



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

Day 14

May 18, 2023

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Thursday, 18 May 2023

1 (10.30 am)

2 Submissions by MS BOLTON (continued)

3 MR JUSTICE NICKLIN: Yes, Ms Bolton.

4 MS BOLTON: My Lord, first of all, you will recall that

5 yesterday we looked at an incident on 2 July, when

6 Mr Manning's vehicle was surrounded and there seemed to

7 be a lot of police.

8 MR JUSTICE NICKLIN: That's right.

9 MS BOLTON: That was actually covered in the 15th witness

10 statement of Susan Pressick in detail. I've got the

11 relevant extract of the statement, my Lord, but in

12 a nutshell, that was the day where there was an attempt

13 to take down the fence. There was quite a large protest

14 and --

15 MR JUSTICE NICKLIN: Yes, I remember.

16 MS BOLTON: You extended -- you strengthened the trespass

17 part of the injunction following that.

18 MR JUSTICE NICKLIN: Yes.

19 MS BOLTON: It's also, as I understand it, when Mr Broughton

20 was arrested because what had happened was there had

21 been online incitement for people to continue the

22 break-ins that had happened from Animal Rebellion.

23 I can hand up the relevant part.

24 MR JUSTICE NICKLIN: That's all right, you've reminded me

1

1 now. Thank you. Now I know where it is.

2 MS BOLTON: My Lord, in which case, we were up to the

3 incident of 18 and 19 July.

4 MR JUSTICE NICKLIN: Yes.

5 MS BOLTON: That's a harassment incident and that concerns

6 posters near Employee F's house, which you will find

7 at -- it's page 1501 in the persons unknown bundle. We

8 have redacted the name --

9 MR JUSTICE NICKLIN: I've looked at that. That's all right.

10 MS BOLTON: And so, my Lord, I appreciate that any

11 harassment has to be tied to somebody protesting at the

12 site. When I get to closing submissions, one of the

13 submissions I will be making on that is, of course,

14 those that we have identified so far have been

15 protesters who have been involved in these types of

16 activities but we accept we don't know who posted this.

17 MR JUSTICE NICKLIN: Yes.

18 MS BOLTON: My Lord, the next one is an obstruction of the

19 highway incident on 19 July. It's dealt with at

20 paragraph 290 of Susan Pressick's statement and it's

21 video 996, and this concerns preventing a lorry

22 accessing the site. It's quite a short video. If we

23 could look at video 996, please. (video played).

24 Thank you. My Lord, so again it demonstrates it

25 doesn't require that many people to even be on the

2

1 access road to cause an obstruction. That vehicle

2 couldn't get in at all. It had to abandon its attempt

3 to get in. That's not even a dog van or a staff member

4 there. That's simply somebody trying to access as

5 a third party contractor and, as you can see, it's, one,

6 had an impact on the traffic and it's, two, meant that

7 the lorry drivers had to abort their attempt to get into

8 the site.

9 My Lord, the next one is a further obstruction on

10 the highway that involves surrounding Mr Manning's car

11 and other staff cars on 2 August. It's an obstruction

12 of the highway, it's interfering with the common law

13 right to access the highway because you will also see

14 staff cars trying to come out and it's an access land

15 trespass and harassment parasitic on the other causes of

16 action.

17 If we could go to video 695, please. (video

18 played).

19 Pausing there, the vehicle on the road still is

20 Mr Manning's vehicle, my Lord. If we could play on,

21 please. (video played).

22 Could we pause a second, please. I'm not sure

23 Mr Curtin is on mute, my Lord.

24 MR CURTIN: I'm sorry.

25 MR JUSTICE NICKLIN: Right.

3

1 MS BOLTON: Okay, go on. (video played).

2 MR JUSTICE NICKLIN: Do we know whose the vehicle that last

3 to enter the site was, that vehicle?

4 MS BOLTON: That was Mr Manning, the one that was held up on

5 the road, my Lord, yes, that's Mr Manning's vehicle.

6 And pausing there, my Lord, one of the voices that

7 you can hear, we believe, is Lauren Gardner, whom we did

8 manage to identify and bring into the proceedings

9 because of another incident that occurred involving her

10 but, yes, again this is an incident involving unknowns,

11 and you will see it's again causing an obstruction on

12 the highway, it's interfering with the access of staff

13 coming out and the trespass and obviously it's targeting

14 the staff again.

15 MR JUSTICE NICKLIN: Mr Manning appeared to have his window

16 open.

17 MS BOLTON: My Lord?

18 MR JUSTICE NICKLIN: Mr Manning appeared to have his window

19 open.

20 MS BOLTON: I'm not sure at what point he opened his window.

21 MR JUSTICE NICKLIN: I think his window is open. The

22 vehicle appears to have both windows open when he drives

23 in and then you can see that he speaks to somebody

24 without the window being opened. So it looks like it is

25 open already.

4

1 MS BOLTON: Yes, and obviously he has spoken to security as
 2 well.
 3 MR JUSTICE NICKLIN: Yes.
 4 MS BOLTON: Because I think what's happened is they have
 5 decided to let the other staff out first . That looks
 6 like what happened. But obviously, both the people
 7 coming in and the people going out were held up by what
 8 was happening.
 9 MR JUSTICE NICKLIN: Yes.
 10 MS BOLTON: My Lord, the next one is a further trespass
 11 incident , four persons unknown, who entered the driveway
 12 and glued themselves to the gate, and police were
 13 required to debond the persons unknown.
 14 My Lord, one of these people's name is now known but
 15 wasn't known until a few weeks before trial started , so
 16 unfortunately, we haven't been able to join them to the
 17 proceedings.
 18 Obviously, this is obstruction of the highway and
 19 trespass incident . I would like to look at video 925,
 20 please, and at 20 minutes, 43 seconds, please. (video
 21 played).
 22 Then this goes on for some time, my Lord, and if we
 23 could go to one hour, seven minutes and 22 seconds,
 24 there is two further female persons unknown, who entered
 25 the driveway. (video played).

5

1 And then, if we could then, please, go to one hour,
 2 22 minutes and 49 seconds, we see a fourth person
 3 unknown enter the driveway and glue themself to the
 4 gate. (video played).
 5 And then one hour and 37 minutes and 23 seconds. We
 6 see further persons unknown enter the driveway after
 7 encouragement from the lady in the wheelchair. (video
 8 played).
 9 And then if we can go to two hours, 34 minutes and
 10 30 seconds, please, we see when the police arrive.
 11 (video played).
 12 So, pausing there, so, my Lord, dealing first of
 13 all , obviously there is a significant trespass incident
 14 and obviously those gates cannot be opened, no one can
 15 leave or enter at the moment, and then if we could look
 16 at video 1017, please, we can see the obstruction.
 17 (video played).
 18 Pausing there, the lady with the pink hair is
 19 Ms Asplin, my Lord. Play on, please. (video played).
 20 My Lord, there is a lady who has a yellow jacket on
 21 that it's just panned past, and you would have seen
 22 earlier on she had a beagle, and that appears to be the
 23 same person we saw yesterday, stepping out in front of
 24 a car with a dog, but again we don't know who she is.
 25 We can play on, please. (video played).

6

1 Thank you. Just pausing there, you have just seen
 2 Pauline Hodson go past on the camera there as well.
 3 Play on, please. (video played).
 4 Then if we could go to five minutes, please. (video
 5 played).
 6 Thank you. My Lord, so, as you can see, this
 7 developed into quite a significant incident . My Lord,
 8 the next incident is 27 September 2022. This is one of
 9 the handwritten letters sent to the addresses of
 10 Mr Manning, Employee Q, Employee L and Employee P and
 11 you will find that at page 891 to 896. Which is:
 12 "Puppy killer. Don't go to work or we will tell
 13 your neighbours."
 14 That appears to be the same letter written in the
 15 same -- I believe it's a crayon. It would appear it may
 16 very well be the same person.
 17 My Lord, the next one is 28 September 2022. Again
 18 it's harassment matter.
 19 MR JUSTICE NICKLIN: On the letters, it's not known who sent
 20 those?
 21 MS BOLTON: No, my Lord, we know that funeral plans were
 22 sent by Ms Jaffray and we know that graffiti was done by
 23 Ms Midwinter and we know that both of them had protested
 24 at the site , and obviously, when it comes to closing,
 25 I will be asking your Lordship to draw inferences from

7

1 that. But obviously, the harassment is anchored to
 2 those protesting at the site . So unless we can identify
 3 the person and demonstrate that they have been
 4 protesting at the site , we accept that, you know, the
 5 injunction wouldn't be enforceable against them.
 6 The next one is again a harassment matter, on
 7 28 September, which is the overnight graffiti of
 8 Employee Q's car and smashed windscreen and that's at
 9 the persons unknown bundle, pages 888 to 890. We say
 10 again this is consistent with the protesters' campaign
 11 to target the staff .
 12 The next one is an incident that does happen --
 13 MR JUSTICE NICKLIN: When you say protestors, you mean the
 14 particular protestors who have done these acts?
 15 MS BOLTON: Indeed, the persons unknown category and those
 16 who we have identified and have pleaded the harassment
 17 cause of action against, that it's consistent with that
 18 campaign for the staff to have been targeted. The
 19 protest message is the same. As I say, the two that we
 20 have identified , who have targeted staff in their homes,
 21 have been part of those protests and so again we
 22 appreciate we have got to identify them and prove that
 23 before anything can be done about it but we say again
 24 it's more evidence of targeting the staff as part of
 25 this campaign.

8

1 MR JUSTICE NICKLIN: It's evidence which shows that some
 2 people are prepared to break the law.
 3 MS BOLTON: Yes.
 4 MR JUSTICE NICKLIN: And that the inference is that their
 5 willingness to break the law is because they want to
 6 protest about the employees working for MBR Acres.
 7 MS BOLTON: Yes, my Lord.
 8 MR JUSTICE NICKLIN: Right.
 9 MS BOLTON: My Lord, the next one is a video on
 10 30 September 2022 and this concerns targeting of
 11 Employee A's car at the Wyton site, where an object is
 12 thrown at Employee A's car and the windscreen is
 13 smashed. It happens after Employee A pulls out of the
 14 Wyton site on to the main carriageway. I'm going to
 15 take you to just after two minutes and 19 seconds. The
 16 person who throws the object that causes the damage is
 17 on the left grass verge at two minutes and 30 but if we
 18 can start at two minutes and 19 because it's initially
 19 easy to get the wrong person in this video that's
 20 throwing the object.
 21 So if we could look from two minutes and 19 seconds,
 22 please. Sorry, it's video 836 for the transcript.
 23 Apologies. (video played).
 24 If we can stop there and if we can go back, please.
 25 Again between -- just there. Sorry. It's 2:30, if we

1 can start at 2:19. This person appears to put their arm
 2 out but it's not this person who causes the incident,
 3 and if we can play on to 2:30, please. Keep going,
 4 please. And it's there, that person -- just rewind back
 5 a little bit, please. Pause there. So it's this person
 6 here that throws the item. Just play on a little bit
 7 more, please -- sorry, a little bit back. I'm just
 8 trying to catch with the arm out. Just there.
 9 My Lord, the exhibit is exhibit --
 10 MR JUSTICE NICKLIN: What tort is that?
 11 MS BOLTON: My Lord?
 12 MR JUSTICE NICKLIN: What tort is that?
 13 MS BOLTON: My Lord, well, it's harassment, and the exhibit
 14 is at 1285 and that's the damage to the windscreen at
 15 1285 to 1289 in the persons unknown bundle. Probably
 16 1287 and 1288 onwards show the damage the most.
 17 MR JUSTICE NICKLIN: Why can't we see that damage in the
 18 video?
 19 MS BOLTON: It's because it hits just above where the dash
 20 cam is, my Lord.
 21 MR JUSTICE NICKLIN: But that's extensive -- it's caused
 22 extensive fracturing by the looks of it.
 23 MS BOLTON: My Lord, if you look -- if you look at 1287, you
 24 can see where it hits, and 1285 is quite high and you
 25 can see -- there is the rearview mirror on 1285.

1 MR JUSTICE NICKLIN: Right, okay.
 2 MS BOLTON: And then if you look at 12 -- we think, my Lord,
 3 on 1288 that the -- we think that the blue item is the
 4 dash cam, so it's above -- it's missed the dash cam
 5 catching it.
 6 MR JUSTICE NICKLIN: Right. Reported to the police?
 7 MS BOLTON: My Lord, I believe it was, and I believe --
 8 I believe that -- you can see the incident, my Lord, but
 9 the woman claimed that the bracelet fell off her arm and
 10 hit the windscreen. The police decided they didn't have
 11 enough evidence to take it further forwards than that.
 12 MR JUSTICE NICKLIN: Did they identify the woman? They must
 13 have done.
 14 MS BOLTON: No, they have not given us the name because they
 15 haven't taken it any further.
 16 MR JUSTICE NICKLIN: But the police identified who it was?
 17 MS BOLTON: Yes.
 18 MR JUSTICE NICKLIN: Right.
 19 MS BOLTON: My Lord, so they are the example incidents.
 20 There are more --
 21 MR JUSTICE NICKLIN: Can you just talk to me about why you
 22 have not brought a third party disclosure application to
 23 get the police to provide you with the names of the
 24 people, in short terms.
 25 MS BOLTON: My Lord, I think that, quite often, where there

1 has been action taken, the police have given us names
 2 and that has helped us, but they haven't on each
 3 occasion, so --
 4 MR JUSTICE NICKLIN: That's not an answer to the question.
 5 Why have you not made a third party disclosure
 6 application to get the police to provide you with the
 7 names -- for example, this is a very good example.
 8 MS BOLTON: My Lord, probably because this is an example of
 9 something which happened on 30 September last year.
 10 MR JUSTICE NICKLIN: Okay, it's now 15 May.
 11 MS BOLTON: My Lord, it is 15 May but from the point of view
 12 of amending a particulars of claim, first of all you've
 13 got to get the application, two, you've got to get the
 14 information, then you've got to plead the case against
 15 that individual.
 16 MR JUSTICE NICKLIN: I raised the question of obtaining
 17 information from the police in at least one hearing at
 18 an interim stage in these proceedings.
 19 MS BOLTON: And, my Lord, we worked -- as you can see, this
 20 has been -- we've worked quite hard. Where there has
 21 been arrests, we have been able to identify. Where the
 22 police have got information, quite often we have named
 23 people. We have also used enquiry agents to name people
 24 up to when we applied to adjoin Ms Gardner and Ms Boyle.
 25 But we haven't been able to identify everybody and we

1 haven't -- and this is an incident that's happened quite
 2 late in the day, where the police haven't provided that
 3 information, so a lot of the time they either don't have
 4 it or we have managed to identify the person ourselves,
 5 so this is probably one of the few times where that
 6 could have been done, and that is very late in the day,
 7 when we are amending a pleading.
 8 MR JUSTICE NICKLIN: Presumably there were a number of
 9 arrests out of the glueing to the gate incident, weren't
 10 there?
 11 MS BOLTON: Yes, and as I said -- well, no, I think there
 12 was one arrest.
 13 MR JUSTICE NICKLIN: Right.
 14 MS BOLTON: Is that correct? Just the lady in the
 15 wheelchair, and we got her name from the police two
 16 weeks before this hearing started.
 17 MR JUSTICE NICKLIN: Okay.
 18 MS BOLTON: So again --
 19 MR JUSTICE NICKLIN: If you had issued a part 31
 20 application, part 31.17 application ...
 21 MS BOLTON: My Lord, I don't think we would have got the
 22 information any quicker.
 23 MR JUSTICE NICKLIN: Arguably -- one inference which is
 24 capable of being drawn is that the claimants are not
 25 really interested in identifying individuals because

1 they are much more interested in obtaining a persons
 2 unknown injunction.
 3 MS BOLTON: My Lord, that's not consistent with the many
 4 times the claimant has amended the claim, which is --
 5 MR JUSTICE NICKLIN: You've amended the claim to introduce
 6 a handful of people.
 7 MS BOLTON: My Lord, those that we can identify. There
 8 isn't a large number of people that the police could
 9 provide us with information for for the incidents that
 10 we are pleading. Secondly --
 11 MR JUSTICE NICKLIN: All of the people who broke in and are
 12 currently pending criminal prosecution, for example, all
 13 of them, they could have been joined to these
 14 proceedings.
 15 MS BOLTON: My Lord, no, we have explained why we haven't
 16 interfered with those proceedings. And I think the
 17 police would probably, quite understandably, not want us
 18 to interfere with those proceedings.
 19 MR JUSTICE NICKLIN: That's about contempt proceedings. I'm
 20 talking about civil proceedings. I'm talking about
 21 making them defendants of these civil proceedings.
 22 MS BOLTON: My Lord, I would make a number of points. We
 23 brought the application last year, after the summer, to
 24 join the previous group of defendants. We got
 25 permission to do that, I believe, in about February this

1 year, so we weren't really in a position to bring more
 2 applications to join more people anyway because there
 3 simply hasn't been the time running up to this trial for
 4 them to be joined applications to be heard and then to
 5 be dealt with. It's one of the more challenging
 6 aspects, again of the part 7, rather than the part 8
 7 procedure because more has to be done and they have to
 8 have time to file a defence from being joined.
 9 So it's not that easy, this close to trial, to be
 10 joining more people in these proceedings because they
 11 then have to have time to file a defence. We then have
 12 to file witness statements and videos. They then have
 13 to have time to deal with that, and those last set were
 14 from last year but they weren't dealt with until this
 15 year, so if we had brought more, they would have had to
 16 have been dealt with --
 17 MR JUSTICE NICKLIN: So at the end of this trial, after I've
 18 dealt with this trial, you could potentially bring
 19 claims against these people?
 20 MS BOLTON: My Lord, yes. But there is not -- at the end of
 21 the day --
 22 MR JUSTICE NICKLIN: And the whole process would start up
 23 again.
 24 MS BOLTON: But this is the point that Lord Justice Coulson
 25 is making in the recent Cuciurean, that you will get to

