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

Day 2

April 26, 2023

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1	Wednesday, 26 April 2023	1	the pole that has been referred to previously in the
2	(10.30 am)	2	evidence. I suspect it is because it's quite ——
3	MR JUSTICE NICKLIN: Right. Ms Jaffray, can you hear me?	3	MR JUSTICE NICKLIN: Why is it hearsay? Why is it hearsay?
4	MS JAFFRAY: I can, yes.	4	MS BOLTON: Well, there's no notice again, my Lord.
5	MR JUSTICE NICKLIN: Good. Thank you very much. We're	5	MR JUSTICE NICKLIN: Why is it hearsay? Why do you say it's
6	going to take a break in the morning because we've got	6	hearsay evidence?
7	the transcribers , but I think $$ are we ready to start,	7	MS BOLTON: Well, my Lord
8	Ms Bolton?	8	MR JUSTICE NICKLIN: It's real evidence.
9	MS BOLTON: My Lord, we are. My Lord, may I just check how	9	MS BOLTON: But from where? It's being said it's MBR Acres,
10	your Lordship wishes to proceed this morning? We still	10	so is that the case $$
11	have some housekeeping matters as well as opening.	11	MR JUSTICE NICKLIN: Well, your first submission, which was
12	Would you prefer me to deal with the housekeeping	12	it was obtained by trespass, was based upon, I assumed,
13	matters first?	13	the acceptance that it was a video of your premises.
14	MR JUSTICE NICKLIN: Yes, go on then.	14	MS BOLTON: No, we take the view, my Lord, that if it is
15	Housekeeping	15	a video of our premises, it's the one that was on the
16	MS BOLTON: My Lord, first of all, obviously Mr Curtin has	16	stick which was put through the vents, but if it's not,
17	now filed and served witness evidence. He obviously	17	then who made this video and how because it's not clear.
18	needs to make an application to you, my Lord, orally for	18	That's all we're asking for to be clarified there. The
19	the admission of that. My Lord very briefly, we're not	19	second part of our objection is the second part has
20	opposing the admission of his witness evidence save the	20	absolutely nothing to do with MBR Acres at all.
21	exhibit C because that is a video. I think it's a video	21	MR JUSTICE NICKLIN: That's fine. I understand that bit.
22	that was obtained by putting a camera on a stick through	22	MS BOLTON: That's all we're asking for clarification on.
23	the MBR air vents, but we're not sure. We're not sure	23	If Mr Curtin wishes to give that clarification , then
24	if it's Mr Curtin's video. He needs to explain who the	24	fine, but if he doesn't, it's not clear where that
25	video was made by because it's covert. And the second	25	evidence has come from, how it has been obtained and
	1		3
1	half of that video looks to be a recording from	1	whether or not it's our facility . If it's our facility ,
2	a laboratory some time ago that's nothing to do with the	2	it's our facility because it's come through the air
3	claimant. It's obviously quite upsetting but it's	3	vents, we can work that out and I'm not going to make
4	nothing to do with the claimants in these proceedings or	4	a fuss about that.
5	their laboratories or anything that they have been	5	MR JUSTICE NICKLIN: Well, surely you can recognise the
6	involved in.	6	premises from the video. I haven't seen it.
7	So we say there's $$ if Mr Curtin wishes to refer to	7	MS BOLTON: Sorry, I've been told it's $$ I might have the
8	the newspaper clippings of the various parts of the	8	attachment wrong. Let me just check.
9	protest, we don't have any objection to that, but that	9	MR JUSTICE NICKLIN: Is it E?
10	particular video would appear, one, to be trespass, if	10	MS BOLTON: I think that's correct, my Lord. I'm just
11	we've understood how it's been obtained, and, two, it	11	checking.
12	needs a statement from the maker of the covert	12	MR JUSTICE NICKLIN: Right.
13	recording. So that's the only thing we object to, but,	13	MS BOLTON: Yes, apologies, my Lord, it's E. It's number 7.
14	generally, we don't make any objection to Mr Curtin's	14	MR JUSTICE NICKLIN: Wasn't I sent this this morning?
15	relief from sanctions application.	15	MS BOLTON: My Lord, apologies. You don't have the bundle.
16	MR JUSTICE NICKLIN: Why does the fact that it's been	16	May I hand up the bundle? It's Mr Curtin's evidence.
17	obtained by trespass, assuming for the purposes of these	17	MR JUSTICE NICKLIN: Oh, right. I think I got an electronic
18	arguments that it has —— why does that make any	18	version of it this morning. (Handed)
19	difference to the admissibility of the evidence?	19	Thank you. I had better watch it if we're going
20	MS BOLTON: My Lord, it doesn't. It's the fact that who	20	to
21	made the covert recording.	21	MS BOLTON: It's narrated by Mr Curtin, my Lord, and I'm
22	MR JUSTICE NICKLIN: Why does that matter?	22	assuming it's a recording by Mr Curtin, but if it's not,
23	MS BOLTON: That's Civil Evidence Act, my Lord. So I'm	23	then that needs to be explained.
24 25	simply saying we just need to know who the maker is —	24 25	MR JUSTICE NICKLIN: "E. Undercover footage".
ر ک	it may be Mr Curtin. It may have been that camera on	ر ک	MS BOLTON: Yes.

