?	19	MS BOLTON: My Lord, indeed, because that is still part of
20	MS BOLTON: Yes, my Lord, because that's where the car needs	20	the highway and you would see that even the narrowing of
21	to go.	21	the channel was causing cars to back up because it's
22	MR JUSTICE NICKLIN: So everybody in this picture?	22	slowing everybody down ——
23	MS BOLTON: Not everybody, my Lord, there is obviously	23	MR JUSTICE NICKLIN: Is that not de minimis?
24	people further back, where the tents are, but, yes, this	24	MS BOLTON: My Lord, the incident isn't de minimis because
25	is a clear interference with the common law right to	25	for a start —— I make two points. No, it's not de
23	· ·	23	·
	45		47
1	access the highway.	1	minimis because it's not a fleeting obstruction, it's
2	MR JUSTICE NICKLIN: Right, and how would I define that in	2	a regular obstruction. This is the fifth obstruction
3	an injunction?	3	that month that we are taking your Lordship to.
4	MS BOLTON: In the same way that your Lordship $$	4	MR JUSTICE NICKLIN: Yes. Hang on a minute.
5	MR JUSTICE NICKLIN: If the lady in the pink tabard stood	5	MS BOLTON: And bear in mind these are a selection of
6	2 metres further back, would she be interfering with it	6	incidents. We will be giving you
7	or not?	7	MR JUSTICE NICKLIN: I know that.
8	MS BOLTON: If she stood 2 metres back and not on the	8	MS BOLTON: —— a large quantity more.
9	carriageway, my Lord. For instance, if that lady was	9	MR JUSTICE NICKLIN: But if I were asked to look at this
10	the other side of that cone, there could be no objection	10	incident and say, was the right of access interfered
11	to that. If she is standing back —— because the bell	11	with here, on this occasion, apart from that one car,
12	mouth comes out further than that —— you can see round	12	which for some reason has been surrounded, the other
13	her. There is no issue there.	13	cars passed relatively freely into the facility, not as
14	And something that I made clear in my opening	14	freely as if the people hadn't been there but —
15	submissions, we accept that any — if there was to be an	15	MS BOLTON: Again, my Lord, that's the point, it's still
16	exclusion zone, it's not going to be in the same terms	16	interfering with the right to pass and repass. It then
17	for a final order as it is for the interim injunction.	17	becomes more aggravated towards the end of the incident,
18	That may very well be too wide. But we said keeping	18	where a car then gets completely surrounded, and that's
19	, ,		
	people off the access road is likely to draw the line in	19 20	the problem. And what has changed is, because people
20	the right place.	20	are not in that position where they are interfering
21	If we can play on, please, (video played).	21	already with the right to pass and repass, we are not
22	My Lord, apologies, it has just been pointed out to	22	getting that surrounding of cars.
23	me we have only identified D7 on that particular video	23	MR JUSTICE NICKLIN: Right.
24	but Mr Morley is also present, in the spearmint T—shirt,	24	MS BOLTON: My Lord, the next incident is 7 August, my Lord
25	on that video.	25	which is obstruction of the highway, the interference

1	with the common law right to access the highway and an	1	can play on, please (video played).
2	access land trespass and harassment parasitic on the	2	Pausing there, "We control the gates," being
3	other causes of action.	3	shouted. Play on, please. (video played).
4	My Lord, there is two videos. Video 75. If we	4	Pausing there, my Lord, you will remember in
5	could watch from the start to 1 minute and 40 seconds,	5	cross-examination, Mr Hardy was asked whether he was
6	please. (video played).	6	terrified by people surrounding his vehicle. That's his
7	You will see just there that's Ms Laidlaw, my Lord,	7	vehicle there. If we can play on, please. (video
8	and that's Ms Hodson coming forwards. So they are the	8	played).
9	two in the front. We don't know who the people are	9	Thank you. I'm going to skip over the next video
10	behind them. And that's both Employee Q's car again, my	10	and go ——
11	Lord, and Employee F's car in that incident. If I could	11	MR JUSTICE NICKLIN: Just pausing on that before we move on,
12	go to video 76 on this incident, please. (video	12	you make the point about Mr Hardy being distressed by
13	played).	13	the surrounding of his vehicle. If I were looking at
14	Again, my Lord, you can see again a vehicle is	14	individual claims against individual —— those —— the
15	having to be moved off the road for them to come out.	15	individual $$ we pick them out, we give them a number, $1$
16	So, my Lord, that's the incident of 7 August. There	16	to 10, and then the question would be for me at a trial
17	is then a further incident on 8 August. If we could go	17	to decide whether that individual was responsible for an
18	to video 143, please. (video played).	18	act of harassment. But each of those would require an
19	Pausing there, we can see we have Mr Maher. We are	19	analysis of what that person did. Some of those
20	going to see a number of the other named defendants in	20	people $$ leave aside the moment of trespass $$ some of
21	this	21	these people just stood with a placard. Did no
22	That's Lou Marley in the black T-shirt, further	22	shouting.
23	along from Mr Maher. If we could play on, please.	23	MS BOLTON: Yes, my Lord. We are not looking to prohibit
24	(video played).	24	people standing off the access road with a placard. We
25	And that's Ms Mayflower coming forwards, D5. That's	25	are not asking for that. I totally accept that —— and
	40		51
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1		1	
1 2	Ms James coming forwards. Pause there, please. That's	1 2	what's interesting is, when you listen to the protest
2	Ms James coming forwards. Pause there, please. That's a smoke flare that has been let off, my Lord, and we are	2	what's interesting is, when you listen to the protest messages and what people are shouting, they can shout
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1	There is the obstruction as in standing in front and the	1	the access.
2	interference with the common law right to access the	2	Then if we move to 10 minutes and 15 seconds,
3	highway but also there is a visibility issue because the	3	please. (video played).
4	staff simply can't see out to start to move forwards	4	We can see here it's Employee P in the lead car and
5	anyway.	5	you can see people have come across and you can see the
6	MR JUSTICE NICKLIN: Okay, lunchtime?	6	cars $$ there is protesters and there is placards where
7	MS BOLTON: Lunchtime, my Lord.	7	the car is trying to come out on to the highway. The
8	MR JUSTICE NICKLIN: Thank you very much. 2 o'clock then.	8	car is having to go completely over the other side of
9	(1.00 pm)	9	the road.
10	(The short adjournment)	10	Then if we can go to video 116, this was captured by
11	(2.00 pm)	11	D19. (video played).
12	MR JUSTICE NICKLIN: Yes, Ms Bolton, where next?	12	We see the police want to clear
13	MS BOLTON: My Lord, before I proceed, I did take some	13	So pausing there, there has been a barricade, which
14	instructions over the lunchtime adjournment over the	14	the protesters have put in place and they are refusing
15	point your Lordship made about the person unknown	15	to move. So the police deconstruct the barricade and,
16	applying after an order has been made and the fear of	16	if we could go to 14 minutes and 45 seconds, please.
17	a costs order.	17	(video played).
18	MR JUSTICE NICKLIN: Yes.	18	So you can see you've got people sitting on the
19	MS BOLTON: My Lord, it seems to me that one of the things	19	crates.
20	the court could do —— and the claimant would be content	20	Then if we can go to 21 minutes and 55 seconds,
21	with —— is to draft something into the order that says	21	please. (video played).
22	there will be no costs against an applicant without the	22	My Lord, this goes on, as you will have seen from
23	permission of the court. So the court could effectively	23	the other camera angle. If we can then pick up D19's
24	assess, if something was entirely unreasonable, that it	24	video at 117.
25	orders costs but, otherwise, there is no costs	25	MR JUSTICE NICKLIN: Who videoed this?
	orders costs but, othermos, there is no costs	20	The viacous time.
	53		55
1	implication for that person.	1	MS BOLTON: That's Ms Windler.
2	MR JUSTICE NICKLIN: Okay.	2	MR JUSTICE NICKLIN: Right. (video played).
3	MS BOLTON: The claimants would have no objection to that.	3	MS BOLTON: That's Mr Broughton, my Lord.
4	MR JUSTICE NICKLIN: Why don't you draft something that you	4	My Lord, this continues. If we can move on to about
5	think would meet that concern and then we can look at it	5	five minutes, please, if we can move on to about ten
6	when we come to the final submissions.	6	minutes, sorry, into the video. (video played).
7	MS BOLTON: My Lord.	7	If we can continue for another five minutes, please,
8	MR JUSTICE NICKLIN: Thank you very much.	8	into 15 minutes.
9	MS BOLTON: My Lord, the next incident is 11 August.	9	(video played).
10	MR JUSTICE NICKLIN: Yes.	10	On to 20 minutes, please. (video played).
11	MS BOLTON: Again this is an obstruction of the highway,	11	So we are still not able to get past, and if we can
12	interference with the common law right and harassment.	12	go to 24 minutes, please. (video played).
13	MR JUSTICE NICKLIN: Yes.	13	Thank you. If we can stop there.
14	MS BOLTON: I'm conscious these are long videos, so I'm	14	So again, my Lord, this was a significant
15	going to move them on as much as I can.	15	obstruction incident, significant interference in the
16	MR JUSTICE NICKLIN: Okay.	16	common law right to access the highway, and we would
17	MS BOLTON: But if we can just start for a moment with video	17	submit it's also one we rely on as harassment parasitic
18	114, please, so you can see at this point the barricade	18	on those two other causes of action.
19	in front of the gates, of the crates. If we then move	19	The next incident, my Lord, is 13 August, 2021, and
20	into seven minutes, please, the police are just going to	20	again this is obstruction of the highway, an access land
21	start to deconstruct the crates so that staff can get	21	trespass and harassment, and the video is video 154.
22	out.	22	(video played).
23	MR JUSTICE NICKLIN: Yes. (video played).	23	This was where a convoy of staff cars were
24	MS BOLTON: And you can see that there is police further up	24	intercepted on the main carriageway, around 70 metres
25	the road because they are trying to effectively control	25	from the access road, and escorted to the site, and it

1	takes about 40 minutes for all vehicles to travel along	1	objection to people who have been arrested, charged and
2	the highway and into the site.	2	brought before the court — there can be really no
3	You will see D4, D3 and D18 but also persons unknown	3	objection to being provided with that information. If
4	instrumental in the incident. And if we can look at	4	they were reluctant to do so, it would have been,
5	video 154, first of all at the beginning. (video	5	I suspect, a candidate for Freedom of Information Act
6	played).	6	request.
7	You can see where the vehicles are held up, just up	7	MS BOLTON: I think, my Lord, that they've provided the
8		8	
9	the road, and if we move forward to five minutes, we get	9	information, though, to the court.
	an idea of the slow progress and the surrounding of the		MR JUSTICE NICKLIN: I only ever required them to provide ——
10	cars. And then again if we move to ten minutes, please,	10	not a name but an identifying individual —— sorry,
11	and then 15 minutes and then 20 minutes and then 25	11	a letter. They have all been given letters by
12	minutes and then 30 minutes, please, we will now see the	12	Superintendent Sissons.
13	protesters have come on to the access road. You've got	13	MS BOLTON: Yes. I will seek clarification on whether we
14	Mr Broughton and Ms Marley next to each other on the	14	know who was arrested on that day.
15	access road there, my Lord. Then if we go to 32 minutes	15	MR JUSTICE NICKLIN: Okay. Because if they have been
16	and 30 seconds, please. And the gentleman with the blue	16	arrested $$ I mean, as a broad rule of thumb,
17	hoodie, who is behind Mr Broughton, that's Mr Falsey.	17	particularly on the videos I've just watched, the people
18	I'm being reminded that right at the end there,	18	who have been arrested must have been behaving pretty
19	Ms Laidlaw was on the access land as well, my Lord.	19	badly. So they would have been candidates for being
20	There is also a video 944. (video played).	20	joined to the proceedings if they weren't already in the
21	If we just go forwards a little bit, please, and	21	proceedings.
22	what that's doing is showing that there is a number of	22	MS BOLTON: My Lord, yes. I know that some prosecutions on
23	people involved; it's not just named defendants. It's	23	obstruction of the highway failed because the CPS had
24	zooming in on people, trying to identify those that can	24	some difficulties understanding where the highway was
25	be identified . But we can't tell who everybody is.	25	and where private land was and I think there was some
	57		59
1	That's Mr Falsey there with Mr Broughton again, my Lord.	1	muddles there, and that's not relating to the trespass
1 2	That's Mr Falsey there with Mr Broughton again, my Lord.  If we can move forward a little bit, please. That's	1 2	muddles there, and that's not relating to the trespass point of the access land.
2	If we can move forward a little bit, please. That's	2	point of the access land.
2	If we can move forward a little bit, please. That's Ms Laidlaw. Thank you.	2	point of the access land.  MR JUSTICE NICKLIN: Yes, okay.
2 3 4	If we can move forward a little bit, please. That's Ms Laidlaw.	2 3 4	point of the access land.  MR JUSTICE NICKLIN: Yes, okay.  MS BOLTON: I think some prosecutions failed on the basis
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1	that's a significant obstruction. The police are trying	1	protests sometimes, which are a procession going
2	to move people forwards and they are making very slow	2	through $$ they notify the police of the numbers, it's
3	progress.	3	all organised, but that isn't what's happening here.
4	MR JUSTICE NICKLIN: 15 August is a good example of $$ the	4	This is an obstruction of vehicles, the targeting of
5	policing response depends on various factors, one of	5	vehicles .
6	which is how many people are present, and so, if 400	6	MR JUSTICE NICKLIN: Well, that's how you characterise it,
7	people turn up one afternoon wanting to protest, the	7	but the larger the number of people, the more difficult
8	question is where are they going to go. There is going	8	it is to say that anybody is targeting. You can see
9	to be, by sheer dint of numbers — there is going to be	9	some of these people in the crowd, they are fairly young
10	a degree of interference with the highway and access to	10	people, who may have been attracted by the idea that
11	the land, simply as a matter of physics that they are	11	they wanted to join a demonstration to make their voice
12	physically present in a confined space and what do the	12	heard about their opposition to $$ the idea that all of
13	police do about them. Leave aside whether I grant an	13	those people are targeting the staff is pretty fanciful.
14	injunction. So suddenly 400 people, who want to	14	MS BOLTON: Not all of those people would be caught by the
15	exercise their protest right, simply, because they	15	injunction. It's very clear that there are a number of
16	attend with all the other people, potentially find	16	people who are not in the way of the police. They are
17	themselves in breach of a High Court injunction.	17	not going to be caught by the injunction. It's the
18	MS BOLTON: My Lord, you can see what's happened. You've	18	people who are standing in the road ——
19	heard the staff talking about it on the dash cam. The	19	MR JUSTICE NICKLIN: Yes, the difficulty —— and well
20	police indicate, when there is a very large protest,	20	recognised in the protest authorities is the chilling
21	which way they want them to turn.	21	effect, which is, if I grant an injunction, some people
22	MR JUSTICE NICKLIN: Yes.	22	will say, "I'm not going there because there is an
23	MS BOLTON: So there is a way of people moving out of the	23	injunction in place and it's too risky."
24	way but they're not trying to.	24	MS BOLTON: It doesn't become a chilling effect to say you
25	MR JUSTICE NICKLIN: Sure, but if I were to grant an	25	shouldn't obstruct cars. You can't simply override —
23	Will Soo Free Michelle. Sure, But in Fwere to grain an	23	Shouldn't obstruct curs. Tou cur t simply override
	61		63
1	injunction in the terms you are outlining to me, that	1	MR JUSTICE NICKLIN: I'm mindful of the fact that one of
2	event wouldn't be possible.	2	your allegations against Mr Curtin is that when he
3	MS BOLTON: My Lord, if that event requires people to crowd	3	crosses the road, he is obstructing a car.
4	the highway, that's not lawful.	4	MS BOLTON: Mr Curtin was crossing the road in front of an
5	MR JUSTICE NICKLIN: Okay. So who is to decide which of the	5	employee who had just left the site.
6	protesters is going to be able to exercise their protest	6	MR JUSTICE NICKLIN: You contend it's an obstruction.
7	right that day or not?	7	MS BOLTON: Our contention is he is looking directly at her,
8	MS BOLTON: That's the point of the persons unknown order,	8	he is walking out in front $$
9	my Lord.	9	MR JUSTICE NICKLIN: I've got the point. That just shows
10	MR JUSTICE NICKLIN: No, I don't think it is because it goes	10	you how not everybody's definition of what obstruction
11	back to what was wrong with the original Harlan	11	is is the same.
12	injunction. Capping the numbers at 25 is arbitrary. It	12	MS BOLTON: My Lord, how that is characterised ——
13	cannot be justified as either necessary or	13	MR JUSTICE NICKLIN: If you've got 400 people, how are they
14	proportionate. In a similar but slightly more fuzzy	14	going to demonstrate outside the Wyton site without
15	way, if I were to grant an injunction in the terms that	15	causing at least some obstruction to the carriageway?
16	you are seeking, there comes a point at which the next	16	MS BOLTON: They stand on the grass verge, my Lord.
17	person to turn up cannot exercise their protest right	17	MR JUSTICE NICKLIN: 400 people?
18	because there is nowhere for them to go.	18	MS BOLTON: My Lord, that's the point. If it's 400 people,
19	MS BOLTON: Well, my Lord, there would come a point —— well,	19	then, yes, some of them will have to line the grass
20	that's not the case because a person can exercise their	20	verge. If they are wanting to protest as the staff come
21	protest right.	21	out, they will still get their ability to do so because
22	MR JUSTICE NICKLIN: They can stand in Huntingdon High	22	the staff will have to drive past them. What they won't
23	Street, yes.	23	be is obstructed and held up and surrounded. That's
24	MS BOLTON: If they line the whole of the road, they line	24	what we are asking not to happen, and the court has
25	the whole of the road. Unless —— yes, there are	25	a balance to strike . If the court says, well, there

Τ	could be 400 people, so you can't have an injunction	1	this was a significant problem, and even to say it
2	preventing obstruction, then what you are also saying is	2	should be left to the police, the cost of that alone $$
3	it's completely proportionate $$ the weight that tips	3	MR JUSTICE NICKLIN: That's a society concern.
4	against that is, otherwise, this conduct $$	4	MS BOLTON: It isn't, my Lord, if we say, well, we have
5	MR JUSTICE NICKLIN: What it shows is how almost impossible	5	identified the named defendants, everybody else will
6	it is for a civil court to strike that balance in	6	either have to be dealt with on an ad hoc basis by the
7	advance of the event that we are talking about.	7	police, that makes the situation unworkable. That
8	MS BOLTON: Civil courts have repeatedly had to strike that	8	wouldn't be justice. That would be to leave the
9	balance, my Lord, quite frequently in recent times.	9	claimants with no real remedy to protect their rights.
10	That balance had to be struck as a result of Insulate	10	They have these rights, they have the right not to have
11	Britain, as a result of Just Stop Oil, as a result of	11	their land trespassed on. They have the right to access
12	Animal Rebellion. All of them have engaged in	12	the highway without interference. They have the right
13	obstruction of the highway and significant incidents $$	13	to drive along the highway.
14	MR JUSTICE NICKLIN: Yes, but those were efforts where the	14	MR JUSTICE NICKLIN: Have the right to access land. You
15	whole purpose was to obstruct the highway, not an	15	almost put it forward as an unqualified right. It's
16	incidental product of the protest.	16	subject to no $$ I mean, I have the absolute right.
17	MS BOLTON: No, my Lord, that's not the case for all of	17	MS BOLTON: They have the right $$ it's that point in Jones.
18	those protests but it is the case that the court has to	18	You cannot override the primary purpose. The Article 10
19	strike that balance and, in any event, the same point	19	and 11 rights don't do that. They are rights to
20	arises . If 400 people turn up, they won't be able to	20	peaceful $$ and this is where things seem to have become
21	all stand on the grass verge in a close area together,	21	a little bit blurred with Ziegler. Jones is saying you
22	but it doesn't stop the injunction being granted. The	22	have the right to peaceful assembly on the highway.
23	question is are you obstructing the highway, are you	23	They are not talking about the carriageway there. They
24	preventing the use of the primary purpose of the	24	are talking about you have the right to assemble on the
25	highway, which is to pass and repass. That is clearly	25	highway but if your assembly is preventing the primary
	65		67
1	happening here.	1	purpose of the highway, to pass and repass, then you are
2	MR JUSTICE NICKLIN: Yes.	2	obstructing. That's not lawful.
3	MS BOLTON: And take away that protection and we only need	3	MR JUSTICE NICKLIN: I really don't think it's as simple as
4	to look at how many incidents we have looked at in just	4	that. It's not as simple as that.
5	over a month, and they are just the worst incidents,	5	MS BOLTON: In my submission, my Lord, that is what Jones is
6	they are not all of the incidents.	6	saying. That is what Abortion Services is saying has
7	MR JUSTICE NICKLIN: I'm not blind to the fact that you have	7	been overlooked in Ziegler and that Ziegler is not
8	now achieved remedies against those people who you	8	a universal principle .
9	regard as the worst examples that you have been able to	9	MR JUSTICE NICKLIN: You make it sound as if the abortion
10	identify . So those people have been taken out of the	10	clinic has suddenly said, okay, that's totally wrong,
11	equation.	11	this is the answer. It is not as simple as that. It is
12	MS BOLTON: Yes.	12	a slight recalibration in the abortion clinic case. It
13	MR JUSTICE NICKLIN: So we are dealing with others. You	13	does not overthrow Ziegler. It interprets Ziegler in
14	see, it's back to Canada Goose and what the Court of	14	a way that emphasises another aspect.
15	Appeal says, which is the civil courts may not have the	15	The fundamental difficulty and complication in the
16	answer for regulating protest.	16	law remains, which is the highway is for everybody and
17	MS BOLTON: But, my Lord, Canada Goose was a very different	17	it can be used for many different purposes, including
18	case to this case. This is a case where staff, every	18	protest. The extent to which that protest then
19	day, when they are trying to access and leave a site,	19	interferes with other people's use of a highway or their
20	will be obstructed on a highway without the protection	20	rights is a process of calibrating the interference
21	of an injunction. There is a protest camp there. There	21	between the engaged interests.
22	are people monitoring when they come and go. Before	22	You can't just simply say, "Oh, well, you are
23	your interim order was made, this was a daily	23	obstructing Mr Jones in his vehicle. Therefore it's
24	occurrence. This wasn't something which was simply	24	unlawful." It is not as simple as that.
25	happening once or twice on an organised demonstration,	25	MS BOLTON: My Lord, in my submission, that's not the