1 a stage where you are not naming every last person and
 2 that that's not required and that's the -- again
 3 that's --
 4 MR JUSTICE NICKLIN: Why should I not require you to name
 5 the people you can name?
 6 MS BOLTON: Because they can't be served, file a defence --
 7 MR JUSTICE NICKLIN: It's going to be easy related to people
 8 that the police have arrested because they will have
 9 their addresses for service.
 10 MS BOLTON: That's the kitchen sink pleading approach that
 11 the Court of Appeal have recently criticised and said
 12 that isn't required for this very reason, that there has
 13 to be a stop point --
 14 MR JUSTICE NICKLIN: That depends whether you think that
 15 civil proceedings like this ought to be -- the courts
 16 ought to deal with them.
 17 MS BOLTON: At that point they are caught by the persons
 18 unknown order but, my Lord, the people we have been able
 19 to identify before -- we have amended this claim several
 20 times and it's a long process, that takes a significant
 21 amount of time to get us to the point where we have got
 22 permission, we can serve them with a claim, they can
 23 file a defence and then the trial directions --
 24 MR JUSTICE NICKLIN: So is the answer to the question
 25 I asked about why you have not made a part 31.17

1 application is because you decided not to?
 2 MS BOLTON: My Lord, in relation to the person in the
 3 wheelchair --
 4 MR JUSTICE NICKLIN: No, no, I'm dealing with this person --
 5 let's just deal with this concrete example on
 6 30 September.
 7 MS BOLTON: The 30 September, my Lord, was reported to the
 8 police. That then took time for it to come back to the
 9 claimant that nothing was happening and that we weren't
 10 getting a name and, if we had then made an application,
 11 we would have been looking at making an application at
 12 the back end of last year.
 13 MR JUSTICE NICKLIN: Mm--hm.
 14 MS BOLTON: That would have then required again that
 15 person -- for permission to be obtained, for a defence
 16 to be filed and for the witness --
 17 MR JUSTICE NICKLIN: If they defended the proceedings.
 18 MS BOLTON: Indeed. We have to take a point where it's not
 19 proportionate to keep doing that and keep making those
 20 applications.
 21 MR JUSTICE NICKLIN: So the answer is you decided not to?
 22 MS BOLTON: On that occasion, yes.
 23 MR JUSTICE NICKLIN: Right. But you haven't made a single
 24 part 31.17 application in the entire proceedings.
 25 MS BOLTON: We haven't really needed to in these

17

1 proceedings.
 2 MR JUSTICE NICKLIN: Right.
 3 MS BOLTON: Because most of the time we have had the
 4 assistance we have needed to identify those that we can
 5 bring evidence against, that we have got evidence
 6 against, that the police know about. A lot of the
 7 people that we are seeing a lot of these videos have not
 8 been arrested by the police.
 9 MR JUSTICE NICKLIN: Yes. I get that. That's a different
 10 point because I don't expect you to make part 31
 11 applications when there is no person you can serve with
 12 the part 31 application.
 13 MS BOLTON: No, and most of those that we have joined, my
 14 Lord, fall into that category and that has been with the
 15 work of enquiry agents and quite a lot of work has been
 16 done to identify them. Some of them have come from the
 17 police but most of them haven't. Most of them have come
 18 from the claimant using enquiry agents to identify those
 19 people, and some of them, you will have seen when we
 20 have identified them, we have had incidents for some
 21 time but it has taken quite a long time to find them.
 22 And that's one of the challenges.
 23 But the only ones where you could say, well, why
 24 haven't you dealt with it by that application for
 25 disclosure from the police, that would have been the

18

1 lady that we saw in the wheelchair, for instance, or
 2 this last harassment incident.
 3 MR JUSTICE NICKLIN: Or the break-in or the man who stands
 4 in the road, who is standing next to his vehicle with
 5 his registration plate visible.
 6 MS BOLTON: I don't think we can get that information for
 7 that reason.
 8 MR JUSTICE NICKLIN: Sorry? You can make the DVLA the
 9 subject of a 31.17 application.
 10 MR CURTIN: My Lord --
 11 MR JUSTICE NICKLIN: Wait a minute, Mr Curtin.
 12 MS BOLTON: I guess we could, my Lord, but I think that
 13 again --
 14 MR JUSTICE NICKLIN: You chose not to.
 15 MS BOLTON: -- that would be quite significant to do so.
 16 MR JUSTICE NICKLIN: Yes. You see, the point is this, which
 17 is you will want to litigate against a large number of
 18 people. Some of those people have to be grouped under
 19 persons unknown because it's not possible to identify
 20 them. There are different ways, so there are a category
 21 of people who there is, as it were, information that is
 22 capable of identifying them because, for example, the
 23 lady in the wheelchair or the lady throwing the item
 24 towards the car, those people have been arrested. The
 25 police could have been made the subject of a 31.17

19

1 application to provide the name of the person and their
 2 address for service.
 3 There is a next category, people who can be
 4 described by what they do. So there are some people
 5 whose prominence in the video evidence is such that they
 6 could be described with certainty as to who they are.
 7 My recollection is you've done that twice in relation to
 8 adding defendants by that description. It's a point
 9 I made right at the start of the litigation, that, as
 10 indicated in Canada Goose, where possible, you should
 11 identify the person by description, so the court, if
 12 necessary, can make findings of fact against that person
 13 and make an order against that person. Whether it's
 14 possible subsequently to serve them or enforce the order
 15 the court makes against them is a separate matter.
 16 MS BOLTON: Under that circumstance we have to have an
 17 alternative method of service, and we did apply for that
 18 on those we described that way, at the beginning, and
 19 the court refused it, and one of them we were able to
 20 subsequently find, with the assistance of an enquiry
 21 agent and with quite a lot of hard work, and serve as an
 22 identifiable but we haven't been able to pursue those
 23 that we could serve by description because the court
 24 wasn't permitting us to serve them in the same way as
 25 persons unknown, so we couldn't do it. That turned out

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1 to be an exercise that got us nowhere because we can
 2 identify them but we can't serve them. We can only
 3 serve them if the court gives us the alternative service
 4 order, which was refused.
 5 So we were in real difficulties on that.
 6 MR JUSTICE NICKLIN: So you get the perverse position, which
 7 is, in relation to people that we have no idea about,
 8 they are in a better position vis-a-vis service than the
 9 people we can actually point at.
 10 MS BOLTON: My Lord, that was the court's decision --
 11 MR JUSTICE NICKLIN: It's not my decision.
 12 MS BOLTON: My Lord, as I say, the position has been made
 13 clear by the Court of Appeal recently that it doesn't
 14 require an unending level of amendments, that there
 15 becomes a point when they will be caught by the category
 16 of persons unknown. We have fairly, where we can,
 17 identified the people we can in this case. There are
 18 two incidents --
 19 MR JUSTICE NICKLIN: I'll tell you now that I don't think
 20 you have, and my current position is, so that you can
 21 address it in final submissions, that you have chosen,
 22 in important respects, not to identify people because
 23 you judge that the benefit of doing that to you is
 24 limited and you are more interested in obtaining the
 25 persons unknown injunction.

21

1 MS BOLTON: My Lord, that doesn't follow because there is
 2 large numbers of persons unknown. It would make no
 3 difference, if we could name them, we would name them --
 4 MR JUSTICE NICKLIN: And that's positively against the
 5 guidance in Canada Goose. Where you are able to
 6 identify people, they should be joined.
 7 MS BOLTON: But the Court of Appeal have clarified that
 8 there have been some misunderstandings on the Court of
 9 Appeal's decision in Canada Goose in the recent
 10 Cuciurean decision by the judge himself who gave that
 11 judgment and he has made it clear that that leads to
 12 a kitchen sink pleading and that they are not
 13 encouraging that approach. That was the very point
 14 taken against the claimants in the Cuciurean case and
 15 the Court of Appeal didn't accept it. So we are not
 16 trying to not identify people but there has to be
 17 a limit and it has to be proportionate and --
 18 MR JUSTICE NICKLIN: Proportionate to who? In relation to
 19 this person, who is the lady in the wheelchair, the lady
 20 by the road side, who you want to make subject to
 21 a persons unknown injunction, he or she -- well, both
 22 shes in those examples, have not been given an
 23 opportunity to come to court and make any submissions in
 24 their own defence and you want to obtain an order
 25 against them. Is that right?

22

1 MS BOLTON: My Lord, we do want to obtain an order that
 2 binds them, yes.
 3 MR JUSTICE NICKLIN: Yes. So you have deliberately
 4 abstained from putting before the court the material
 5 that would enable the court to identify them, have them
 6 served, let them have the opportunity, if they want to,
 7 to come and defend themselves, in favour of making an
 8 order against them without hearing from them.
 9 MS BOLTON: My Lord, I make the point that, if either of the
 10 defendants that we have brought applications to join
 11 last autumn had, when that permission was granted
 12 in February, wanted to defend these proceedings, it
 13 would have thrown the whole court timetable. If we had
 14 made more applications, it would have thrown --
 15 MR JUSTICE NICKLIN: It might have meant I had to put
 16 chapter 2 into this litigation .
 17 MS BOLTON: My Lord, that's the point. At some point, with
 18 a part 7 claim in particular -- and this is again
 19 something which, in the cases where this was being
 20 challenged, there has been more flexibility to join
 21 because they were part 8. So that makes it much easier
 22 to join people at a later stage.
 23 MR JUSTICE NICKLIN: It doesn't seem to me that it's much
 24 fairer .
 25 MS BOLTON: My Lord, again --

23

1 MR JUSTICE NICKLIN: Are you suggesting that the part 8
 2 procedure allows a sort of free and easy regime, where
 3 you can add people at the last five minutes and say the
 4 trial is next Friday?
 5 MS BOLTON: It requires less steps before trial, which has
 6 made it easier for parties who are on the part 8
 7 procedure to include more people late because it doesn't
 8 jeopardise the trial timetable. That person can still
 9 file witness evidence. That person can still make
 10 representations but they are not in a position where it
 11 jeopardises the trial timetable, and what the court is
 12 saying here is we should have joined these people to
 13 these proceedings as they stand, and it seems that the
 14 only way the court can do that, as your Lordship is
 15 acknowledging, is chapter 2. That just becomes unending
 16 litigation .
 17 MR JUSTICE NICKLIN: Mm-hm.
 18 MS BOLTON: That's not what's being encouraged by the Court
 19 of Appeal. With respect, that, to me, seems --
 20 MR JUSTICE NICKLIN: So if you are in the second category --
 21 if you are in the second wave of protesters, you get
 22 a sort of, I'm sorry, you've missed your chance to have
 23 any participation in a trial .
 24 MS BOLTON: No, they don't miss their chance. If the lady
 25 in the wheelchair doesn't want to be bound by this, she

24

1 has the ability to make an application to be heard.
 2 MR JUSTICE NICKLIN: What happens then?
 3 MS BOLTON: At that point, she can be heard and the court
 4 can decide whether she should be named and whether she
 5 should be party to the proceedings or whether the
 6 injunction ought to be varied.
 7 MR JUSTICE NICKLIN: For what?
 8 MS BOLTON: That depends on what her application is, my
 9 Lord. But she has the right to be heard and have her
 10 position — she will then be identified.
 11 MR JUSTICE NICKLIN: So she can come along and say, "I want
 12 to be excluded from this persons unknown injunction."
 13 MS BOLTON: She can come along and say I want to be heard.
 14 MR JUSTICE NICKLIN: To what purpose? Just tell me what you
 15 imagine she would be doing.
 16 MS BOLTON: That depends, exactly. That depends on exactly
 17 what her application is.
 18 MR JUSTICE NICKLIN: Okay.
 19 MS BOLTON: Her application may well be that she doesn't
 20 want to be bound or she thinks it's wrong that there
 21 should be prohibition on trespass. There could be all
 22 sorts of reasons why she says she shouldn't be bound by
 23 an injunction.
 24 MR JUSTICE NICKLIN: Okay, let's go back to the lady with
 25 the bracelet or the lady with the stone, whatever she is

25

1 throwing. You say she is guilty of harassment.
 2 MS BOLTON: Yes.
 3 MR JUSTICE NICKLIN: You need to establish against her that
 4 it's a course of conduct?
 5 MS BOLTON: No, because a course of conduct against the
 6 staff employees can be by more than one person. We
 7 don't have to show that she is particularly — the
 8 course of conduct is to harassment of the staff. That
 9 can be a course of conduct that involves more than one
 10 person.
 11 MR JUSTICE NICKLIN: On which side of this? More than one
 12 person harassed or more than one person doing the
 13 harassment?
 14 MS BOLTON: Your Lordship is right. In the case of — yes,
 15 if she was to come along and if she was to say that
 16 that's the only time she has taken part in any
 17 harassment of the staff and there were no further
 18 incidents, it wouldn't be harassment against her as an
 19 individual.
 20 MR JUSTICE NICKLIN: Right.
 21 MS BOLTON: It would be harassment — it is harassment by
 22 persons unknown but it is —
 23 MR JUSTICE NICKLIN: So she comes along and says, "I've read
 24 this judgment of Mr Justice Nicklin and he has granted
 25 a persons unknown injunction against me. On the basis

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1 of this — this is the first time I've ever heard about
 2 these proceedings and I object to being subject as
 3 a person unknown to this injunction because I'm not
 4 guilty of harassment. Number 1, I didn't throw, it was
 5 my bracelet came off my hand inadvertently. In any
 6 event, that was the only day I was present and I want to
 7 be excluded from this injunction."
 8 MS BOLTON: My Lord, yes.
 9 MR JUSTICE NICKLIN: So I would say — what would I do?
 10 Vary the injunction and say all persons unknown except
 11 for Mrs Joan Brown.
 12 MS BOLTON: No, my Lord, you would probably — because
 13 that's the only thing that is being alleged against that
 14 person, you would probably name her in the proceedings
 15 and you would probably make no order against her.
 16 MR JUSTICE NICKLIN: Right. So presuming that you oppose
 17 that and said, "No, no, she did deliberately throw
 18 a stone at the car and we say that she has been guilty
 19 of more acts of trespass, so we want to prove those
 20 facts." So I have to have another trial on that issue?
 21 MS BOLTON: No — well, yes, my Lord, you have to hear her
 22 application.
 23 MR JUSTICE NICKLIN: But I have to have evidence, don't I?
 24 MS BOLTON: Yes.
 25 MR JUSTICE NICKLIN: I have to have oral evidence.

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1 MS BOLTON: Yes.
 2 MR JUSTICE NICKLIN: So I have to have another trial.
 3 MS BOLTON: Well, no, she could make an application to be
 4 heard and it doesn't have to be a trial. The court has
 5 quite a bit of flexibility on how it deals with that
 6 application.
 7 MR JUSTICE NICKLIN: But you just accepted we were having
 8 oral evidence.
 9 MS BOLTON: Well, yes, you could do.
 10 MR JUSTICE NICKLIN: On an application?
 11 MS BOLTON: Yes.
 12 MR JUSTICE NICKLIN: And then ultimately at the end of it
 13 I say, what, join her to the proceedings and then
 14 dismiss the claim against her?
 15 MS BOLTON: If she wants to be heard at that point, she can
 16 apply to join the proceedings and you can dismiss the
 17 claim against her.
 18 MR JUSTICE NICKLIN: Right.
 19 MS BOLTON: Or you can make an order that she is named on
 20 the claim and whatever parts of the claim you consider,
 21 once she becomes a named defendant, apply to her, apply
 22 to her. Or you can dismiss her application.
 23 MR JUSTICE NICKLIN: Mm—hm.
 24 MS BOLTON: They are the three ways the court can approach
 25 it.