1	MR JUSTICE NICKLIN: Right.	1	is a link, but $$ yes, it's not MBR, but it is one of
2	Okay, there's a section at the beginning of the	2	the suppliers.
3	video which has $$ or it must be about 5 seconds long $$	3	MS BOLTON: One, there's no link. Two, there's no date on
4	that has pictures which could be inside a facility .	4	this and, looking just at the video, it's quite clear
5	MS BOLTON: Yes. It may be something Mr Curtin can clarify	5	it's very old and so it's completely irrelevant to these
6	in a very straightforward way $$	6	proceedings.
7	MR CURTIN: Yes.	7	MR JUSTICE NICKLIN: Right. It's likely to have only
8	MR JUSTICE NICKLIN: Go on then, Mr Curtin.	8	peripheral relevance to the extent that what motivates
9	MS BOLTON: —— but we're being provided with something where	9	people to protest about the rearing of animals for
10	we're not really told where it's come from and how $$	10	research is that —— whether they're right or wrong about
11	MR JUSTICE NICKLIN: Right.	11	the conditions in which animals are then subject to
12	MS BOLTON: —— and when ——	12	experiments is what drives their commitment, so it has
13	MR JUSTICE NICKLIN: Okay.	13	that relevance. So it is footage like that which is
14	MS BOLTON: —— which is also quite relevant, because if it's	14	largely a factor or at least some part of people's
15	something to do with his defence over the protest,	15	motivation to protest against the rearing of animals for
16	where, when, how, is going to be quite important. The	16	research.
17	second half, as I say, doesn't have anything to do with	17	MS BOLTON: It goes to the test of sincerely held belief,
18	MBR's premises at all, there can't be any argument over	18	my Lord, as to ——
19	that because it's clearly a laboratory, but the first	19	MR JUSTICE NICKLIN: Well, I don't think you're —— I've not
20	half, that's what's being said and we would just like	20	detected that you're challenging that they sincerely
21	that clarified .	21	hold their beliefs.
22	MR JUSTICE NICKLIN: Okay. Mr Curtin, can you help me with	22	MS BOLTON: That's one of my points as well. We say it's
23	what this is?	23	irrelevant because it's not MBR, but, in any event,
24	MR CURTIN: Yes. It is footage that was gathered from like	24	that's not being challenged.
25		25	MR JUSTICE NICKLIN: Yes, right. Okay. So you now know
23	an extremely long fishing rod, further than from me to	23	WIN JOSTICE MICKEIN. Tes, right. Okay. 30 you now know
	5		7
1	you, with a small pinhole camera. I was part of the	1	about the provenance of this video.
2	team. I do take some responsibility for taking that	2	MS BOLTON: We don't know much about the date of the othe
3	footage. It isn't inside at MBR. As to when it was	3	part of the video, but $$
4	taken, I wouldn't be able to give an answer to you	4	MR JUSTICE NICKLIN: Well, Mr Curtin is going to get back to
5	standing up now, but I'll be able to do this in the	5	you on that.
6	dinner break. But it is footage of inside MBR which	6	MR CURTIN: Could I suggest we —— because my case isn't
7	I had a hand in being responsible for, if that helps.	7	going to rest on exhibit C $$
8	MR JUSTICE NICKLIN: Okay.	8	MS BOLTON: Sorry. It was my mistake. It's E.
9	MR CURTIN: And I understand the point that —— for the case	9	MR CURTIN: At E. Could we discuss it when the time comes,
10	of the trial, whether the dogs are kept in such dirty	10	whether it's inadmissible, because it really doesn't —
11	conditions or not, it doesn't give people the right to	11	my defence doesn't rest on it, as we speak.
12	block the roads, et cetera, et cetera. It's just	12	MS BOLTON: I'm quite content to deal with it in that way,
13	something I'm bound to want to refer to during the	13	my Lord. I'm simply flagging it now. Mr Curtin
14	course of my defence.	14	obviously then needs to make an application to you.
15	MR JUSTICE NICKLIN: Okay.	15	That application isn't going to be opposed.
16	MS BOLTON: My Lord, from five minutes and 54 seconds in,	16	We also have a difficulty with Ms Jaffray in that we
17	we're not dealing with an MBR premises and we look like	17	still don't have any witness evidence from Ms Jaffray so
18	we're dealing with a very old, covert recording from	18	I don't see how she can make an application for relief
		19	••
19 20	a laboratory somewhere. MR CLIRTIN: Is it the purching?	20	from sanction because she hasn't effectively done
20 21	MR CURTIN: Is it the punching? MS POLTON: Yes it's the whole that's not relevant at		anything to cure that problem. So we have no witness
	MS BOLTON: Yes, it's the whole —— that's not relevant at	21	evidence. We say she shouldn't be cross—examining,
22	all to this case.	22	advancing a positive case, and she shouldn't be allowed
23 24	MR CURTIN: That was taken at Huntingdon Life Sciences,	23	to give oral evidence because she has to have relief to
	which is a few miles up the road, which is supplied to	24	do that and she's not provided what's needed to obtain
25	by MBR, and was actually set up by the same There	25	relief . So we still have that difficulty with