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	approach that the Supreme Court is saying. The	_	point, both from Lord fiving that Lord Ciyac. This that's
2	Supreme Court is saying you can peacefully assemble on	2	where the recalibration is needed because $$ and the
3	the highway, provided you are not interfering with the	3	second point about Ziegler $$
4	primary purpose of the highway, to pass and repass.	4	MR JUSTICE NICKLIN: If you enforce that rule in the way
5	MR JUSTICE NICKLIN: Unless you are talking about an	5	that you are suggesting, you take the carriageway out of
6	isolated stretch of a carriageway in the Outer Hebrides	6	people's $$ a zone where people can protest. They can't
7	or a stretch of carriageway at three in the morning, you	7	protest on private land, so you are slowly whittling
8	can't meaningfully talk about exercising any use of the	8	away where any citizen can meaningfully exercise his or
9	highway for protest purposes if that's not going to pose	9	her protest.
10	at least some sort of short—term obstruction to other	10	MS BOLTON: But you are not, my Lord, because the highway $$
11	people who might want to use it.	11	and this is a very good example of it $$ includes all of
12	MS BOLTON: This is where the blurring comes between highway	12	those grass verges, will normally include the pavement,
13	and carriageway, because the purpose of the $$ the	13	in most areas, and nobody is talking about stopping the
14	highway is the carriageway and the grass verge and in	14	one-off procession here. If I had brought this evidence
15	this case part of the access road. The point being $$	15	as there was one procession $$
16	and one of the examples given in Jones is you could have	16	MR JUSTICE NICKLIN: I get all of this.
17	a picnic on the grass verge but you probably can't camp	17	MS BOLTON: $$ once a year, that would be de minimis.
18	there. But the carriage $$ but if you interfere $$ and	18	MR JUSTICE NICKLIN: The problem is all of these cases are
19	they even go as far as to say it's possible that even	19	backward looking, all of them. All of the Supreme
20	not being on the carriageway could cause a problem to	20	Court $$ well, Abortion is an odd case because it comes
21	pass and repass, if it was a narrow pathway, but	21	by a very odd route but the rest of the cases are
22	generally the focus $$ and this is where it has gone	22	backward looking and they are criminal cases and they
23	a little bit wrong, in my respectful submission, in the	23	question how is the court properly to direct itself as
24	past, is the focus is on the pass and repass is	24	to the assessment of whether somebody is guilty of
25	primarily a carriageway point, and it's probably not	25	obstructing the highway or not. That's a real world
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helped in the authorities that there has been a general discussion of the highway, when in fact the concern is the carriageway and the rest of the highway will only be a concern in more extreme examples.

approach that the Supreme Court is saying. The

There is going to be an interference with a person's right to pass and repass if people are stood in a long procession on a grass verge because there is a degree of interference, yes, because any driver with any common sense will slow down. There is people on the side, just like if you are in a built—up area. So if you were in —— for instance, this would normally be a 60—mile an hour zone but for the temporary speed limit that has been put in because of the protest camp, you wouldn't drive past people at that speed if they were standing on the grass verge. When we talk about de minimis interference, there is interference but that would be de minimis, that would be reasonable, that would be wilful, or any of those matters.

But where we are talking about standing on the highway and preventing cars from passing, that's interfering with the primary purpose and that's the one thing that peaceful assembly doesn't allow, and that's the point in Jones, that the Supreme Court in Abortion Services is saying this wasn't cited and is quoting those parts of Jones that are relevant to that

example.

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It's incredibly complicated and, in a democratic society, there is an incredibly important role of the police and the prosecution services deciding whether it's in the public interest to prosecute. So if there is a moment of community outrage, for example we can all think back to the demonstration about Sarah Everard, and then there was counter demonstrations because of the police response to arresting some of the protesters.

point, both from Lord Irvine and Lord Clyde. And that's

If there is an almost inevitable, predictable, instinctive community response and citizens gather outside a police station and they block a carriageway, okay, you may say that on the basis of the authorities they are technically guilty of a criminal offence of obstructing the highway. The likelihood of any of those people being arrested, still less prosecuted for that, is pretty remote because the people who are responsible for assessing whether to prosecute will take a view as to whether it's in the public interest and they will factor in all the various considerations, the extent of the interruption, whether there was any violence, all the sort of things that the CPS will take into account. That's our democratic institutions working as they should because there is just as much an importance in deciding the calibrated response to any unlawful act and

1	whether a prosecution ensues. Ziegler is an example of	1	any injunction I grant interferes with the protest
2	when somebody is actually prosecuted and a challenge to	2	rights.
3	whether or not it was a lawful obstruction in those	3	MS BOLTON: My Lord, you have to consider the interference
4	particular circumstances.	4	with protest rights but protest rights can't override
5	You are asking me to impose by way of civil	5	the primary purpose of the highway. That has been made
6	injunction a prospective restriction, which doesn't	6	very clear by the Supreme Court. What we have to recall
7	admit of any consideration of the individual	7	with Ziegler as well is even just looking at Ziegler on
8	circumstances.	8	its own, Ziegler wasn't a case where people couldn't
9	MS BOLTON: My Lord, it does, and what we are asking —	9	access the Excel Centre or leave the Excel Centre, it
10	MR JUSTICE NICKLIN: Okay, so what happens if there is some	10	was only a very limited obstruction. Those staff can't
11	perceived outrage? Let's imagine —— I'm speaking wholly	11	get out any other way.
12	hypothetically. Imagine that there is an inspection by	12	MR JUSTICE NICKLIN: I thought Ziegler was an example of
13	the relevant authorities of MBR Acres and then there is	13	complete blockage for a period.
14	a prosecution takes place for failure to comply with	14	MS BOLTON: No, it was one side of the road. That was part
15	some health and safety regulations at the Wyton site.	15	of what was disproportionate about it. It was a one-off
16	It could well be that that sort of event would provoke	16	protest, blocking one access on one side, and they were
17	a very significant protest and a large number of people	17	arrested for obstruction of the highway. That's part of
18	might turn up. If I've already granted an injunction,	18	the problem with Ziegler: when you look at the facts,
19	they could end up straying into the path of a contempt	19	it 's a very limited interference. People could still
20	application, whereas I wasn't even asked to consider	20	come and go to the Excel Centre by road. They just
21	that as a circumstance that might take place, leading to	21	couldn't get past on that particular side of the road.
22	a large number of people wanting to protest. That's the	22	That's the difficulty that Ziegler has been —— and
23	problem. With all of the backward—looking exercise,	23	one of the things that Lord Reed is saying in
24	it's difficult enough, and Ziegler might be thought ——	24	Abortion Services, it has been given this universal
25	and what's happened to Ziegler after the event might be	25	application. It was very specific on the facts of that
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1	thought to demonstrate how the law is struggling with	1	case and, when you look at it, it was a one-off protest
2	calibrating that response even in relation to things	2	at a particular event. What it wasn't was an entirely
3	that have already happened.	3	blocking the highway, day in, day out, and targeting
4	You are asking me to try and calibrate the response	4	
5		4	staff of a particular company. That's the very
	in advance.	4 5	staff of a particular company. That's the very different nature of what we are dealing with here.
6	in advance.  MS BOLTON: My Lord, I'm asking you to provide a response		
6 7		5	different nature of what we are dealing with here.
	MS BOLTON: My Lord, I'm asking you to provide a response	5 6	different nature of what we are dealing with here.  So not only was Jones not cited in Ziegler but
7	MS BOLTON: My Lord, I'm asking you to provide a response based on the evidence, which isn't the evidence of	5 6 7	different nature of what we are dealing with here.  So not only was Jones not cited in Ziegler but  Ziegler was a very different type of obstruction case
7 8	MS BOLTON: My Lord, I'm asking you to provide a response based on the evidence, which isn't the evidence of a claimant who has been prosecuted at MBR Acres.	5 6 7 8	different nature of what we are dealing with here.  So not only was Jones not cited in Ziegler but  Ziegler was a very different type of obstruction case with the ultimate decision being fairly — the
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7 8 9 10	MS BOLTON: My Lord, I'm asking you to provide a response based on the evidence, which isn't the evidence of a claimant who has been prosecuted at MBR Acres.  MR JUSTICE NICKLIN: I know, but you are asking me to do something which will set in the future the rules about	5 6 7 8 9 10	different nature of what we are dealing with here.  So not only was Jones not cited in Ziegler but Ziegler was a very different type of obstruction case with the ultimate decision being fairly —— the difficulty, I think, that the Supreme Court had in Abortion Services with it is it's being viewed as giving
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1	my lawful excuse." You can have your Article 11 rights	1	that could also be achieved.
2	balanced but you can always have a lawful excuse.	2	So you will see the traffic that's starting to queue
3	MR JUSTICE NICKLIN: But what you are trying to get me to do	3	up as the staff are being held up coming into the $$
4	is to decide now that there will be no lawful excuse and	4	that's Mr Ahmed who has just come into the middle, in
5	therefore you are prohibited from obstructing the	5	front of the car. And I'm just trying to identify
6	highway.	6	Mr Falsey. He has got the placard, talking to the
7	MS BOLTON: And if I was asking the court to do that on	7	police officer . You can see people standing right in
8	a pure precautionary basis, with no evidence as	8	front of the car, stopping them going in. You can see
9	extensive as what we are putting before the court,	9	the traffic that is backing up, up the road.
LO	I could understand that that would be a very, very steep	10	You've obviously got access land trespass as well,
L1	hill to climb. But we are not. We are demonstrating	11	my Lord. We have an unknown standing in front of the
L2	that there have been significant unlawful obstructions	12	car.
L3	and there is no reasonable excuse for those.	13	So thank you.
L4	That is why we are asking. And we can see that	14	My Lord, so that's the incident on 16 September. My
L5	people are still protesting at the site, there is still	15	Lord, the next incident is 22 September. That's the
L6	a protest camp at the site. There is still people	16	Anglia Water incident. I wonder if we could just go to
L7	holding placards and shouting but what they are not	17	it very shortly so that you can see there are a number
L8	doing is standing in front of cars, preventing people	18	of persons unknown, or are you happy $$
L9	from getting home or getting to their place of work.	19	MR JUSTICE NICKLIN: No, that's fine I've got it.
20	MR JUSTICE NICKLIN: Yes.	20	MS BOLTON: You have seen that. My Lord, the next incident
21	MS BOLTON: And that is the rights we are asking the court	21	is 20 November 2021. This was a committal incident for
22	to protect.	22	the 12th and 13th defendants and the incident lasts for
23	MR JUSTICE NICKLIN: Yes.	23	approximately 55 minutes. Just to refresh the court's
24	MS BOLTON: My Lord, the next incident is 16 September 2021.	24	memory, video 451, please. (video played).
25	Again it's an obstruction of the highway, an access land	25	Of course, we have the exclusion zone at this stage.
	77		79
1	trespass and harassment. The obstruction is on the way	1	So the staff are having to drive on the other side of
2	into the site, both at the bell mouth and on the access	2	the road. This is Employee F and Employee Q again.
3	road, and some obstruction near the gate. If we can	3	So we can see that both cars are still being pursued
4	look at video 325, please, at around $$ we can see the	4	by protesters . One is being surrounded further up the
5	protesters on the bell mouth, and if we can move to 52	5	road and this one is $$ they are trying to get this one
6	seconds, please. (video played).	6	free . Now those that have been involved in holding up
7	So, my Lord, again you can see, the protester who is	7	Employee F are coming back towards Employee Q's car as
8	coming in there, it's creating a very narrow channel.	8	well.
9	There is someone on a loudhailer and there is people	9	My Lord, you've seen this video before, so if I can
LO	standing in front of the cars as they are trying to	10	take the court to video 706, this is captured from
L1	access the site .	11	inside Employee Q's car. (video played).
L2	And the lady with the blond hair and the placard,	12	My Lord, that's Victoria Asplin in front. Thank
L3	that the nose of the car is just starting to come past,	13	you.
L4	is Ms Jaffray and that's Ms Laidlaw, with the dog in her	14	So, my Lord, that continues, as you've seen from the
L5	arms, on the carriageway. I think that's actually	15	other incidents.
L6	Mr Curtin with the loudhailer there, my Lord.	16	Then we have got video 794. This is a TCM digital
L7	MR CURTIN: It might be.	17	video. (video played).
L8	MS BOLTON: If we could also look at video 326, please, this	18	If we can move forwards to 15 minutes, please.
L9	shows the incident from a different perspective. (video	19	MR JUSTICE NICKLIN: The blurring of the number plates has
20	played). It's Mr Broughton on the access road, my Lord.	20	been done by the person who has put the footage out. Is
21	MR JUSTICE NICKLIN: Have you painted a line now where the $$	21	that right?
22		22 23	MS BOLTON: I don't think it was us, my Lord, no.
23	MS BOLTON: Yes, my Lord. And my Lord, I need to take instructions on this but I suspect, if it was required	23 24	MR JUSTICE NICKLIN: You haven't blurred the number plates
24	·		in anything else.
25	for "Private Property" or something to be painted on it,	25	MS BOLTON: I don't think so. I don't think it's us, no.

1	(video played).	1	know, I'm not criticising the police. The police have
2	So we can see at this stage Employee Q's car, 15	2	a difficult job to do. And they have to judge on the
3	minutes on, is still surrounded. And then 28 minutes	3	ground what is the correct policing response to the
4	and 30 seconds, please. (video played).	4	particular circumstance and the process. That will be
5	Again Employee Q's car is still surrounded. Then 33	5	informed by the number of people who are there, the
6	minutes and 27 seconds, please. (video played).	6	number of officers that are available, the number of
7	So if we can pause there, so you can hear the police	7	back-up officers that could be called upon, the physical
8	there saying, "Get off the highway, stop blocking the	8	resources the police have at their disposal, how they
9	highway."	9	judge the situation with the protesters, at what level
10	MR JUSTICE NICKLIN: You don't dispute the police have an	10	they judge them to be $$ potentially it could flare up.
11	absolute battery of powers to deal with this?	11	That will inform the policing response.
12	MS BOLTON: My Lord, what the police can't do is keep coming	12	All of those are factors, and so I am absolutely not
13	day after day after day to every individual who turns up	13	sitting in court 13 saying they should have started
14	and obstructs cars. That's not $$ again, they can't	14	arresting people, but that's $$
15	stand outside MBR Acres forever, and that's what was	15	MS BOLTON: But, my Lord, respectfully, the claimant is in
16	happening before the injunction. I understand the	16	the same position. They can't make the police do that.
17	difference where there is a one-off protest but that	17	They are having civil wrongs $$ significant civil wrongs
18	isn't what's happening here. This is relentless. And	18	committed against them and your Lordship granted
19	that's the situation, right up until the point where	19	a remedy at an interim stage and extended that remedy
20	there is an order and then we still have a fixed	20	following this incident, and that has been highly
21	campaign at the site but this has stopped, and that's	21	effective, and that has allowed these people to come and
22	the difference, we have some incidents but nowhere near	22	go from work, it has allowed the first claimant to
23	the magnitude of what was happening without the order in	23	continue its lawful activities and that is what's made
24	place. That's the difference.	24	the difference here. There have been arrests, there
25	My Lord, the next one is video $$	25	have been problems with some of the prosecutions, but
	81		83
1	MR JUSTICE NICKLIN: This incident led me to change the	1	it's quite clear $$ it will be clear as we go through
2	injunction.	2	the evidence $$ that that is the timeline and that is
3	MS BOLTON: This incident, my Lord, led to you changing the	3	where things have significantly changed.
4	injunction. This incident was also an incident for	4	But what it hasn't done is it hasn't prevented
5	which people were committed for breach of the injunction	5	people from protesting. People are still camping there.
6	and, at that point, matters significantly calmed down.	6	People are still standing by the side of the road,
7	So it shows the difference that has made. Police were	7	people are still chanting and shouting and holding up
8	there from the start. It didn't stop this. The	8	their banners. What they are not doing is standing in
9	injunction stopped this. There was significant impact	9	the road, stopping people getting away from work or
10	on those employees and the claimants' civil rights until	10	stopping them getting into work.
11	that point. All of these people can still protest. The	11	MR JUSTICE NICKLIN: Yes.
12	difference is the claimant can go about their business	12	MS BOLTON: My Lord, is that a good place for a break?
13	and the claimant's staff can come and go from work.	13	MR JUSTICE NICKLIN: Oh, yes, it is, thank you very much.
14	That's what's changed.	14	Right, we will come back at 25 to four, please.
15	Video 795, my Lord. 50 minutes and 30 seconds,	15	(3.19 pm)
16	please. (video played).	16	(A short break)
17	Pausing there $$ thank you $$ what that's showing,	17	(3.39 pm)
18	my Lord, is the police tactic that had to be used to	18	MR JUSTICE NICKLIN: Right. Carry on, Ms Bolton.
19	even get Employee ${\sf Q}$ free, of the police having to all	19	MS BOLTON: My Lord, the next incident is $$ and this is
20	lock arms and form a corridor around her so that her car	20	where the incidents change, following the committal
21	could actually get out.	21	proceedings and the changes to the injunction order.
22	MR JUSTICE NICKLIN: Yes. It's not any function of mine to	22	The incidents start to change in their nature. So we
23	criticise the police but one different way of doing this	23	have 12 April 2022. We have an obstruction of the
24	would be to start arresting people. Once you started	24	highway, and this is evidence provided by both
25	arresting people, the message would get out. But, you	25	Employee B, Employee AA, Employee C and Employee A. If

1	we can look at, first of all, video 181, which is	1	MS BOLTON: Yes. My Lord, the next incident is 5 May 2022.
2	Employee AA's car being obstructed by persons unknown	2	MR JUSTICE NICKLIN: Was this vehicle registration number
3	with a beagle on the highway. (video played).	3	apparent from that clip?
4	MR JUSTICE NICKLIN: So the lady with the dog?	4	MS BOLTON: Can we go back, please.
5	MS BOLTON: My Lord, yes. I want you to have a look at the	5	MR JUSTICE NICKLIN: I'm just wondering whether you reported
6		6	it to the police.
7	MR JUSTICE NICKLIN: Right.	7	Yes.
8	MS BOLTON: So the cars slow down, the car progresses again,	8	MS BOLTON: Let's have a look. Yes, that is clear. I don't
9	another person comes out and the person kicks the car.	9	know and I will find out, my Lord.
10	You can also see that from video 180 from 40	10	The difficulty is, my Lord, we can provide it to the
11	seconds — sorry, apologies, different incident. Video	11	police but what the police won't do is provide
12	180, the rear camera of the same employee's dash cam,	12	information past that unless they take any action.
13	apologies, on the same day, and if we can go from 40	13	MR JUSTICE NICKLIN: Because by far away the optimum
14	seconds, please. (video played).	14	solution, both for the court and for the claimants, is
15	So that's the same person with the beagle. And you	15	an in personam order against individuals because it's
16	will have seen also how the cars behind are being held	16	that that $$ I mean, if you tell me $$ I don't dispute
17	up as well.	17	what you say $$ this person, if he has done it twice in
18	And then video 182. We can watch from one minute,	18	a day $$ once might be considered $$ not kicking the car
19	please. (video played).	19	but this incident, if seen on its own, is a bit odd but,
20	Pausing for a moment, on its own, initially this	20	if you take it with what's happened in the morning, then
21	looks like a slightly strange incident because it looks	21	it becomes to looks slightly more sinister.
22	like at first somebody is generally slowing down the	22	MS BOLTON: Yes, it's a bit like the lady with the beagle as
23	traffic for a reason but, as it progresses, my Lord, you	23	well, my Lord. The first time, she could just have been
24	will see what then happens. (video played).	24	crossing the road and got in the way. The second time
25	My Lord, that's the same person unknown that was	25	it becomes apparent that she is standing in the way of
	85		87
1	involved in the incident $$ thank you, sorry $$ the	1	the cars with the dog, which is
2	incident earlier in the day, who had stepped out and	2	MR JUSTICE NICKLIN: Okay.
3	kicked the car. So again we are starting to see random	3	MS BOLTON: 5 May. This is not a $$ it is a video,
4	stepping—out, putting a dog out, kicking a car, and you	4	apologies, it's also in the persons unknown bundle at
5	will see that this has become very much a persons	5	988 and 989. This is the incident of Mr Manning's home
6	unknown activity following the November committals.	6	being spray painted and L and K $$ in the case of
7	So if we can then $$	7	Mr Manning, the person was identified and was prosecuted
8	MR JUSTICE NICKLIN: Let's pause and just think about that	8	and she was protesting $$ sorry, only one person was
9	incident because I'm just thinking through the	9	identified, I'm being reminded. There were two people
10	safeguard. Let's assume I grant an injunction against	10	present. So if we look at the videos, it's video 187.
11	persons unknown, the safeguards are, one, you have to	11	MR JUSTICE NICKLIN: What is the name of the person who got
12	show it's a protestor; two, you have to get the	12	prosecuted?
13	permission of the court to bring the application.	13	MS BOLTON: Tony Midwinter, my Lord.
14	MS BOLTON: Yes.	14	MR JUSTICE NICKLIN: And she was added, wasn't she?
15	MR JUSTICE NICKLIN: So there is a level of seriousness	15	MS BOLTON: She wasn't added, my Lord, for the simple reason
16	before the court says okay. It gives the court an	16	that she was prosecuted and, whilst she was protesting
17	opportunity to say, well, if that had stood alone,	17	at the site, there is nothing else, when we have gone
18	I would never have granted an injunction to prohibit	18	through the videos, that she had done wrong, save from
19	that conduct.	19	the point of view $$ there is no evidence of
20	MS BOLTON: Yes.	20	obstruction.
21	MR JUSTICE NICKLIN: So it's only in cases where the court	21	MR JUSTICE NICKLIN: What was her sentence?
22	is satisfied that it's somebody who is doing this as	22	MS BOLTON: Unfortunately, she got a fine, my Lord, and $$
23	part of a protest action.	23	MR JUSTICE NICKLIN: Did it go to the magistrates or to the
24	MS BOLTON: Yes.	24	Crown Court?
25	MR JUSTICE NICKLIN: Right, carry on.	25	MS BOLTON: Magistrates. She pleaded guilty. It's a matter