28

1 MR JUSTICE NICKLIN: So then she escapes from the persons
 2 unknown injunction but you said, earlier on in the
 3 proceedings --
 4 MS BOLTON: In relation to harassment.
 5 MR JUSTICE NICKLIN: Right, well, she is not Gammelled at
 6 this point.
 7 MS BOLTON: No.
 8 MR JUSTICE NICKLIN: Well, she might be because she might be
 9 arguably Gammelled at the point when you say she's
 10 guilty of harassment, then she becomes unGammelled
 11 because she wasn't, so unless she does some other act
 12 which gets her into a category of a person unknown, she
 13 is not a defendant to the proceedings, she is not bound
 14 by any of the injunction.
 15 MS BOLTON: Yes, she has to do something more that would
 16 bring her within it.
 17 MR JUSTICE NICKLIN: Right.
 18 MS BOLTON: But at that point, no, she wouldn't have any
 19 order made against her.
 20 But --
 21 MR JUSTICE NICKLIN: And this all makes sense in civil
 22 proceedings, does it?
 23 MS BOLTON: My Lord, that's the approach that is currently
 24 the endorsed approach by the Court of Appeal.
 25 MR JUSTICE NICKLIN: The Court of Appeal hasn't even begun

1 to grapple with issues like this. It hasn't even begun.
 2 MS BOLTON: They have had applications challenging these
 3 points in front of them and they've made those
 4 decisions.
 5 MR JUSTICE NICKLIN: What other judge has actually conducted
 6 a final trial on a case like this?
 7 MS BOLTON: My Lord, that's not the point --
 8 MR JUSTICE NICKLIN: It is the point because actually, when
 9 you get to trial, all of these issues start to come out
 10 about who is going to be ...
 11 MS BOLTON: I'm just being told that two weeks ago a
 12 Transport for London persons unknown injunction was --
 13 final hearing was just handed down and they granted the
 14 persons unknown orders, my Lord.
 15 MR JUSTICE NICKLIN: Mm--hm. Did they have any represented
 16 defendants?
 17 MS BOLTON: Two defendants represented themselves.
 18 MR JUSTICE NICKLIN: As defendants -- named defendants of
 19 the proceedings?
 20 MS BOLTON: As named defendants to the proceedings, my Lord.
 21 MR JUSTICE NICKLIN: Right. And they gave evidence?
 22 MS BOLTON: It looks like they did, my Lord, yes.
 23 MR JUSTICE NICKLIN: Did the court grapple with the issue
 24 that Mr Curtin raised, about whether, if I were to
 25 decide he gets a different injunction from the persons

1 unknown -- you were suggesting to me at some point
 2 earlier in the trial it wouldn't make any difference
 3 because he will be subject to the persons unknown
 4 injunction anyway.
 5 MS BOLTON: That's the point the Court of Appeal has
 6 grappled with recently and, as I say, that is a point
 7 for my closing because, at the moment, there is so much
 8 up in the air about this. As it stands at the moment,
 9 that is a point the Court of Appeal has dealt with but
 10 whether that all changes, I don't know at this stage.
 11 But I hear your Lordship, I'm quite happy to address it
 12 but, at the moment, that's the point that has been made
 13 because it was a defendant who had been named in one and
 14 then he was caught on a persons unknown breach, even
 15 though he had been dealt with as a named defendant
 16 already.
 17 So that is a point. That's the very point that the
 18 Court of Appeal were grappling with. But, as I say,
 19 this could all change by the time I make closing
 20 submissions.
 21 MR JUSTICE NICKLIN: I don't think it will change that
 22 quickly, will it, unless you know something I don't.
 23 MS BOLTON: I don't know anything at the moment. That's not
 24 a hint that we have had an embargoed handdown or
 25 anything like that. That has certainly not happened.

1 But it is all, at the moment, a little uncertain as to
 2 what submissions I will be making on any of this.
 3 MR JUSTICE NICKLIN: I mean, you can see how far away -- in
 4 terms -- when you measure it against conventional,
 5 two-party litigation, this is now drifting off into
 6 some -- what appears to be unmanageable proceedings.
 7 MS BOLTON: My Lord, with respect, the alternative provides
 8 an unworkable solution that doesn't remedy the wrongs
 9 being committed, and I think that is why the courts have
 10 taken the line that they have taken. Otherwise,
 11 claimants are left with unworkable solutions.
 12 MR JUSTICE NICKLIN: Yes, one answer potentially is that you
 13 can't fix all of the problems in the world with civil
 14 proceedings.
 15 MS BOLTON: No, my Lord, but where there are rights of
 16 a claimant and there are wrongs being committed, where
 17 the court can give a remedy that will deal with that,
 18 that is the approach that has been taken.
 19 MR JUSTICE NICKLIN: That's where the Court of Appeal went
 20 wrong in Cameron because they thought that a wrong had
 21 taken place and the civil proceedings could put it
 22 right, and it took the Supreme Court to say, "No, you
 23 can't serve the person, so you can't actually have
 24 a remedy."
 25 MS BOLTON: As the Court of Appeal have subsequently

1 clarified , there is a very different category of person
 2 unknown and that's the difference here. These are
 3 persons unknown groups who are capable of being
 4 communicated with.
 5 MR JUSTICE NICKLIN: Really?
 6 MS BOLTON: That lady who is standing by the gate is
 7 encouraging people to not have fear.
 8 MR JUSTICE NICKLIN: Yes.
 9 MS BOLTON: It would be inconceivable, considering where she
 10 comes from across the road and what she is saying, that
 11 she didn't --
 12 MR JUSTICE NICKLIN: She is an example of a person that it
 13 would be perfectly easy to communicate with because all
 14 you need to do is make an application for a 31.17 order
 15 against the police. We can have her name and address
 16 and we can communicate with her directly.
 17 MS BOLTON: It's inconceivable that she didn't know about
 18 the injunction anyway.
 19 MR JUSTICE NICKLIN: That's speculation on your part.
 20 MS BOLTON: No, and she had been served as a person --
 21 MR JUSTICE NICKLIN: Neither you nor I know what that woman
 22 knows about.
 23 MS BOLTON: The lengths she was going to encourage people
 24 not to be scared and to cross over the road and stand on
 25 the claimant's land, my Lord, and that nothing would

1 happen to them, indicated she knew very well what was
 2 happening. There were other seasoned protesters there
 3 on the other side --
 4 MR JUSTICE NICKLIN: It doesn't matter anyway because, on
 5 one version of the Court of Appeal's decision, that
 6 doesn't matter.
 7 MS BOLTON: My Lord, indeed, but that is an example of
 8 somebody who probably knew full well --
 9 MR JUSTICE NICKLIN: That's your submission. Right,
 10 Mr Curtin, you wanted to say something?
 11 MR CURTIN: Yes. If I may just make a couple of
 12 submissions, all I can say is it's very refreshing to
 13 hear this conversation because the nature of this
 14 conversation is talked about amongst protesters and the
 15 people who come to the gate and is one of my jobs to try
 16 and explain --
 17 MR JUSTICE NICKLIN: I can't imagine how ordinary citizens
 18 try to understand the persons unknown litigation.
 19 I just don't understand how ordinary citizens can be
 20 expected to understand what restrictions they are placed
 21 under, under what circumstances, why it is that there
 22 end up being -- I just don't understand how anybody --
 23 any ordinary citizen can work out what they can and
 24 can't do, but there we are.
 25 MR CURTIN: And imagine adding to that by someone turning

1 up, who has some idea of the campaign, and they are
 2 aware that, for example, people have broken into the
 3 site and taken dogs, they are aware that there have been
 4 a number of events, not organised by Camp Beagle, on
 5 Facebook, "Come out and get the dogs," and people have
 6 broke into the fence. They are not on the injunction,
 7 so they said to me, "Would they put my name on the
 8 injunction if I go over to the road," and I have to hold
 9 my hands up and said, "I can't tell you", but if you
 10 just bear with me for a couple of minutes, my Lord, you
 11 used the term managerless, and it will be my submission
 12 that right from -- not right from the get-go but soon
 13 in, it became to me that this injunction is as
 14 managerless as MBR Acres itself.

The named defendants are a time capsule between July
 and mid-August 2021. There has only been three people
 added since then. One was Victoria Glover, who was
 petrified when she was added on the basis of, yes, she
 may have stepped over a line -- she could not understand
 why it appeared like she had been singled out when all
 around her -- and then there were two other people,
 Louise Boyle and Laura Gardner, who did in fact -- the
 evidence would show that they made repeated blockages of
 the gate, so they were in fact added, but
 Caroline Bolton yesterday tried to mislead the court, I

1 think, yesterday in terms of Animal Rebellion, that they
 2 sneaked in and they sneaked off. Nothing could be
 3 further from the truth, and I spoke to Animal Rebellion
 4 people yesterday, who were amazed and shocked that
 5 no one could get hold of them.

It brings me back to the manager -- this injunction,
 I would say, is managerlessness. Caroline Bolton has
 the difficult duty to try and present this but she --
 who is behind the steering wheel of this injunction? We
 don't even know who is paying for it, and to not track
 down the woman in the wheelchair -- sorry, I'm
 speaking -- to not track down the woman in the
 wheelchair, it's just -- it shows you that no one is
 really trying, because that woman is on social media
 posts. She never tried to hide her identity. She went
 to court and she was -- that person was proud of what
 she did. I as much as she cannot understand why she
 hasn't joined the injunction, when Victoria Glover, who
 maybe stepped across the line or maybe blocked one
 vehicle -- so I'd call it the Will Young factor, and
 let's not snigger about Will Young but -- and all I'm
 saying is that I'm pleased that this conversation has
 taken place. It's one that I have been dying to have
 but because it would require me giving all sorts of
 information and it looks like I want to provide the

1 court with information, in order for you to track them
 2 down, but come on, use Will Young as an example. Why
 3 was he never put into an injunction, and it brings this
 4 injunction into disrepute when he wasn't brought into
 5 it. But we all know why he wasn't brought into it, but
 6 that's one, Will Young, but I don't know why the other
 7 people haven't been named.
 8 Caroline Bolton says, "Oh, we haven't had time."
 9 That's not the case and that can't be true, and she
 10 always comes up with that excuse. There is a man named
 11 in this, who was part of the vicious attack on me and
 12 the camp, who has been given a suspended sentence for
 13 his attack on the camp. He is named as violently
 14 threatening Mr Manning. Even he is not on this
 15 injunction. I think his name's -- and I will grass him
 16 up. His name is Graham Neale, Graham Neale,
 17 a despicable individual. Why the hell -- take his
 18 example but I don't like to hear his name discussed.
 19 So this injunction, even though they have spent
 20 millions and millions, it doesn't represent the
 21 situation today. They are caught in a time vacuum of
 22 last summer. Only three names have been added since
 23 that time, and the naming procedure -- and it's why so
 24 many people got so nervous because they all felt --
 25 people who were not even coming to the camp, hadn't been

1 to the camp for a year, until a month ago they were
 2 still named individuals, when everyone knows that no one
 3 else is getting added. So this injunction is already in
 4 disrepute on the site itself because no one understands
 5 it and I'm never able to give clear instructions.
 6 MS BOLTON: My Lord --
 7 MR CURTIN: That's it.
 8 MS BOLTON: -- with respect to Mr Curtin, he is not a person
 9 unknown.
 10 MR JUSTICE NICKLIN: You are saying that he's going to --
 11 I've yet to read the Cuciurean judgment that you've
 12 referred to. If you are right about the most recent
 13 Court of Appeal decision, he has got a direct interest
 14 in the persons unknown injunction.
 15 MS BOLTON: Yes, but --
 16 MR JUSTICE NICKLIN: It's bizarre. First of all, he has to
 17 come and defend himself against the proceedings and then
 18 he has to defend himself against the persons unknown
 19 injunction.
 20 MS BOLTON: Your Lordship has raised a number of concerns
 21 about persons unknown throughout these proceedings,
 22 which led Mr Curtin to make some rather strong comments
 23 the other day, and I would ask the court to take note of
 24 the fact that clearly there is a little bit of saying to
 25 the court what has been picked up and has been

1 challenged to us, rather than any actual evidence in
 2 those submissions, and the person being spoken about as
 3 Victoria Glover is Victoria Asplin, who was also subject
 4 to committal proceedings and was involved in a number of
 5 incidents and is a good example of somebody who was
 6 joined later, that took quite some time for us to
 7 identify, and is yet another person that we can see in
 8 earlier incidents but we couldn't identify for some
 9 time. We could see her, but we have to find these
 10 people, and that is not always easy, and sometimes you
 11 have situations where, for instance on some of the
 12 highways obstruction cases, where there are massive
 13 amounts of arrests and we have no idea who any of those
 14 people are and, yes, I understand the benefit of
 15 a disclosure application in those types of cases, but
 16 that isn't what's happened in this case, and the people
 17 that we are targeting -- Mr Curtin has just referred to
 18 somebody who threatened David Manning. We are not aware
 19 of that being the person that Mr Curtin has an issue
 20 with of being assaulted by.
 21 Secondly, that's not something, that incident on
 22 camp, that we can intervene in because it's nothing to
 23 do with the incidents we are complaining about, but it
 24 is -- there is a large amount of very broad evidence,
 25 without anything concrete, being brought in now, by

1 somebody who is a named defendant. And that's not fair
 2 on the claimant and it's a little bit of carrying on the
 3 coattails of -- your Lordship is asking me questions,
 4 which I need to address in closing, and then we are
 5 being given information about an individual who attacked
 6 Mr Curtin that we knew nothing about --
 7 MR JUSTICE NICKLIN: Leave aside that. Mr Curtin has
 8 made -- in what he said to me there are several points,
 9 which are serious points, which are about people's
 10 understanding of the injunction. I think we, as
 11 lawyers, need to step back. I've gone back and looked
 12 at the injunction order that currently applies to the
 13 site and I think that what can be said about it is that,
 14 to the best possible, it tries to explain what can and
 15 cannot be done but I'm not sure it would win prizes for
 16 being clear.
 17 MS BOLTON: But, my Lord, that's again another evidence
 18 example because -- and there is a couple of points on
 19 that.
 20 MR JUSTICE NICKLIN: I think it's up to the court
 21 ultimately. It's for me.
 22 MS BOLTON: Absolutely.
 23 MR JUSTICE NICKLIN: I'm going to have to find a way of
 24 trying to strip away all of the -- there are currently
 25 three pages, before you get to the order, of various

1 people, some of whom categories of persons unknown have
 2 been superseded. The court's primary responsibility,
 3 when making injunctions, is to make itself clear.
 4 MS BOLTON: Yes.
 5 MR JUSTICE NICKLIN: So that people understand what they can
 6 and cannot do. And I'm going to have to take a look, if
 7 I do grant a persons unknown injunction, at how I'm
 8 going to frame that because this is the order which, if
 9 the current Court of Appeal decision in Dagenham
 10 remains, is going to be the order, which may be subject
 11 to review but, unless reviewed, is going to be the order
 12 that applies from now until the end of time. And so it
 13 will bind people who have yet to be born, so I'm going
 14 to have to make it clear in simple terms, which is we
 15 may have to start stripping away the pretence and
 16 saying, right, never mind about parties to the action,
 17 I, the court, am prohibiting this activity. You must
 18 not — nobody must do any of these acts.
 19 MS BOLTON: My Lord, indeed, and those who are named in the
 20 proceedings —
 21 MR JUSTICE NICKLIN: The named proceedings (Overspeaking).
 22 The named proceedings, I will be inclined to take
 23 entirely separate courses. So if I grant an injunction
 24 against Mr Curtin, he will have his own order, with his
 25 name on it, which only applies to him, and it will

1 specify what he can and cannot do and it will include,
 2 probably, unless you can persuade me otherwise, a thing
 3 saying, "And the persons unknown order has nothing to do
 4 with you. You are subject — you, Mr Curtin, are
 5 subject to these restrictions."
 6 As to persons unknown, I will then look at what —
 7 and I will invite you, in your closing submissions, to
 8 present to me the order which achieves clarity and
 9 certainty about what you say. Let's bin the convoluted,
 10 multiple page order and you set out, in terms that every
 11 citizen is capable of understanding, what the court is
 12 prohibiting.
 13 MS BOLTON: My Lord, I'm grateful for that indication
 14 because it certainly is the case that even just the
 15 naming of the parties to the proceeding at the moment
 16 takes several pages.
 17 MR JUSTICE NICKLIN: We can get rid of all of those people
 18 now because they have fallen by the wayside, the claims
 19 against them have been resolved. That's an end. Those
 20 people are no longer of any relevance to what remains to
 21 be determined in the proceedings.
 22 Right, it's time for a break. Mr Curtin, we are
 23 going to have our break but you can have a short moment
 24 before we have our break.
 25 MR CURTIN: It's just to add one more — seeing as this

1 injunction is about this particular protest, let's not
 2 make it too generic. One of the hallmarks, as we have
 3 heard, of the Camp Beagle campaign, is it goes on all
 4 the time. There is people there today, and it really is
 5 a place where people drop into. If you wanted to attend
 6 a demonstration, you have to look up, you have to travel
 7 somewhere, especially to go to a demonstration. And
 8 this term "protester", which I can't stand but I use it
 9 sometimes, you know, but we are dealing with people like
 10 I gave you an example of a woman who one minute I'm
 11 speaking to her, the next minute she crossed the road
 12 and when the cars come up, she threw her tea. She did
 13 not know she was going to throw that tea. She had no
 14 idea she was going to do it and she was overtaken by —
 15 so be careful when you say any person who shall be
 16 a protester, that is another massive thing that's not
 17 understood on the ground.
 18 MS BOLTON: Again, my Lord, Mr Curtin cannot give that
 19 evidence but I'm not — I wanted to clarify with
 20 your Lordship what more you want me to cover.
 21 MR JUSTICE NICKLIN: If you are finished, that's —
 22 MS BOLTON: We have obviously got more incidents. I've
 23 taken the incidents which are key. I will provide
 24 your Lordship with the more detailed schedules which are
 25 in the causes of action with — what we are adding in is

1 making sure we have picked up every defendant. So you
 2 will have that in good time before closing.
 3 MR JUSTICE NICKLIN: Are these the best bits — are these
 4 the highlights of the persons unknown?
 5 MS BOLTON: These are the most serious incidents.
 6 MR JUSTICE NICKLIN: Right.
 7 MS BOLTON: But there are quite a number more but you had
 8 indicated you didn't want to see every video.
 9 MR JUSTICE NICKLIN: I don't want to see every video and
 10 I really want to avoid having to watch every video.
 11 MS BOLTON: Indeed.
 12 MR JUSTICE NICKLIN: So I want you to be selective about —
 13 because there is a law of diminishing returns. You
 14 have, I think, illustrated to me the key categories of
 15 behaviour, which you say has been engaged in by persons
 16 unknown. If you give me another example, which is less
 17 serious, it's not going to take me much further.
 18 MS BOLTON: No.
 19 MR JUSTICE NICKLIN: I know it exists. I know that you've
 20 got that evidence but, if you don't get home on the, as
 21 it were, the top — the worst examples, it's not going
 22 to be improved by repetition of a less serious —
 23 MS BOLTON: Indeed, and obviously we will provide —
 24 MR JUSTICE NICKLIN: Let me ask you about this point because
 25 we are going to stop, so don't worry about the break.