1	Ms Jaffray.	1	but that wasn't achieved until much later, and we raised
2	MR JUSTICE NICKLIN: Right.	2	the fact that we didn't have witness evidence from these
3	Ms Jaffray $$ I've always thought your name is	3	witnesses as well. We've written to the defendants over
4	pronounced "Jaff—rey". Am I wrong about that?	4	the lack of witness evidence. So it's not a case of
5	MS JAFFRAY: It's "Jaffray".	5	misunderstanding the directions from the court, and also
6	MR JUSTICE NICKLIN: Right. I'm sorry that I've been	6	that was May last year. The directions you were given
7	getting it wrong all this time.	7	were January. We have explained what's needed, but it's
8	MS JAFFRAY: That's fine.	8	not been forthcoming.
9	MS BOLTON: That's possibly my fault, my Lord, because	9	MR JUSTICE NICKLIN: Right. Let me look at the $$ where's
10	originally I was. I think I've got it right now. It	10	the relevant document?
11	sounds like I have.	11	MS BOLTON: The defence is in Ms Jaffray's defendant bundle.
12	MR JUSTICE NICKLIN: Okay. Just to explain, Ms Jaffray, you	12	MR JUSTICE NICKLIN: It will be in bundle 2. It will be the
13	may have picked up $$ because I think you told me you'd	13	first bundle, the pleading one.
14	read the transcript of what happened on Monday, which is	14	MS BOLTON: It's section 2, pages 61 to 62.
15	the court's procedures are that ordinarily parties to	15	MR JUSTICE NICKLIN: Ms Jaffray, do you have a copy of the
16	litigation, including the defendants, are required to	16	bundles? The important bundles for this trial are the
17	provide any evidence they want to rely upon. That	17	ones that relate to you, so far as you're concerned.
18	includes a witness statement from themselves,	18	MS JAFFRAY: Yes.
19	essentially setting out what they want to say about what	19	MR JUSTICE NICKLIN: I'm looking at tab 2 in that. Do you
20	has happened or the allegations that are being made in	20	have them?
21	the proceedings.	21	MS JAFFRAY: Yes, let me just grab them.
22	Ms Bolton is objecting on the basis that you haven't	22	MR JUSTICE NICKLIN: So it's the first of the two
23	provided such a document and she says the consequences	23	ring—binders and it's divider 2 in the bundle.
24	of that are that you are not entitled to rely upon any	24	MS JAFFRAY: Yes. What am I looking for?
25	evidence and that would mean that you would not be able	25	MR JUSTICE NICKLIN: That's the document that you $$ is that
	9		11
1	to give evidence in your own defence. Now, can I just	1	what you're referring to, when you said to me you'd
2	clarify first of all whether you were intending to give	2	filed something last year?
3	evidence in the proceedings?	3	MS JAFFRAY: So it's the one that starts off with "My right
4	MS JAFFRAY: Yes. I sent off some photos and some videos	4	to protest".
5	and I did email into MBR injunction(?) to say my witness	5	MR JUSTICE NICKLIN: The document starts on page 61 and
6	evidence made the same as what was submitted last year.	6	says, "Under Article 11 of the European Convention of
7	MR JUSTICE NICKLIN: What did you submit last year?	7	Human Rights". Do you have the same document?
8	MS JAFFRAY: I sent off a statement last year.	8	MS JAFFRAY: Yes.
9	MR CURTIN: It's a similar case to mine. I thought my	9	MR JUSTICE NICKLIN: Right, okay.
10	defence witness $$ I thought $$ I didn't know the big	10	I notice that what you say on the second page of the
11	difference between submit a defence and a witness	11	document is in the second paragraph you said:
12	statement.	12	"I had initially planned to address each of the
13	MS BOLTON: My Lord, the difficulty with that is, one, we	13	points made against me, although I have instead decided
14	raised it at the PTR and made it clear that that was	14	that this will only add to the copious amount of
15	still missing; secondly, we've written to the defendants	15	paperwork already received by the court [as read]."
16	and made it clear that that's still missing.	16	Then you deal two paragraphs down with one of the
17	MR JUSTICE NICKLIN: What is the document that she's	17	allegations specifically about you striking a worker's
18	referring to from last year?	18	car.
19	MS BOLTON: She's referring to her defence.	19	MS JAFFRAY: Yes.
20	MR JUSTICE NICKLIN: Oh, the defence.	20	MR JUSTICE NICKLIN: And then that's the extent of what you
21	MS BOLTON: Which didn't have a statement of truth on it,	21	say about the individual events that are alleged against
22	which	22	you. Now, it's important that I know whether you intend

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to dispute any of the other allegations that are made

against you by MBR Acres, in other words, because if you

do, then I need to know, and so do the claimants, what

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MS JAFFRAY: It does. It does.