Τ	for the Magistrates Court. Slightly disappointing that	1	MR JUSTICE NICKLIN: Yes.
2	perhaps she wasn't prevented from $$	2	MS BOLTON: And who was responsible for the other employee
3	MR JUSTICE NICKLIN: You probably don't know the whole	3	properties being targeted we don't know. We only picked
4	story.	4	up the one because of Mr Manning's camera and the person
5	MS BOLTON: Exactly, I don't.	5	had identifiable features.
6	MR JUSTICE NICKLIN: If she had no previous convictions, the	6	The next incident was 9 May, which is again
7	fact it stayed in the Magistrates' Court indicates it	7	a harassment incident, my Lord, and this concerned
8	was less than £2,500 damage.	8	Employee J and this was an unknown item, possibly food,
9	MS BOLTON: Yes.	9	being thrown at Employee J's car outside the Wyton site,
L 0	MR JUSTICE NICKLIN: The prosecutor may not have been	10	and you will find that $$ it's described at
L1	aware $$ no, they would have been, obviously, from the	11	paragraphs 105 to 109 of Employee J's witness statement,
L2	nature of what was scrawled on the wall that it was	12	at page 1632 in the persons unknown bundle, and it's
L3	linked to the $$	13	exhibit 1647. And that's $$ they are leaving the Wyton
L4	MS BOLTON: Yes.	14	site .
L5	MR JUSTICE NICKLIN: And he had been targeted because of his	15	MR JUSTICE NICKLIN: Could you show 1647 as well, please.
L6	role at the $$	16	MS BOLTON: So we are not sure what it was but it does look
L7	MS BOLTON: Yes.	17	like it might have been food.
L8	MR JUSTICE NICKLIN: Yes.	18	MR JUSTICE NICKLIN: Yes.
L9	MS BOLTON: There had been $$ my understanding is a number	19	MS BOLTON: We then have 9 June 2022, and this is a trespas
20	of offences have been prosecuted. There have been,	20	incident and this is persons unknown entering the
21	shall we call them, technical difficulties . As	21	driveway and painting the MBR banners attached to the
22	your Lordship will be aware, in criminal cases they are	22	gate. If we look at video 914, please. (video played)
23	important.	23	And if we go to $1$ minute and $41$ seconds, please.
24	MR JUSTICE NICKLIN: Good.	24	Then if we can go to video 969, please. (video
25	MS BOLTON: There have been a number of matters where that	25	played). This is the second paint being applied.
	89		91
1	has been the case.	1	So, my Lord, again it's a trespass incident with
2	MR JUSTICE NICKLIN: Okay.	2	aggravating features.
3	MS BOLTON: So if we could look at video 187, please.	3	19 June 2022. These are matters which are still
4	(video played).	4	subject to criminal proceedings and these are the
5	And also video 704, please. (video played).	5	trespass break-ins by persons unknown, who are believed
6	So, my Lord, there was two people but only one was	6	to be associated with Animal Rebellion. My Lord, video
7	identified because she had very distinctive tattoos that	7	927, it's two minutes in, please. You will see movement
8	could be seen on the camera. They thought they had	8	in the bushes, a ladder appearing and eight persons
9	sprayed the camera but the spray paint over the camera	9	unknown come over the fence. (video played).
L 0	didn't work, so that was how somebody was identified	10	MR CURTIN: My Lord.
L1	from that. And Mr Manning noticed her on the videos at	11	MR JUSTICE NICKLIN: Yes.
L2	the Wyton site and that's how the link was made.	12	MR CURTIN: Just since it's a persons unknown, my
L3	MR JUSTICE NICKLIN: Didn't she scrawl $$ what did she	13	understanding $$ and remember, I'm not attempting to
L4	scrawl on the wall?	14	interfere (inaudible) $$ is that the Animal Rebellion
L5	MS BOLTON: My Lord, it's in the bundle at $$ it's persons	15	people, they are a very distinct organisation. I think
L6	unknown, page 10544. Sorry, there is one digit too	16	one of their claims to fame is that they operate openly.
L7	many. It should be 1054. No? I think we have got the	17	So I'm sure, if the claimants perhaps made the efforts
L8	wrong reference there. It's 1044. So "scum", my Lord.	18	to contact Animal Rebellion, they would possibly be
L9	MR JUSTICE NICKLIN: Oh, right.	19	forthcoming with their names. That's my understanding
20	MS BOLTON: And then the other one was for the other staff	20	of the nature of their project, and they haven't made
21	who were also targeted at the same time but we don't	21	any secret of it and their names have appeared in the
22	know if by the same person. One is at page 1667. And	22	media, et cetera.
23	that's "Puppy killer scum. MBR scum. Puppy killer.	23	MS BOLTON: My Lord, as I understand it, some of these
24	Kills beagles at MBR Acres." The redactions have been	24	people were, on one of the incidents, arrested and then
25	done by the claimants there to protect names.	25	released and have since $$ there has been a further

1	investigation . I think the police have decided to	1	the proceedings rather than a committal application.
2	pursue it on a different basis. So we don't have the	2	MS BOLTON: You can see the date of the incident, my Lord.
3	names.	3	MR JUSTICE NICKLIN: Yes.
4	As to Mr Curtin saying Animal Rebellion willingly	4	MS BOLTON: We have had some difficulty in getting
5	give up their names, they certainly do not do that, and	5	information we would like and then, in addition to that,
6	I can say that with some confidence because I've	6	query whether ——
7	represented Arla Foods. But this is $$	7	MR JUSTICE NICKLIN: You can wait and see what happens in
8	MR JUSTICE NICKLIN: According to Superintendent Sissons'	8	the prosecution.
9	table, there are two people awaiting trial for	9	MS BOLTON: Indeed, and query whether we should be bringing
10	aggravated trespass.	10	committal proceedings but it seems that we shouldn't be
11	MS BOLTON: Yes.	11	competing with the deadline for prosecution.
12	MR JUSTICE NICKLIN: Which trial will take place	12	MR JUSTICE NICKLIN: No, there is no point because it's
13	24 July 2023, or is listed to try on that day.	13	highly unlikely that a civil court, where a criminal
14	MS BOLTON: Yes.	14	court has heard and determined and sentenced somebody
15	MR JUSTICE NICKLIN: So their names won't be a secret.	15	for a breach of a criminal offence, that the civil court
16	MR CURTIN: My Lord, there were three people that went to	16	will add materially to that punishment.
17	the police station, they gave their identities to the	17	MS BOLTON: Indeed.
18	police . I think two weeks later, the CPS gave an	18	MR JUSTICE NICKLIN: So there is every reason why you should
19	official announcement that they weren't going to proceed	19	wait and see what the result of that is . The limitation
20	with the charges and they gave an official reason and	20	period is not going to be remotely troubled in relation
21	that was lack of evidence, and the three people who had	21	to this. So you can wait and see what happens and, if
22	gone down the police station to give their names were	22	you want to bring proceedings afterwards, you can.
23	astounded.	23	MS BOLTON: My Lord, indeed.
24	MS BOLTON: I believe, my Lord, what happened was that they	24	MR JUSTICE NICKLIN: I say proceedings, I don't mean
25	were prosecuted —— they were arrested originally under	25	a contempt proceeding. I can see that there might be
23	were prosecuted they were unested originally under	23	a contempt proceeding. I can see that there might be
	93		95
1	a different piece of legislation . It was then decided	1	arguments that you can't bring a contempt proceeding
1 2	a different piece of legislation . It was then decided that that hadn't been very successful in prosecutions so	1 2	
			arguments that you can't bring a contempt proceeding
2	that that hadn't been very successful in prosecutions so	2	arguments that you can't bring a contempt proceeding after they have been acquitted by a criminal court.
2 3	that that hadn't been very successful in prosecutions so far and that they had to be released whilst the evidence	2	arguments that you can't bring a contempt proceeding after they have been acquitted by a criminal court.  MS BOLTON: No.
2 3 4	that that hadn't been very successful in prosecutions so far and that they had to be released whilst the evidence was gathered for them to be rearrested.	2 3 4	arguments that you can't bring a contempt proceeding after they have been acquitted by a criminal court.  MS BOLTON: No.  MR JUSTICE NICKLIN: But I don't see what's in the way of
2 3 4 5	that that hadn't been very successful in prosecutions so far and that they had to be released whilst the evidence was gathered for them to be rearrested.  MR JUSTICE NICKLIN: What happened was a postal requisition.	2 3 4 5	arguments that you can't bring a contempt proceeding after they have been acquitted by a criminal court.  MS BOLTON: No.  MR JUSTICE NICKLIN: But I don't see what's in the way of you bringing civil proceedings against them.
2 3 4 5 6	that that hadn't been very successful in prosecutions so far and that they had to be released whilst the evidence was gathered for them to be rearrested.  MR JUSTICE NICKLIN: What happened was a postal requisition. So you can either bring somebody before a criminal court	2 3 4 5 6	arguments that you can't bring a contempt proceeding after they have been acquitted by a criminal court.  MS BOLTON: No.  MR JUSTICE NICKLIN: But I don't see what's in the way of you bringing civil proceedings against them.  MS BOLTON: No.
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1	seconds, please.	1	are at the Wyton site, they are not served.
2	MR JUSTICE NICKLIN: Yes. (video played).	2	MS BOLTON: Indeed.
3	MS BOLTON: And, of course, my Lord, you are probably aware,	3	MR JUSTICE NICKLIN: So the alternative service order, you
4	when police attend an incident of this nature, there	4	know $$ I know that in a lot of the persons unknown
5	needs to be a certain number of police there before they	5	litigation , once the alternative service order is
6	will go and even try and arrest anybody or get involved.	6	granted, everybody forgets about it.
7	So this has been going on for a while, and if we get to	7	MS BOLTON: Yes.
8	38 minutes and 15 seconds, please. (video played).	8	MR JUSTICE NICKLIN: But that's one of the most $$ well, if
9	We have a glimpse of one of those who have broken in	9	there is any element of limit and restraint in this
10	on the other side there, the gate. You can see them	10	area, it's by reference to the service of the claim form
11	walking away from the gate.	11	and, if these people haven't been served with a claim
12	Then video 776 at 57 seconds, please. (video	12	form, then, (a) they are not subject to the injunction
13	played).	13	order and nobody who in the future did this would be
14	So pausing there, my Lord, that's a reference to the	14	subject to it either.
15	fact that those who broke in offered to leave the site	15	MS BOLTON: They would be subject to the injunction order if
16	if they were given 25% of the dogs on that day.	16	they attended after an order has been made, my Lord.
17	The next day, my Lord, is 20 June, and that's when	17	They would be in breach of the order. But as to whether
18	there is a further break—in and five dogs are stolen,	18	they are people who have been served with the claim, at
19	and the entry is recorded in video 928 from 1 minute and	19	the moment we don't know. What we do know is at this
20	15 seconds. (video played).	20	point there is an order in place that binds persons
21	You see a minibus pulling up. What happens when	21	unknown and prohibits trespass and they are trespassing.
22	people enter the site, my Lord, is the dogs — what has	22	So they are breaching the order at a time when the order
23	not been caught on camera and isn't in a part of the	23	is present.
24	site where the camera can pick it up is the perimeter	24	So that is $$ the difficulty here is, as we have
25	fence that has been cut in a blind spot and the dogs are	25	said, we don't want to interfere ——
	97		99
1	passed out through that cut—out part of the perimeter	1	MR JUSTICE NICKLIN: That just makes the whole alternative
2	fence. So whilst people go over the front gates, there	2	service order just $$ that just moves it totally into
3	is also people cutting the side fence and passing the	3	the realms of fiction at that point.
4	dogs through a cut part of the side fence.	4	MS BOLTON: That has always been the approach with trespass,
5	If we go to 10 minutes and 40 seconds, please.	5	my Lord.
6	(video played).	6	MR JUSTICE NICKLIN: Well ——
7	Pausing there, please, and whilst the police are	7	MS BOLTON: The trespass injunctions $$
8	dealing with those at the front, of course the dogs were	8	MR JUSTICE NICKLIN: Not really. The old school trespass
9	being passed out the side.	9	injunctions were directed at the current occupiers of
10	So that's the trespass incident.	10	the land. They did have the beneficial effect of
11	MR JUSTICE NICKLIN: In relation to these individuals, do	11	actually catching anybody who moved in as well but this
12	you have any evidence that any of them have been	12	is a totally different beast. This is trying to make
13	protesters at the site?	13	people subject to civil proceedings of which they've got
14	MS BOLTON: My Lord, the only thing that we have seen	14	absolutely zero notice.
15	recently $$ and we don't $$ because we don't $$ to be	15	MS BOLTON: But that's exactly the same as the other
16	honest, we don't have enough information about them at	16	protester injunctions, where people have been committed
17	present. So it may be that they have, but we don't	17	on trespass. Trespass is one of the ones where the
18	know. The only information and the only link we have	18	one $$ the clearest notice that can be given because it
19	seen is their Twitter campaign footage is, along with	19	can be posted on the edge of a claimant's land and, two,
20	two other protesters, calling for justice for	20	in this case it's not only now on the claimant's land
21	Mr Broughton, who is on remand.	21	but it's also on the side fences. There are large
22	So that's the only link that we know of. When we	22	postings everywhere, so nobody is in any doubt that
23	have more information on their identity, it may very	23	there is an injunction in place.
24	well be that when we look at videos, we will see it.	24	MR JUSTICE NICKLIN: Did these people stop to have a look at
25	MR JUSTICE NICKLIN: The issue is this, which is unless they	25	the notice board?

1	MS BOLTON: As your Lordship knows, that's not how it works.	1	because it's not necessarily the person filming it but
2	It works on the basis that they have been served, and in	2	the people who can access it that can be helpful to
3	the case going forwards of trespass, that will be dealt	3	these kind of incidents which have now happened on three
4	with on the basis that it will be right on the	4	occasions. And the next one is a much bigger incident
5	perimeter $$ it is on the perimeter at the moment $$ as	5	as well.
6	well as on the notice board.	6	MR JUSTICE NICKLIN: Well, then, you would need a persons
7	So anybody trespassing would have that notice.	7	unknown injunction that stops people carrying out
8	Considering that $$	8	surveillance of your site, if that's $$ and I don't know
9	MR JUSTICE NICKLIN: This goes back to Cameron: has such	9	what the cause of action for that would be but
10	opportunity as there can reasonably be expected to $$	10	MS BOLTON: My Lord, we accept the limitations of the $$ w
11	whatever the wording is $$ to be expected to be able to	11	accept that a drone trespass has to be over the site.
12	respond to the proceedings. These people haven't had	12	We do accept the limitations of it but that is one of
13	any chance to respond to these proceedings.	13	the reasons why we have been seeking it, is because
14	MS BOLTON: We don't even know yet if these are the same	14	we
15	people who were there the day before.	15	MR JUSTICE NICKLIN: Okay, let's have a look at the rest.
16	MR JUSTICE NICKLIN: Does that make it any better?	16	(video played).
17	MS BOLTON: Yes, it does because, as we know, we saw one of	17	MS BOLTON: So, pausing there, there is nothing more on this
18	them being interviewed outside the front of the site.	18	video, my Lord, other than the police dealing with the
19	The police were involved. They have been served and	19	front whilst something else is happening somewhere else
20	they were at the site . If they have come back a second	20	on the site.
21	time ——	21	MR JUSTICE NICKLIN: Okay.
22	MR JUSTICE NICKLIN: When were they served?	22	MS BOLTON: So the next incident, my Lord, is 2 July 2022.
23	MS BOLTON: They are served by the fact that they are	23	And that's an obstruction of the highway and access land
24	persons unknown.	24	trespass and that's Mr Manning's vehicle being
25	MR JUSTICE NICKLIN: Okay.	25	surrounded by persons unknown, as he attempts to enter
	101		103
1	MS BOLTON: This is a trespass that's very clear and it has	1	the Wyton site, and that's video 754. (video played).
2	happened on two occasions, potentially three. We won't	2	MR JUSTICE NICKLIN: Why are there such a large number of
3	know that $$	3	police present?
4	MR JUSTICE NICKLIN: If they are the same people, then they	4	MS BOLTON: I'm not clear why there is such a large number
5	get $gammelled(?)$ on the first visit, that will make the	5	of police there that day, my Lord. It's an incident
6	second visit a breach.	6	that's happening very early in the morning. I don't
7	MS BOLTON: Yes, and if they are not, my Lord, then, yes, we	7	know if this is nervousness after the break-ins.
8	just don't have the information at the moment on these	8	I don't know. I'll try and find out a little bit more
9	individuals . We just don't know. As I say, we are	9	about the incident, my Lord. All I know is that
10	trying not to get in the way of the police investigation	10	Mr Manning was obstructed.
11	but what we do see is three Animal Rebellion break-ins	11	Then the next one is an interference with the common
12	and one $$	12	law right to access the highway and trespass. And
13	MR JUSTICE NICKLIN: But this is a criminal offence.	13	that's video 1005. (video played).
14	MS BOLTON: Yes, one of the reasons I'm also bringing this	14	If we can move on 15 minutes, please. (video
15	to the court's attention, my Lord, is they're climbing	15	played) sorry , if we can go back just to maybe $$ let's
16	over the gate and they're cutting the fence and what we	16	try there, yes, please. (Video played).
17	see as we go through the footage is plainly everyone	17	Pausing there, what's happening, my Lord, is these
18	knew where to go, and this is another point on	18	two people are chaining themselves to the gate.
19	surveillance .	19	MR JUSTICE NICKLIN: Themselves to the gate?
20	MR JUSTICE NICKLIN: Where do I get that evidence from?	20	MS BOLTON: Sorry, they are chaining the gate together.
21	MS BOLTON: We are coming to more, my Lord, on this.	21	Sorry, wrong incident. And what then happens is $$ the
22	MR JUSTICE NICKLIN: Right.	22	reason for it is there is an animal transport van
23	MS BOLTON: But that's the point I would make. Again, it's	23	inside, and if we move to 17 minutes and 27 seconds,
24	another reason why the claimant is very anxious about	24	please, (video played), you can just see the van inside.
2.5	drones being flown over the site and monitoring the site	2.5	Pausing there, so we have got the police vehicles

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2
           (video played).
 3
              My Lord, you can see people moving into the road,
           further up.
 4
 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
           happened since the injunction, which is it's the masked,
12
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?
       MR JUSTICE NICKLIN: Yes, it is. Right. Tomorrow then at
18
19
           10.30, please. Thank you very much.
20
       (4.37 pm)
          (The court adjourned until 10.30 am the following day)
21
2.2
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24
25
                                  105
 1
                                 INDEX
 2
     Submissions by MS BOLTON ......1
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
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                                  106
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now turned up, my Lord, and if we can play on, please.