1 One point that occurred to me about the harassment and
 2 about this is — one of the reasons why harassment is
 3 the most difficult is because, under the Act,
 4 a defendant can try and defend, so assuming the claimant
 5 proves that it meets the objective requirements of
 6 harassment and the court is satisfied the relevant
 7 defendant has pursued a course of conduct amounting to
 8 harassment, a defendant can then defend that and say it
 9 was nevertheless, in the circumstances, all the
 10 circumstances, reasonable.

11 So, for example, a protester who the court says,
 12 actually, objectively judged, your conduct did, on this
 13 occasion, cross the line between irritations and
 14 annoyance and the court is satisfied that it did amount
 15 to harassment. A defendant could nevertheless persuade
 16 the court that that was exuberance on the part of the
 17 relevant defendant and that, in all the circumstances,
 18 because it was an exercise of a protest right, it was
 19 reasonable in all the circumstances. And the court
 20 would then, if that were — I'm just dealing with
 21 a two-party example. The court might say, "Yes,
 22 objective criteria for harassment has been met but the
 23 defendant has demonstrated the defence under
 24 subsection (4)," I think it is.

25 MS BOLTON: Yes.

1 MR JUSTICE NICKLIN: That's a particular wrinkle in
 2 harassment. It's very little explored in the
 3 authorities.
 4 MS BOLTON: Yes.
 5 MR JUSTICE NICKLIN: The difficulty with imposing
 6 a harassment injunction against persons unknown is I am
 7 shutting out in advance any defence, so the court is
 8 saying there can be no circumstances in which your
 9 behaviour would be reasonable. I can see that there
 10 might be, I test everything by reference to what would
 11 happen in inter partes proceedings because, of course,
 12 the court wouldn't be deterred from granting an
 13 injunction to restrain an identified defendant from
 14 pursuing, let's say, "You must not go within 50 yards of
 15 this person's home, you must not contact them, you must
 16 not follow them, you must not," whatever they have been
 17 guilty of. So classic stalking, if you like.

18 MS BOLTON: Yes.

19 MR JUSTICE NICKLIN: The court would, as part of the process
 20 of deciding what is the correct remedy to grant, look at
 21 the circumstances, and it might very well be very easy
 22 on those facts to reach a conclusion that none of that
 23 behaviour could ever be reasonable, so following
 24 somebody from their workplace or things like that or
 25 making unwanted telephone calls at two in the morning.

1 MS BOLTON: Yes.

2 MR JUSTICE NICKLIN: Never going to be reasonable and
 3 that — I suppose the final safety valve is that, in the
 4 event that the injunction was breached because the
 5 person rang the person at two in the morning to tell
 6 them that their house was on fire, the court is not
 7 going to impose a penalty in those circumstances. So
 8 there is that ultimate safeguard.

9 But what happens in a persons unknown injunction
 10 that's going to have future effect on newcomers is I am
 11 depriving every one of those people with their
 12 opportunity to say, "Actually, my conduct is reasonable
 13 and I shouldn't be the subject of an injunction." And
 14 that's one of the problems that you will need to address
 15 in the submissions about injunctions against persons
 16 unknown to bind newcomers.

17 That's what sets it apart from what I'll call the
 18 classic persons unknown, which is people I can point to,
 19 perhaps on a video, and say, you, you and you, what you
 20 were doing there, on these seven occasions that I've
 21 watched videos, was harassment. I don't know who you
 22 are but I'm going to grant an injunction against you
 23 because I'm satisfied on the evidence that it's
 24 a proportionate, necessary measure to protect the
 25 interests of the claimant, et cetera, and ultimately

1 when, if ever, you are finally identified and you want
 2 to come along and challenge this, you can make your
 3 application to change the order. That's because the
 4 court is making an assessment of actual evidence before
 5 imposing the order. With a persons unknown, future
 6 newcomers, all comers, I'm not doing that job, I'm
 7 making a very —

8 MS BOLTON: My Lord, indeed, and I accept that under that
 9 category of persons unknown, prohibitions are likely to
 10 be much more limited for that very reason. And I don't
 11 shy away from that.

12 MR JUSTICE NICKLIN: Right, okay. Two things. You know all
 13 these things. None of what I have said during the last
 14 two days will come as remotely a surprise to you as
 15 things that concern me. In relation to your final
 16 submissions, please provide to Mr Curtin and to me —
 17 for Mr Curtin, the order. Go back to scratch.
 18 Obviously, you don't have a free hand, you can't start
 19 changing but what you are doing is rendering it into
 20 a Mr Curtin-specific order, which identifies clearly
 21 what order you say the court should make against
 22 Mr Curtin personally. And then equally, go back to the
 23 drawing board with the persons unknown. I'm not saying
 24 for a moment that I think contra mundum orders are
 25 remotely justifiable. I continue to have the view

1 I expressed in Dagenham and the Court of Appeal doesn't
 2 really deal with that. It just deals with the question
 3 about whether final injunctions bind newcomers.
 4 But it seems to me that the logical -- there is an
 5 objection to contra mundum because there is an important
 6 stage that -- in the inter partes model is that you have
 7 to be Gammelled before you get into the game. So I'm
 8 not actually making -- you are not asking for a contra
 9 mundum order, you are asking for a persons unknown
 10 order. You have to get yourself into the category. So
 11 it doesn't actually bind the whole world, it potentially
 12 might bind the whole world, depending on what individual
 13 people do.
 14 MS BOLTON: Yes.
 15 MR JUSTICE NICKLIN: There is a debate to be had whether
 16 that's a semantic or real difference, ultimately.
 17 MS BOLTON: Yes.
 18 MR JUSTICE NICKLIN: But your case at the moment is you are
 19 not asking for a contra mundum order, you are asking for
 20 a conventional, insofar as there is such a thing,
 21 persons unknown injunction, which has to operate by
 22 principle of the Gammell rule, which is you do an act by
 23 which you then become a defendant to the proceedings and
 24 bound by the injunction order.
 25 MS BOLTON: Yes.

1 MR JUSTICE NICKLIN: But we have got to find
 2 a citizen --friendly way of explaining that.
 3 MS BOLTON: Yes.
 4 MR JUSTICE NICKLIN: So that you don't have to read three or
 5 four Court of Appeal authorities and the latest musings
 6 of any other judge who has to grapple with this issue to
 7 be able to understand how it works, because I think
 8 there are probably a handful of people in the country
 9 who understand how persons unknown injunctions work.
 10 I take my hat off to any citizen that can understand all
 11 of these things, and so it's my job ultimately, and your
 12 job to assist me, which is to render to me an order
 13 which I can credibly put forward and say, "Here, you
 14 don't have to understand about -- you don't have to read
 15 any Court of Appeal decisions about persons unknown
 16 injunctions, this order is telling you what you can and
 17 can't do."
 18 MS BOLTON: Yes, my Lord. May I just clarify, while,
 19 obviously, the Mr Curtin order needs to be available for
 20 next week.
 21 MR JUSTICE NICKLIN: Yes.
 22 MS BOLTON: I'm assuming I don't have to provide the persons
 23 unknown order at this stage because we just don't know
 24 what direction it's going in.
 25 MR JUSTICE NICKLIN: That's a good point. Why waste time on

1 that. Yes.
 2 MS BOLTON: As soon as I have that --
 3 MR JUSTICE NICKLIN: You are quite right, we will come back
 4 and look at that when we know what the latest --
 5 MS BOLTON: I hear your Lordship. I do accept that that
 6 sounds a very sensible way forwards, that we have
 7 something which strips it down and explains very clearly
 8 to people just what they need to know.
 9 MR JUSTICE NICKLIN: Yes. Right. So that's it for today
 10 then, is it?
 11 MS BOLTON: My Lord --
 12 MR JUSTICE NICKLIN: Good. You've all got lots of things to
 13 do.
 14 MS BOLTON: I'm grateful because my shoes are a little on
 15 fire.
 16 MR JUSTICE NICKLIN: Right. Okay, that's it for today,
 17 Mr Curtin.
 18 MR CURTIN: Could I ask one question, please?
 19 MR JUSTICE NICKLIN: Yes.
 20 MR CURTIN: In the criminal sense, when you are dealing with
 21 harassment, a course of action, I don't think it's
 22 possible in criminal cases -- I may be wrong -- to
 23 harass a group of people. But in these hearings it's as
 24 if you sort of loosely talk about they are harassing
 25 them. Whereas in a criminal case --

1 MR JUSTICE NICKLIN: The short answer, Mr Curtin, is you
 2 need to look at the expanded harassment offences. So
 3 the Harassment Act essentially provides for two regimes.
 4 The first is what you might call -- and this was the
 5 original harassment, which was a direct process of one
 6 person is being harassed by another person. Of course,
 7 it's possible for one person to harass, for example, two
 8 people at the same time, so if you harassed a husband
 9 and his or her wife, you might find that that was
 10 a conventional harassment.
 11 The Harassment Act was expanded subsequently to
 12 cater for circumstances where the nature of the
 13 harassment is slightly targeted in a different way, so
 14 it's like harassing -- classically, it's a company case
 15 where you are trying to harass the company. A company
 16 can't be harassed because it's not a human being but you
 17 can have the same effect by harassing its staff, so if
 18 you harass employee 1 on Monday, employee 2 on Tuesday
 19 and employee 3 on Wednesday, you may end up causing
 20 a course of conduct amounting to harassment because the
 21 employees are regarded for these purposes as being
 22 joined together, or certainly regarded as being grouped
 23 together for the purposes of harassment. So there are
 24 two different ways in which the harassment offence can
 25 be committed, at least two. All right?

1 MR CURTIN: How old is that new collective harassment?
 2 MR JUSTICE NICKLIN: I don't know.
 3 MR CURTIN: Do you know?
 4 MR JUSTICE NICKLIN: Not off the top of my head. I can look
 5 at when --- because it's the additional subsection to ...
 6 when was it added, Ms Bolton?
 7 MS BOLTON: I think it's the same time as the --- when ---
 8 MR JUSTICE NICKLIN: It's that package of measures.
 9 MS BOLTON: It's when the additional measures to protect
 10 political research --- is it 2005? Yes, it's 2005 that
 11 the Serious Organised Crime Act comes in, my Lord. So
 12 it must have been around that time because I don't think
 13 it was (inaudible).
 14 MR JUSTICE NICKLIN: Yes. Mr Curtin, what changed was that
 15 in 2005, or shortly thereafter, subsection (1A) of the
 16 prohibition of harassment --- section 1, subsection (1A)
 17 was inserted into the Harassment Act by the Serious
 18 Organised Crime and Police Act of 2005. And if you look
 19 at the Protection from Harassment Act, section 1, you
 20 will see that subsection (1A) is what I was trying to
 21 describe as the second form of harassment:
 22 "A person must not pursue a course of conduct:
 23 "(a) which involves harassment of two or more
 24 persons, and:
 25 "(b) which he knows or ought to know involves

1 harassment of those persons, and:
 2 "(c) by which he intends to persuade any person
 3 (whether or not one of those mentioned above):
 4 "(i) not to do something that he is entitled or
 5 required to do, or:
 6 "(ii) to do something that he is not under any
 7 obligation to do."
 8 So that was the example that Parliament introduced
 9 a second type of harassment, which is harassment of at
 10 least --- two or more persons, with a view to getting
 11 a third person to do something that it didn't want to
 12 do. Or to stop ---
 13 MR CURTIN: I don't think it's actually --- I don't think ---
 14 I don't wish to have a conversation. I don't think that
 15 SOCA ruling has ever really been used in a prosecution
 16 that I'm aware of. I think that's why it's not known,
 17 because it's actually not used.
 18 MR JUSTICE NICKLIN: If you want to find out, Mr Curtin,
 19 make a freedom of information request to the
 20 Director of Public Prosecutions and find out how many
 21 prosecutions there have been for section 1,
 22 subsection (1A). It may be that, because of the
 23 requirements of that section, it's not always an easy
 24 offence to prove but I have no idea about that.
 25 I certainly haven't seen many, but I have no idea. But

1 it's ---
 2 MR CURTIN: Okay, thank you.
 3 MR JUSTICE NICKLIN: But it's designed to deal with
 4 a different type of harassment, but that's why
 5 Ms Bolton --- and Ms Bolton is particularly relying upon
 6 that because that's important for her case.
 7 MR CURTIN: Can I ask one more question. I always say that.
 8 Can I just ask, because I speak to some of the people
 9 who are named, and they're --- why is it --- especially
 10 you, my Lord, you seem to take special interest in
 11 people who have maybe (inaudible) but you are quite
 12 interested, ah, that's Mr Falsey, that's Mr Morley. Why
 13 are you --- because as far as they are concerned, it's
 14 done and dusted. You seem to take an interest.
 15 MR JUSTICE NICKLIN: It is. You can put their mind at rest,
 16 Mr Curtin. I'm not interested. Their case has been
 17 resolved. I'm only interested in it because Ms Bolton
 18 is dealing with the persons unknown, so on each of these
 19 occasions, I just want to know which of these people has
 20 actually been already dealt with because I can take them
 21 out of the equation because they are not for these
 22 purposes persons unknown. It's not because I am going
 23 to do anything in relation to them.
 24 MR CURTIN: Okay.
 25 MR JUSTICE NICKLIN: They can rest easy. Their claims have

1 been resolved. That's an end of the matter, and I'm not
 2 going to in any way refer to them in the judgment or
 3 criticise them in any way. If I ever have to refer to
 4 any of them, it will only be to indicate that they were
 5 present on these occasions. I will say in the judgment
 6 that for each of them the claims have been resolved and
 7 that's an end of the matter. All right?
 8 MR CURTIN: Excellent.
 9 MR JUSTICE NICKLIN: So please put their minds at rest.
 10 MR CURTIN: Thank you.
 11 MS BOLTON: My Lord, there is just two things I need to hand
 12 up.
 13 MR JUSTICE NICKLIN: Yes.
 14 MS BOLTON: One is the witness statement about the witness
 15 statement preparation, which has already been --- sorry,
 16 I say there are two things I need to hand up. There is
 17 one thing I need to hand up, which is that witness
 18 statement, if I may.
 19 MR JUSTICE NICKLIN: Yes.
 20 MS BOLTON: The other is the statement of Mr Manning about
 21 the gate and the banners ---
 22 MR JUSTICE NICKLIN: Asking to remove?
 23 MS BOLTON: And service on persons unknown.
 24 MR JUSTICE NICKLIN: Yes.
 25 MS BOLTON: Mr Manning hasn't been available, so he is going

1 to sign that witness statement and that will be with the
 2 court by the end of today.
 3 MR JUSTICE NICKLIN: That's fine.
 4 MS BOLTON: And obviously we are sending both of these to
 5 Mr Curtin as well.
 6 MR JUSTICE NICKLIN: Thank you very much. We will meet
 7 again on Monday at 10.30. You will be making your
 8 closing.
 9 MS BOLTON: Yes.
 10 MR JUSTICE NICKLIN: Mr Curtin will have it 2 o'clock on
 11 Saturday.
 12 MS BOLTON: Yes.
 13 MR JUSTICE NICKLIN: Mr Curtin, you've got quite a busy
 14 weekend. The two key things for you to remember are
 15 Ms Bolton's submissions that you will receive will
 16 identify the arguments and evidence that she is relying
 17 upon. One of the key things that you need to do is to
 18 address anything you want to tell me about those matters
 19 in your submissions. You can bring up other things
 20 unrelated to those and you can make other points and
 21 refer to other evidence if you want to but the key
 22 target for your submissions is to respond to what
 23 Ms Bolton says about you and why she says I should make
 24 the order against you. That's your final opportunity to
 25 say to me, "You shouldn't make that order," either

57

1 because you say it's not justified on the evidence or
 2 that there are other reasons that you say an order
 3 shouldn't be granted against you in those terms. All
 4 right? It's not necessary to make an order -- go on.
 5 MR CURTIN: Will a verbal submission in person, will that
 6 carry the weight of a written submission?
 7 MR JUSTICE NICKLIN: Absolutely it will.
 8 MR CURTIN: I will put some stuff in writing -- okay, good.
 9 MR JUSTICE NICKLIN: Absolutely. The most important thing
 10 is that you use your time to best effect for you.
 11 I don't mind if the whole thing is oral because,
 12 happily, I'm going to get a transcript, so if you find
 13 that your time is best spent working out for you what
 14 you want to say to me, don't -- if the time doesn't
 15 permit you to reduce that into writing, that's not
 16 a problem. The key thing is that you have an
 17 opportunity to say what you want to say to me in answer
 18 to Ms Bolton's submissions and that's why it's important
 19 for you to read what she says about you and the evidence
 20 that she relies upon and you can either say, well, that
 21 evidence -- you can't accept that evidence because X, Y,
 22 Z, or that evidence was contradicted by this evidence,
 23 or that evidence doesn't prove what Ms Bolton says it
 24 proves or, even if it does, you shouldn't grant any
 25 order against me because it's not necessary or it's not

58

1 proportionate, et cetera. So those are -- just tell me
 2 what you want but the key thing, because then you won't
 3 miss anything, is to respond to the points that
 4 Ms Bolton is making against you, all right?
 5 MR CURTIN: Okay. Can I make -- not a formal application
 6 but I've done it in the past and -- is to -- and I've
 7 received a plain English answer: how much have these
 8 legal proceedings cost that have been brought against
 9 me? What is the cost of this entire injunction and the
 10 costs against me? Can I be given that information,
 11 please.
 12 MR JUSTICE NICKLIN: I don't think --
 13 MR CURTIN: Not necessarily now.
 14 MR JUSTICE NICKLIN: I don't think that information is going
 15 to be readily available. The reason for that is simple,
 16 which is that the solicitors who act for the claimants
 17 are conducting proceedings against not only you but have
 18 been in the past conducting proceedings against several
 19 other named defendants and, of course, they have been
 20 conducting proceedings against persons unknown, so
 21 extracting the costs figure of what it would have
 22 cost -- what costs are attributable to you and you
 23 alone, that will be a difficult exercise to conduct.
 24 The reason that --
 25 MR CURTIN: Can I have a ballpark figure, my Lord.