MS BOLTON: You ordered that to be signed at the PTR by

a certain date, which we're not taking any issue with,

1	you say about that.	1	said is when the witness gives the evidence. It
2	MS JAFFRAY: Okay. I think most of my cross—examining was	2	wouldn't be fair on you $$ for example, it wouldn't be
3	going to be about the protests and the effect that it's	3	fair on you if MBR staff climbed into the witness box in
4	had on the claimants as they stated it had quite	4	court 13 and it was the first time that you heard what
5	a severe impact on them.	5	they were alleging against you, and so they have been
6	MR JUSTICE NICKLIN: I don't know whether you've seen	6	required to provide a statement so that you know what
7	Mr Curtin's document that he's filed this morning. Have	7	they are saying, so that you have an opportunity to
8	you seen that?	8	consider what they are saying and the purpose is for you
9	MS JAFFRAY: No.	9	to be able to raise any evidence that you want to rely
10	MR JUSTICE NICKLIN: Right. Mr Curtin, have you sent it to	10	upon in answer to that.
11	Ms Jaffray? I'm not suggesting you should have done.	11	MS JAFFRAY: Okay.
12	MR CURTIN: No, it's something I forgot to do.	12	MR JUSTICE NICKLIN: What's missing in the jigsaw at the
13	MR JUSTICE NICKLIN: That's all right. Could you possibly	13	moment is your bit, where you tell me and the claimants
14	send it to her?	14	what you intend to say in broad terms in your evidence
15	MR CURTIN: I could, yes.	15	when you come to give it in the trial.
16	MR JUSTICE NICKLIN: The reason I'm saying that is Mr Curtin	16	MS JAFFRAY: Okay.
17	has done quite a good job of setting out what he wants	17	MR JUSTICE NICKLIN: All right?
18	to say and it sounds to me as if you're taking a similar	18	MS JAFFRAY: Yes. I can do that by the end of tonight if
19	position, which is $$ I don't want to put words in your	19	that's okay.
20	mouth and you'll tell me if I'm wrong about this, but	20	MR JUSTICE NICKLIN: That's fine. As soon as possible,
21	broadly I think your case is, "I accept what is shown on	21	please.
22	the video footage of me doing. What I'm doing is	22	MS JAFFRAY: Yes.
23	protesting and I dispute that my protests have caused	23	MS BOLTON: My Lord, one further point is Ms Jaffray has now
24	any real anxiety or upset to the MBR workers".	24	provided a list of who she wishes to cross-examine, and
25	MS JAFFRAY: Yes, exactly that, yes. And then it's one of	25	one of the things that she refers to in relation to her
	13		15
	==		= = = =

1 the fine points of, one, me using NHS systems, one where 2 I was supposed to obstruct the car and the others 3 where -- just the impact the workers said that protest has had on them for each of the allegations. MR JUSTICE NICKLIN: Well, what I'm going to ask you to do 6 is to have a look at Mr Curtin's statement because it 7 may help you as something as a model that you may be 8 able to adjust -- and obviously your position is 9 different from his, but you will see what he's filed as 10 a way of trying to advance a witness statement. 11 I do appreciate the difficulty that a litigant in 12 person has because you're not used to having to produce 13 witness statements and I would imagine that most people 14 who have no legal experience are not familiar with what 15 is required, but if you have a look at that, it may tell 16 you or give you an indication, it may make you think

2.0 21 MS JAFFRAY: Okay. 2.2 MR JUSTICE NICKLIN: Just to explain to you so that you 23 understand why this is important, it is because we can't 2.4 have a trial at which witnesses give evidence and the

about certain things like $\,--\,$ for example, the allegation

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that you've been using NHS systems, then you need to

include your denial and anything you want to say about that, in relation to that, by way of an explanation. first time that the opposing party learns what is being

1 denial over her using her position at the NHS is a report that she has. If she's going to say, "I have 2. 3 a report that clears me", that ought to also be part of

her evidence because that is what the employees have been told by the police, so that's their understanding 5 6 of how the prosecution which has recently taken place

7 arose. So that's the information they have and if it's going to be contradicted -- it may very well be that the 8

9 police got that wrong, but if it's going to be 10 contradicted, it ought to be provided.

MR JUSTICE NICKLIN: Ms Jaffray, you've apparently referred 11 12 to a report. Have you provided that to the claimants? MS JAFFRAY: I haven't, no. So I actually had the court 13

case on Monday about this one and there's absolutely no 14 15 mention of me using NHS systems. I used my NHS black 16 book but I didn't use systems to get any details about 17 members of staff. I can look for that report and I' II

18 give just a screenshot, if I may. 19 MR JUSTICE NICKLIN: Well, do you not have an electronic

2.0 version of it? 21 MS JAFFRAY: Yes, I just didn't want to send off the whole 22 report, unless it's just to yourself.