Opus 2 Official Court Reporters aa (2) 50:9 84:25 aas (3) 50:4,5 85:2 ability (1) 64:21 able (15) 6:24 7:8 8:3,10 11:21,22 18:16 34:23 36:24 47:4 56:11 62:6 65:20 66:9 101:11 abort (2) 14:10 50:25 abortion (9) 41:23 43:10 68:6,9,12 70:24 71:20 75:24 76:10 absent (1) 23:22 absolute (2) 67:16 81:11 absolutely (6) 24:19 27:4 37-14 74-24 83-12 100-14 academic (1) 44:9 accept (11) 7:23,25 8:2 9:11 10:23 27:15 46:15 51:25 103:10.11.12 access (59) 13:8,15 15:13 17:18,18 19:20,21 20:23,24 22:12,15 25:18 26:4 28:10.19.24 29:3.4.6 44:19 45:8.9 46:1.19 47:2,18 48:10 49:1,2 51:24 52:13 53:2 55:1 56:16.20.25 57:13.15.19 60:2,9 61:10 66:19 67:11.14 69:15 75:9.16 76:20 77:25 78:2.11.20 79:10 103:2,23 104:12 105:7.14 accessing (2) 28:2 44:22 according (2) 93:8 94:8 account (1) 72:22 achieved (2) 66:8 79:1 acquitted (1) 96:2 acres (4) 73:13 74:8 81:15 90:24 across (3) 45:1.5 55:5 acting (2) 9:19 43:8 action (17) 1:18,23 3:24 9:11 10:4 20:25 28:6 30:22 32:2 47:3 49:3 50:13 56:18 86:23 87:12 94:14 103:9 actions (1) 31:1 actively (1) 13:15 activities (2) 30:14 83:23 activity (2) 28:3 86:6 actual (3) 3:13 25:1 50:20 actually (8) 5:18 9:9 30:8 73:2 78:15 82:21 96:13 100:11 ad (1) 67:6 add (1) 95:16 added (2) 88:14,15 addition (1) 95:5 additional (1) 8:13 address (3) 2:3 36:13,22 adjourned (1) 105:21 adjournment (2) 53:10,14 admit (1) 73:7 adopted (2) 7:13 10:7 advance (2) 65:7 74:5 advanced (1) 26:21 advancing (1) 7:16 after (10) 15:2 43:14 50:10 53:16 73:25 81:13,13 96:2 99:16 104:7 afternoon (1) 61:7 afterwards (1) 95:22 again (40) 8:8.9 17:17 19:11,13,15,16 20:2,8,22 22:24 26:1 32:14 39:2 43:18 44:21 47:1.8 48:15 49:10,14,14 50:8 52:23 54:11 56:14,20 57:10 58:1 60:25 77:25 78:7 80:2 81:5.14 85:8 86:3 91:6 92:1 102:23 against (19) 23:21,23 26:21 27:25,25 30:15 31:25 32:8

87:15 96:5 aggravated (5) 8:21 48:17 93:10 94:12.14 aggravating (2) 23:22 92:2 ah (1) 21:12 ahead (2) 12:8 25:5 ahmed (1) 79:4 alarm (1) 10:20 alive (1) 29:12 allegations (1) 64:2 allow (1) 70:22 allowed (4) 36:13 47:12 83:21.22 almost (3) 65:5 67:15 72:10 alone (2) 67:2 86:17 along (5) 24:17 49:23 57:1 67:13 98:19 already (9) 2:20 3:25 34:13 37:6 48:21 59:20 73:18 74:3.18 also (27) 1:15 3:18 8:13,22 19:19,19 20:12 28:12 43:12 46:24 53:3 56:17 57:3,20 65:2 78:18 79:1 82:4 85:10,16 88:4 90:5,21 98:3 100:21 102:14 105:6 altering (1) 24:20 alternative (5) 7:11 17:20 99:3,5 100:1 although (1) 27:22 always (8) 25:12 43:5 74:12.16 76:22.23 77:2 100:4 amount (1) 42:11 analogy (1) 32:9 analysis (4) 10:4,11 30:10 51:19 angle (1) 55:23 anglia (2) 36:24 79:16 animal (7) 65:12 92:6,14,18 93:4 102:11 104:22 announcement (1) 93:19 another (9) 8:8 19:11 24:8 34:24 56:7 68:14 85:9 102:18.24 answer (3) 27:23 66:16 68:11 anxious (3) 3:2 25:21 102:24 anybody (10) 9:5,9 10:20 25:17 28:21 30:3 63:8 97:6 100:11 101:7 anything (7) 3:9 21:24 23:10 33:17 52:25 80:24 94:18 anyway (4) 14:22 27:12 53:5 76:13 anywhere (2) 23:19 29:8 apart (4) 10:21 36:23 48:11 94:17 apologies (6) 6:18 46:22 58:13 85:11,13 88:4 apparent (2) 87:3,25 apparently (1) 58:9 appeal (2) 32:12 66:15 appear (3) 8:13,15 96:13 appeared (1) 92:21 appearing (1) 92:8 appears (1) 19:20 applicant (1) 53:22 application (6) 28:7 73:20 75:25 86:13 94:22 95:1 applied (1) 91:25 apply (1) 29:13 applying (1) 53:16 approach (4) 43:9 69:1 100:4 105:10 approaches (1) 34:15 appropriate (2) 39:17 76:12 approximately (1) 79:23

arises (1) 65:20 arla (1) 93:7 arms (2) 78:15 82:20 around (7) 18:13,20 30:25 56:24 78:4 82:20 105:9 arrest (6) 40:13 58:9,14,15 94:7 97:6 arrested (9) 59:1,14,16,18 72:16 75:17 92:24 93:25 94-12 arresting (4) 72:9 82:24,25 83:14 arrests (2) 14:15 83:24 arrived (1) 94:10 arrives (1) 36:21 article (5) 43:24,24 67:18 76:25 77:1 artificial (1) 11:2 aside (7) 21:22 22:8,22 41:10 47:15 51:20 61:13 ask (4) 2:11 4:6 16:9 34:23 asked (7) 7:20 9:2 23:23 48:9 51:5 58:19 73:20 asking (19) 3:8 25:16 28:14,18 29:10,12 41:10 51:25 60:13,24 64:24 73-5 9 74-4 6 9 77-7 14 21 aspect (1) 68:14 aspects (1) 39:11 asplin (1) 80:12 asplins (1) 15:14 assault (1) 94:13 assemble (2) 67:24 69:2 assembly (3) 67:22,25 70:22 assess (1) 53:24 assessing (1) 72:18 assessment (4) 22:20 29:25 71:24 74:17 assistance (1) 3:22 assisted (1) 41:19 associated (1) 92:6 assuage (1) 34:20 assume (1) 86:10 assuming (1) 58:8 assure (1) 34:17 astounded (1) 93:23 attached (1) 91:21 attempt (1) 16:17 attempted (1) 19:4 attempting (1) 92:13 attempts (1) 103:25 attend (2) 61:16 97:4 attended (1) 99:16 attention (1) 102:15 attracted (1) 63:10 august (9) 14:21 48:24 49:16,17 54:9 56:19 58:5 60:6 61:4 authorities (4) 63:20 70:1 72:13 73:13 authority (1) 76:12 available (2) 33:23 83:6 avoid (2) 25:21 52:7 awaiting (1) 93:9 aware (4) 12:22 89:11,22 97.3 away (5) 66:3 71:8 84:9 87:13 97:11

b (1) 84:25 back (35) 1:21 5:19 6:2 8:5 13:25 14:9.11 15:15 19:15 20:18 22:17.20 24:6 33:19 36:5 38:20 41:22 45:24 46:6,8,11 47:21 50:24 60:10.14.20 62:11 66:14 72:7 80:7 84:14 87:4 101:9,20 104:15 background (2) 6:13,14 backing (1) 79:9 backup (1) 83:7 backward (2) 71:19,22 backwardlooking (1) 73:23 badly (1) 59:19 balaclava (1) 39:4

blue (3) 15:21 21:18 57:16

blurring (2) 69:12 80:19

board (2) 100:25 101:6

bolton (258)

blurred (3) 24:3 67:21 80:23

1:7.8.9.13.15.17 2:2.10.19

3:7,18 4:5,19 5:7,8,24

balance (11) 29:5 31:20 32:17.18 40:15 41:9 64:25 65:6.9.10.19 balanced (1) 77:2 balancing (3) 29:22 31:14 41:10 bang (1) 11:11 banging (1) 52:21 banners (2) 84:8 91:21 bar (3) 20:20 21:11 33:4 barricade (3) 54:18 55:13,15 barrier (2) 7:5 11:3 barriers (9) 5:17 6:2 9:15,17,20,23 10:12,18 11:15 baseball (2) 6:19 20:5 based (1) 74:7 basic (1) 43:21 basis (11) 29:19,22,23 60:4 67:6 72:13 74:17 77:8 93:2 101:2,4 battery (1) 81:11 beagle (3) 85:3,15 87:22 beagles (1) 90:24 bear (3) 43:2,6 48:5 bearing (1) 43:23 beast (1) 100:12 become (6) 7:4 10:5 21:8 63:24 67:20 86:5 becomes (4) 18:19 48:17 87:21.25 becoming (1) 31:23 before (16) 13:24 18:3 39:12 42:10,11 51:11 53:13 59:2 66:22 77:9 80:9 81:16 86:16 94:6 97:5 101:15 beginning (4) 7:18 37:25 42:6 57:5 behalf (2) 9:19 35:10 behaving (1) 59:18 behaviour (3) 7:4 26:22 32:5 behind (9) 15:10,13 16:15 21:7,10,14 49:10 57:17 85:16 being (39) 3:5 9:9 10:12 12:6 13:14 23:23 27:13,14 39:2 41:5 47:8 50:4 51:2,12 57:18 59:3,19 65:22 69:15,20 72:16 76:8,10 79:3 80:3,4 85:2.16 88:6.9 91:3.9.25 96:12 98:9 101:18 102:25 103:24 105:16 believe (6) 6:12,14 11:24 29:19 38:18 93:24 believed (1) 92:5 bell (8) 19:2,25 26:2 29:1 45:13 46:11 78:2,5 beneficial (1) 100:10 benefit (1) 2:5 best (1) 32:25 better (1) 101:16 between (4) 24:13 41:24 68:21 69:12 beyond (2) 21:24 40:24 big (1) 19:8 bigger (1) 103:4 binds (1) 99:20 bit (12) 2:24 5:18 6:2 24:1 50:3 57:21 58:2 67:21 69:23 87:19,22 104:8 bits (1) 4:9 black (2) 21:14 49:22 blatant (1) 27:6 blind (3) 27:22 66:7 97:25 block (1) 72:12 blockage (1) 75:13 blocking (3) 75:16 76:3 81:8 blond (1) 78:12

6:1.10.12.16.21 7:7.16.20 8:25 9:6.10.22 10:14.22 11:6.10.13.17.24 12:2.12.16.19.21 13:2.4.6.23 14:7.17.24 15:17 16:5,7,11,13 17:14,16,25 18:4,8,18,24 21:20 22:1,10,15 23:25 24:13 25:3,7 26:15,20 27:5.12 28:8 29:14 30:17 31:21.23 32:4.7.12.22 33:6.14.18.23 34:4.13 35:3.17.21 36:4 37:17,18,22 39:14,16,25 40:8,12 41:3,13,17,22 42:11,15 43:2,6 44:3,11,17 45:5,8,13,17,20,23 46:4,8 47:13.19.24 48:5.8.15.24 51-23 52-16 53-7 12 13 19 54:3.7.9.11.14.17.24 56:1,3 58:11,13,17,21 59:7,13,22 60:4 61:18,23 62:3.8.19.24 63:14.24 64:4,7,12,16,18 65:8,17 66:3,12,17 67:4,17 68:5,25 69:12 71:10,17 73:9 74.6 12 16 75.3 14 76.24 77-7 21 24 78-18 23 79-20 80:22,25 81:12 82:3 83:15 84:12,18,19 85:5,8 86:14,20,24 87:1,4,8,22 88:3.13.15.22.25 89:5,9,14,17,19,25 90:3,15,20 91:2,16,19 92-23 93-11 14 24 94:16.22.24 95:2.4.9.17.23 96:3,6,9,13 97:3 98:14 99:2,7,15 100:4,7,15 101:1.14.17.23 102:1,7,14,21,23 103:10,17,22 104:4,20 106:2 bonnet (1) 14:7 both (9) 5:13 25:9 39:20 49:10 71:1 78:2 80:3 84:24 87:14 brawl (1) 33:4 breach (5) 61:17 82:5 95:15 99:17 102:6 breaches (1) 94:20 breaching (1) 99:22 break (4) 36:3.8 84:12.16 breakin (1) 97:18 breakins (3) 92:5 102:11 104:7 brief (1) 37:2 briefly (1) 37:25 bring (5) 39:12 86:13 94:6 95:22 96:1 bringing (3) 95:9 96:5 102:14 brings (1) 29:7 britain (2) 42:2 65:11 broad (1) 59:16 broke (1) 97:15 broken (1) 97:9 brought (3) 27:15 59:2 71:14 broughton (9) 6:14,15 38:2 56:3 57:14,17 58:1 78:20 98:21 builtup (1) 70:10 bundle (3) 88:4 90:15 91:12 bundles (1) 5:1 bushes (1) 92:8 business (1) 82:12 c (1) 84:25

calibrate (1) 74:4

call (2) 4:9 89:21

calling (1) 98:20

calmed (1) 82:6

calm (4) 26:8,15 32:23 33:7

84:3

changes (1) 84:21

changing (1) 82:3

94:7

calibrated (2) 23:6 72:25 calibrating (2) 68:20 74:2 called (4) 12:6 60:23 83:7 43:18,20,25 48:19 82:14

cam (4) 15:25 16:3 61:19 85:12 camera (10) 8:15 21:18 55:23 85:12 90:8.9.9 91:4 97:23.24 cameron (1) 101:9 camp (4) 66:21 69:17 70:13 77:16 campaign (2) 81:21 98:19 camping (2) 19:21 84:5 canada (3) 7:1 66:14,17 96-18 candidate (1) 59:5 candidates (1) 59:19 cannot (4) 7:2 62:13,17 67:18 cant (28) 7:10 12:25 15:17,18,19 18:15,19 20:18 23:7 30:23 52:25 53-4 57-25 58-25 63-25 65:1 68:22 69:8.17 71:6 75:4,10 76:25 81:12,14 83:16 96:1 105:15 cap (2) 6:19 20:5 capping (3) 34:13 35:12 62:12 captured (2) 55:10 80:10 car (52) 14:2.7 15:25 16:2 17:1 18:13 19:4 20:1 7 13 23:1 31:14 38:4,10,11,15,15,21,23 45:14,20 47:8,15 48:11,18 49:10.11 50:8.24.24 52:19,21 55:4,7,8 64:3 78:13 79:5,8,12 80:7,11 81-2 5 82-20 85-2 8 9 59-13 86:3.4 87:18 91:9 careful (1) 29:22 carefully (1) 22:17 carriage (1) 69:18 carriageway (22) 23:12,17,19 24:4,20 25:23 45:19 46:9 50:20 56:24 64:15 67:23 69:6,7,13,14,20,25 70:3 71:5 72:12 78:15 carry (5) 5:6 29:24 37:17 84:18 86:25 carrying (1) 103:7 cars (25) 14:10 22:15 24:15,18,21 25:22 27:13 30:20 45:9 47:12,21 48:13.22 55:6 56:23 57:10 63:25 70:20 77:18 78:10 80:3 81:14 85:8.16 88:1 cases (8) 24:2 25:13 34:10 71:18,21,22 86:21 89:22 cast (2) 30:17 31:8 catchall (1) 43:9 catching (1) 100:11 categories (1) 22:2 category (3) 21:23 22:3 30:22 caught (4) 8:15 63:14.17 97:23 cause (6) 1:18 24:18 26:5 69:20 74:23 103:9 caused (3) 10:20 39:23.25 causes (10) 1:23 3:23 9:11 10:4 20:25 32:2 47:3 49:3 50:13 56:18 causing (4) 14:3 47:21 64:15 74:22 central (1) 12:6 centre (4) 75:9,9,20 76:20 certain (1) 97:5 cetera (2) 30:12 92:22 chaining (2) 104:18,20 challenge (1) 73:2 challenges (1) 7:9 challenging (1) 8:6 chance (1) 101:13 change (3) 82:1 84:20,22 changed (7) 35:12

channel (3) 34:16 47:21 78:8 chanting (1) 84:7 characterise (1) 63:6 characterised (1) 64:12 charge (1) 94:7 charged (1) 59:1 charges (1) 93:20 chat (1) 3:18 check (2) 14:22 96:16 checking (3) 11:25 12:19 chill (1) 23:7 chilling (3) 27:24 63:20.24 chronology (1) 5:20 circumstance (2) 73:21 83:4 circumstances (2) 73:4,8 cited (3) 43:11 70:24 76:6 citing (1) 76:11 citizen (1) 71:8 citizens (1) 72:11 civil (17) 32:3,6 41:3,4,25 42:3 65:6,8 66:15 73:5 82:10 83:17.17 95:13.15 96:5 100:13 claimant (12) 8:17 25:21 28:16 31:3 39:20 41:15 53-20 74-8 82-12 83-15 22 102-24 claimants (19) 3:4,6,11 5:24 10:8,9,25 11:13 28:22 40:4 54:3 67:9 82:10.13 87:14 90:25 92:17 100:19.20 claims (2) 51:14 92:16 clarification (3) 32:14 58:17 clear (23) 6:16 8:19 9:12 12:13 21:8 23:6 25:15 26:19 29:5 38:15 43:11 45:25 46:14 55:12 60:5 63:15 75:6 84:1,1 87:8 94:16 102:1 104:4 clearer (1) 105:14 clearest (2) 28:24 100:18 clearing (1) 13:25 clearly (6) 20:15 28:13 43:15 50:3 65:25 105:6 climb (1) 77:11 climbing (1) 102:15 clinic (2) 68:10,12 clip (1) 87:3 close (3) 20:7 44:25 65:21 closest (1) 21:18 closing (2) 2:8 38:11 clyde (1) 71:1 combination (1) 50:13 combined (1) 1:23 come (32) 9:1,2,23 11:11 14:3 15:2 22:16 24:15 33:19 34:10,19,23 36:5 37:11 38:4.11 49:15 54:6 55:5.7 57:13 62:19 64:20 66:22 75:20 78:13 79:4 82:13 83:21 84:14 92:9 101:20 comes (7) 25:25 41:22 46:12 62:16 69:12 71:20 85:9 coming (14) 5:2 14:11 15:21 20:1.35:1.49:8.25.50:1 78:8 79:3 80:7 81:12 96:23 102:21 commemorate (1) 27:2 comment (1) 40:12 commission (1) 40:25 committal (7) 27:15 44:14 79:21 84:20 94:22 95:1,10 committals (2) 26:8 86:6 committed (4) 41:5 82:5 83:18 100:16 common (19) 13:7 17:10,13,17,21 20:23 22:12 44:19 45:4,25 49:1 50:16 53:2 54:12 56:16 58:6,7 70:8 104:11 communication (1) 34:17 community (2) 72:6.11 company (1) 76:4

33:9 51:14 53:22 64:2 65:4

66:8 74:14 83:18 86:10

april (1) 84:23

arbitrary (1) 62:12

area (6) 8:20 31:13 65:21

arguably (3) 7:14 9:15 11:4

arguments (2) 28:20 96:1

70:10 99:10 105:9

areas (2) 32:3 71:13

argument (1) 26:21

arise (1) 10:23

dpp (3) 22:21 42:23 44:3

draft (2) 53:21 54:4

competing (2) 40:15 95:11 complaint (1) 10:17 complete (1) 75:13 completely (4) 26:9 48:18 55:8 65:3 complexity (2) 30:10 52:15 complicated (2) 52:14 72:2 complication (1) 68:15 comply (1) 73:14 comprising (1) 5:11 concern (5) 5:12 54:5 67:3 70:2.4 concerned (1) 91:7 concerning (1) 30:5 concerns (1) 34:20 conduct (5) 8:23 29:9 32:18 65:4 86:19 cone (1) 46:10 confidence (1) 93:6 confined (2) 33:15 61:12 conscious (2) 54:14 60:12 consider (6) 2:5 25:17 33:21 52:11 73:20 75:3 considerably (1) 3:10 consideration (2) 37:5 73:7 considerations (1) 72:20 considered (3) 25:25 43:10 87.18 considering (1) 101:8 consultation (1) 33:13 contact (1) 92:18 contemplate (1) 29:10 contempt (4) 28:7 73:19 95:25 96:1 contend (1) 64:6 content (1) 53:20 contention (2) 3:13 64:7 context (1) 43:12 continue (3) 56:7 74:22 83:23 continues (3) 16:13 56:4 80:14 control (3) 35:5 51:2 54:25 convenient (1) 26:23 convictions (1) 89:6 convoy (1) 56:23 correct (2) 43:22 83:3 correctly (1) 41:9 corridor (1) 82:20 cost (2) 35:12 67:2 costs (10) 34:3,11,13,15,15 35:2 53:17.22.25.25 couldnt (6) 7:25 8:2 23:18 41:7 75:8,21 count (1) 19:9 counter (1) 72:8 counts (1) 94:13 couple (3) 7:17 33:14 44:14 course (5) 11:7 24:21 79:25 97:3 98:8 courts (5) 35:9 65:8 66:15 79:23 102:15 covered (3) 11:4 44:24 105:10 coveredfaced (1) 105:13 cps (4) 59:23 72:22 93:18 94:13 crash (1) 7:5 crates (3) 54:19,21 55:19 creating (1) 78:8 credible (1) 29:19 criminal (11) 41:1,25 71:22 72:14 89:22 92:4 94:6 95:13.15 96:2 102:13 criticise (1) 82:23 criticising (1) 83:1 crosses (1) 64:3 crossexamination (1) 51:5 crossexamined (1) 4:13 crossing (2) 64:4 87:24 crossreference (1) 14:23 crowd (2) 62:3 63:9 crowding (1) 26:10 crown (1) 88:24 cuadrilla (1) 32:15 current (1) 100:9

currently (1) 22:7 curtail (1) 23:13 curtin (56) 1:3,5 2:4,8 3:1.10.19 4:6.8.22.24 5:5 11:20.24.25 12:4,7,12,18,19,20,24 13:1,3,19,21 16:9,12 18:4 26:23 27:25 28:14,19 29:2,15,16,16,18 30:2,7 34:7 36:11.12.13 37:7.13.15 42:20 64:2.4 78:16.17 92:10.12 93:4.16 curtins (2) 30:9 37:20 cut (3) 1:21 97:25 98:4 cutout (1) 98:1 cutting (2) 98:3 102:16 cvp (1) 12:3 D

d18 (3) 15:7 47:6 57:3

d19 (1) 55:11

d19s (1) 55:23

d3 (1) 57:3

d4 (1) 57:3

d5 (1) 49:25

d7 (1) 46:23

d8 (1) 6:10

89:8

85:12

105:21

daily (1) 66:23

dare (1) 34:11

damage (4) 17:13 39:18 40:3

dash (4) 15:25 16:3 61:19

date (3) 16:4 95:2 96:16

day (25) 38:4 42:7.9.16.17

59:14 62:7 66:19 76:3,3

81:13,13,13 85:13 86:2

87:18 93:13 96:16,17,22

97:16,17 101:15 104:5

de (8) 30:23.23 47:23.24.25

deal (3) 4:21 30:13 81:11

dealing (4) 66:13 76:5 98:8

dealt (3) 41:24 67:6 101:3

decide (5) 27:18 51:17 62:5

decided (3) 33:25 93:1 94:1

35:9 40:19 43:8.21 76:8.16

deconstruct (2) 54:21 55:15

defendants (6) 6:8,17 49:20

defendant (3) 20:11 21:6

57:23 67:5 79:22

definition (2) 32:2 64:10

degree (5) 10:3,10 40:20

define (1) 46:2

61:10 70:7

delay (1) 39:21

72:2,23

64:14 74:1

66:25 72:7

depends (1) 61:5

describe (1) 7:10

describing (1) 19:6

description (1) 8:2

details (1) 4:11

91:10

deployed (1) 105:16

described (4) 7:3,17,24

deliberate (1) 31:1

delineation (1) 41:24

deliveries (1) 36:19

democratic (3) 33:12

nonstrate (4) 22:5 30:6

demonstrating (1) 77:11

demonstration (3) 63:11

demonstrations (2) 41:9

days (7) 1:20 2:15 16:5

42:12.15 96:15.17

70:15,16 71:17

deadline (1) 95:11

103:18

74:25 77:4

deciding (2) 72:4,25

decisions (1) 35:24

47:5

decision (8) 22:23 29:24

difference (7) 24:13 81:17,22,24 82:7,12 83:24 different (19) 7:21 21:23 22:1 30:21 31:6,8,8 43:15 66:17 68:17 76:5.7.13 78:19 82:23 85:11 93:2 94:1 100:12 difficult (8) 19:8 32:1 40:15 52:9,12 63:7 73:24 83:2 difficulties (5) 8:1 22:5 35:12 59:24 89:21 difficulty (16) 7:7,16 13:23 14:3 27:21 28:3.4 44:21 63:19 68:15 75:22 76:9 15 87:10 95:4 99:24 digit (1) 90:16 digital (1) 80:16 dint (2) 27:18 61:9 direct (2) 28:2 71:23 directed (1) 100:9 direction (1) 3:25 directly (1) 64:7 disappeared (1) 14:8 disappointing (1) 89:1 discloses (1) 29:17 discourage (1) 34:25 discretion (3) 34:4,15 74:25 discuss (1) 37:12 discussion (2) 50:23 70:2 discussions (1) 25:8 dismantled (1) 6:3 dismissed (1) 58:10 disposal (1) 83:8 disproportionate (1) 75:15 dispute (2) 81:10 87:16 dissenting (1) 22:22 distance (1) 10:1 distinct (1) 92:15 distinction (1) 24:5 distinctive (1) 90:7 distress (1) 10:20 distressed (1) 51:12 division (1) 2:14 document (1) 3:7 does (12) 9:8 26:5 28:16 29:2 33:18 34:14 35:20 68:13 73:9 91:16 101:16.17 doesnt (11) 8:13,14 9:10,12 25:11 27:17 35:8 63:24 65:22 70:22 73:6 dog (4) 78:14 85:4 86:4 88:1 dogs (8) 27:2 96:12 97:16,18,22,25 98:4,8 doing (14) 21:24 23:10 30:11 32:8.9 33:1 35:2 40:10 41:1 57:22 77:18 82:23 84:8 86:22 done (14) 1:17,21 5:1 8:5 10:25 19:6 26:9 29:21 35:6 80-20 84-4 87-17 88-18