59

1 MR JUSTICE NICKLIN: I don't think that a ballpark figure is
 2 going to be very valuable. It doesn't really matter in
 3 the final analysis. Whether or not the claimants are
 4 entitled to a remedy against you isn't determinative or
 5 determined by how much they've spent. There may be
 6 other later aspects in the case where the court wants to
 7 look more closely at costs but we haven't reached that
 8 stage yet and the costs aren't legally relevant to the
 9 matters that we are going to be dealing with on Monday.
 10 I understand why you are interested in that in a very
 11 broad sense but it's not something that you need to deal
 12 with for Monday.
 13 If you want to submit to me -- and you have done in
 14 the past -- that the costs of these proceedings are
 15 disproportionate, then, fine. I don't think Ms Bolton
 16 will quibble with the fact that they've cost a very
 17 large sum of money but, beyond that, you can't take that
 18 matter any further and, as I've said, it's not legally
 19 relevant for the issues I have to decide on Monday -- or
 20 listen to on Monday.
 21 MR CURTIN: Okay, thank you.
 22 MR JUSTICE NICKLIN: All right. Thank you very much.
 23 Sorry that we have gone on a little bit longer but
 24 you understand we are going to stop.
 25 Right, thank you, everybody.

60

1 (12.15 pm)
 2 (The court adjourned until Monday, 22 May at 10.30 am)
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 13
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 15
 16
 17
 18
 19
 20
 21
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 23
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 25

61

1 INDEX
 2
 3 Submissions by MS BOLTON (continued)1
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

62

63

<p style="text-align: center;">A</p> <p>abandon (1) 3:2 ability (1) 25:1 able (9) 5:16 12:21,25 16:18 20:19,22 22:5 38:5 50:7 abort (1) 3:7 above (3) 10:19 11:4 54:3 absolutely (3) 40:22 58:7,9 abstained (1) 23:4 accept (6) 2:16 8:4 22:15 48:8 51:5 58:21 accepted (1) 28:7 access (5) 3:1,4,13,14 4:12 accessing (1) 2:22 achieves (1) 42:8 acknowledging (1) 24:15 acres (2) 9:6 35:14 across (2) 33:10 36:19 action (6) 3:16 8:17 12:1 41:16 43:25 51:21 activities (1) 2:16 activity (1) 41:17 acts (3) 8:14 27:19 41:18 actual (2) 39:1 48:4 actually (12) 1:10 21:9 30:5,8 32:23 45:12 47:12 49:8,11 54:13,17 55:20 add (2) 24:3 42:25 added (6) 35:17,18,24 37:22 38:3 53:6 adding (3) 20:8 34:25 43:25 additional (2) 53:5,9 address (7) 20:2 21:21 31:11 33:15 40:4 47:14 57:18 addresses (2) 7:9 16:9 adjoin (1) 12:24 adjoined (1) 61:2 advance (1) 46:7 after (5) 6:6 9:13,15 14:23 15:17 again (2) 2:24 4:10,11,14 6:24 7:17 8:6,10,21,23 9:25 13:18 15:6,23 16:2 17:14 19:13 23:18,25 40:17 43:18 57:7 against (43) 8:5,17 12:14 15:19 18:5,6 19:17 20:12,13,15 22:4,14,25 23:8 26:3,5,18,25 27:13,15 28:14,17 29:19 32:4 33:15 38:17,18 41:24 42:19 46:6 47:15,22 48:21 57:24 58:3,25 59:4,8,10,17,18,20 60:4 agent (1) 20:21 agents (3) 12:23 18:15,18 ago (2) 30:11 38:1 ah (1) 55:12 air (1) 31:8 alleged (1) 27:13 allows (1) 24:2 alone (1) 59:23 along (5) 25:11,13 26:15,23 48:2 already (5) 4:25 31:16 38:3 55:20 56:15 also (4) 1:20 3:13 12:23 39:3 alternative (3) 20:17 21:3 32:7 always (4) 37:10 39:10 54:23 55:7 amazed (1) 36:4 amended (3) 14:4,5 16:19 amending (2) 12:12 13:7 amendments (1) 21:14 amongst (1) 34:14 amount (3) 16:21 39:24 45:14 amounting (2) 45:7 52:20 amounts (1) 39:13 analysis (1) 60:3 anchored (1) 8:1 animal (3) 1:23 36:1,3 annoyance (1) 45:14 another (8) 4:9 27:20 28:2</p>	<p>39:7 40:17 43:16 44:16 52:6 answer (7) 12:4 16:24 17:21 32:12 52:1 58:17 59:7 anybody (1) 34:22 anything (7) 8:23 31:23,25 39:25 55:23 57:18 59:3 anyway (4) 15:2 31:4 33:18 34:4 apart (1) 47:17 apologies (1) 9:23 appeal (17) 16:11 21:13 22:7,15 24:19 29:24,25 31:5,9,18 32:19,25 38:13 41:9 49:1 50:5,15 appeals (2) 22:9 34:5 appear (1) 7:15 appeared (3) 4:15,18 35:20 appears (5) 4:22 6:22 7:14 10:1 32:6 application (27) 11:22 12:6,13 13:20,20 14:23 17:1,10,11,24 18:12,24 19:9 20:1 25:1,8,17,19 27:22 28:3,6,10,22 33:14 39:15 48:3 59:5 applications (7) 15:2,4 17:20 18:11 23:10,14 30:2 applied (1) 12:24 applies (3) 40:12 41:12,25 apply (4) 20:17 28:16,21,21 appreciate (2) 2:10 8:22 approach (6) 16:10 22:13 28:24 29:23,24 32:18 arent (1) 60:8 arguably (2) 13:23 29:9 arguments (1) 57:16 arm (3) 10:1,8 11:9 around (2) 35:21 53:12 arrest (1) 13:12 arrested (4) 1:21 16:8 18:8 19:24 arrests (3) 12:21 13:9 39:13 arrive (1) 6:10 aside (1) 40:7 ask (5) 38:23 44:24 51:18 55:7,8 asked (1) 16:25 asking (7) 7:25 40:3 49:8,9,19,19 56:22 aspects (2) 15:6 60:6 aspln (2) 6:19 39:3 38:17,18 41:24 42:19 46:6 47:15,22 48:21 57:24 58:3,25 59:4,8,10,17,18,20 60:4 agent (1) 20:21 agents (3) 12:23 18:15,18 ago (2) 30:11 38:1 ah (1) 55:12 air (1) 31:8 alleged (1) 27:13 allows (1) 24:2 alone (1) 59:23 along (5) 25:11,13 26:15,23 48:2 already (5) 4:25 31:16 38:3 55:20 56:15 also (4) 1:20 3:13 12:23 39:3 alternative (3) 20:17 21:3 32:7 always (4) 37:10 39:10 54:23 55:7 amazed (1) 36:4 amended (3) 14:4,5 16:19 amending (2) 12:12 13:7 amendments (1) 21:14 amongst (1) 34:14 amount (3) 16:21 39:24 45:14 amounting (2) 45:7 52:20 amounts (1) 39:13 analysis (1) 60:3 anchored (1) 8:1 animal (3) 1:23 36:1,3 annoyance (1) 45:14 another (8) 4:9 27:20 28:2</p>	<p>before (11) 5:15 8:23 13:16 16:19 23:4 24:5 40:25 42:24 44:2 48:4 49:7 beginning (1) 20:18 begun (2) 29:25 30:1 behaviour (3) 44:15 46:9,23 behind (1) 36:9 being (23) 4:24 13:24 15:8 22:6 23:19 24:18 27:2,13 30:11 32:9,16 33:3 34:22 39:2,19,20,25 40:5,16 52:6,16,21,22 believe (6) 4:7 7:15 11:7,7,8 14:25 benefit (2) 21:23 39:14 best (4) 40:14 44:3 58:10,13 better (1) 21:8 between (3) 9:25 35:15 45:13 beyond (1) 60:17 bin (1) 42:9 bind (5) 41:13 47:16 49:3,11,12 bins (1) 23:2 bit (7) 10:5,6,7 28:5 38:24 40:2 60:23 bits (1) 44:3 bizarre (1) 38:16 blockages (1) 35:23 blocked (1) 36:19 blue (1) 11:3 board (1) 48:23 bolton (166) 1:3,4,5,10,17,20 2:2,5,10,18 4:1,4,17,20 5:1,4,10 7:21 8:15 9:3,7,9 10:11,13,19,23 11:2,7,14,17,19,25 12:8,11,19 13:11,14,18,21 14:3,7,15,22 15:20,24 16:6,10,17 17:2,7,14,18,22,25 18:3,13 19:6,12,15 20:16 21:10,12 22:1,7 23:1,9,17,25 24:5,18,24 25:3,8,13,16,19 26:2,5,14,21 27:8,12,21,24 28:1,3,9,11,15,19,24 29:4,7,15,18,23 30:2,7,11,17,20,22 31:5,23 32:7,15,25 33:6,9,17,20,23 34:7 35:25 36:7 37:8 38:6,8,15,20 40:17,22 41:4,19 42:13 43:18,22 44:5,7,11,18,23 45:25 46:4,18 47:1 48:8 49:14,17,25 50:3,18,22 51:2,5,11,14 53:6,7,9 55:5,5,17 56:11,14,20,23,25 57:4,9,12,23 58:23 59:4 60:15 62:2 boltons (2) 57:15 58:18 born (1) 41:13 both (5) 4:22 5:6 7:23 22:21 57:4 bound (5) 24:25 25:20,22 29:13 49:24 boyle (2) 12:24 35:22 bracelet (3) 11:9 25:25 27:5 breach (1) 31:14 breached (1) 47:4 break (6) 9:2,5 42:22,23,24 44:25 breakin (1) 19:3 breakins (1) 1:23 bring (6) 4:8 15:1,18 18:5 29:16 57:19 brings (2) 36:6 37:3 broad (2) 39:24 60:11 broke (2) 14:11 35:6 broken (1) 35:2 brought (8) 11:22 14:23 15:15 23:10 37:4,5 39:25 59:8 broughton (1) 1:20 brown (1) 27:11</p>	<p>bundle (3) 2:7 8:9 10:15 busy (1) 57:13</p> <hr/> <p style="text-align: center;">C</p> <p>c (1) 54:2 call (3) 36:20 47:17 52:4 calls (1) 46:25 cam (3) 10:20 11:4,4 came (1) 27:5 camera (1) 7:2 cameron (1) 32:20 camp (7) 35:4 37:12,13,25 38:1 39:22 43:3 campaign (5) 8:10,18,25 35:1 43:3 canada (3) 20:10 22:5,9 cannot (6) 6:14 36:17 40:15 41:6 42:1 43:18 cant (16) 10:17 16:6 21:2 32:13,23,23 34:17,24 35:9 37:9 43:8 48:18 50:17 52:16 58:21 60:17 capable (4) 13:24 19:22 33:3 42:11 capsule (1) 35:15 car (7) 3:10 6:24 8:8 9:11,12 19:24 27:18 careful (1) 43:15 caroline (3) 35:25 36:7 37:2 carrageway (1) 9:14 carry (1) 58:6 carrying (1) 40:2 cars (3) 3:11,14 43:12 cases (4) 23:19 39:12,15 51:22 catch (1) 10:8 catching (1) 11:5 categories (2) 41:1 44:14 category (10) 8:15 18:14 19:20 20:3 21:15 24:20 29:12 33:1 48:9 49:10 cater (1) 52:12 caught (4) 16:17 21:15 31:14 37:21 cause (2) 3:1 8:17 caused (1) 10:21 causes (4) 3:15 9:16 10:2 43:25 causing (2) 4:11 52:19 certainty (2) 20:6 42:9 cetera (2) 47:25 59:1 challenge (1) 48:2 challenged (2) 23:20 39:1 challenges (1) 18:22 challenging (2) 15:5 30:2 chance (2) 24:22,24 change (3) 31:19,21 48:3 changed (1) 53:14 changes (1) 31:10 changing (1) 48:19 chapter (2) 23:16 24:15 chase (1) 19:14 chosen (1) 21:21 circumstance (1) 20:16 circumstances (9) 34:21 45:9,10,17,19 46:8,21 47:7 52:12 citizen (3) 34:23 42:11 50:10 citizenfriendly (1) 50:2 citizens (2) 34:17,19 civil (6) 14:20,21 16:15 29:21 32:13,21 claimant (7) 14:4 17:9 18:18 32:16 40:2 45:4 47:25 claimants (6) 13:24 22:14 32:11 33:25 59:16 60:3 claimed (1) 11:9 claims (4) 15:19 42:18 55:25 56:6 clarified (2) 22:7 33:1 clarify (2) 43:19 50:18 clarity (1) 42:8 classic (2) 46:17 47:18 classically (1) 52:14 clear (6) 21:13 22:11 38:5 40:16 41:3,14</p>	<p>clearly (3) 38:24 48:20 51:7 close (1) 15:9 closely (1) 60:7 closing (8) 2:12 7:24 31:7,19 40:4 42:7 44:2 57:8 coattails (1) 40:3 collective (1) 53:1 come (18) 3:14 17:8 18:16,17 22:23 23:7 25:11,13 26:15 30:9 34:15 35:5 37:2 38:17 43:12 48:2,14 51:3 comers (1) 48:6 comes (5) 7:24 26:23 33:10 37:10 53:11 coming (3) 4:13 5:7 37:25 comments (1) 38:22 committal (1) 39:4 committed (3) 32:9,16 52:25 common (1) 3:12 communicate (2) 33:13,16 communicated (1) 33:4 company (3) 52:14,15,15 complaining (1) 39:23 concern (1) 48:15 concerned (1) 55:13 concerns (4) 2:5,21 9:10 38:20 conclusion (1) 46:22 concrete (2) 17:5 39:25 34:5 38:13 41:9 conduct (10) 26:4,5,8,9 45:7,12 47:12 52:20 53:22 59:23 conducted (1) 30:5 conducting (3) 59:17,18,20 consider (1) 28:20 considering (1) 33:9 consistent (3) 8:10,17 14:3 contact (1) 46:15 contempt (1) 14:19 continue (2) 1:22 48:25 continued (2) 1:3 62:2 contra (4) 48:24 49:5,8,19 contractor (1) 3:5 contradicted (1) 58:22 conventional (3) 32:4 49:20 52:10 conversation (4) 34:13,14 36:22 54:14 convoluted (1) 42:9 correct (2) 13:14 46:20 cost (4) 59:8,9,22 60:16 60:8 (6) 59:10,21,22 60:7,8,14 couldnt (3) 3:2 20:25 39:8 coulson (1) 15:24 country (1) 50:8 couple (3) 34:11 35:10 40:18 course (12) 2:13 26:4,5,8,9 45:7 46:11 51:21 52:6,20 53:22 59:19 courses (1) 41:23 courts (4) 16:15 21:10 32:9 41:2 cover (1) 43:20 covered (1) 1:10 crayon (1) 7:15 credibly (1) 50:13 crime (2) 53:11,18 criminal (4) 14:12 51:20,22,25 criteria (1) 45:22 criticise (1) 56:3 direct (2) 38:13 52:5 criticised (1) 16:11 cross (2) 33:24 45:13 crossed (1) 43:11 cuciuorean (4) 15:25 22:10,14 38:11 current (2) 21:20 41:9 currently (4) 14:12 29:23 40:12,24 curtin (48) 3:23,24 19:10,11 30:24 34:10,11,25 38:7,8,22 39:17,19 40:6,7 41:24 42:4,22,25 43:18 48:16,17,22 50:19</p>	<p>51:17,18,20 52:1 53:1,3,14 54:13,18 55:2,7,16,24 56:8,10 57:5,10,13 58:5,8 59:5,13,25 60:21 curtainspecific (1) 48:20</p> <hr/> <p style="text-align: center;">D</p> <p>dagenham (2) 41:9 49:1 damage (4) 9:16 10:14,16,17 54:1,7 (1) 39:18 dash (3) 10:19 11:4,4 david (1) 39:18 day (6) 1:13 13:2,6 15:21 27:6 38:23 days (1) 48:14 deal (7) 15:13 16:16 17:5 32:17 49:2 55:3 60:11 dealing (7) 6:12 17:4 43:9 45:20 51:20 55:18 60:9 deals (2) 28:5 49:2 dealt (9) 2:19 15:5,14,16,18 18:24 31:9,15 55:20 debate (1) 49:15 debond (1) 5:13 decide (3) 25:4 30:25 60:19 decided (4) 5:5 11:10 17:1,21 deciding (1) 46:20 decision (7) 21:10,11 22:9,10 34:5 38:13 41:9 decisions (2) 30:4 50:15 defend (6) 23:7,12 38:17,18 45:4,8 defendant (14) 28:21 29:13 31:13,15 40:1 44:1 45:4,7,8,15,17,23 46:13 49:23 defendants (11) 14:21,24 20:8 23:10 30:16,17,18,18,20 35:15 59:19 defended (1) 17:17 deliberately (2) 23:3 27:17 demonstrate (1) 8:3 demonstrated (1) 45:23 demonstrates (1) 2:24 demonstration (2) 43:6,7 depending (1) 49:12 depends (4) 16:14 25:8,16,16 depriving (1) 47:11 describe (1) 53:21 described (3) 20:4,6,18 description (3) 20:8,11,23 designed (1) 55:3 despicable (1) 37:17 detail (1) 1:11 detailed (1) 43:24 determinative (1) 60:4 determined (2) 42:21 60:5 deterred (1) 46:12 developed (1) 7:7 didn't (7) 11:10 22:15 27:4 33:11,17 44:8 54:11 difference (4) 22:3 31:2 33:2 49:16 different (7) 18:9 19:20 30:25 33:1 52:13,24 55:4 difficult (3) 36:8 45:3 59:23 difficulties (1) 21:5 difficulty (1) 46:5 diminishing (1) 44:13 direct (2) 38:13 52:5 direction (1) 50:24 directions (1) 16:23 directly (1) 33:16 director (1) 54:20 disclosure (4) 11:22 12:5 18:25 39:15 discussed (1) 37:18 dismiss (3) 28:14,16,22 disproportionate (1) 60:15 disrepute (2) 37:4 38:4 does (4) 8:12 29:11,22 58:24 doest (17) 2:25 21:13 22:1 23:23 24:7,25 25:19 28:4</p>	<p>32:8 34:4,6 37:20 49:1,11 58:14,23 60:2 dog (2) 3:3 6:24 dogs (2) 35:3,5 doing (7) 17:19 21:23 25:15 26:12 47:20 48:6,19 done (12) 7:22 8:14,23 11:13 13:6 15:7 18:16 20:7 40:15 55:14 59:6 60:13 dont (44) 2:16 6:24 7:12 13:3,21 18:10 19:6 21:19 24:24 26:7 27:23 31:10,21,22,23 34:19,22 36:10 37:6,18 44:9,20,25 47:21 48:10,18 50:4,14,14,22,23 51:21 53:2,12 54:13,13,14,14 58:11,14 59:12,14 60:1,15 down (6) 1:14 30:13 36:11,12 37:2 51:7 draw (1) 7:25 drawing (1) 48:23 drawn (1) 13:24 drifting (1) 32:5 drivers (1) 3:7 drives (1) 4:22 drivesway (4) 5:11,25 6:3,6 drop (1) 43:5 during (1) 48:13 dusted (1) 55:14 duty (1) 36:8 dvla (1) 19:8 dying (1) 36:23</p> <hr/> <p style="text-align: center;">E</p> <p>earlier (4) 6:22 29:2 31:2 39:8 easier (2) 23:21 24:6 easy (9) 9:19 15:9 16:7 24:2 33:13 39:10 46:21 54:23 55:25 effect (3) 47:10 52:17 58:10 either (4) 13:3 23:9 57:25 58:20 else (1) 38:3 embargoed (1) 31:24 employee (11) 2:6 7:10,10,10 8:8 9:11,12,13 52:18,18,19 employees (3) 9:6 26:6 52:21 enable (1) 23:5 encourage (1) 33:23 encouraged (1) 24:18 encouragement (1) 6:7 encouraging (2) 22:13 33:7 end (11) 15:17,20 17:12 28:12 34:22 41:12 42:19 52:19 56:1,7 57:2 endorsed (1) 29:24 enforce (1) 20:14 enforceable (1) 8:5 engaged (1) 44:15 english (1) 59:7 enough (1) 11:11 enquiry (4) 12:23 18:15,18 20:20 enter (4) 4:3 6:3,6,15 entered (2) 5:11,24 entire (2) 17:24 59:9 entirely (1) 41:23 entitled (2) 54:4 60:4 equally (1) 48:22 equation (1) 55:21 escapes (1) 29:1 especially (2) 43:7 55:9 essentially (1) 52:3 establish (1) 26:3 et (2) 47:25 59:1 even (11) 2:25 3:3 29:25 30:1 31:14 36:10 37:14,19,25 42:14 58:24 event (2) 27:6 47:4 events (1) 35:4 ever (5) 27:1 46:23 48:1 54:15 56:3</p>
---	--	---	---	--	---	---