23 MR JUSTICE NICKLIN: Well, I can't see evidence that the 24 other parties don't see. Is your concern that the 2.5

report contains other material that's not relevant to

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1	you or	1	unknown, my Lord, as I think was explained in the
2	MS JAFFRAY: Yes.	2	application, it's more there so the court can take
3	MR JUSTICE NICKLIN: You are entitled to redact —— that	3	a view on how much it needs to see as that evidence is
4	means block out or withhold $$ bits that you say are	4	looked at because obviously there's a recent Court of
5	irrelevant and you can send the relevant part to the	5	Appeal decision which suggests it should be dealt with
6	claimants' solicitors . They may argue that they need to	6	in a summary basis, but we're at trial, we do accept
7	see the whole document, but we can do it in stages.	7	that the court is going to be looking at a $$ it can
8	MS JAFFRAY: Okay.	8	take as many of the incidents $$ it can be taken through
9	MR JUSTICE NICKLIN: So in the first instance sit down, when	9	it or not. We can take it as a sampling exercise, but
L O	you've got a moment, look through the document, decide	10	it's there for your assistance.
L1	which parts of it are relevant to you and the point that	11	MR JUSTICE NICKLIN: Yes, the Court of Appeal's decision is
L2	you're making, relying upon that document, and then you	12	useful insofar as it goes because, of course, the Court
L3	can $$ either with a big black marker or by withholding	13	of Appeal considers the points that are appealed. The
L4	whole pages, you can then send them the relevant part of	14	point that was relevant in that case was that the judge
L5	that; all right?	15	refused to grant summary judgment
L6	MS JAFFRAY: Yes, okay.	16	MS BOLTON: Yes.
L7	MR JUSTICE NICKLIN: Then we'll have a look at that some	17	MR JUSTICE NICKLIN: and the Court of Appeal says, "No,
L8	time later in the trial .	18	summary judgment is available".
L9	MS JAFFRAY: Okay, yes. I can do that tonight as well.	19	MS BOLTON: Yes.
20	MR JUSTICE NICKLIN: Okay. Right.	20	MR JUSTICE NICKLIN: It leaves unaddressed the question
21	I think, Ms Bolton, of course there are procedural	21	which is, "Okay, so you grant summary judgment, what
22	steps that need to be put in order, but there aren't any	22	next?". You don't get summary judgment and then, right,
23	huge surprises coming your way on this front, so if	23	injunction. It doesn't work like that. So the
24	you're content, I would prefer to deal with it in	24	difficulty $$ that's why I said on Monday, regarding
25	stages. Let's get the material; you see it; we'll	25	summary judgment against persons unknown, rather like
	17		19
1	decide what we do about it in the course of the trial .	1	default judgment, it might be thought to be procedurally

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MS BOLTON: My Lord, indeed. My Lord, I'm sorry, I only 2. 3 flag it because --MR JUSTICE NICKLIN: No, that's perfectly sensible. MS BOLTON: $\,--\,$ under practice $\,--\,$ PD32, the defence can't 5 6 stand as the evidence at final hearing, so it just needs 7 to be formalised and then we do need to see it because, 8 even Mr Curtin's evidence, whilst none of it comes as 9 a surprise, it does change what I needed to ask and how 10 I need to ask it and, as I'm sure your Lordship can 11 appreciate, that takes time. Without having had any 12 evidence, my approach had been to look at the 13 allegations and the evidence and prep as much as I could on the basis of what may or may not happen at trial, but 14 15 it all has to be then worked into that already-done 16 preparation. So as long as we can have some time with 17 it, I'm content for it to be dealt with in stages. 18 MR JUSTICE NICKLIN: Sure. 19 MS BOLTON: My Lord, the other matter is the summary judgment application. I hear what your Lordship was 2.0 21 saving on Monday. We're obviously not pursuing summary 2.2 judgment applications now against Mr Curtin and it's 2.3 unlikely we're pursuing ones against Ms Jaffray unless 2.4 evidence doesn't turn up and we find ourselves in 25 a difficulty on moving forwards. In relation to persons

3 which is: what injunction are you going to grant and against whom? MS BOLTON: Exactly. 5 6 MR JUSTICE NICKLIN: So it's not -- much as though we would 7 like a simple answer in this area of the law, that isn't 8 going to produce it. 9 MS BOLTON: And, my Lord, I think we tried to make that 10 clear in the application. MR JUSTICE NICKLIN: That's a fair point. 11 12 MS BOLTON: Really, it's there from the point of view of if the court gets to a point where it says, "Actually I've 13 14 seen enough on the trespass persons unknown ..." --15 MR JUSTICE NICKLIN: Yes, I think I can do that without 16 resort to summary judgment. 17 MS BOLTON: It's there to assist the court more than 18 anything, my Lord. 19 MR JUSTICE NICKLIN: That's fine. Right. 2.0 MS BOLTON: My Lord, so unless —— one last matter, my Lord, 21 is the timetable, which we've rejigged on the basis that 22 there has been an indication of cross-examination being 23 required, so if I may hand that up so everyone knows 24 where we are going.

straightforward, but it belies the real complexity,

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MR JUSTICE NICKLIN: That's helpful. Thank you very much. $\label{eq:continuous} 20$