90:25

dont (68) 4:9,25 5:1,2,5 6:6

19:1,2,13,16 20:2,8 23:15

28:17,21,23 29:1 31:16

38:16 40:13 43:20 44:8

58:17.18.23 60:24 62:10

80:22.25.25 81:10 87:8.16

89:3.5 90:21 91:3 93:2

94:18.21.21 95:24 96:4

98:15,15,16,17 99:19,25

down (16) 12:14 21:15 22:16

24:18 26:8 30:24 32:24

82:6 85:8,22 93:22

33:7 35:14 37:2 47:22 70:9

101:14 102:8,9 103:8

104:6,8 105:10

doubt (1) 100:22

67:19 68:3 76:15,18

12:7.12 16:16.22

49:9 52:6.17 54:4

determine (1) 41:3

82:8 90:10.13

determined (2) 33:20 95:14

didnt (11) 2:22 7:22 11:10

17:22 34:18 36:14.25 42:9

draw (4) 24:23 25:5,15 46:19 drawing (1) 26:11 dreamed (1) 31:13 drive (6) 15:13 25:23 64:22 67:13 70:14 80:1 driver (3) 16:23 36:23 70:8 driveway (1) 91:21 drone (1) 103:11 drones (1) 102:25 durant (2) 6:13 15:17 during (1) 36:18 earlier (2) 5:19 86:2 early (1) 104:6 earth (1) 35:11 easier (3) 18:20 25:1 30:13 easy (4) 24:25 29:16 30:8,8 edge (4) 26:4 29:3.6 100:19 effect (5) 27:24 32:11 63:21,24 100:10 effective (2) 32:19 83:21 effectively (3) 32:9 53:23 54:25 efforts (2) 65:14 92:17 eight (1) 92:8 either (8) 19:14.17 23:20 27:25 62:13 67:6 94:6 99:14 elaborate (1) 10:5 elected (1) 50:25 element (3) 33:12 99:9 105:15 else (8) 19:25 35:7 67:5 80:24 88:17 94:18 103:19,19 mail (1) 1:11 emphasises (1) 68:14 employee (34) 15:25 16:3 38:23 47:8.15 49:10.11 50:4.5.8.9.19.23 52:19,21,24 55:4 64:5 80:2,2,7,7,11 81:2,5 82:19 84:25,25,25,25 85:2 91:8,9,11 employees (5) 17:8 38:24 82:10 85:12 91:2 encourage (1) 37:9 encouraged (2) 25:12 41:14 end (3) 48:17 57:18 73:19 enforce (1) 71:4 enforcement (1) 44:10 engage (1) 37:8 engaged (3) 10:11 65:12 68:21 enormous (1) 34:3 enough (5) 7:13.15 24:19 73:24 98:16 ensues (1) 73:1 enter (5) 8:19 28:11 96:25 97-22 103-25 entering (2) 28:21 91:20 entirely (2) 53:24 76:2 entitle (1) 11:10 entitled (2) 11:6 96:8 entry (1) 97:19 equation (1) 66:11 equivalent (1) 76:17 escorted (1) 56:25 essential (2) 37:14 74:24 sentially (1) 33:10 et (2) 30:12 92:22 even (25) 4:9,11 8:5,19 10:5,9,24 19:6,8 22:22 30:9 42:9.17 47:20 52:9 67:1 69:19,19 73:20 74:2 75:7 82:19 96:16 97:6 101:14 evening (1) 3:17

event (8) 34:2 62:2,3

ever (2) 10:5 59:9

everard (1) 72:7

65:7,19 73:16,25 76:2

events (3) 5:20 24:25 43:18

every (9) 1:18,19 38:4 40:13 42:7.9 66:18 81:13 95:18 everybody (12) 27:20 29:13 32:8 33:7 45:15.22.23 47:22 57:25 67:5 68:16 99:6 everybodys (1) 64:10 everyone (2) 20:19 102:17 everything (1) 58:24 everywhere (1) 100:22 evidence (38) 2:16 3:13 4:8.10.13.18 9:6.8 14:19 25:1.17 26:7 29:17.23.23 31:7 34:7 35:23,24 36:2 37:20 38:24 41:16,17 42:20 58:23 71:14 74:7,7 77:8 84:2,24 88:19 93:21 94:3 96:8 98:12 102:20 exactly (3) 30:11 89:5 100:15 example (20) 4:13 7:2,23 21:21 24:15 29:15 30:3,5 31:3 36:16.16.24 39:7 42:1 61:4 71:11 72:1,6 73:1 75:12 examples (3) 66:9 69:16 70:4 excel (4) 75:9,9,20 76:20 excellent (2) 1:6 4:22 exceptions (1) 26:8 exclusion (15) 25:9,9,15 26:17 27:19,19,20,21 31:10.24.25 33:2 46:16 52:9 79:25 excuse (6) 76:23,24 77:1.2.4.13 exemplify (1) 11:1 exercise (12) 22:6 26:25 31:14 40:17 41:11 61:15 62:6.17.20 71:8 73:23 74:25 exercising (1) 69:8 exhibit (1) 91:13 exit (2) 28:11 58:13 exiting (1) 28:21 expected (2) 101:10.11 expediency (1) 32:25 experiments (1) 4:11 explanation (1) 47:11 extended (1) 83:19 extensive (1) 77:9 extent (8) 10:8 17:22 24:11 25:19 37:7 68:18 72:20 74:25 external (1) 7:6 extreme (1) 70:4 f (2) 80:2.7 facebook (2) 4:10 60:22 faces (1) 105:10 facility (2) 37:9 48:13 factor (2) 12:7 72:20 factors (2) 61:5 83:12 factspecific (1) 43:5 failed (2) 59:23 60:4 failure (1) 73:14 fair (1) 24:19

fairly (5) 12:9 29:4 35:13 63:9 76:8 falsey (3) 57:17 58:1 79:6 fame (1) 92:16 familiar (2) 12:9 18:2 fanciful (1) 63:13 far (4) 31:15 69:19 87:13 94:3 favour (2) 25:11 26:18 fear (2) 34:18 53:16 feature (1) 35:9 featured (1) 58:22 features (3) 23:22 91:5 92:2 feel (1) 37:14 feeling (1) 23:18 felt (1) 36:22 fence (8) 7:6 92:9 96:24 97:25 98:2.3.4 102:16 fences (1) 100:21

few (3) 1:20 96:15,17 fewer (1) 15:4 fiction (1) 100:3 fifth (2) 47:4 48:2 filming (2) 20:7 103:1 final (5) 25:10 33:9 37:12 46:17 54:6 finally (1) 50:10 find (4) 61:16 87:9 91:10 104:8 finding (1) 26:12 fine (4) 18:7 79:19 88:22 96:11 finish (1) 2:10 finishing (1) 96:23 first (23) 1:9 8:17 11:19 13:6,9 14:19 15:9 21:11 22:12 28:23 33:15 39:11 41-14-20 45-12 57-5 83-22 85:1.22 87:23 96:22.22 102:5 fit (1) 42:4 five (4) 56:5,7 57:8 97:18 fixed (1) 81:20 flag (4) 9:10 21:11 37:2 45:5 flare (3) 50:2,9 83:10 flashpoint (3) 26:11,15 42:12 fleeting (1) 48:1 flipping (1) 25:4 flowers (8) 26:24 27:2,8,13 28:14.17.19 29:2 flown (1) 102:25 focus (4) 22:4 25:1 69:22,24 follow (2) 12:5 37:13 following (7) 26:8 43:8 44:14 83:20 84:20 86:6 105:21 food (3) 36:20 91:8,17 foods (1) 93:7 foot (1) 34:12 footage (5) 8:14 15:18 80:20 98:19 102:17 forced (1) 17:3 forever (1) 81:15 forgets (1) 99:6 form (5) 5:4 39:18 82:20 99:10,12 forthcoming (1) 92:19 forward (4) 57:8 58:2 67:15 74:19 forwards (11) 11:11 13:16 15:21 49:8,25 50:1 53:4 57:21 61:2 80:18 101:3 found (1) 8:3 four (5) 5:10 18:18 60:21 84:14 94:12 framework (1) 3:12 free (8) 22:15 23:2,3,17 24:21,22 80:6 82:19 freedom (1) 59:5 freely (3) 47:12 48:13,14 frequently (1) 65:9 friday (5) 2:6.9 3:5.6.15 friends (1) 35:10 front (29) 4:15 5:17 6:19 13:11 18:10 20:6,19 21:4 23:1 30:19 31:14.17 38:8,15 49:9 53:1 54:19 64:4.8 77:18 78:10 79:5.8.11 80:12 98:2.8 101:18 103:19 frustrating (1) 94:17 fs (4) 15:25 16:3 49:11 50:23 fully (1) 10:23 function (2) 41:7 82:22 fundamental (1) 68:15 further (18) 8:1 15:15 17:1 20:18 24:6 28:25 41:11 45:24 46:6.12 49:17.22 54:24 80:4 92:25 94:14

97:18 105:4

fuzzy (1) 62:14

74:10.20 99:13

gammelled (1) 102:5

future (6) 29:21 34:23 41:12

105:9 101:9

gan (1) 60:23 gap (1) 38:11 gate (20) 10:25 11:7,11,11 16:16 21:4.4 26:24 28:15.15.17 78:3 91:22 96:25 97:10,11 102:16 104:18.19.20 gates (6) 5:17 13:11 51:2 54:19 98:2 105:13 gateway (2) 23:20 27:9 gather (1) 72:11 gathered (1) 94:4 gave (4) 42:20 93:17.18.20 general (4) 39:18 70:1 76:11 generally (2) 69:22 85:22 gentleman (10) 6:13,23 8:13 22:6 30:19 33:18 34:2 38-19 45-18 57-16 germany (1) 36:20 get (37) 3:5 7:22 9:1 11:12 13:24 25:22 29:8 32:18 36:18.19 38:3 42:7 50:20,25 52:6,25 54:21 56:11 57:8 60:10,20 64:21 71:16 75:11,21 77:3 80:5 81-8 82-19 21 25 86-12 97:6 7 102:5 10 20 gets (2) 28:6 48:18 getting (7) 48:22 50:10 77:19,19 84:9,10 95:4 give (10) 3:2.22 9:8.25 27:17 28:5 36:16 51:15 93:5,22 given (6) 1:19 59:11 69:16 75:24 97:16 100:18 gives (3) 3:16 60:8 86:16 giving (2) 48:6 76:10 glimpse (1) 97:9 goes (4) 33:12 55:22 62:10 going (49) 2:14,15 3:6 5:8,19 12:7 14:4,11 16:25 18:5 19:4 21:8.13 22:19 25:5.16 26:12 30:21 35:7.13 37:3.18.20.22 38:3 40:20 42:7 46:16 49:20 50:3 51:9 54:15,20 61:8,8,9 62:6 63:1,17,22 64:14 69:9 70:5 79:8 93:19 94:24 95:20 97:7 101:3 gone (6) 8:5 19:24 42:19 69:22 88:17 93:22 good (14) 1:6.9 7:2.12.13.14 16:22 24:15 39:6 61:4 71:11 84:12 89:24 105:17 goose (3) 7:1 66:14,17 graduates (1) 28:6 grant (12) 23:5,21,23 27:19,24 61:13,25 62:15 63:21 74:17 75:1 86:10 granted (6) 65:22 73:18 74:14 83:18 86:18 99:6 grass (17) 24:6,14,17 26:1,4 39:3 44:6 52:3 64:16,19 65:21 69:14,17 70:7,15 71-12 76-19 great (1) 3:14 green (1) 6:10 ground (1) 83:3 group (3) 5:16 18:13 45:3 guilty (3) 71:24 72:14 88:25 hadnt (3) 42:7 48:14 94:2 hair (2) 15:14 78:12 half (1) 60:18 halfway (1) 4:3 hand (2) 1:10 21:11 handed (1) 35:14 handful (1) 31:5 hang (1) 48:4

Opus 2 Official Court Reporters happen (3) 34:19 64:24

happened (11) 32:21 61:18

73:25 74:3,21 87:20 93:24

94:5 102:2 103:3 105:12

74:11

middle (4) 6:14 15:12 29:3

79:4

happening (15) 8:22 27:12 28:25 31:2 42:21 50:14 63:3 66:1,25 81:16,18,23 103:19 104:6.17 happens (9) 34:1 42:1 73:10 85:24 95:7,21 96:15 97:21 104:21 happy (2) 12:8 79:18 harassed (1) 8:24 harassment (19) 5:13 8:22 13:8 17:11,19 20:24 37:24 44:20 47:3 49:2 50:16 51:18 52:10.15 54:12 56:17,21 78:1 91:7 hardy (3) 50:24 51:5,12 harlan (1) 62:11 harm (2) 74:21,22 hasnt (2) 84:4,4 havent (12) 4:11,16,25 33:20.25 36:23 44:13.15 80:23 92:20 99:11 101:12 having (15) 13:15,24 22:16,16 25:23 29:10 38:11,25 44:22 49:15 55:8 76:22 80:1 82:19 83:17 head (1) 44:23 headings (2) 3:20,21 health (2) 39:22 73:15 hear (7) 1:3,5 35:14 52:24 60:13 81:7 105:8 heard (5) 34:7 42:6 61:19 63:12 95:14 hearing (2) 12:16,25 hebrides (1) 69:6 held (6) 22:8 50:5 57:7 64:23 79:3 85:16 hello (3) 1:3 11:20 36:12 helmet (1) 4:14 help (3) 3:10 6:5,8 helped (1) 70:1 helpful (3) 35:18 41:25 103:2 helps (3) 3:18 11:1 22:5 here (23) 5:2,3 6:10 10:4,11 13:13 21:7 27:2 30:19 31:3 37:3 38:23 48:11 50:14 55:4 63:3 66:1 71:14 76:5 81:18 83:24 94:20 99:24 heres (1) 37:3 high (3) 10:10 61:17 62:22 highly (2) 83:20 95:13 highway (79) 9:16,21 10:7,13 13:7.8 17:12.17 20:22.24 22:13.25 24:9 26:2 30:24 37:23 39:7,10 40:20 43:4 44:6,18,19,22,24 45:10 46:1 47:2,20 48:25 49:1 53:3 54:11 55:7 56:16,20 57:2 58:6,10 59:23,24 61:10 62:4 65:13,15,23,25 66:20 67:12.13.22.25 68:1.16.19 69:3.4.9.12.14 70:2.3.20 71:10.25 72:15 75:5,17 76:3,22 77:6,25 81:8,9 84:24 85:3 103:23 104:12 105:8 highways (1) 24:2 hill (1) 77:11 historic (2) 24:25 43:18 hoc (1) 67:6 hodson (2) 18:1 49:8 hold (2) 5:5 24:7 holding (6) 15:10 20:13 21:24 77:17 80:6 84:7 holds (1) 7:12 home (2) 77:19 88:5 honest (1) 98:16 hoodie (1) 57:17 hope (1) 1:10 hoping (1) 4:1 hour (2) 15:3 70:12 huntingdon (1) 62:22 hypothetical (2) 37:5 74:20 hypothetically (1) 73:12

60:8 63:10.12 injunction (57) 23:5,5,14,21 identifiable (1) 91:5 25:4 26:9.11 27:18.24 identified (12) 6:8 7:3 19:7 26:10 46:23 57:25 67:5 88:7.9 90:7.10 105:15 identify (13) 6:24 7:8 8:4,10 18:14,17,19 20:18,19 39:9 57:24 66:10 79:5 identifying (1) 59:10 identities (1) 93:17 identity (1) 98:23 ill (6) 4:3 36:1 37:13.13 103:7 105:12 58:17 104:8 illusory (2) 33:22 34:21 im (60) 3:2 4:1 5:2,3,8 6:6 10:7 11:20,21 insofar (1) 6:7 12:6,8,9,19,21,22 13:21 14:4.17 15:11 18:5 23:23 25:16.18 27:1.22 29:9 70:11 30:2.5.7 32:8.9 instead (1) 42:2 35:13,15,15,19 37:18 51:9 52:7,9 54:14,14 57:18 60:11 63:22 64:1 66:7 73:11 74:6 79:5 83:1 86:9 78:24 87:5 88:9 92:13,17 96:18,20,20 102:14 104:4 image (1) 14:2 imagine (3) 30:14 73:11,12 immediately (1) 28:6 impact (4) 38:25 40:1 44:12 implication (1) 54:1 interests (1) 68:21 implied (1) 11:5 importance (1) 72:24 important (5) 26:16 41:6,8 96:10 99:25 72:3 89:23 impose (3) 29:13 33:2 73:5 imposing (3) 32:10 33:9,10 impossible (1) 65:5 inaudible (3) 3:14 58:12 incident (79) 1:19 5:12 8:9,17,21 9:13 11:17 14:16.20 17:6.9.16 18:2 104:11 105:7 20:21 22:7 37:6.19.22.23 39:24 42:21 44:17 47:1,24 48:10,17,24 49:11,12,16,17 52:17 54:9 56:15,19 57:4 58:5,7,8,14 77:24 78:19 79:14.15.16.20.21.22 82:1.3.4.4 83:20 84:19 85:11.21 86:1.2.9 87:1.19 88:5 91:6,7,20 92:1 94:17 95:2 96:17,18,21,23 97:4 98:10 103:4,22 104:5,9,21 incidental (1) 65:16 incidents (22) 1:22 5:9,11 9:23 13:9 19:5,8 40:1,2 44:14 48:6 50:17 65:13 105:3 66:4.5.6 80:15 81:22 84:20.22 92:24 103:3 include (2) 32:17 71:12 includes (2) 23:16 71:11 including (2) 33:10 68:17 involving (1) 39:8 incredibly (3) 41:6 72:2,3 irvine (1) 71:1 incursions (1) 28:10 index (1) 106:1 indicate (1) 61:20 indicated (1) 41:18 indicates (1) 89:7 indicator (1) 36:22 isolated (1) 69:6 individual (10) 23:22 40:24 item (1) 91:8 51:14,14,15,17 59:10 items (1) 4:18 60:23 73:7 81:13 individuals (5) 34:22 87:15 94:11 98:11 102:9 ineos (2) 32:12.14 inevitable (1) 72:10 inference (1) 40:18 25:1,11,12,25 inform (1) 83:11 information (11) 58:20,22 59:3.5.8 87:12 95:5 98:16.18.23 102:8