every (7) 16:1 42:10
44:1,8,9,10 47:11
everybody (2) 12:25 60:25
everyone (1) 38:2
everything (1) 46:10
evidence (28) 8:24 9:1 11:11
18:5,5 20:5 24:9 27:23,25
28:8 30:21 35:23 39:1,24
40:17 43:19 44:20 47:23
48:4 57:16,21
58:1,19,21,21,22,22,23
exactly (2) 25:16,16
example (20) 11:19 12:7,7,8
14:12 17:5 19:22 33:12
34:7 35:2 37:2,18 39:5
40:18 43:10 44:16
45:11,21 52:7 54:8
examples (2) 22:22 44:21
excellent (1) 56:8
except (1) 27:10
excluded (2) 25:12 27:7
excuse (1) 37:10
exercise (3) 21:1 45:18 59:23
exhibit (3) 10:9,9,13
exists (1) 44:19
expanded (2) 52:2,11
expect (1) 18:10
expected (1) 34:20
explain (2) 34:16 40:14
explained (1) 14:15
explaining (1) 50:2
explains (1) 51:7
explored (1) 46:2
expressed (1) 49:1
extended (1) 1:17
extensive (2) 10:1,2,22
extract (1) 1:12
extracting (1) 59:21
exuberance (1) 45:16

F

facebook (1) 35:5
factor (1) 36:20
fair (1) 40:1
fairer (1) 23:24
fairly (1) 21:16
fall (1) 18:14
fallen (1) 42:18
falsey (1) 55:12
far (3) 2:14 32:3 55:13
favour (1) 23:7
fear (1) 33:7
february (2) 14:25 23:12
fell (1) 11:9
felt (1) 37:24
female (1) 5:24
fence (2) 1:14 35:6
few (2) 5:15 13:5
figure (3) 59:21,25 60:1
file (6) 15:8,11,12 16:6,23
24:9
filed (1) 17:16
final (8) 21:21 30:6,13 47:3
48:15 49:3 57:24 60:3
finally (1) 48:1
find (11) 2:6 7:11 18:21
20:20 39:9 40:23 50:1 52:9
54:18,20 58:12
findings (1) 20:12
fine (2) 57:3 60:15
finished (1) 43:6
finishes (1) 47:51 15
fire (7) 1:5 5:5 6:12 12:12
27:1 38:16 52:4
fire (2) 7:4 24:3
fix (1) 32:13
flexibility (2) 23:20 28:5
follow (2) 22:1 46:16
following (2) 1:18 46:23
form (1) 53:21
formal (1) 59:5
forward (1) 50:13
forwards (2) 11:11 51:6
four (2) 5:11 50:5
fourth (1) 6:2
fracturing (1) 10:22

frame (1) 41:8
free (2) 24:2 48:18
freedom (1) 54:19
friday (1) 24:4
front (2) 6:23 30:3
fs (1) 2:6
full (1) 34:8
funeral (1) 7:21
further (10) 3:9 5:10,24 6:6
11:11,15 26:17 36:3 44:17
60:18
future (2) 47:10 48:5

G

game (1) 49:7
gammell (1) 49:22
gammelled (3) 29:5,9 49:7
gardner (3) 4:7 12:24 35:22
gate (7) 5:12 6:4 13:9 33:6
34:15 35:24 56:21
gates (1) 6:14
gave (3) 22:10 30:21 43:10
generic (1) 43:2
get (24) 2:12 3:2,3,7 9:19
11:23 12:6,13,13 15:25
16:21 18:9 19:6 21:6 24:21
30:9 35:5 36:5 40:25 42:17
44:20 49:7,10 58:12
getgo (1) 35:12
gets (2) 29:12 30:25
getting (3) 17:10 38:3 54:10
give (4) 32:17 38:5 43:18
44:16
given (6) 11:14 12:1 22:22
37:12 40:5 59:10
gives (1) 21:3
giving (1) 36:24
glover (3) 35:17 36:18 39:3
glue (1) 6:3
glued (1) 5:12
glueing (1) 13:9
goes (2) 5:22 43:3
going (32) 5:7 9:14 10:3
16:7 30:10 33:23 38:10
40:23 41:6,8,10,11,13
42:23 43:13,14
44:17,21,25 47:2,7,10,22
50:24 55:22 56:2,25 58:12
59:14 60:2,9,24
gone (2) 40:11 60:23
good (6) 12:7 39:5 44:2
50:25 51:12 58:8
goose (3) 20:10 22:5,9
graffiti (2) 7:22 8:7
graham (2) 37:16,16
grant (5) 41:7,23 46:20
47:22 58:24
granted (4) 23:11 26:24
30:13 58:3
granting (1) 46:12
grapple (3) 30:1,23 50:6
grappled (1) 31:6
grappling (1) 31:18
grass (2) 9:17 37:15
grateful (2) 42:13 51:14
ground (1) 43:17
group (2) 14:24 51:23
grouped (2) 19:18 52:22
groups (1) 33:3
guess (1) 19:12
guidance (1) 22:5
guilty (5) 26:1 27:4,18 29:10
46:17

H

hadnt (1) 37:25
hair (1) 6:18
hallmarks (1) 43:2
hand (6) 1:24 27:5 48:18
56:11,16,17
handdown (1) 31:24
handed (1) 30:13
handful (2) 14:6 50:8
hands (1) 6:2
handwritten (1) 7:9

happen (3) 8:12 34:1 46:11
happened (8) 1:21 23 5:4,6
12:9 13:1 31:25 39:16
happening (3) 5:8 17:9 34:2
happens (3) 9:13 25:2 47:9
happily (1) 58:12
happy (1) 31:11
harass (4) 51:23 52:7,15,18
harassed (4) 26:12 52:6,8,16
harassing (3) 51:24 52:14,17
harassment (48) 2:5,11 3:15
7:18 8:1,6,16 10:13 19:2
26:1,8,13,17,18,21,21 27:4
29:4,10 45:1,2,6,8,15,22
46:2,6 47:21 51:21
52:2,3,5,10,11,13,20,23,24
53:1,16,17,19,21,23
54:1,9,9 55:4
hard (2) 12:20 20:21
hasnt (5) 15:3 29:25 30:1
36:18 56:25
hat (1) 50:10
havent (16) 5:16 11:15
12:2,25 13:1,2 14:15
17:23,25 18:17,24 20:22
37:7,8 54:25 60:7
having (2) 28:7 44:10
head (1) 53:4
hear (6) 4:7 27:21 31:11
34:13 37:18 51:5
heard (9) 15:4 25:1,3,9,13
27:1 28:4,15 43:3
hearing (4) 12:17 13:16 23:8
30:13
hearings (1) 51:23
held (2) 4:4 5:7
hell (1) 37:17
helped (1) 12:2
here (4) 10:6 24:12 33:2
50:13
hes (1) 38:10
hide (1) 36:15
high (1) 10:24
highlights (1) 44:4
highway (6) 2:19 3:10,12,13
4:12 5:18
highways (1) 39:12
himself (3) 22:10 38:17,18
hint (1) 31:24
hit (1) 11:10
hits (2) 10:19,24
hodson (1) 7:2
hold (2) 35:8 36:5
home (2) 44:20 46:15
homes (1) 8:20
hour (3) 5:23 6:1,5
hours (1) 6:9
house (2) 2:6 47:6
human (1) 52:16
husband (1) 52:8

I

id (1) 36:20
idea (6) 21:7 35:1 39:13
43:14 54:24,25
identifiable (1) 20:22
identified (9) 2:14 8:16,20
11:16 18:20 21:17 25:10
46:13 48:1
identifies (1) 48:20
identify (22) 4:8 8:2,22
11:12 12:21,25 13:4 14:7
16:19 18:4,16,18 19:19
20:11 21:2,22 22:6,16 23:5
39:7,8 57:16
identifying (2) 13:25 19:22
identity (1) 36:15
ii (1) 54:6
ill (2) 21:19 47:17
illustrated (1) 44:14
im (38) 3:22,24 4:20 9:14
10:7 14:19,20 17:4 24:22
27:3 30:11 31:11
36:11,21,22 38:5 40:15,23
41:6,7,13 42:13 43:10,19
45:20 47:22,23 48:6,6,23

49:7 50:22 51:14 54:16
55:16,17 56:1 58:12
imagine (3) 25:15 34:17,25
impact (1) 3:6
important (5) 21:22 49:5
55:6 58:9,18
impose (1) 47:7
imposing (2) 46:5 48:5
improved (1) 44:22
inadvertently (1) 27:5
incaudible (2) 53:13 55:11
incident (18) 1:6 2:3,5,19
4:9,10 5:11,19 6:13 7:7,8
8:12 10:2 11:8 13:1,9 19:2
39:21
incidents (11) 11:19 14:9
18:20 21:18 26:18
39:5,8,23 43:22,23 44:5
incitement (1) 1:22
inclined (1) 41:22
include (2) 24:7 42:1
inconceivable (2) 33:9,17
index (1) 62:1
indicate (1) 56:4
indicated (3) 20:10 34:1 44:8
indication (1) 42:13
individual (5) 12:15 26:19
37:17 40:5 49:12
individuals (2) 13:25 38:2
inference (2) 9:4 13:23
inferences (1) 7:25
information (14) 12:14,17,22
13:3,22 14:9 19:6,21 36:25
37:1 40:5 54:19 59:10,14
initially (1) 9:18
injunction (45) 1:18 8:5 14:2
21:25 22:21 25:6,12,23
26:25 27:3,7,10 29:2,14
30:12,25 31:4 33:18
35:6,8,13 36:6 9:18
37:3,4,15,19 38:3,14,19
40:10,12 41:7,23 43:1
46:6,13 47:4,9,13,22
49:21,24 59:9
injunctions (5) 41:3 47:15
49:3 50:9,16
inserted (1) 53:17
insofar (1) 49:20
instance (2) 19:1 39:11
instructions (1) 38:5
intends (1) 54:2
inter (2) 46:11 49:6
interest (3) 38:13 55:10,14
interested (7) 13:25 14:1
21:24 55:12,16,17 60:10
interests (1) 47:25
interfere (1) 14:18
interfered (1) 14:16
interfering (2) 3:12 4:12
interim (1) 12:18
intervene (1) 39:22
into (19) 3:7 4:8 7:7 18:14
23:16 29:12 32:5 35:2,6
37:3,4,4,5 43:5 48:19
49:7,10 53:17 58:15
introduce (1) 14:5
introduced (1) 54:8
invite (1) 42:7
involved (2) 2:15 39:4
involves (4) 3:10 26:9
53:23,25
involving (2) 4:9,10
irritations (1) 45:13
isnt (4) 14:8 16:12 39:16
60:4
issued (1) 13:19
issues (3) 30:1,9 60:19
item (3) 10:6 11:3 19:23
its (90) 1:20 2:7,19,20,22
3:2,5,6,11,12,14
4:11,12,13 6:21 7:15,18,19
8:17,24 9:1,18,22,25
10:2,4,5,13,19,21 11:4,4
12:10 15:5,9 16:7,20 17:18
19:19 20:8,13 21:11 23:23
25:20 26:4 33:17 34:12

J

jacket (1) 6:20
jaffray (1) 7:22
jeopardise (1) 24:8
jeopardises (1) 24:11
joan (1) 27:11
job (3) 48:6 50:11,12
jobs (1) 34:15
join (8) 5:16 14:24 15:2
23:10,20,22 28:13,16
joined (9) 14:13 15:4,8 18:13
22:6 24:12 36:18 39:6
52:22
joining (1) 15:10
judge (4) 21:23 22:10 30:5
30:22 36:25
50:6
judged (1) 45:12
judgment (5) 22:11 26:24
38:11 56:2,5
July (4) 1:6 2:3,19 35:15
justifiable (1) 48:25
justified (1) 58:1

K

keep (3) 10:3 17:19,19
key (7) 43:23 44:14
57:14,17,21 58:16 59:2
killer (1) 7:12
kitchen (2) 16:10 22:12
knew (3) 34:1,8 40:6
know (30) 2:1,16 4:2 6:24
7:21,22,23 8:4 18:6
31:10,22,23 33:17,21
36:10 37:5,6 43:9,13
44:19,19 47:21 48:12
50:23 51:4,8 53:2,3,25
55:19
known (4) 5:14,15 7:19
54:16
knows (3) 33:22 38:2 53:25

L

l (1) 7:10
lady (13) 6:7,18,20 13:14
19:1,23,23 22:19,19 24:24
25:24,25 33:6
land (2) 3:14 33:25
large (6) 1:14 14:8 19:17
22:2 39:24 60:17
last (12) 4:2 12:9 14:23
15:13,14 16:1 17:12 19:2
23:11 24:3 37:22 48:13
late (3) 13:2,6 24:7
later (3) 23:22 39:6 60:6
latest (2) 50:5 51:4
laura (1) 35:22
lauren (1) 4:7
lawyers (1) 40:11
leads (1) 22:11
lead (3) 12:17 52:25 54:10
leave (2) 6:15 40:7
led (1) 38:22
left (2) 9:17 32:11
legal (1) 59:8
legally (2) 60:8,18
lengths (1) 33:23
less (3) 24:5 44:16,22
let (3) 5:5 23:6 44:24
lets (6) 17:5 25:24 36:21
42:9 43:1 46:14

letter (1) 7:14
letters (2) 7:9,19
level (1) 21:14
like (15) 4:24 5:6,19 16:15
30:1,6 22 31:25 35:20
36:25 37:18 43:9 46:17,24
52:14
likely (1) 48:9
limit (1) 22:17
limited (2) 21:24 48:10
line (4) 32:10 35:19 36:19
45:13
listen (1) 60:20
litigate (1) 19:17
litigation (5) 20:9 23:16
24:16 32:5 34:18
little (9) 10:5,6,7 32:1 38:24
40:2 46:2 51:14 60:23
logical (1) 49:4
london (1) 30:12
long (2) 16:20 18:21
longer (2) 42:20 60:23
look (16) 2:23 5:19 6:15
9:21 10:23,23 11:2 41:6
42:6 43:6 46:20 51:4 52:2
53:4,18 60:7
looked (3) 1:6 2:9 40:11
looking (1) 17:11
looks (5) 4:24 5:5 10:22
30:22 36:25
loosely (1) 51:24
lordship (9) 7:25 24:14 26:14
31:11 38:20 40:3 43:20,24
51:5
lorry (2) 2:21 3:7
lot (6) 1:8 13:3 18:6,7,15
20:21
lots (1) 51:12
louise (1) 35:22