1	(Handed)	1	MS BOLTON: My Lord, indeed. I'm just checking but $$ no,
2	It's most important for Ms Jaffray and Mr Curtin.	2	our timetable only flags the one who is no longer able
3	Are you able to email a copy to Ms Jaffray?	3	to attend because the others were already covered by
4	MS BOLTON: We will indeed.	4	hearsay notices, so we'll do that.
5	MR JUSTICE NICKLIN: Thank you very much. The importance of	5	MR JUSTICE NICKLIN: If you can do that, and then you'll
6	this for both of you is that you know who is coming when	6	know that those are the ones that you need to
7	so that the night before you can concentrate on the	7	concentrate on in terms of what would you have asked
8	questions you want to ask each of these witnesses. So	8	them, what do you want to say to me about these
9	it's an orderly process of the witnesses being called so	9	witnesses; all right?
10	that you know what's coming up.	10	MS BOLTON: My Lord, you'll see from the timetable on
11	MR CURTIN: Excellent.	11	Wednesday, 10 May and Thursday, 11 May, so the afternoon
12	MS JAFFRAY: Okay.	12	of the 10th and the morning of the 11th, is Ms Jaffray's
13	MS BOLTON: So, my Lord, that's the timetable.	13	case, so that's when she needs to make any opening
14	The other point on the timetable, my Lord, is that	14	submissions and make herself available for
15	Employees C and I were never being called. There was	15	cross—examination.
16	a hearsay notice and they weren't challenged so we're	16	MR JUSTICE NICKLIN: Yes, Ms Jaffray ——
17	not proposing to call those, so their evidence we are	17	MS BOLTON: It's 10 May, which is one day where we would say
18	proposing stands. And Employee P is signed off work	18	there needs to be some arrangement $\ \mbox{I}$ appreciate she
19	with $$ which is, as I understand it, mental health	19	may not be able to attend for most of this hearing, but
20	issues as a result of the $$ and Ms Read because of her	20	she either needs to be, we would say, in the same
21	ill health, my Lord. So I flag that $$ you'll see in	21	situation as the claimants' witnesses at a solicitors '
22	the timetable we're not proposing to call them. We're	22	office or here because it's cross-examination, my Lord.
23	asking for their evidence to stand. I appreciate there	23	MR JUSTICE NICKLIN: Ms Jaffray, that's important for you.
24	has been some issues raised very late in the day about	24	On the timetable $$ you'll be sent this by email, the
25	them, but the hearsay notices weren't challenged and	25	updated timetable. The important day for you, a date
	21		23
1	I think that will have to be a matter of submission.	1	for your diary, is 10 May. That's a day when you really
1 2	MR JUSTICE NICKLIN: Yes.	2	need to be here; all right?
3	Just so that you're —— Ms Jaffray and Mr Curtin, the	3	MS JAFFRAY: Yes, that's fine.
4	law permits the court to receive evidence in a written	4	MR JUSTICE NICKLIN: Okay. Thank you.
5	statement in civil proceedings where a Civil Evidence	5	MS BOLTON: My Lord, we changed this timetable slightly this
6	Act notice has been served, as it has been, in relation	6	morning because we noticed something that needed to move
7	to those witnesses you just heard. That doesn't mean to	7	and I apologise it hasn't saved properly. We're aware
8	say the court accepts automatically what they say and	8	that your Lordship isn't available on the afternoon of
9	you and Ms Jaffray have the opportunity to write down ——	9	3 May.
10	what's usually most helpful —— any questions that you	10	MR JUSTICE NICKLIN: Correct.
11	would have wanted to ask them or any points that you	11	MS BOLTON: I apologise. It does all still fit, the other
12	would have wanted to put to them in your	12	dates.
13	cross—examination and then, ultimately, I will have to	13	MR JUSTICE NICKLIN: Okay. That's fine. Well, just rejig
14	decide what weight, that means the importance that I can	14	it. I mean, the reality may be ——
15	attach to the evidence, bearing in mind that the witness	15	MS BOLTON: Mr Jacklin should be 4 May, not the 3rd, and the
16	hasn't been cross—examined by you and Ms Jaffray. All	16	same would be the case then for $$
17	right?	17	MR JUSTICE NICKLIN: Well, just recirculate the updated
18	MR CURTIN: Yes.	18	version .
19	MR JUSTICE NICKLIN: So in respect of those, were there four	19	MS BOLTON: I apologise. The only difficulty, my Lord, is
20	witnesses?	20	with 3 and 4 May. They just need swapping round and
21	MS BOLTON: My Lord, yes.	21	then they work, so it doesn't affect either of these
22	MR JUSTICE NICKLIN: Four witnesses. Can you just make sure	22	defendants.
23	that you send an email to both Mr Curtin and Ms Jaffray	23	MR JUSTICE NICKLIN: Right. Well, it affects their
24	reminding them what those four witnesses are so they	24	preparation so we need you just to circulate the updated

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say are unlawful and cannot reasonably be characterised

claim in terms identical or similar to the terms sought $% \left(1\right) =\left(1\right) \left(1$

Mel Broughton, against whom the claim has been stayed as

The first claimant, MBR Acres Limited, and the third

he is currently on remand in prison. The claimants have

by the claimants at $\mbox{ trial}$, save the third defendant,

been unable to secure undertakings for the 11th

defendant and the 20th defendant.