92:14

28:18 29:11.20 32:19 34:24 36:18.21 40:6 41:15.18 42:3.8.10 44:12 46:3,17 52:4 61:14,17 62:1.12.15 63:15.17.21.23 65:1,22 66:21 73:6,18 74:13,18 75:1 81:16 82:2,4,5,9 84:21 86:10,18 94:20 99:12.15 100:23 injunctions (3) 100:7.9.16 inside (6) 14:2 50:24 52:19 80:11 104:23,24 inspection (1) 73:12 instance (3) 24:14 46:9 instinctive (1) 72:11 institutions (1) 72:23 instructions (3) 16:23 53:14 instrumental (1) 57:4 insulate (2) 42:2 65:10 intend (2) 25:7 36:14 intention (1) 36:14 intercepted (1) 56:24 interest (2) 72:5,19 interesting (1) 52:1 interfere (8) 23:13 24:12 40:24 69:18 92:14 94:18 interfered (1) 48:10 interference (32) 13:7 17:7,10,13,18,20 20:23 26:5 28:5.12.13 44:18 45:25 47:18 48:25 50:15 52:13 53:2 54:12 56:15 58:7 61:10 67:12 68:20 70:5,8,16,16 75:3,19 interferes (2) 68:19 75:1 interfering (12) 22:11 23:16 24:8,21 31:9 45:3,9 46:6 48:16,20 69:3 70:21 interim (6) 25:20 32:23 33:16 46:17 66:23 83:19 interprets (1) 68:13 interrupting (1) 35:16interruption (1) 72:21 interviewed (1) 101:18 into (23) 5:18 24:20 25:4 27:14,19 28:7 31:13 32:3 33:12 48:13 53:21 54:20 56:6,8 57:2 72:22 73:19 78:2 79:3,4 84:10 100:2 introduced (1) 4:12 investigation (2) 93:1 102:10 involved (7) 8:9 40:13 57:23 80:6 86:1 97:6 101:19 isnt (22) 19:5 21:19 22:9.15.17 25:2 33:15 34:9 37:10.13 41:25 42:18.25 43:3,4 47:13,24 63:3 67:4 74:7 81:18 97:23 its (144) 2:19 8:5,21,22,25 9:7 10:19.21 12:7 13:22 15:8.25 16:2.3.5.7 17:19 19:8 22:24.25 23:23 24:3,5,7,13,25 26:2,12,18,19 27:20 28:12,13 29:14 30:4,8,13 31:1,4,7 32:14,15 33:3,3 35:18.22 36:3.21 37:14.15 39:8.17 40:12.22 41:3.4.14 42:18 43:20 44:9,10,20

46:16 47:21.25 48:1.1.15 55-4 56-17 57-23 23 58:8.13 63:2.15.17.23 64:6.18 65:3 66:14 67:15.17 68:3.4.23 69:19,25 72:2,5,19 73:24 74:14,19,21,22,24 75:8,19 76:10,13,13,14 77:25 78:8,20 80:25 82:22 83:23 84:1 85:20 86:12.21.22 87:15.19.22 88:4.10.25 90:15.15.18 91:10.12 92:1.7.12 95:12 96:15,17,17 99:10 100:20,21 102:23 103:1 104:5 105:12 itself (5) 22:3 26:6 28:5 71:23 76:13 ive (19) 3:14 4:18 6:1 12:12 14:18 29:11.21.23 31:3 34:7 36:22 40:6 44:1 59:17 64:9 73:18 79:19 93:6 96:18

i (1) 91:8 iacket (1) 38:19 iaffray (2) 21:13 78:14 james (1) 50:1 job (4) 40:10,15 41:2 83:2 join (1) 63:11 joined (1) 59:20 joining (2) 39:3 94:25 jones (15) 22:21 24:5,23 26:1 42:23 43:11 44:3 67:17.21 68:5.23 69:16 70:23.25 76:6 js (2) 91:9,11 judge (5) 31:19 34:24 83:2,9,10 judged (1) 40:21 judgment (1) 35:14 july (14) 11:18 13:5,6 14:20 17:6.16 20:21 37:19.22 44:17 47:1 93:13 94:15 103:22 june (5) 5:10 7:5 91:19 92:3 97:17 justification (1) 30:12 justified (3) 30:15,18 62:13 justify (1) 32:1

k (1) 88:6 keep (4) 5:19 26:15 31:2 81:12 keeping (2) 13:25 46:18 key (1) 1:21 khaki (1) 19:1 kick (1) 11:11 kicked (1) 86:3 kicking (2) 86:4 87:18 kicks (1) 85:9 killer (2) 90:23,23 kills (1) 90:24 kind (1) 103:3 knew (1) 102:18 know (52) 2:14,22 4:9,20 5:1 6:17 8:3 9:16 10:8 19:1.2.13.17 20:2.8.17 22:1 23:15 25:9 31:5 33:17 34:16 37:3 38:16 48:7 49:9 58:12.15 59:14.22 60:24 74:9 83:1 87:9 89:3 90:22 91:3 98:18,22 99:4,4,19,19 101:14.17 102:3.9 103:8 104.7 8 9 105.10 knowledge (1) 41:11 known (1) 30:3 knows (1) 101:1

I (1) 88:6 labour (1) 2:14 lack (1) 93:21 ladder (1) 92:8 lady (8) 6:10,12 38:18 46:5,9 78:12 85:4 87:22 laidlaw (4) 49:7 57:19 58:3 land (28) 10:6,8,9 11:3,4,8,13 17:18,22 20:24 47:2,18 49:2 52:13 56:20 57:19 59:25 60:2 61:11 67:11.14 71:7 77:25 79:10 100:10.19.20 103:23 large (12) 5:11 19:5 24:16 39:9 40:16 48:8 61:20 73:17,22 100:21 104:2,4 larger (1) 63:7 last (1) 27:3 lasts (1) 79:22 later (5) 8:5 11:22 93:18 96:15.18 lawful (13) 26:22 32:18 42:25 43:3 62:4 68:2 73:3 76:22.24 77:1.2.4 83:23 laying (3) 26:24 27:1 28:19 lays (2) 27:8 29:2 lead (2) 23:18 55:4 leading (1) 73:21 leaflet (2) 37:4.9 leaning (1) 45:1 least (6) 2:24 4:1,17 18:18 64:15 69:10 leave (13) 15:5 16:18 21:22 22:8 27:7 29:16 47:15

51:20 61:13 66:19 67:8

led (4) 58:9 82:1,3 96:12

left (11) 6:10 18:22 19:12

21:7 23:12 27:9 38:25

45:11 47:9 64:5 67:2

lets (11) 12:13 22:4 23:19

87:8 103:15 104:15

level (4) 25:15 30:10 83:9

like (10) 5:8 33:3,3 44:23

70:10 85:21,22 87:22

letter (1) 59:11

letters (1) 59:11

licence (1) 11:5

lifting (1) 2:17

91:17 95:5

likely (1) 46:19

75:10,19

105:11

98:18,22

linked (1) 89:13

listen (1) 52:1

listening (1) 30:7

69:23 104:8

lives (1) 27:3

lock (1) 82:20

locking (1) 105:13

log (3) 12:2,8,8

listed (2) 18:14 93:13

litigant (2) 12:22 33:24

litigation (2) 35:6 99:5

little (9) 2:24 5:18 11:20

24:1 57:21 58:2 67:21

long (3) 40:22 54:14 70:6

lines (2) 24:3 25:6

likelihood (1) 72:15

limit (2) 70:12 99:9

limitation (1) 95:19

limitations (2) 103:10.12

line (11) 15:20 20:19 24:23

62:24,24 64:19 78:21

limited (4) 25:14 26:7

25:15 43:14 46:19

86:15

34:1 45:11 73:11 86:8,10

75-9 97-15

leaving (1) 91:13

leggatt (1) 32:16

legislation (1) 94:1

less (2) 72:16 89:8

lost (1) 27:3 lunchtime (3) 53:6,7,14 magistrates (4) 88:23,25 89:1.7 magnitude (1) 81:23 maher (7) 6:18 15:22 18:21,22 47:13 49:19,23 main (2) 24:17 56:24 maintain (1) 26:13 majority (1) 22:23 legal (4) 10:11,11 23:25 28:6 makes (7) 23:6 27:9 34:21 35:5 52:11 67:7 100:1 making (5) 23:25 24:5 29:5 44:5 61:2 let (5) 2:7 4:20 50:2.9 96:16 man (1) 21:17 managed (1) 20:19 managers (1) 16:2 manner (3) 9:17 10:17,19 manning (3) 88:7 90:11 104:10 mannings (3) 88:5 91:4 103:24 many (9) 18:16 26:17 36:17,20 39:8 61:6 66:4 68:17 90:17 marley (4) 21:8 47:6 49:22 57:14 masked (1) 105:12 materially (1) 95:16 matter (7) 22:20 29:2 32:24,25 34:4 61:11 88:25 matters (5) 60:5 70:18 82:6 89-25 92-3 maybe (1) 104:15 mayflower (6) 20:11 21:7,12 38:19 47:6 49:25 mbr (7) 9:1 73:13 74:8 81:15 90:23,24 91:21 mean (4) 59:16 67:16 87:16 link (7) 11:24 12:2,3,5 90:12 meaningfully (2) 69:8 71:8 means (3) 23:16 28:4 29:11 measure (2) 32:23 40:23 media (1) 92:22 meet (2) 4:3 54:5 megaphone (1) 4:15 memorial (1) 27:9 memory (1) 79:24 merely (1) 5:2 message (1) 82:25 messages (1) 52:2 metal (1) 8:20 method (1) 7:21 methods (1) 7:12 metres (4) 23:20 46:6,8 look (34) 11:19 14:12,12,18

15:20.24 31:2 33:8 42:3 43-17 44-3 48-9 52:11.18.18.54:5.57:4.66:4 74:19.21 75:18 76:1 78:4.18 85:1.5 87:8 88:10 90:3 91:16,22 98:24 100:24 103:15 looked (6) 3:19 14:22 18:4 30:19 43:12 66:4 looking (18) 15:8 19:12 24:24 25:5.17 30:9 35:24 42:23 43:18 51:13.23 52:7.9 64:7 71:19.22 75:7 96:21 looks (4) 44:23 85:21,21 87:21 lordship (15) 1:19,22 5:9 7:22 8:18 25:16 26:10 28:18 34:13 46:4 48:3 53:15 83:18 89:22 101:1 lorries (1) 27:14 lorry (3) 36:18,21,22 loss (5) 39:12,16,17,20,21 lot (3) 2:20,21 99:4 lou (2) 47:6 49:22 loudhailer (2) 78:9,16 low (1) 21:15 luck (1) 16:22

midwinter (1) 88:13 might (22) 2:10,23 9:19 10:19 11:4 25:24 30:24 milder (1) 37:1 48.5 mine (1) 82:22 71:17 97:19 105:16 47:6 87:20 104:6 57:8,10 58:2 100:11 105:3 5:7.8.24

34:18,19,23,25 35:1 40:24 69:11 73:18.21.24.25 78:17 87:18 91:17 95:25 mind (6) 2:7 34:8 43:2,6,23 mindful (1) 64:1 minibus (1) 97:21 minimis (8) 30:23,23 47:23,24 48:1 70:15,17 minute (8) 21:1 38:5 48:4 49:5 60:7 85:18 91:23 minutes (44) 5:18 6:3 13:12,17 14:5,13,24 15:2,3 50:10 54:20 55:2.16.20 56:5,6,7,8,10,12 57:1,8,10,11,11,12,12,15 60:11,16,18,21 79:23 80-18 81-3 3 6 82-15 92-7 96:25 97:8 98:5 104:14 23 misunderstood (1) 12:12 moment (22) 1:4 5:19,22 14:12 15:19,19,22 21:9.13.14 37:2 50:3 51:20 52:4,8 54:17 72:6 85:20 96:10 99:19 101:5 102:8 mentary (2) 23:11,16 monday (2) 2:22 3:19 monitoring (2) 66:22 102:25 month (2) 48:3 66:5 more (22) 1:24 2:5 10:5 16:15 20:15 37:18 41:8 48:8,17 50:3 52:9,12,14 62:14 63:7 70:4 87:21 98:23 102:21 103:17 104:8 morley (9) 18:9 19:12 20:7 21:10,14 38:7,20 46:24 morning (6) 1:9,11 4:24 69:7 most (6) 21:11 25:12 26:18 31:19 71:13 99:8 motif (1) 26:23 mouth (8) 19:2 20:1 26:3 29:1 45:13 46:12 78:2,5 move (23) 18:20 51:11 53:4 54:15,19 55:2,15 56:4,5 60:7,10,11,14,16,20 61:2 78:5 80:18 104:14.23 moved (8) 10:15,24 13:14 20:10.12 30:20 49:15 movement (1) 92:7 moves (1) 100:2 moving (3) 13:16 61:23 ms (284) 1:7,8,9,13,15,17 2:2,10,16,19 3:7,18 4:5,19 6:1.10.10.12.13.16.21 7:7,16,20 8:25 9:6,10,22 10:14,22 11:6,10,13,17,24 12:2.12.16.19.21 13:2,4,6,23 14:7,17,24 15:14,17,17 16:5,7,7,11,13 17:14,16,25 18:1,4,8,18,24 20:11 21:7.8.12.13.20 22:1.10.15 23:25 24:13 25:3,7 26:15,20 27:5,12 28:8 29:14 30:17 31:21,23 32:4,7,12,22 33:6,14,18,23 34:4,13 35:3,17,21 36:4 37:17.18.22 38:19

idea (6) 34:22 36:17 57:9

informed (1) 83:5

initially (2) 50:25 85:20

39:14.16.25.40:8.12

43:2,6 44:3,11,17

41:3.13.17.17.22 42:11.15

45:5.8.13.17.20.23 46:4.8 47:6.13.19.24 48:5.8.15.24 49:7,8,25 50:1 51:23 52:16 53:7.12.13.19 54:3.7.9.11.14.17.24 56:1,1,3 57:14,19 58:3.11.13.17.21 59:7,13,22 60:4 61:18,23 62:3,8,19,24 63:14,24 64:4,7,12,16,18 65:8.17 66:3.12.17 67:4.17 68:5.25 69:12 71:10.17 73:9 74:6.12.16 75:3.14 76:24 77:7,21,24 78:14,14,18,23 79:20 80:22,25 81:12 82:3 83:15 84:12,18,19 85:5,8 86:14,20,24 87:1,4,8,22 88:3.13.15.22.25 89:5.9.14.17.19.25 90:3.15.20 91:2.16.19 92:23 93:11,14,24 94:16,22,24 95:2,4,9,17,23 96:3.6.9.13.20 97:3 98:14 99:2,7,15 100:4,7,15 101:1,14,17,23 102:1,7,14,21,23 103:10.17.22 104:4.20 106.2 much (18) 2:1 3:2 8:5 9:16 34:18 36:6 37:16 43:8,9 53:8 54:8,15 72:24 84:13 86:5 103:4 105:11.19 muddles (1) 60:1 must (2) 28:1 59:18 mustnt (1) 23:7 mute (2) 1:4 13:20 myself (1) 37:7

name (4) 7:3 30:2 59:10 88:11 named (4) 6:8 49:20 57:23 67:5 names (7) 90:25 92:19,21 93:3,5,15,22 narrow (2) 69:21 78:8 narrowed (1) 45:8 narrowing (1) 47:20 nature (7) 11:2 31:1 76:5 84:22 89:12 92:20 97:4 near (4) 20:1 29:8 78:3 81:22 necessarily (2) 94:23 103:1 necessary (1) 62:13 need (17) 2:16 11:18 12:5 16:16 17:23 25:24 26:14 34:18 37:12 39:12.23 43:6 52:5,18 66:3 78:23 103:6 needed (1) 71:2 needs (6) 12:2 17:12 33:7 45:14,20 97:5 nervous (1) 43:14 nervousness (1) 104:7 never (5) 6:23 8:9 28:5 31:13 86:18 newcomers (1) 33:10 next (30) 1:20 2:15 11:17 14:20 17:16 20:21 44:17 47:1 48:24 51:9 53:12 54:9 56:19 57:14 58:5 62:16 77:24 79:15,20 81:25 84:19 87:1 91:6 96:16,17,22 97:17 103:4.22 104:11

nfa (1) 94:13

nicklin (257)

1:3,6,11,14,16,25 2:3,13

3:1 4:3,7,19,23 5:5,22,25

6:5,11,15,20 7:1,11,19

8:24 9:4,8,14 10:2,16

13:5.19.22 14:6.15.18

18:2,7,16,23 21:17,21

26:14.17.21 27:7.17

15:16 16:4,6 17:12,15,24

22:4,14 23:4 24:11,24 25:4

11:1.9.12.16.25

12:4.11.15.17.24

36:5.10.12.37:6.15.21 39:10.15.23 40:5.9.14 41:6,16,21 42:9,12 43:1,3,20 44:9,16 45:2,7,11,15,18,22 46:2,5 47:11,15,23 48:4,7,9,23 51:11 52:6 53:6.8.12.18 54:2.4.8.10.13.16.23 55:25 56:2 58:8.12.15.19.25 59:9.15 60:3 61:4.22.25 62:5,10,22 63:6,19 64:1,6,9,13,17 65:5,14 66:2,7,13 67:3,14 68:3,9 69:5 71:4,16,18 73:10 74:9.14.24 75:12 76:21 77-3 20 23 78-21 79-19 80:19.23 81:10 82:1.22 84:11,13,18 85:4,7 86:8,15,21,25 87:2,5,13 88:2.11.14.21.23 89:3,6,10,15,18,24 90:2,13,19 91:1,15,18 92:11 93:8,12,15 94-5 21 23 25 95:3 7 12 18 24 96:4 7 11 97:2 98:11,25 99:3,8 100:1,6,8,24 101:9.16.22.25 102:4.13.20.22 103:6,15,21 104:2,19 105:18 obody (4) 42:16 71:13 99:13 100:22 norm (1) 42:14 normally (2) 70:11 71:12 nose (1) 78:13 noted (1) 17:8 nothing (3) 11:14 88:17 103:17 notice (5) 100:14,18,25 101:6.7 noticed (1) 90:11 notify (1) 63:2 notional (1) 34:22 november (2) 79:21 86:6 nowhere (2) 62:18 81:22 number (35) 5:9 9:22,24 10:22 11:18.21 16:10 20:11 24:16 30:21 35:3 38:20 40:16 41:13 42:13,15 49:20 51:15 57:22 63:7,15 73:17,22 79:17 80:19,23 83:5,6,6 87:2 89:19,25 97:5 104:2,4 numbers (5) 12:14 39:9 61:9

62:12 63:2

29:7.16 30:8 31:18.22.24

32:5.8.20.23 33:7.17.22

34:1.7.16 35:15.18.22

objection (7) 4:20 27:4,10 46:10 54:3 59:1.3 obscuring (1) 29:1 observe (2) 4:24 5:2 100.2 obstruct (5) 23:15 28:1 31:16 63:25 65:15 53:25 obstructed (6) 29:18 47:16 64:23 66:20 85:2 104:10 obstructing (15) 10:13 22:2,9 23:1 25:2 31:9 37:10 42:24 64:3 65:23 68:2.23 71:25 72:15 77:5 obstruction (61) 13:7 17:7,10,11,12,17 20:22 65:4 21:23 22:19 23:3,11 24:2.22 26:5 28:12 36:17 outer (1) 69:6 37:23,24 39:7,10,19 40:20 outlining (1) 62:1 42:18,22 43:4 44:5,18 47:2 48:1.2.2.25 50:15 52:12.13 53-1 54-11 56-15 20 58:6.10 59:23 61:1 63:4 64:6,10,15 65:2,13 69:10 73:3 75:10,17 76:7,21 77:25 78:1,3 84:23 88:20

obstructions (1) 77:12 obstructive (1) 40:1 obstructs (1) 81:14 obtaining (1) 96:7 obviously (13) 8:18.20 9:12 17:9 20:6 28:8 35:11 44:25 45:23 47:16 79:10 89:11 105:5 occasion (3) 43:22 48:11

96:12 occasions (5) 8:20 9:24 31:8 102:2 103:4 occupational (1) 39:22 occupiers (1) 100:9 occur (1) 35:25 occurrence (1) 66:24 occurring (1) 50:17 oclock (8) 2:8,11 3:5,8,14,15 4.4 53.8 odd (3) 71:20.21 87:19 offence (4) 72:14 94:14 95:15 102:13

offences (4) 41:1 89:20 94:12,20 offer (1) 3:16 offered (1) 97:15 officer (1) 79:7 officers (3) 4:15 83:6.7 official (2) 93:19,20 oh (4) 36:3 68:22 84:13 90:19 oil (1) 65:11

okay (30) 1:6 2:3 4:3,23 12:7 14:6 16:6 27:7 33:22 35:15 37:12 44:16 45:7 53:6 54:2.16 58:15.25 59:15 60:3 62:5 68:10 72:13 73:10 86:16 88:2 90:2 101:25 103:15.21 old (1) 100:8 once (6) 1:24 66:25 71:17

82:24 87:18 99:5

oneoff (6) 42:18,21 71:14

75:15 76:1 81:17 ones (1) 100:17 onwards (1) 13:17 opening (2) 3:20 46:14 openly (1) 92:16 opens (1) 21:4 operate (1) 92:16 operates (1) 23:14 operation (1) 96:14 operationally (1) 40:19 opportunity (2) 86:17 101:10 opposite (1) 45:18 opposition (1) 63:12 optimum (1) 87:13

opus (2) 12:2,4 orange (1) 38:19 order (34) 25:20 27:10 29:13.15 30:15 32:1.13.23 33:9 34:3.11 35:5.5 46:17 53:16,17,21 62:8 66:23 81:20,23 84:21 87:15 96:7 99:3,5,13,15,16,17,20,22,22

orders (4) 25:10 33:16 34:14 ordinarily (1) 29:8

organisation (1) 92:15 organised (2) 63:3 66:25 original (1) 62:11 originally (3) 1:18 6:3 93:25 others (2) 18:15 66:13 otherwise (3) 23:14 53:25 outcome (1) 76:13