M

main (1) 9:14
makes (3) 20:15 23:21 29:21
making (15) 1:13 14:21
15:25 17:11 19:23 32:2
41:3 44:1 46:25 48:4,7
49:8 57:7 59:4
man (2) 19:3 37:10
manage (1) 4:8
managed (1) 13:4
manager (1) 36:6
managerless (2) 35:11,14
managerlessness (1) 36:7
mannings (4) 1:7 3:10,20 4:5
many (5) 2:25 14:3 37:24
54:20,25
massive (2) 39:12 43:16
material (1) 23:4
matter (9) 7:18 8:6 20:15
34:4,6 56:1,7 60:2,18
matters (2) 57:18 60:9
maybe (3) 36:19,19 55:11
mbr (2) 9:6 35:14
mean (2) 8:13 32:3
meant (2) 3:6 23:15
measure (2) 32:4 47:24
measures (2) 53:8,9
media (1) 36:14
meet (1) 57:6
meets (1) 45:5
member (1) 3:3
mentioned (1) 54:3
message (1) 8:19
met (1) 45:22
method (1) 20:17
midaugust (1) 35:16
midwinter (1) 7:23
might (9) 23:15 29:8,8 45:21
46:10,21 49:12 52:4,9
millions (2) 37:20,20
mind (3) 41:16 55:15 58:11
minds (1) 6:2
minute (3) 19:11 43:10,11

minutes (12) 5:20,23 6:2,5,9
7:4 9:15,17,18,21 24:3
35:10
mirror (1) 10:25
mislead (1) 35:25
miss (2) 24:24 59:3
missed (2) 11:4 24:22
misunderstandings (1) 22:8
mmhm (4) 17:13 24:17
28:23 30:15
model (1) 49:6
moment (10) 6:15
31:7,8,12,23 32:1 42:15,23
48:24 49:18
monday (7) 52:18 57:7
60:9,12,19,20 61:2
money (1) 60:17
month (1) 38:1
more (30) 8:24 10:7 11:20
14:1 15:1,2,5,7,10,15
21:24 23:14,20 24:7
26:6,9,11,12,27,29 29:15
42:25 43:20,22,24 44:7
48:10 53:23 54:10 55:7
60:7
morley (1) 55:12
morning (2) 46:25 47:5
most (9) 10:16 18:3,13,17,17
38:12 44:5 45:3 58:9
ms (170) 1:3,4,5,10,17,20
2:2,5,10,18 4:1,4,17,20
5:1,4,10 6:19 7:21,22,23
8:15 9:3,7,9
10:11,13,19,23
11:2,7,14,17,19,25
12:8,11,19,24,24
13:11,14,18,21
14:3,7,15,22 15:20,24
16:6,10,17
17:2,7,14,18,22,25 18:3,13
19:6,12,15 20:16 21:10,12
22:1,7 23:1,9,17,25
24:5,18,24 25:3,8,13,16,19
26:2,5,14,21 27:8,12,21,24
28:1,3,9,11,15,19,24
29:4,7,15,18,23
30:2,7,11,17,20,22 31:5,23
32:7,15,25 33:6,9,17,20,23
34:7 38:6,8,15,20 40:17,22
41:4,19 42:13 43:18,22
44:5,7,11,18,23 45:25
46:4,18 47:1 48:8
49:14,17,25 50:3,18,22
51:2,5,11,14 53:6,7,9
55:5,5,17
56:11,14,20,23,25
57:4,9,12,15,23 58:18,23
59:4 60:15 62:2
much (11) 14:1 23:21,23
31:7 36:17 44:17 48:10
57:6 59:7 60:5,22
multiple (1) 42:10
mundum (4) 48:24 49:5,9,19
musings (1) 50:5
must (9) 11:12 41:17,18
46:14,15,15,16 53:12,22
mute (1) 3:23

N

name (17) 2:8 5:14 11:14
12:23 13:15 16:4,5 17:10
20:1 22:3,3 27:14 33:15
35:7 37:16,18 41:25
named (19) 12:22 25:4
28:19,21 30:18,20
31:13,15 35:15 37:7,10,13
38:2 40:1 41:19,21,22 55:9
59:19
names (5) 11:23 12:1,7
37:15,22
naming (3) 16:1 37:23 42:15
nature (2) 34:13 52:12
neale (2) 37:16,16
near (1) 2:6
necessarily (1) 59:13

necessary (4) 20:12 47:24
 58:4,25
 need (12) 26:3 33:14 40:4,11
 47:14 51:8 52:2
 56:11,16,17 57:17 60:11
 needed (2) 17:25 18:4
 needs (1) 50:19
 neighbours (1) 7:13
 neither (1) 33:21
 nervous (1) 37:24
 never (5) 36:15 37:3 38:5
 41:16 47:2
 nevertheless (2) 45:9,15
 newcomers (4) 47:10,16
 48:6 49:3
 next (13) 2:18 3:9 5:10
 7:8,17 8:6,12 9:9 19:4 20:3
 24:4 43:11 50:20
 nicklin (170) 1:4,9,16,19,25
 2:4,9,17 3:25 4:2,15,18,21
 5:3,9 7:19 8:13 9:1,4,8
 10:10,12,17,21
 11:1,6,12,16,18,21
 12:4,10,16
 13:8,13,17,19,23
 14:5,11,19 15:17,22
 16:4,7,14,24
 17:4,13,17,21,23 18:2,9
 19:3,8,11,14,16 21:6,11,19
 22:4,18 23:3,15,23
 24:1,17,20
 25:2,7,11,14,18,24
 26:3,11,20,23,24
 27:9,16,23,25
 28:2,7,10,12,18,23
 29:1,5,8,17,21,25
 30:5,8,15,18,21,23 31:21
 32:3,12,19 33:5,8,12,19,21
 34:4,9,17 38:10,16
 40:7,20 23 41:5,21 42:17
 43:21 44:3,6,9,12,19,24
 46:1,5,9 47:2 48:12
 49:15,18 50:1,4,21,25
 51:3,9,12,16,19 52:1
 53:2,4,8,14 54:18
 55:3,15,25
 56:9,13,19,22,24
 57:3,6,10,13 58:7,9
 59:12,14 60:1,22
 nobody (1) 41:18
 none (2) 46:22 48:13
 nor (1) 33:21
 note (1) 38:23
 nothing (6) 17:9 33:25 36:2
 39:22 40:6 42:3
 nowhere (1) 21:1
 number (9) 13:8 14:8,22
 19:17 27:4 35:4 38:20 39:4
 44:7
 numbers (1) 22:2
 nutshell (1) 1:13

O

object (4) 9:11,16,20 27:2
 objection (1) 49:5
 objective (2) 45:5,22
 objectively (1) 45:12
 obligation (1) 54:7
 obstruction (8) 2:18 3:1,9,11
 4:11 5:18 6:16 39:12
 obtain (2) 22:24 23:1
 obtained (1) 17:15
 obtaining (3) 12:16 14:1
 21:24
 obviously (13) 4:13 5:1,6,18
 6:13,14 7:24 8:1 43:22
 44:23 48:18 50:19 57:4
 occasion (3) 12:3 17:22
 45:13
 occasions (3) 47:20 55:19
 56:5
 occurred (2) 4:9 45:1
 o'clock (1) 57:10
 offence (2) 52:24 54:24
 offences (1) 52:2

often (2) 11:25 12:22
 oh (1) 37:8
 okay (13) 4:1 11:1 12:10
 13:17 25:18,24 48:12
 51:16 55:2,24 58:8 59:5
 60:21
 old (1) 53:1
 once (1) 28:21
 ones (1) 18:23
 online (1) 1:22
 onwards (1) 10:16
 open (5) 4:16,19,21,22,25
 opened (3) 4:20,24 6:14
 operate (1) 49:21
 opportunity (5) 22:23 23:6
 47:12 57:24 58:17
 oppose (1) 27:16
 oral (3) 27:25 28:8 58:11
 order (39) 16:18 20:13,14
 21:4 22:24 23:1,8 27:15
 28:19 29:19 33:14 37:1
 40:12,25 41:8,10,11,24
 42:3,8,10 48:3,5,17,20,21
 49:9,10,19,24
 50:12,16,19,23 57:24,25
 58:2,4,25
 orders (2) 30:14 48:24
 ordinary (3) 34:17,19,23
 organised (3) 35:4 53:11,18
 original (1) 52:5
 otherwise (2) 32:10 42:2
 ought (4) 16:15,16 25:6
 53:25
 ourselves (1) 13:4
 over (3) 33:24 35:8,19
 overnight (1) 8:7
 overspeaking (1) 41:21
 overtaken (1) 43:14
 own (2) 22:24 41:24

P

p (1) 7:10
 package (1) 53:8
 pages (3) 8:9 40:25 42:16
 panned (1) 6:21
 paragraph (1) 2:20
 parasitic (1) 3:15
 parliament (1) 54:8
 part (21) 1:18,24 8:21,24
 13:19,20 15:6,6 16:25
 17:24 18:10,12 23:18,21
 24:1,6 26:16 33:19 37:11
 45:16 46:19
 partes (2) 46:11 49:6
 participation (1) 24:23
 particular (4) 8:14 23:18
 43:1 46:1
 particularly (2) 26:7 55:5
 particulars (1) 12:12
 parties (3) 24:6 41:16 42:15
 parts (1) 28:20
 party (4) 3:5 11:22 12:5 25:5
 past (5) 6:21 7:2 59:6,18
 60:14
 pauline (1) 7:2
 pause (2) 3:22 10:5
 pausing (5) 3:19 4:6 6:12,18
 7:1
 paying (1) 36:10
 penalty (1) 47:7
 pending (1) 14:12
 people (67) 1:22 2:25 5:6,7
 9:2 11:24 12:23,23
 14:6,8,11 15:2,10,19
 16:5,7,18 18:7,19
 19:18,21,21,24 20:3,4
 21:7,9,17,22 22:6,16 23:22
 24:3,7,12 33:7,23 34:15
 35:2,5,16,21 36:4
 37:7,24,25 39:10,14,16
 41:1,5,13 42:17,20
 43:4,5,9 47:11,18 49:13
 50:8 51:8,23 52:8
 55:8,11,19
 peoples (2) 5:14 40:9
 perfectly (1) 33:13

perhaps (1) 47:19
 permission (4) 14:25 16:22
 17:15 23:11
 permit (1) 58:15
 permitting (1) 20:24
 person (49) 6:2,23 7:16 8:3
 9:16,19 10:1,2,4,5 13:4
 16:1 17:2,4,15 18:11
 20:1,11,12,13 22:19 24:8,9
 26:6,10,12,12 27:3,14
 29:12 32:23 33:1,12,20
 36:16 38:8 39:2,7,19 43:15
 47:5,5 52:6,6,7 53:22
 54:2,11 58:5
 personally (1) 48:22
 persons (57) 2:7 5:11,13,24
 6:6 8:9,15 10:15 14:1
 16:17 19:19 20:25
 21:16,25 22:2,21 25:12
 26:22,25 27:10 29:1
 30:12,14,25 31:3,14 33:3
 34:18 38:14,18,21 41:1,7
 42:3,6 44:4,15 46:6,15
 47:9,15,18 48:5,9,23
 49:9,21 50:9,15,22 53:24
 54:1,10 55:18,22 56:23
 59:20
 persuade (3) 42:2 45:15 54:2
 perverse (1) 21:6
 petrified (1) 35:18
 picked (2) 38:25 44:1
 pink (1) 6:18
 place (3) 32:21 36:23 43:5
 placed (1) 34:20
 plain (1) 59:7
 plans (1) 7:21
 plate (1) 19:5
 play (6) 3:20 6:19,25 7:3
 10:3,6
 played (15) 2:23 3:18,21 4:1
 5:21,25 6:4,8,11,17,19,25
 7:3,5 9:23
 plead (1) 12:14
 pleaded (1) 8:16
 pleading (4) 13:7 14:10
 16:10 22:12
 please (23) 2:23 3:17,21,22
 5:20,20 6:1,10,16,19,25
 7:3,4 9:22,24 10:3,4,5,7
 48:16 51:18 56:9 59:11
 pleased (1) 36:22
 pm (1) 61:1
 points (7) 14:22 30:3
 40:8,9,18 57:20 59:3
 police (24) 1:8 5:12 6:10
 11:6,10,16,23 12:1,6,17,22
 13:2,15 14:8,17 16:8 17:8
 18:6,8,17,25 19:25 33:15
 53:18
 political (1) 53:10
 position (7) 15:1
 21:6,8,12,20 24:10 25:10
 positively (1) 22:4
 possible (6) 19:19 20:10,14
 40:14 51:22 52:7
 posted (1) 2:16
 posters (1) 2:6
 posts (1) 36:15
 potentially (3) 15:18 32:12
 49:11
 preparation (1) 56:15
 prepared (1) 9:2
 present (4) 27:6 36:8 42:8
 56:5
 pressick (1) 1:11
 pressicks (1) 2:20
 presumably (1) 13:8
 presuming (1) 27:16
 pretence (1) 41:15
 preventing (1) 2:21
 previous (1) 14:24
 primary (1) 41:2
 principle (1) 49:22
 prizes (1) 40:15
 probably (10) 10:15 12:8
 13:5 14:17 27:12,14,15

34:8 42:2 50:8
 problem (1) 58:16
 problems (2) 32:13 47:14
 procedure (4) 15:7 24:2,7
 37:23
 proceeding (1) 42:15
 proceedings (43) 4:8 5:17
 12:18
 14:14,16,18,19,20,21
 15:10 16:15 17:17,24 18:1
 23:12 24:13 25:5 27:2,4
 28:13,16 29:3,13,22
 30:19,20 32:6,14,21
 38:17,21 39:4 41:20,21,22
 42:21 46:11 49:23
 59:8,17,18,20 60:14
 process (4) 15:22 16:20
 46:19 52:5
 prohibiting (2) 41:17 42:12
 prohibition (2) 25:21 53:16
 prohibitions (1) 48:9
 prominence (1) 20:5
 proportionate (5) 17:19
 22:17,18 47:24 59:1
 prosecution (2) 14:12 54:15
 prosecutions (2) 54:20,21
 protect (2) 47:24 53:9
 protection (1) 53:19
 protest (5) 1:14 8:19 9:6
 43:1 45:18
 protested (1) 7:23
 protester (3) 43:8,16 45:11
 protesters (6) 2:15 8:10,14
 24:21 34:2,14
 protesting (3) 2:11 8:2,4
 protestors (1) 8:13
 protests (1) 8:21
 proud (1) 36:16
 prove (4) 8:22 27:19 54:24
 58:23
 proves (2) 45:5 58:24
 provide (9) 11:23 12:6 14:9
 20:1 36:25 43:23 44:23
 48:16 50:22
 provided (1) 13:2
 provides (2) 32:7 52:3
 public (1) 54:20
 pulls (1) 9:13
 puppy (1) 7:12
 purpose (1) 25:14
 purposes (3) 52:21,23 55:22
 pursue (2) 20:22 53:22
 pursued (1) 45:7
 pursuing (1) 46:14
 putting (1) 23:4

Q

q (1) 7:10
 qs (1) 8:8
 question (6) 12:4,16 16:24
 49:2 51:18 55:7
 questions (1) 40:3
 quibble (1) 60:16
 quicker (1) 13:22
 quickly (1) 31:22
 quite (20) 1:14 2:22 7:7
 10:24 11:25 12:20,22 13:1
 14:17 18:15,21 19:15
 20:21 28:5 31:11 39:6 44:7
 51:3 55:11 57:13