All the other named defendants have compromised the

1	MS BOLTON: We will make sure they are given those today,	1	claimant, B&K Universal Limited, are subsidiaries of the
2	my Lord.	2	Marshall Farm Group Limited, incorporated in the US and
3	MR JUSTICE NICKLIN: Okay. Thank you very much.	3	trading as Marshall Bioresources. The first claimant
4	Right. So, with that, are we ready to start?	4	conducts its business from premises in Wyton in
5	MS BOLTON: My Lord, indeed we are.	5	Huntingdon, which is referred to in the claim as the
6	MR JUSTICE NICKLIN: Right.	6	"Wyton site". The first and third claimants breed
7	MR CURTIN: I have one little caveat. I don't know whether	7	animals for biomedical research. The first and third
8	we need to do it now. I would like to have some	8	claimants are licensed by the Secretary of State under
9	discussion about Wendy Jarrett's evidence before she	9	section 2(b) and 2(b) of the Animals (Scientific
10	gives evidence.	10	Procedures) Act 1986 to breed animals for supply to
11	MR JUSTICE NICKLIN: That's fine. We'll do that on the day;	11	licensed entities authorised to conduct animal testing
12	all right?	12	and research.
13	Oh, and Mr Curtin, I'm taking it that you're asking	13	It is a legal requirement in both the United Kingdom
14	me to admit your witness statement, although it's late?	14	and globally that, with very limited exception, all
15	MR CURTIN: Yes. Can I also add by close of today $$ and	15	potential new medicines intended for human use are
16	the only reason I didn't do it was some sort of form of	16	tested on two species of mammal in pre-clinical trials
17	overwhelming $$ convert my original defence statement.	17	before they are tested on human volunteers in clinical
18	It doesn't have too many it's very generic, my right	18	trials . Those limited exceptions are explained in the
19	to protest —— convert my original defence statement into	19	witness evidence of Wendy Jarrett. That said, my Lord,
20	a witness statement. Is that possible?	20	nothing that has been said in these proceedings disputes
21	MR JUSTICE NICKLIN: You can just adopt it. All you need to	21	that. What is disputed and what is at the heart of the
22	do is you need to put a sentence in the witness	22	protesters' objections and protests is their belief that
23	statement that you've prepared for me and say, "I adopt	23	it is wrong.
24	what I've said in my defence statement"; all right?	24	As the claimants' evidence explains, one of the key
25	MR CURTIN: Could we do that in person today?	25	reasons for testing on animals is to ensure that
	25		27
1	MD HISTIGE NICKLING That's fine So I'm treating you as	1	national and modification in the state of th
1	MR JUSTICE NICKLIN: That's fine. So I'm treating you as	2	potential new medicine is safe prior to it being given
2	making an application for relief from sanction for the	3	over to human volunteers in clinical trials . It is
	lateness of your witness statement. It's not opposed so	4	required to ensure the safety of human volunteers in
4 5	I grant it.	5	clinical trials. The second claimant representative,
	MR CURTIN: Thank you very much.	6	Demetris Markou, is an employee of the first claimant
6 7	MR JUSTICE NICKLIN: Right. You judge where we need the	7	and the line manager of the first claimant. Mr Markou
	break, Ms Bolton — all right? — because I'm liable to	8	represents the second claimant class pursuant to
8	forget. This clock is wrong.	9	CPR 19.6.
9	Opening submissions by MS BOLTON		The fourth claimant representative, Susan Pressick,
10	MS BOLTON: My Lord, the claimants seek final and injunctive	10	is an employee of the third claimant and holds the
11	relief against two named defendants, those being the	11	position of site manager and UK administrator and
12	11th and 20th defendants, Mr Curtin and Ms Jaffray, and	12	European quality manager for the UK subsidiaries of the
13	six categories of persons unknown, being the 28th to the	13	Marshall Farm Group Limited. Ms Pressick represents the
14	31st defendants and the 33rd to the 36th defendants.	14	fourth claimant class pursuant to CPR 19.6.
15	Injunction is sought to prevent acts which the claimants	15	My Lord, you will recall that there were questions

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over Ms Pressick's ability to represent the first

20th witness statement that she has nationwide

unknown, page 447.

claimant. Ms Pressick explains at paragraph 2 of her

responsibilities with the Marshall Bioresources Group in

the UK and has been authorised by the board of both the

first and third claimants to act for the first claimant.

My Lord, that evidence can be found for the purpose of

Mr Curtin at page 67 in his bundle and for the purpose

of Ms Jaffray at page 65 and for the purpose of persons

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The remaining defendants are all protesters who the claimants allege have committed or in the case of persons unknown apprehend will commit significant unlawful acts against the claimants and particularly the first and second claimants, such that the third and fourth claimants apprehend that the same shall happen to them. The basis for the apprehension, my Lord, of the third and fourth claimants is set out in again the 20th witness statement of Susan Pressick at paragraphs 85 to 101. Again, for the purpose of Mr Curtin, that's paragraphs 89 to 93 of her witness statement in his bundle, for the purpose of Ms Jaffray, that's paragraphs 87 to 91 of Susan Pressick's witness statement in her bundle and for persons unknown, that's page 469 to 473 in the persons unknown bundle.

The summary of the alleged unlawful acts of the defendants

The goal of the defendants is to cause the staff of the first and third claimants to leave their jobs and bring an end to the lawful and necessary activities of the first and third claimants; see especially the defence of Mr Curtin at pages 63 to 64 of his bundle. If the defendants were successful in that aim, there would be a significant adverse impact on medical research and the development of new drug treatments in

the UK.

The claimants accept that medical research involving animals, whilst required by law, is an emotive subject and that the degree of protest by those opposed to medical research which involves animals is inevitable. After all, in this case, we are talking about species that, for many years, have been characterised as man's best friend. That does not, however, justify trespass, it does not justify interference with the claimants' common law right to access the highway and it doesn't justify obstruction of the highway and harassment.

It is plain that these protests are driven by emotion and genuine personal belief that the use of animals in medical research is wrong. It is, however, the law and debates on whether it is morally right to do so are for the ballot box and not these proceedings. The claimants, however, understand the strength of feeling these issues provide and have no interest in prohibiting and no intention to prohibit peaceful protest and recognise the rights of others to peacefully protest. The claimants seek only to prohibit unlawful instances of trespass at the first and third claimants' sites and the other torts complained of in the claimants' particulars of claim and the witnesses' evidence.

In respect of the first claimant, these alleged unlawful activities have become a relentless aspect of the defendants' protest, which campaign has been significantly tempered by the interim injunction order and associated committal applications. Unlawful acts, though, do persist even after the grant of the injunction, albeit in a much more tempered way.