60:8,10,20

71.6 72.16 17 73.17 22

78:9 79:7 82:5,11,24,25

83:5,14,21 84:5,5,6,7,9

88:9 90:6 92:15,24

93:9.16.21 94:9 97:22

75:8.19 76:18 77:15.16.18

outrage (2) 72:6 73:11 outside (6) 32:10 64:14 72:12 81:15 91:9 101:18 over (20) 1:20 7:5 11:7

18:25 25:22 33:4.5 51:9 53:14.14 55:8 66:5 76:19 90:9 92:9 96:24 98:2

102:16.25 103:11 overlooked (1) 68:7 override (3) 63:25 67:18 75:4 overthrow (1) 68:13 own (4) 3:12 75:8 85:20 87:19 owners (2) 9:18 10:18 ownership (1) 10:5

p (1) 55:4 paint (2) 90:9 91:25 painted (3) 78:21,25 88:6 painting (1) 91:21 panoply (1) 30:14 paragraph (1) 9:7 paragraphs (1) 91:11 parasitic (7) 5:13 13:8 20:25 37:24 47:3 49:2 56:17 parked (1) 13:10 part (20) 9:23 15:17 16:18 17:19 22:11 23:2 26:2 30:18 42:25 44:6 47:19 60:9 69:15 75:14,17 86:23 96:13 97:23 98:1.4 partake (1) 36:15 particular (15) 20:22,25

21:24 33:12 39:17,18 40:3.25 46:23 73:4 75:21 76:2,4,14 83:4 particularly (4) 19:8 25:10,12 59:17

parts (3) 4:12 15:25 70:25 pass (10) 24:9 42:24 48:16.21 65:25 68:1 69:4,21,24 70:6 picked (1) 91:3 passage (5) 23:2,3,17 24:21,22 passed (3) 48:13 98:1,9 passing (3) 44:7 70:20 98:3

past (12) 19:4 20:2 29:18 36:5 44:8 56:11 64:22 69:24 70:14 75:21 78:13 87:12 path (1) 73:19 pathway (1) 69:21

pattern (1) 37:13 55:14 58:14 63:23 patterson (2) 15:14 18:10 pause (12) 5:22 6:5 7:1 8:12 84:12 93:12 99:20 100:23 12:1 14:9 21:17 45:2 50:1 105:17 81:7 86:8 96:19

pausing (49) 6:1,23 8:8 15:7 placing (1) 9:15 16:21 17:25 18:9,12,21,25 19:11,15,19,25 105:15 20:4.10.15.17 21:3.6.10 plates (2) 80:19,23 38:2,7,10,14,18,23 39:2

44:21 49:19 50:8,12,19,22 51:2.4.11 52:21 55:13 16:13.24 17:1 60:13.19 82:17 85:20 18:5.8.11.19.24 97:14 98:7 103:17 104:17,25 105:5 19:10.14.17.21.23

pavement (1) 71:12 peaceful (3) 67:20,22 70:22 peacefully (1) 69:2 people (134) 6:7 9:18,19 played (109) 5:25 6:22,25 13:16 14:9 15:21 18:13.20

20:17 23:6.15.18 24:19.20 26:3 28:23 29:1 17:2.24 18:8.11.20.24 30:14,16,17,21 31:5,8,12 19:10.14.18.22 33:3 37:1 38:14,16,21 20:3,9,14,16,20 39:8,9,19 40:16,25 42:13 21:2,5,9,16 44:25 45:2,3,10,24 46:19 38:1,6,9,13,17,22 39:1,5 48:14.19 49:9 44:20 46:21 47:7 51:6.20.21.24 52:2 55:5.18 49:6,13,18,24 57:23,24 59:1,17 50:7.11.18.21.51:1.3.8 52:20.22 54:23 61:2,6,7,14,16,23 62:3 55:3.11.17.21 63:7,9,10,13,14,16,18,21 64:13,17,18 65:1,20 66:8.10.22 69:11 70:6.9.14

56:2,6,9,10,12,22 57:6,20 60:6,12,15,17,19,21 78:6,20 79:24 80:11,17 81:1,4,6 82:16 85:3,14,19,24 90:4,5 91:22,25 92:9 97:2,8,13,20 98:6 103:16 104:1,13,15,16,24 105:2

98-2 3 99-11 18 100:13.16.24 101:12.15 102:4 103:2,7 104:18 pleading (1) 5:11 105:3.9 peoples (2) 68:19 71:6 per (1) 17:13 perceived (1) 73:11 perfectly (2) 1:5 10:2 perhaps (3) 24:2 89:2 92:17 perimeter (4) 97:24 98:1

101:5 5 period (3) 42:20 75:13 95:20 permission (2) 53:23 86:13 permitted (1) 27:18 person (40) 7:24 8:8 12:22

15:8,9,21 18:25 19:11,15 20:5 21:12,19 25:2,2 30:4 33:24 38:7 39:2 40:13 44:23 45:7.12 51:19 53:15 54:1 62:17.20 80:20 85:9,9,15,25 87:17 88:7,8,11 90:22 91:4 103:1

personam (1) 87:15 persons (36) 5:3,6 7:14 21:3 22:2 23:8 27:25 29:11,15 30.4 22 31.4 25 33.9 34.24 57:3 62:8 70:5 74:14 79:18 85:2 86:5,11 88:4 90:15

105:13

91:12,20 92:5,8,12 99:4,20 101:24 103:6.25 105:14 perspective (1) 78:19 physical (1) 83:7 physically (1) 61:12 physics (1) 61:11 pick (3) 51:15 55:23 97:24

picnic (1) 69:17 picture (2) 4:14 45:22 pictures (1) 4:10 piece (1) 94:1 pink (2) 45:12 46:5 placard (11) 15:10 20:13 21:14.25 22:8.18 24:7

51:21.24 78:12 79:6 placards (2) 55:6 77:17 place (15) 9:9 11:3 46:20 73:14,21 77:19 81:24

placed (2) 9:21 10:24 plainly (4) 42:22,24 102:17

play (50) 6:21,24 8:7,11 13:11,17 14:4,24 15:5,23

20:2.8.14.16.20 21:4.9.15 37:24 38:8,12,16,21 39:1,4 46:21 49:23 50:6,11,18,20 51:1,3,7 52:22 60:14 105:1

8:7,11 13:12,18 14:6,25 15:3,6,23 16:1,12,14,18,24

pleaded (7) 1:23 5:11 9:11 17:20 39:16.25 88:25 please (118) 2:12 4:6 5:14.17.21 6:4.21.24 8:7,11 13:11,12,17,20 14:10,13,25 15:2,6,23,24 16:9,14,17,24 17:1 18:8,11,24 19:10,14,17,22 20:3,9,10,14,16,20 21:1.2.4.9.15.17 37:25 38:5.8.12.16.21.39:1.5 44:20 46:21 49:6.12.18.23 50:1,6,11,18,21 51:1,3,7

52:22 54:18,20 55:3,16,21 56:5,7,10,12 57:10,12,16,21 58:2 60:6,7,11,14,16,18,21 78:4.6.18 79:24 80:18 81:4.6 82:16 84:14 85:14,19 87:4 90:3,5 91:15,22,23,24 92:7 97:1.8.12 98:5.7

104:14,16,24 105:1,19 pm (6) 36:9 53:9,11 84:15,17 105:20 pointed (3) 3:25 14:1 46:22 pointing (1) 16:7 points (9) 10:22 22:10 23:25 28:9 33:14 35:3,25 41:13

47:25 poland (1) 36:19 police (78) 4:14,15 9:24 13:15,23 14:4,8 16:21 17:3 40:9 10 12 14 18 18 41:1.3.7.8.14.15.18 43:7,7,13,21,25 50:23 54:20,24 55:12,15 58:19.21 60:9.13.19 61:1,13,20 63:2,16 67:2,7 72:4,9,12 79:7 81:7,10,12 82:7,18,19,23 83:1,1,8,16 87:6.11.11 93:1.17.18.22 94:13 96:10.25 97:4.5 98:7 101:19 102:10 103:18

104:3,5,25 policeman (4) 15:9,11,11,20 polices (1) 94:19 policing (6) 40:23 41:8 43:23 61:5 83:3,11 pose (1) 69:9 position (3) 28:22 48:20 83:16 possible (3) 39:8 62:2 69:19

possibly (2) 91:8 92:18 postal (4) 94:5,8,10,15 posted (2) 60:22 100:19 postings (1) 100:22 posts (1) 4:10 potentially (4) 28:7 61:16 83:10 102:2 power (1) 28:9 powers (1) 81:11 practical (1) 32:25 practically (1) 34:11

pratt (3) 2:16 16:7 96:20 prays (1) 34:8 precautionary (2) 74:13 77:8 preceding (1) 47:12 predictable (1) 72:10 prefer (1) 3:15 prepare (1) 3:3 present (13) 9:19,24 15:7,18 33:16 46:24 50:6 61:6.12 88:10 98:17 99:23 104:3 pressick (1) 9:6 pressicks (1) 41:17

pretty (4) 47:12 59:18 63:13 protests (6) 24:11 38:25 42:2 47:10 63:1 65:18 72:17 prevent (4) 13:16 28:18,25 provide (5) 58:19 59:9 74:6 87:10,11 prevented (3) 26:10 84:4 provided (7) 26:23 58:21,23 89.2

59:3.7 69:3 84:24 provides (1) 30:10 preventing (5) 65:2,24 67:25 70:20 77:18 provoke (1) 73:16 previous (1) 89:6 pspo (4) 32:10 33:11,11,13

previously (2) 10:6 43:16 primarily (1) 69:25 primary (7) 24:8 65:24 67:18.25 69:4 70:21 75:5 principle (2) 68:8 76:11 prism (1) 52:8 private (3) 59:25 71:7 78:25 pro (1) 2:7 probably (8) 17:23 40:14,21 41:7 69:17,25 89:3 97:3 problem (6) 48:19 67:1 69:20 71:18 73:23 75:18 problems (1) 83:25 procedure (1) 4:25 proceed (2) 53:13 93:19 proceeding (2) 95:25 96:1 proceedings (14) 36:15 44:15 59:20.21 84:21 92:4 95:1.10.22.24 96:5 100:13 101:12.13 process (2) 68:20 83:4 procession (4) 63:1 70:7 71:14.15 product (1) 65:16 production (1) 16:2 progress (2) 57:9 61:3 progresses (2) 85:8,23 prohibit (5) 27:11 31:12 41:12 51:23 86:18 prohibited (1) 77:5 prohibiting (1) 32:18 prohibition (1) 30:18 prohibits (4) 26:22 28:3 32:5 99:21 project (1) 92:20 proof (1) 17:12 properly (2) 40:11 71:23 properties (1) 91:3 property (1) 78:25 proportionalitynecessity (1) 29:25 proportionate (3) 40:23 62:14 65:3 propose (1) 2:2 proposition (1) 43:21 prosecute (2) 72:5,18 prosecuted (9) 72:16 73:2 74:8,20 88:7,12,16 89:20 93:25 prosecution (6) 72:4 73:1,14 94:19 95:8,11 prosecutions (4) 59:22 60:4 83:25 94:2 prosecutor (1) 89:10 prospective (1) 73:6 prospectively (1) 30:15 protect (3) 67:9 77:22 90:25 protection (2) 66:3,20 protest (42) 22:11 23:8,13 27:1 39:3 40:17,21 42:6,18,25 43:3,22 52:1 61:7.15.20 62:6.17.21 63:20 64:20 65:16 66:16,21 68:18,18 69:9 70:13 71:6,7,9 73:17,22 75:1.4.4.16 76:1 77:16 81:17 82:11 86:23 protester (4) 7:4 37:8 78:7 100:16 protesters (20) 5:16 10:14 13:13,25 15:4 24:16 34:9,17 55:6,14 57:13 60:14 62:6 72:9 78:5 80:4 83:9 98:13.20 105:9

protesting (5) 42:19 77:15

84:5 88:8.16

protestor (1) 86:12

thank (18) 1:5,11,25 4:22

public (2) 72:5,19 pull (1) 45:14 pulled (1) 39:2 pulling (1) 97:21 punished (1) 94:24 punishment (1) 95:16 puppy (2) 90:23,23 pure (1) 77:8 purely (1) 2:19 purpose (8) 65:15,24 67:18 68:1 69:4.13 70:21 75:5 purposes (2) 68:17 69:9 pursue (1) 93:2 pursued (1) 80:3 pursuit (1) 40:21 push (1) 14:9 putting (4) 22:21 28:17 77:9 86:4

q (4) 50:19 52:24 80:2 82:19 qs (11) 38:23 47:8,15 49:10 50:8 52:19,21 80:7,11 81:2.5 quantity (1) 48:8 query (2) 95:6.9 question (12) 4:6 7:2 21:22 29:7 43:5 44:9,10 51:16 52:10 61:8 65:23 71:23 queue (1) 79:2 quick (1) 14:18 quid (1) 2:7 quietly (1) 36:1 quite (12) 2:20.21 8:6 11:1 15:19 19:5,8 21:15 24:4 36:3 65:9 84:1 auo (1) 2:7 quoting (1) 70:25

radar (1) 96:9 railings (1) 5:23 raise (1) 35:25 random (1) 86:3 rather (3) 4:8 30:4 95:1 reached (2) 29:23 76:16 reaches (1) 32:3 real (3) 30:13 67:9 71:25 realise (1) 12:23 really (7) 11:1 23:22 26:3 31:22 59:2 68:3 100:8 realms (1) 100:3 rear (1) 85:12 rearrested (1) 94:4 reason (9) 29:9 30:18 48:12 85:23 88:15 93:20 95:18 102:24 104:22 reasonable (2) 70:17 77:13 reasonably (1) 101:10 reasons (2) 102:14 103:13 rebellion (6) 65:12 92:6.14.18 93:4 102:11 recalibration (2) 68:12 71:2 recall (1) 75:6 recent (1) 65:9 recently (1) 98:15 recognise (4) 6:6,7,15 31:25 recognised (2) 32:12 63:20 recognising (1) 32:15 record (2) 11:21 12:25 recorded (1) 97:19 recording (2) 12:13,16 red (1) 15:14 redactions (1) 90:24 reed (1) 75:23 refer (2) 4:17,19 reference (7) 23:4 26:1 32:2 35:22 90:18 97:14 99:10 refresh (1) 79:23 refusing (1) 55:14 regard (1) 66:9 regime (1) 35:12 registration (1) 87:2 regular (1) 48:2 regulated (1) 34:6

regulating (2) 29:9 66:16 regulations (1) 73:15 relates (1) 58:16 relating (1) 60:1 relation (6) 2:17 39:13 74:2 94:11 95:20 98:11 relatively (1) 48:13 released (2) 92:25 94:3 relentless (2) 42:19 81:18 relevant (2) 70:25 73:13 reliable (1) 34:16 relied (3) 8:22 13:6 17:9 relief (1) 74:13 reluctant (1) 59:4 rely (2) 22:3 56:17 relying (1) 50:14 remains (1) 68:16 remand (1) 98:21 remedies (1) 66:8 remedy (4) 42:4 67:9 83:19,19 remember (2) 51:4 92:13 reminded (2) 57:18 88:9 remote (1) 72:17 remotely (1) 95:20 reoccurred (1) 44:15 repass (10) 24:9 42:24 48:16 21 65:25 68:1 69:4,21,24 70:6 repassing (1) 44:7 repeatedly (1) 65:8 reported (1) 87:5 represent (1) 5:3 representation (1) 35:10 representative (2) 23:9,9 represented (1) 93:7 request (1) 59:6 require (1) 51:18 required (4) 29:25 30:11 59:9 78:24 requires (1) 62:3 requisition (4) 94:5,8,10,15 resolve (1) 32:24 resources (1) 83:8 respectful (1) 69:23 respectfully (1) 83:15 respond (2) 101:12,13 response (11) 3:3 43:23 61:5 72:9,11,25 74:2,4,6 83:3,11 responsible (4) 5:6 51:17 72:17 91:2 rest (6) 31:4.5 36:2 70:3 71:21 103:15 rested (1) 43:14 restrained (1) 29:20 restraint (1) 99:9 restriction (1) 73:6 result (10) 8:23 17:11 38:25 47:9 50:17 65:10,11,11 94:10 95:19 returned (2) 9:18 10:17 returning (1) 11:14 reversed (2) 14:11 50:24 reviewed (1) 8:14 revolving (1) 30:17 rightly (3) 14:1 16:7 40:22 rights (19) 10:11 33:8,20,24 40:16 43:24 44:7 67:9,10,19,19 68:20 75:2,4,4 76:25 77:1,21 82:10 ring (1) 12:6 rise (1) 28:5 risk (5) 23:14 27:23 34:10 35:2 39:22 risky (1) 63:23

79:9 80:2,5 84:6,9 87:24 105:3 role (3) 41:8 72:3 89:16 round (1) 46:12 route (2) 42:2 71:21 row (1) 21:11 rules (1) 74:10

safeguard (1) 86:10 safeguards (2) 33:11 86:11 safety (1) 73:15 sake (1) 28:20 same (18) 34:5 35:6 46:4,16 58:8,14 64:11 65:19 83:16 85:12,13,15,25 90:21,22 100-15 101-14 102-4 sarah (1) 72:7 satisfied (1) 86:22 saturday (8) 2:12,25 3:8,14,15,17 4:2,4 save (2) 44:13 88:18 saw (1) 101:17 sawdust (1) 36:19 saying (19) 3:23 16:21 31:3 33:4 38:3 40:10 47:16 65:2 67:21 68:6,6 69:1,2 70:24 75:23 76:18 81:8 83:13 scale (2) 44:13,15 schedule (2) 1:15 18:14 schedules (2) 1:18,21 school (1) 100:8 scott (1) 60:23 scrawl (2) 90:13.14 scrawled (1) 89:12 screen (2) 19:13 35:19 scum (3) 90:18,23,23 se (1) 17:13 second (7) 15:20 71:3 87:24 91:25 94:11 101:20 102:6 secondly (6) 22:19 28:25 33:18 35:6 41:15.18 seconds (23) 13:12 14:13,24 38:5 49:5 55:2,16,20 57:16 60:7 78:6 81:4,6 82:15 85:11,14 91:23 97:1,8,12,20 98:5 104:23 secret (2) 92:21 93:15 security (1) 15:5 see (100) 5:15.16 6:2 9:22 11:20.22 13:10.13.23 14:2,7,8 15:14,17,18,19 16:19,25 17:3,6,25 18:12.20 19:7.19 20:4.15 21:10.12.13.18 26:6 29:8 30:21 31:18,24 38:10,14 39:4 40:9.25 44:21 46:12 47:4.20 49:7.14.19.20 50:3,12,19 52:23,25 53:4 54:18,24 55:4,5,5,12,18 57:3,7,12 60:19,25 61:18 63:8 66:14 77:14 78:4.7 79:2,7,8,17 80:3 81:2 85:10,24 86:3,5 92:7 94:21 95:2.7.19.21.25 96:4.24 97:10.21 98:24 102:11.17 104:24 105:3,8 seeing (1) 6:6 seek (4) 40:23 41:15 58:17 59:13 seeking (3) 40:5 62:16 103:13 seem (1) 67:20 seems (6) 2:4 28:8 33:1 34:21 53:19 95:10 seen (20) 3:2 8:14,19 10:20 37:19 44:4,11,13 50:22 55:22 60:12 79:20 80:9,14 85:16 87:19 90:8 96:23 98-14 19

sensible (1) 1:25 sent (2) 4:10 12:3 sentence (1) 88:21 sentenced (1) 95:14 separate (1) 12:4 separately (1) 5:10 separating (1) 33:3 september (3) 77:24 79:14,15 serious (2) 3:13 94:19 seriousness (1) 86:15 serve (4) 7:8.10.14.15 served (11) 7:12.20.22.24 99:1,11,18 101:2,19,22,23 service (7) 7:12,25 8:2 99:3,5,10 100:2 services (7) 41:23 43:10 68:6 70:24 72:4 75:24 76:10 serving (1) 8:4 set (6) 17:7 34:11 41:9.10 74:10,18 seven (1) 54:20 several (3) 8:20 39:11 42:12 shall (1) 89:21 shame (1) 19:16 shape (1) 5:4 sheer (1) 61:9 short (3) 36:8 53:10 84:16 shortly (1) 79:17 shorts (2) 19:1 21:18 shortterm (1) 69:10 shot (2) 6:19 19:24 should (17) 9:14 11:22 12:21 25:18,19 28:18 29:5 31-15 15 41-24 42-16 67-2 72:24 83:13 90:17 95:9.18 shouldnt (2) 63:25 95:10 shout (2) 52:2,3 shouted (1) 51:3 shouting (7) 9:3 21:22 36:23 51:22 52:2 77:17 84:7 show (8) 5:20 27:13 31:7 39:12,23 60:25 86:12 91:15 showing (3) 16:17 57:22 82:17 shown (1) 30:9 shows (4) 64:9 65:5 78:19 82:7 shut (1) 17:3 side (27) 3:7 10:24 15:13 18:25 20:8.11.12 23:20 25:23 28:19 30:20 45:15,19 46:10 55:8 70:9 75:14,16,21 76:19 80:1 84:6 97:10 98:3,4,9 100:21 significant (18) 24:4 35:2 39:7 42:11,13,17,20,22 44:12 56:14,15 61:1 65:13 67:1 73:17 77:12 82:9 83:17 significantly (2) 82:6 84:3 similar (1) 62:14 simple (5) 68:3,4,11,24 88:15 since (5) 10:5 43:19 92:12,25 105:12 sinister (1) 87:21 sissons (6) 14:19 41:19.21 59:12 93:8 94:9 sit (2) 3:6 36:1 site (32) 8:16 24:15 28:2 32:10 56:25 57:2 64:5,14 66:19 73:15 77:15.16 78:2,11 81:21 88:17 90:12 91:9.14 97:15.22.24 98:13 99:1 101:18.20 102:25.25 103:8.11.20 104:1 sitting (3) 2:6 55:18 83:13 situation (5) 42:5 67:7 74:20 81:19 83:9 skip (1) 51:9 slight (1) 68:12 slightly (7) 7:21 27:8 62:14