R

raised (3) 12:16 30:24 38:20
 rang (1) 47:5
 rather (3) 15:6 38:22 39:1
 reach (1) 46:22
 reached (1) 60:7
 read (5) 26:23 38:11 50:4,14
 58:19
 readily (1) 59:15
 real (2) 21:5 49:16
 really (10) 13:25 15:1 17:25
 33:5 36:14 43:4 44:10 49:2
 54:15 60:2
 rearview (1) 10:25

reason (5) 16:12 19:7 48:10
 59:15,24
 reasonable (6) 45:10,19
 46:9,23 47:2,12
 reasons (3) 25:22 45:2 58:2
 rebellion (3) 1:23 36:1,3
 recall (1) 1:5
 receive (1) 57:15
 received (1) 59:7
 recent (3) 15:25 22:9 38:12
 recency (3) 16:11 21:13 31:6
 recollection (1) 20:7
 redacted (1) 2:8
 reduce (1) 58:5
 refer (3) 56:2,3 57:21
 reference (1) 46:10
 referred (2) 38:12 39:17
 refreshing (1) 34:12
 refused (2) 20:19 21:4
 regarded (2) 52:21,22
 regime (1) 24:2
 regimes (1) 52:3
 registration (1) 19:5
 related (1) 16:7
 relation (7) 17:2 20:7 21:7
 22:18 29:4 48:15 55:23
 relevance (1) 42:20
 relevant (6) 1:12,24 45:6,17
 60:8,19
 relies (1) 58:20
 relying (2) 55:5 57:16
 remains (2) 41:10 42:20
 remedy (5) 32:8,17,24 46:20
 60:4
 remember (2) 1:16 57:14
 reminded (1) 1:25
 remotely (2) 48:14,25
 remove (1) 56:22
 removal (1) 50:12
 rendering (1) 48:19
 repeated (1) 35:23
 repetition (1) 44:22
 reported (2) 11:6 17:7
 represent (1) 37:20
 representations (1) 24:10
 represented (2) 30:15,17
 request (1) 54:19
 require (4) 2:25 16:4 21:14
 36:24
 required (5) 5:13 16:2,12
 17:14 54:5
 requirements (2) 45:5 54:23
 requires (1) 24:5
 research (1) 53:10
 resolved (4) 42:19 55:17
 56:1,6
 respect (3) 24:19 32:7 38:8
 respects (1) 21:22
 respond (2) 57:22 59:3
 responsibility (1) 41:2
 rest (3) 55:15,25 56:9
 restrain (1) 46:13
 restrictions (2) 34:20 42:5
 returns (1) 44:13
 review (1) 41:11
 reviewed (1) 41:11
 rewind (1) 10:4
 rid (1) 42:17
 rights (1) 32:15
 road (9) 3:1,19 4:5 19:4
 22:20 33:10,24 35:8 43:11
 ruling (1) 54:15
 running (1) 15:3

S

safeguard (1) 47:8
 safety (1) 47:3
 same (9) 6:23 7:14,15,16
 8:19 20:24 52:8,17 53:7
 satisfied (3) 45:6,14 47:23
 saturday (1) 57:11
 saw (2) 6:23 19:1
 saying (9) 24:12 33:10 36:22
 38:10,24 41:16 42:3 46:8
 48:23

scared (1) 33:24
 schedules (1) 43:24
 scratch (1) 48:17
 seasoned (1) 34:2
 second (5) 3:22 24:20,21
 53:21 54:9
 secondly (2) 14:10 39:21
 seconds (7) 5:20,23 6:2,5,10
 9:15,21
 section (4) 53:16,19
 54:21,23
 security (1) 5:1
 see (22) 3:5,13 4:11,23
 6:2,6,10,16 7:6
 10:17,24,25 11:8 12:19
 19:16 32:3 39:7,9 44:8,9
 46:9 53:20
 seeing (2) 18:7 42:25
 seem (3) 23:23 55:10,14
 seemed (1) 1:7
 seems (3) 24:13,19 49:4
 seen (4) 6:21 7:1 18:19
 54:25
 selective (1) 44:12
 semantic (1) 49:16
 sending (1) 57:4
 sense (3) 29:21 51:20 60:11
 sensible (1) 51:6
 sent (3) 7:9,19,22
 sentence (1) 37:12
 separate (2) 20:15 41:23
 september (7) 7:8,17 8:7
 9:10 12:9 17:6,7
 serious (6) 40:9 44:5,17,22
 53:11,17
 serve (9) 16:22 18:11
 20:14,21,23,24 21:2,3
 32:23
 served (3) 16:6 23:6 33:20
 service (6) 16:9 20:2,17
 21:3,8 56:23
 set (2) 15:13 42:10
 sets (1) 47:17
 seven (2) 5:23 47:20
 several (4) 16:19 40:8 42:16
 59:18
 shall (1) 43:15
 shes (2) 22:22 29:9
 shocked (1) 36:4
 shoes (1) 51:14
 short (4) 2:22 11:24 42:23
 52:1
 shortly (1) 53:15
 should (9) 16:4 20:10 22:6
 24:12 25:4,5,21 48:21
 57:23
 shouldnt (5) 25:22 47:13
 57:25 58:3,24
 show (3) 10:16 26:7 35:23
 shows (2) 9:1 36:13
 shutting (1) 46:7
 shy (1) 48:11
 side (3) 22:20 26:11 34:3
 sign (1) 57:1
 significant (4) 6:13 7:7 16:20
 19:15
 simple (2) 41:14 59:15
 since (2) 35:17 37:22
 single (1) 17:23
 singled (1) 35:20
 sink (2) 16:10 22:12
 site (12) 2:12,22 3:8 4:3
 7:24 8:2,4 9:11,14 35:3
 38:4 40:13
 situation (1) 37:21
 situations (1) 39:11
 slightly (1) 52:13
 smashed (2) 8:8 9:13
 sneaked (2) 36:2,2
 snigger (1) 36:21
 soca (1) 54:15
 social (1) 36:14
 sollicitors (1) 59:16
 solution (1) 32:8
 solutions (1) 32:11
 somebody (8) 2:11 3:4 4:23

34:8 39:5,18 40:1 46:24
 someone (1) 34:25
 something (11) 12:9 23:19
 29:15 31:22 34:10 39:21
 51:7 54:4,6,11 60:11
 sometimes (2) 39:10 43:9
 somewhere (1) 43:7
 soon (2) 35:12 51:2
 sort (3) 24:2,22 51:24
 sorts (2) 25:22 36:24
 sounds (1) 51:6
 speak (1) 55:8
 speaking (2) 36:12 43:11
 speaks (1) 4:23
 special (1) 55:10
 specify (1) 42:1
 speculation (1) 33:19
 spent (3) 37:19 58:13 60:5
 spoke (1) 36:3
 spoken (2) 5:1 39:2
 staff (14) 3:3,11,14 4:12,14
 5:5 8:11,18,20,24
 26:6,8,17 52:17
 stage (7) 12:18 16:1 23:22
 31:10 49:6 50:23 60:8
 stalking (1) 46:17
 stand (3) 24:13 33:24 43:8
 standing (2) 19:4 33:6
 stands (2) 19:3 31:8
 start (7) 9:18 10:1 15:22
 20:9 30:9 41:15 48:18
 started (2) 5:15 13:16
 statement (8) 1:11,12 2:20
 56:14,15,18,20 57:1
 statements (1) 15:12
 steering (1) 36:9
 step (1) 40:11
 stepped (2) 35:19 36:19
 stepping (1) 6:23
 steps (1) 24:5
 still (4) 3:19 24:8,9 38:2
 stone (2) 25:25 27:18
 stop (5) 9:24 16:13 44:25
 54:12 60:24
 strengthened (1) 1:17
 strip (1) 40:24
 stripping (1) 41:15
 strips (1) 51:7
 strong (1) 38:22
 stuff (1) 58:8
 subject (10) 19:9,25 22:20
 27:2 31:3 39:3 41:10
 42:4,5 47:13
 submit (1) 60:13
 subsection (6) 45:24
 53:5,15,16,20 54:22
 subsequently (4) 20:14,20
 32:25 52:11
 suggesting (2) 24:1 31:1
 sum (1) 60:17
 summer (2) 14:23 37:22
 superseded (1) 41:2
 supposed (1) 47:3
 supreme (1) 32:22
 sure (4) 3:22 4:20 40:15 44:1
 surprise (1) 48:14
 surrounded (1) 1:7
 surrounding (1) 3:10
 susan (2) 1:11 2:20
 suspended (1) 37:12

T

taken (12) 11:15 12:1 18:21
 22:14 26:16
 32:10,10,18,21 35:3 36:23
 43:23
 takes (2) 16:20 42:16
 talk (2) 11:21 51:24
 talked (1) 34:14
 talking (2) 14:20,20
 target (2) 8:11 57:22
 targeted (3) 8:18,20 52:13
 targeting (4) 4:13 8:24 9:10
 39:17
 tea (2) 43:12,13
 telephone (1) 46:25

telling (1) 50:16
 term (2) 35:11 43:8
 terms (6) 11:24 32:4 36:1
 41:14 42:10 58:3
 test (1) 46:10
 thank (10) 2:1,24 7:1,6 55:2
 56:10 57:6 60:21,22,25
 thats (65) 1:9,25 2:5,9 3:3,4
 4:5 8:8 9:19 10:14,21 12:4
 13:1 14:3,19 16:2,2,3,10
 18:9,22 22:4 23:17 24:18
 26:16 27:13 29:23 30:7
 31:5,12,17,23 32:19
 33:2,19 34:9 37:6,9 38:7
 39:21 40:1,17 42:19
 43:16,21 46:1 47:10,14,17
 48:3 49:16 50:25 51:9,16
 54:16 55:4,6,12,12 56:1,7
 57:3,24 58:15,18
 themselves (1) 6:3
 themselves (3) 5:12 23:7
 30:17
 thereafter (1) 53:15
 theyre (1) 55:9
 theyve (3) 30:3 60:5,16
 thing (9) 27:13 42:2 43:16
 49:20 56:17 58:9,11,16
 59:2
 thinks (1) 25:20
 third (4) 3:5 11:22 12:5
 54:11
 though (2) 31:15 37:19
 thought (1) 32:20
 threatened (1) 39:18
 threatening (1) 37:14
 three (5) 28:24 35:16 37:22
 40:25 50:4
 threw (1) 43:12
 throughout (1) 38:21
 throw (3) 27:4,17 43:13
 throwing (3) 9:20 19:23 26:1
 thrown (3) 9:12 23:13,14
 throws (2) 9:16 10:6
 thursday (1) 1:1
 tied (1) 2:11
 time (31) 5:22 13:3
 15:3,8,11,13 16:21 17:8
 18:3,21,21 26:16 27:1
 31:19 35:15 37:8,21,23
 39:6,9 41:12 42:22 43:4
 44:2 50:25 52:8 53:7,12
 58:10,13,14
 times (3) 13:5 14:4 16:20
 timetable (3) 23:13 24:8,11
 today (5) 37:21 43:4 51:9,16
 57:2
 together (2) 52:22,23
 told (1) 30:11
 too (1) 43:2
 took (3) 17:8 32:22 39:6
 towards (1) 19:24
 track (3) 36:10,12 37:1
 traffic (1) 3:6
 transcript (2) 9:22 58:12
 transport (1) 30:12
 travel (1) 43:6
 trespass (8) 1:17 3:15 4:13
 5:10,19 6:13 25:21 27:19
 trial (17) 5:15 15:3,9,17,18
 16:23 24:4,5,8,11,23 27:20
 28:2,4 30:6,9 31:2
 tried (2) 35:25 36:15
 tries (1) 40:14
 true (1) 37:9
 truth (1) 36:3
 try (4) 34:15,18 36:8 45:4
 trying (8) 3:4,14 10:8 22:16
 36:14 40:24 52:15 53:20
 tuesday (1) 52:18
 turned (1) 20:25
 turning (1) 34:25
 twice (1) 20:7
 twoparty (2) 32:5 45:21
 type (2) 54:9 55:4
 types (2) 2:15 39:15

U

ultimate (1) 47:8
 ultimately (5) 28:12 40:21
 47:25 49:16 50:11
 uncertain (1) 32:1
 understand (15) 1:20
 34:18,19,20,22 35:19
 36:17 39:14 41:5
 50:7,9,10,14 60:10,24
 understandably (1) 14:17
 understanding (2) 40:10
 42:11
 understands (1) 38:4
 understood (1) 43:17
 unending (2) 21:14 24:15
 unfortunately (1) 5:16
 ungammed (1) 29:10
 unknown (58) 2:7 5:11,13,24
 6:3,6 8:9,15 10:15 14:2
 16:18 19:19 20:25
 21:16,25 22:2,21 25:12
 26:22,25 27:3,10 29:2,12
 30:12,14 31:1,3,14 33:2,3
 34:18 38:9,14,18,21 41:1,7
 42:3,6 44:4,16 46:6
 47:9,16,18 48:5,9,23
 49:9,21 50:9,15,23
 55:18,22 56:23 59:20
 unknowns (1) 4:10
 unless (5) 8:2 29:11 31:22
 41:11 42:2
 unmanageable (1) 32:6
 unrelated (1) 57:20
 until (5) 5:15 15:14 38:1
 41:12 61:2
 unwanted (1) 46:25
 unworkable (2) 32:8,11
 upon (3) 55:5 57:17 58:20
 used (4) 12:23 35:11
 54:15,17
 using (1) 18:18

V

vacuum (1) 37:21
 valuable (1) 60:2
 valve (1) 47:3
 van (1) 3:3
 varied (1) 25:6
 various (1) 40:25
 vary (1) 27:10
 vehicle (10) 1:7 3:1,19,20
 4:2,3,5,22 19:4 36:20
 verbal (1) 58:5
 verge (1) 9:17
 version (1) 34:5
 vicious (1) 37:11
 victoria (4) 35:17 36:18
 39:3,3
 video (30) 2:21,22,23,23
 3:17,17,21 4:1 5:19,20,25
 6:4,7,11,16,17,19,25 7:3,4
 9:9,19,22,23 10:18 20:5
 44:8,9,10 47:19
 videos (3) 15:12 18:7 47:21
 violently (1) 37:13
 visavis (1) 21:8
 visible (1) 19:5
 voices (1) 4:6

W

wait (1) 19:11
 wants (2) 28:15 60:6
 wasnt (5) 5:15 20:24 29:11
 37:4,5
 waste (1) 50:25
 watch (1) 44:10
 watched (1) 47:21
 wave (1) 24:21
 way (9) 20:18,24 24:14 40:23
 50:2 51:6 52:13 56:2,3
 ways (3) 19:20 28:24 52:24
 wayside (1) 42:18
 wednesday (1) 52:19
 week (1) 50:20

weekend (1) 57:14
 weeks (3) 5:15 13:16 30:11
 weight (1) 58:6
 went (2) 32:19 36:15
 werent (4) 13:9 15:1,14 17:9
 weve (1) 12:20
 whatever (3) 25:25 28:20
 46:16
 whats (3) 5:4 24:18 39:16
 wheel (1) 36:9
 wheelchair (9) 6:7 13:15
 17:3 19:1,23 22:19 24:25
 36:11,13
 whereas (1) 51:25
 whole (5) 15:22 23:13
 49:11,12 58:11
 whom (2) 4:7 41:1
 whose (2) 4:2 20:5
 wife (1) 52:9
 willingness (1) 9:5
 win (1) 40:15
 window (5) 4:15,18,20,21,24
 windows (1) 4:22
 windscreen (4) 8:8 9:12
 10:14 11:10
 wish (1) 54:14
 witness (8) 1:10 15:12 17:16
 24:9 56:14,14,17 57:1
 woman (7) 11:9,12 33:21
 36:11,12,14 43:10
 wont (1) 59:2
 work (6) 7:12 18:15,15 20:21
 34:23 50:9
 worked (2) 12:19,20
 working (2) 9:6 58:13
 workplace (1) 46:24
 works (1) 50:7
 world (3) 32:13 49:11,12
 worry (1) 44:25
 worst (1) 44:21
 wouldnt (5) 8:5 26:18 29:18
 31:2 46:12
 wrinkle (1) 46:1
 writing (2) 58:8,15
 written (2) 7:14 58:6
 wrong (5) 9:19 25:20
 32:20,20 51:22
 wrongs (2) 32:8,16
 wyton (2) 9:11,14

X

x (1) 58:21

Y

y (1) 58:21
 yards (1) 46:14
 year (7) 12:9 14:23
 15:1,14,15 17:12 38:1
 yellow (1) 6:20
 yesterday (5) 1:6 6:23 35:25
 36:1,4
 yet (4) 38:11 39:7 41:13 60:8
 young (4) 36:20,21 37:2,6
 yourself (1) 49:10
 youve (11) 1:25 12:12,13,14
 14:5 20:7 24:22 38:11
 44:19 51:12 57:13

Z

z (1) 58:22

I

1 (6) 27:4 52:18 53:16,19
 54:21 62:2
 1017 (1) 6:16
 1030 (3) 1:2 57:7 61:2
 12 (1) 11:2
 1215 (1) 61:1
 1285 (4) 10:14,15,24,25
 1287 (2) 10:16,23
 1288 (2) 10:16 11:3
 1289 (1) 10:15
 15 (2) 12:10,11

1501 (1) 2:7
 15th (1) 1:10
 18 (2) 1:1 2:3
 19 (5) 2:3,19 9:15,18,21
 1a (4) 53:15,16,20 54:22

2

2 (6) 1:6 3:11 23:16 24:15
 52:18 57:10
 20 (1) 5:20
 2005 (4) 53:10,10,15,18
 2021 (1) 35:16
 2022 (3) 7:8,17 9:10
 2023 (1) 1:1
 219 (1) 10:1
 22 (3) 5:23 6:2 61:2
 23 (1) 6:5
 230 (2) 9:25 10:3
 27 (1) 7:8
 28 (2) 7:17 8:7
 290 (1) 2:20

3

3 (1) 52:19
 30 (6) 6:10 9:10,17 12:9
 17:6,7
 31 (3) 13:19 18:10,12
 3117 (6) 13:20 16:25 17:24
 19:9,25 33:14
 34 (1) 6:9
 37 (1) 6:5

4

4 (1) 45:24
 43 (1) 5:20
 49 (1) 6:2

5

50 (1) 46:14

6

695 (1) 3:17

7

7 (2) 15:6 23:18

8

8 (4) 15:6 23:21 24:1,6
 836 (1) 9:22
 888 (1) 8:9
 890 (1) 8:9
 891 (1) 7:11
 896 (1) 7:11

9

925 (1) 5:19
 996 (2) 2:21,23