61-2 70-9 85-8 slowing (4) 24:21 30:24 47:22 85:22 slowly (2) 38:12 71:7 small (1) 27:9 smoke (2) 50:2,9 society (2) 67:3 72:3 solution (1) 87:14 somebody (15) 7:2,23 19:2,20,25 30:24,24 58:9 71:24 73:2 85:22 86:22 90:10 94:6 95:14 somebodys (1) 23:17 someone (1) 78:9 something (16) 11:7 25:7,25 30:25 35:4,7,13 37:14 46:14 53:21,24 54:4 66:24 74:10 78:25 103:19 metimes (5) 12:22 19:6 32:16.25 63:1 somewhere (2) 43:15 103:19 soon (1) 35:8 sophistication (2) 10:3,10 sort (6) 3:21 11:5 31:11 69:10 72:22 73:16 sound (1) 68:9 space (1) 61:12 speaking (1) 73:11 spearmint (1) 46:24 specific (2) 75:25 76:23 specifically (2) 31:9,16 speed (2) 70:12.14 spend (2) 2:15 37:18 spot (1) 97:25 spray (2) 88:6 90:9 sprayed (1) 90:9 staff (21) 10:1 13:24 15:1 39:21 40:2 47:9 53:4 54:21 56:23 60:10 61:19 63:13 64:20,22 66:18 75:10 76:4 79:3 80:1 82:13 90:20 stage (5) 14:10 15:4 79:25 81:2 83:19 stakes (1) 52:15 stamp (1) 16:20 stand (11) 11:13 23:19 24:6 33:4,4 44:5 52:4 62:22 64:16 65:21 81:15 standing (26) 20:6,13 21:3 22:7,10,17 23:1 24:14,16 26:3 44:24 45:10.18 46:11 51:24 53:1 63:18 70:14.19 77:18 78:10 79:7.11 84:6.8 87:25 stands (1) 33:16 start (13) 2:2,20 5:8,15 13:10 47:25 49:5 53:4 54:17.21 82:8.24 84:22 started (2) 82:24 83:13 starting (4) 5:10 78:13 79:2 86:3 starts (1) 38:4 statement (4) 4:17 16:8 41:20 91:11 statements (2) 9:4 17:8 station (3) 72:12 93:17,22 stayed (1) 89:7 staying (1) 38:15 steep (1) 77:10 step (1) 31:16 stepped (4) 11:3 30:25,25 86:2 stepping (4) 24:20 31:12,13 105:13 steppingout (1) 86:4 still (23) 13:14 23:2 35:4 47:19 48:15 50:19 56:11 60:20 64:21 72:16 75:19 77:15,15,16 80:3 81:3,5,20 82:11 84:5,6,7 92:3 stolen (1) 97:18

stopped (2) 81:21 82:9 stopping (6) 15:20 71:13 76:20 79:8 84:9,10 stops (1) 103:7 story (1) 89:4 straightforward (2) 29:21 52:12 strange (1) 85:21 straying (1) 73:19 street (1) 62:23 stretch (2) 69:6,7 strike (7) 29:4 31:20 32:17 64:25 65:6.8.19 strip (2) 8:20 10:6 struck (1) 65:10 structure (1) 3:22 struggle (2) 2:10,23 struggling (1) 74:1 subject (7) 67:16 76:22 92:4 99:12.14.15 100:13 submit (2) 25:8 56:17 submitted (2) 4:8,12 substantially (1) 33:2 successful (2) 16:17 94:2 suddenly (2) 61:14 68:10 suffered (1) 40:3 suffering (1) 39:19 sufficient (1) 23:12 sufficiently (2) 6:6 7:8 suggested (2) 3:19 9:20 suggesting (3) 3:4 25:18 summons (1) 94:7 sunday (1) 3:16 superintendent (6) 14:19 41:19.21 59:12 93:8 94:9 supreme (10) 22:23 35:9 41:23 69:1,2 70:23 71:19 75:6 76:9.11 sure (5) 14:17 35:13 61:25 91:16 92:17 surprise (1) 34:9 surprised (1) 35:8 surrounded (7) 48:12.18 64:23 80:4 81:3.5 103:25 surrounding (5) 38:21 48:22 51:6,13 57:9 surveillance (3) 96:14 102:19 103:8 susan (1) 9:6 suspect (3) 9:19 59:5 78:24 symbolic (1) 27:1 tabard (2) 45:12 46:5 table (3) 93:9 94:9 96:21 tactic (1) 82:18 taken (8) 5:12 6:1 7:25 9:9 40:19 43:9 52:19 66:10 takes (5) 14:12 29:17 57:1 58:14 73:14 taking (3) 12:21 21:21 48:3 talk (5) 9:2 22:24 34:1 69:8 70:15 talked (1) 4:16 talking (9) 15:11 61:19 65:7 67:23.24 69:5 70:19 71:13 79:6 target (1) 40:4 targeted (4) 47:9 89:15 90:21 91:3 targeting (5) 8:25 63:4,8,13 76:3 tattoos (1) 90:7 tcm (1) 80:16 technical (2) 10:12 89:21 technically (1) 72:14

temporary (1) 70:12

tent (1) 19:20

tents (1) 45:24

terrified (1) 51:6

testified (1) 36:25

62:1,15

test (1) 23:4

stood (7) 22:6 30:19 46:5,8

65:11.22 81:8 82:8 100:24

51:21 70:6 86:17

stop (8) 16:22 56:13

105:17

85:21 87:21 89:1 94:16

slow (6) 22:16 24:18 57:9

ten (3) 36:5 56:5 57:10

terms (5) 3:11 35:20 46:16

13:20 16:12 37:15 51:9 53:8 54:8 56:13 58:4 79:13 80:12 82:17 84:13 86:1 105:19 thanks (1) 36:6 thats (150) 1:25 2:2 7:2 10:18 14:3 15:1,12,22 42:5,23 43:11 44:4 48:15.18 68:2,10,25 69:9 99:8 100:15 101:1 104:1,6,13 104:18.19 theory (2) 7:11 33:17 98:14 thinking (3) 35:19 86:9 94:25 thirdly (1) 41:22 103:3 threw (1) 7:5 102:17 throughout (1) 22:7 throw (1) 11:7 thumb (1) 59:16 thumped (1) 34:3 timeline (1) 84:2

16:21,22 17:5,5,9,9,25 18:7,9,21,21 19:3.16 20:13 21:8.19 22:19 24:5.19.23 25:5.7 27:12.21 29:21.25 30:8.10.12.31:6.14.23 32:5,10 33:15,22 34:4 37:8 38:2,7,24 39:16 41:1,17,22 45:7,15,20 47:4,5,8 49:7.8.10.16.22.25.25 50:1.5.23 51:6 52:21.23 56:1,3 57:17,22 58:1,2,22 60:1,22 61:1 62:4,8,20 63:6 64:18.23 65:17 67:3 70:20,21,22 71:1,25 72:23 73:22 75:17,22 76:4,24,25 78-14 15 79-2 4 14 15 19 80-12 81-14 15 19 21 24 82:14,17 83:14 85:15,25 90:12,23 91:13 92:19 96:11 97:14.17 98:10.22 102:1,23 103:8,23,24 elves (4) 60:23 61:17 therefore (2) 68:23 77:5 theyre (3) 61:24 102:15,16 theyve (3) 9:2 59:7 100:13 thing (9) 24:6,8 25:24 26:18 31:18 37:5 70:22 76:21 though (4) 4:11 19:1 21:11 thought (7) 3:20 10:6 37:6 73:24 74:1 75:12 90:8 three (14) 6:17 18:18 37·1 39:21 50:10 60:16.18 69:7 93:16.21 94:13 102:2.11 through (20) 2:16,21,22 14:4 16:18 26:7 35:5 36:2 37:20 42:16 50:10 52:7 63:2 84:1 86:9 88:18 96:25 98:1,4 thrown (3) 27:13,14 91:9 time (23) 2:5,11 3:3 7:21 8:15 10:10 16:20 17:22 28:11 31:4.6 36:3 37:2.18 42:21 43:7.13.13 87:23.24 90:21 99:22 101:21 times (4) 32:13 36:17,20 65:9 timetable (3) 1:13 2:4 3:2 tips (1) 65:3 today (1) 2:15 together (3) 5:12 65:21 104:20 told (1) 12:6 tolerate (1) 40:20 tomorrow (2) 2:15 105:18 tony (1) 88:13 too (3) 46:18 63:23 90:16

ritual (1) 27:1

road (47) 13:14,15 15:12

17:1,4 19:20,21 24:17

25:18,24 26:4 28:10,20,24

29:3,4,6 45:8 46:19 49:15

51:24 54:25 55:9 56:25

57:8.13.15 60:9 62:24.25

75:14,20,21 76:19 78:3,20

63:18 64:3.4 69:15

sees (1) 76:12

send (1) 2:16

selection (1) 48:5

sense (4) 8:21 39:20 70:9

totally (4) 51:25 68:10

torts (1) 28:25

100:2,12

towards (3) 48:17 50:4 80:7 traffic (3) 79:2,9 85:23 transcript (1) 2:21 transitory (1) 28:4 transport (1) 104:22 travel (1) 57:1 treatment (1) 38:3 trespass (42) 5:13,13 8:19 9:13 10:21 11:2 17:19,19 20:24 27:6.7 28:15 47:2 49:2 50:14 51:20 52:8.11.14 56:21 60:1 78:1 79:10 91:19 92:1.5 93:10 94:13,14 98:10 99:21 100:4,7,8,17,17 101:3 102:1 103:11,24 104:12 105:6 trespassed (1) 67:11 trespassing (3) 22:9 99:21 101:7 trial (4) 51:16 93:9,12 94:15 tried (1) 3:22 tries (2) 32:24 37:8 troubled (1) 95:20 troubles (1) 31:18 try (8) 25:20 30:14 36:1 74:4 93-13 97-6 104-8 16 trying (25) 9:1,25 13:24 14:9 24:23 28:11 50:20,25 52:7,25 54:25 55:7 57:24 60:10,20 61:1,24 66:19 77:3 78:10 79:5 80:5 96:10 100:12 102:10 tshirt (5) 15:22 19:3 20:5 46:24 49:22 turn (6) 37:22 61:7.21 62:17 65:20 73:18 turned (1) 105:1 turns (1) 81:13 twice (2) 66:25 87:17 twitter (1) 98:19 type (1) 76:7 typical (1) 36:16 ultimate (2) 35:23 76:8 ultimately (1) 40:5 unable (2) 11:20 36:22 uncertainty (1) 27:23

underneath (1) 50:4 underpinned (1) 43:24 understand (11) 3:1 10:2 12:24 13:3 17:22 32:20 35:17,19 77:10 81:16 92:23 understandable (1) 76:14 understanding (6) 10:9 59:24 76:15 89:19 92:13.19 understood (3) 5:5 43:16 96:11 unfortunately (1) 88:22 universal (2) 68:8 75:24 unknown (46) 5:4,6 7:4,14,24 20:5 21:3,12,19 22:2 23:8 27:25 29:11.15 30:4.22 31:4.25 33:10 34:24 38:7 44:23 53:15 57:3 62:8 74:15 79:11,18 85:2,25 86:6,11 88:4 90:16 91:8,12,20 92:5,9,12 99:4,21 101:24 103:7,25 105:14 unlawfully (1) 9:20 unless (4) 62:25 69:5 87:12 98:25 unlikely (1) 95:13 unqualified (1) 67:15 unreasonable (1) 53:24 unsuccessful (1) 34:2 until (6) 2:22,24 4:2 81:19

used (3) 9:23 68:17 82:18 useful (1) 30:3 using (4) 22:25 30:2,5 41:25 usual (1) 44:7

v (4) 22:21 42:23 44:3 60:23 validate (2) 4:25 5:3 van (2) 104:22,24 various (3) 52:10 61:5 72:20 vary (1) 34:24 vehicle (21) 13:10,14 18:10 23:16 37:2,8,10 38:8 44:25 45:1,16 49:14 50:4,5,5

103:24 vehicles (14) 23:11 28:1,11,20 29:18 31:17 44:22 45:6 47:17 57:1,7 63:4,5 104:25 verge (15) 24:6 14 17 26:4

63:4,5 104:25 verge (15) 24:6,14,17 26:4 39:3 44:6 52:3 64:16,20 65:21 69:14,17 70:7,15 76:19 verges (2) 26:1 71:12

version (1) 37:1 vet (2) 60:25,25 victoria (1) 80:12 video (178) 1:24 2:16 5:14,25 6:17,21,25 8:7,11,12 11:19 12:10,13 13:9,12,18 14:6,14,25 15:3,6,23,24

15:3,0,23,24 16:1,9,12,14,18,18,24 17:2,23,24 18:5,8,11,20,24 19:10,14,18,22 20:3,9,14,16,20 21:1,2,5,9,15 25:1 35:18 37:25,25 38:6,8,12,17,21 39:1,5 44:1,20,20 46:21,23,25 47:4,5,6 49:4,6,12,12,18,18,24

50:6,11,18,21 51:1,3,7,9

52:18,20,22,24 54:17,23 55:3,10,11,17,21,24 56:2,6,6,9,10,12,21,21,22 57:5,5,20,20 60:6,6,12,12,14,16,19,21,22,24 78:4,6,18,19 79:24,24 80:9,10,11,16,17,17 81:1,4,6,25 82:15,16

85:1,3,10,11,14,18,19,24 88:3,10 90:3,4,5,5 91:22,22,24,24 92:6,9 96:24 97:2,8,12,12,19,20 98:6 103:16,18 104:1,1,13,13,14,16,24

105:2 videoed (1) 55:25 videos (15) 11:18,21,21,23 18:6 27:12 30:21 49:4 52:17 54:14 59:17 88:10,18 90:11 98:24 viewed (2) 30:23 76:10

viewed (2) 30:23 76:10 views (4) 3:8 22:22,22 29:1 vignette (1) 10:18 violence (1) 72:21 virtues (1) 26:17 visibility (1) 53:3 visit (2) 102:5,6 visiting (1) 37:8 voice (1) 63:11

wait (3) 95:7,19,21 waiting (2) 14:2 16:15 walking (3) 38:19 64:8 97:11 wall (2) 89:12 90:14 wanting (3) 61:7 64:20 73:22 wants (1) 3:23 wasnt (11) 4:13 43:11 66:24 70:24 73:20 75:8 76:2,11 88:14,15 89:2 watch (3) 11:22 49:5 85:18 watched (4) 18:3 40:7 44:1 59:17 watching (2) 1:24 10:7

watching (2) 1:24 10:7
water (2) 36:24 79:16
way (35) 5:4 8:4 10:15 13:25
16:18 19:6 23:6,15 26:12
28:24 30:23 31:11 32:17
33:1 34:5 35:6,16 36:23
45:10 46:4 61:21,23,24
62:15 63:16 68:14 71:4
73:5 75:11 78:1 82:23
87:24,25 96:4 102:10
wearing (3) 4:14 6:18 39:4
wednesday (1) 1:1
week (1) 27:3

weekend (1) 2:23 weekly (1) 42:17 weeks (1) 93:18 weight (1) 65:3 went (1) 93:16 werent (4) 59:20 60:5 76:20

93:19 whatever (1) 101:11 whats (13) 3:16 5:2 32:20 52:1 61:18 63:3 73:25 81:18 82:14 83:23 87:20 96:4 104:17

whenever (1) 35:14 whereas (1) 73:20 whereby (1) 34:17 whilst (7) 2:19 25:16 88:16 94:3 98:2,7 103:19 white (2) 19:3 20:5 whittling (1) 71: 45:8 62:24,25 65:15 89:3

100:1
wholly (1) 73:11
whom (1) 31:5
whose (2) 5:22 22:21
wide (1) 46:18
wilful (1) 70:17
willingly (1) 93:4
windler (1) 56:1
windscreen (1) 45:6
wiped (1) 34:11
wish (1) 4:24

wished (1) 31:11 witness (6) 9:4,6 16:8 17:8 41:20 91:11 wonder (2) 2:24 79:16 wondering (1) 87:5 wont (7) 12:8 40:22 64:22 65:20 87:11 93:15 102:2 wording (1) 101:11 work (10) 5:1 35:20 42:16 45:11 77:19 82:13 83:22

84:9,10 90:10 worked (1) 33:1 working (2) 3:7 72:23 works (2) 101:1,2 world (2) 23:24 71:25 worst (2) 66:5,9 wouldnt (7) 2:23 22:8 24:25

wouldn't (1) 2:25 22:8 24:25 29:8 62:2 67:8 70:13 writing (1) 12:14 wrong (15) 16:4 23:10 32:3,6 41:4,4 42:4,5 62:11 68:10 69:23 88:18 90:18 96:21 104:21 wrongs (3) 44:13 83:17,17

wyton (9) 28:2 32:10 64:14

104:1

73:15 90:12 91:9,13 99:1

year (1) 71:17 yet (3) 23:23 33:20 101:14 young (1) 63:9 youre (1) 37:3 yours (1) 30:5 yourself (1) 13:19 youve (13) 3:1 30:19 37:19 44:3 50:22 55:18 57:13 61:18 64:13 79:10 80:9,14 zero (1) 100:14 ziegler (23) 41:25 43:8,9,11,14 67:21 68:7,7,13,13 71:3 73:1,24,25 75:7,7,8,12,18,22 76:6,7,16 20:0 (15) 25:9 26:18 27:19,20,20,22 31:11,24,25 33:2 46:16 52:9 70:12 71:6 79:25 zones (1) 25:10 zooming (1) 57:24

1 (8) 21:1 38:4 49:5 51:15 60:7 91:23 97:19 106:2 10 (6) 38:5 43:24 51:16 55:2 67:18 98:5 **100 (1)** 53:9 1003 (1) 5:14 **1005 (1)** 104:13 **1030 (3)** 1:2 105:19,21 1044 (1) 90:18 105 (1) 91:11 1054 (1) 90:17 10544 (1) 90:16 **109 (1)** 91:11 **11 (5)** 43:24 54:9 67:19 76:25 77:1 **114 (1)** 54:18 1152 (1) 36:7 116 (1) 55:10 117 (1) 55:24 12 (4) 5:18 6:3 36:6 84:23 **1209 (1)** 36:9 12th (1) 79:22 13 (6) 17:16 34:23 35:1 56:19 60:7 83:13 13th (3) 17:5.5 79:22 14 (1) 55:16 141 (2) 11:19 13:9 **143 (1)** 49:18 **15 (12)** 14:21 55:2 56:8 57:11 58:5 60:6 61:4 80:18

17 (4) 1:1 20:21 37:19 104:23 170 (1) 21:1 173 (1) 52:18 18 (1) 13:17 180 (2) 85:10,12 181 (1) 85:1 182 (1) 85:18 187 (2) 88:10 90:3 18th (1) 47:5 19 (1) 92:3

81:2 97:8,20 104:14

**154 (2)** 56:21 57:5

16 (2) 77:24 79:14

1647 (2) 91:13,15

1632 (1) 91:12

1667 (1) 90:22

2 (6) 4:4 13:11 46:6,8 53:8 103:22 20 (5) 23:20 56:10 57:11 79:21 97:17 200 (1) 53:11 2021 (8) 5:10 7:5 11:18 44:17 56:19 58:5 77:24 79:21 2022 (6) 17:16 84:23 87:1 91:19 92:3 103:22 2023 (3) 1:1 93:13 94:15 21 (1) 55:20 216 (1) 60:6 22 (3) 14:4 37:22 79:15 2202 (1) 9:7 223 (1) 16:25 24 (4) 17:23 56:12 93:13

94:15

25 (4) 57:11 62:12 84:14 97:16 2500 (1) 89:8 27 (5) 5:10 7:5 44:17 81:6 104:23 28 (3) 15:3 47:1 81:3

30 (5) 13:12 57:12,16 81:4 82:15 319 (1) 84:15 32 (1) 57:15 325 (1) 78:4 326 (1) 78:18 33 (1) 81:5 339 (1) 84:17 38 (2) 96:25 97:8

4 (1) 96:25 40 (5) 49:5 57:1 85:10,13 98:5 400 (7) 61:6,14 64:13,17,18 65:1,20 41 (1) 91:23 437 (1) 105:20 45 (1) 55:16 451 (1) 79:24

5 (3) 20:11 87:1 88:3 50 (3) 14:13,24 82:15 515 (1) 9:7 52 (4) 14:12,24 15:2 78:5 545 (1) 16:19 55 (2) 55:20 79:23 57 (2) 44:20 97:12 5th (1) 21:6

6 (7) 2:8,11 3:5,8,14,15 14:20 60mile (1) 70:11 62 (1) 47:4 671 (1) 52:19

7 (2) 48:24 49:16 70 (1) 56:24 704 (1) 90:5 706 (1) 80:10 75 (1) 49:4 75 (1) 49:4 75 (1) 104:1 76 (1) 49:12 776 (1) 97:12 78 (1) 7:4 794 (1) 80:16 795 (1) 82:15

8 (1) 49:17 814 (1) 16:17 815 (2) 15:24 16:11 829 (1) 16:13 830 (2) 16:15,16

9 (6) 11:18 13:5,6 17:6 91:6,19 914 (1) 91:22 927 (1) 92:7 928 (1) 97:19 933 (1) 96:24 944 (1) 57:20 969 (1) 91:24 988 (1) 88:5 989 (1) 88:5 9th (1) 47:5

Opus 2 Official Court Reporters

82:10 105:21

unusual (1) 32:1

upset (1) 9:9

unworkable (1) 67:7

upon (4) 8:22 13:6 22:3 83:7