At the time the interim injunction was sought, the defendants were dictating who they would let on and off the Wyton site, with significant obstruction of the highway being caused by the defendants as well as acts of trespass and interference with the first claimant's common law right to access the highway. On occasion the obstructions and interference with the first claimant's common law right to access the highway was so great that the access to and exit from the Wyton site was delayed for hours and the B1090 highway, the highway immediately outside the site, was inpassable.

Your Lordship will be referred to incidents such as that of 9 July 2021, as described in the served witness evidence of Mr Manning in his second statement at paragraphs 50 to 55, Employee P at paragraph 17 to 23, Employee A at paragraphs 23 to 29, Ms Read at paragraphs 34 to 43, Production Manager at paragraphs 24 to 32, Employee B at paragraphs 21 to 28 and Employee F

at paragraphs 43 to 55.

Even when permitted to enter or exit the Wyton site, the defendants have targeted the first claimant's staff by abusing them and surrounding their cars when they enter and exit the site. The court is familiar with these activities, the claimants having brought several committal actions concerning these activities, and the court is respectfully minded of the incident from 20 November 2021, again after the grant of the interim injunction, and it's described in Employee F's witness statement at paragraphs 144 to 153, Employee I's witness statement at paragraphs 41 to 44, Employee P's witness statement at paragraphs 89 to 93, Mr Markou's witness statement at paragraphs 43 to 59 and Ms Pressick's 20th witness statement, paragraphs 20 to 342.

The defendants, at the time at which the interim injunction was sought, were also photographing and videoing and continuing to photograph and video staff and officers of the first claimant and their vehicles and number plates and were also using drones and cameras to monitor the Wyton site. The conduct described in other means have been used to identify employees of the first claimant, several of whom have been targeted in their homes and away from the Wyton site. In

1	particular, the homes and vehicles of some employees	1	Mr Manning's witness statement, shows those documents;
2	have been vandalised, as explained in the second witness	2	employee F, paragraphs 163 to 167, and that's page 1470
3	statement of Mr Manning, whose home was vandalised, at	3	in the persons unknown bundle; exhibit F2 of
4	paragraphs 70 to 78, Employee L at paragraphs 28 to 44	4	Employee F's witness statement, pages 2 to 8, exhibit
5	and the 20th witness statement of Susan Pressick at	5	those funeral plans.
6	paragraph 346.	6	In addition to that, handwritten letters have been
7	MR JUSTICE NICKLIN: Just as a point of clarification	7	sent to employees by persons unknown. You will hear
8	because it's not immediately apparent to those who are	8	evidence of that from Mr Manning, Employee P's witness
9	present in court that are following these proceedings,	9	evidence, Employee Q's evidence and Mr Jacklin, formerly
10	but you are going through the evidence that is relevant	10	Employee L.
11	both to the two individual defendants but also the	11	Home visits and the vandalisation of homes has also
12	persons unknown claim?	12	been a consequence of employees' homes being identified.
13	MS BOLTON: My Lord, yes.	13	You will hear evidence from Mr Manning as to the
14	MR JUSTICE NICKLIN: I think that probably in fairness,	14	vandalisation of the exterior of his home, Mr Jacklin,
15	unless you say otherwise, the allegations that you're	15	Employee K, James Hardy and Employee Q. None of those
16	making about, for example, vandalism of Mr Manning's	16	I should say, my Lord, are anything other than
17	home are not allegations that are being made against	17	references to persons unknown. There is no suggestion
18	these two individual defendants. They are in support of	18	that any evidence has been $$ in the evidence that those
19	the persons unknown case, so it's important ——	19	home visits were undertaken by Ms Jaffray or Mr Curtin.
20	MS BOLTON: Yes.	20	Causes of action, legal tests to be applied in these
21	MR JUSTICE NICKLIN: I think those who are listening or may	21	proceedings.
22	be reporting, it's important —— although there's an	22	The particulars of claim set out the causes of
23	obvious focus because we have two defendants in the	23	action relied upon by the claimants with the
24	proceedings, but what you're saying is not —— unless you	24	re—re—amended particulars of claim being the operative
25	say it's an allegation against them, it's not an	25	version of the same, which, my Lord, I will refer to
	33		35
1	allegation against them; it's an allegation generally.	1	simply as "the particulars of claim". The causes of
2	It's complained of by the claimants in support of their	2	action are trespass, interference with the first
3	claim against persons unknown.	3	claimant's common law right to access the highway,
4	MS BOLTON: My Lord, indeed, and my very next part of my	4	public nuisance and harassment.
5	opening deals with where we say that may be different $$	5	In addition to these causes of action and the law
6	MR JUSTICE NICKLIN: Okay.	6	surrounding these causes of action, the courts will have
7	MS BOLTON: $$ and that the rest are persons unknown.	7	to consider and apply the following: the relevant legal
8	MR JUSTICE NICKLIN: Right. Thank you.	8	test for granting precautionary relief, the test for
9	MS BOLTON: My Lord, that identification of employees'	9	granting injunctive relief that will bind a newcomer
10	addresses, which we say have come through both the	10	following the decision which is pending from the
11	recording of employees' number plates and the following	11	Supreme Court in Wolverhampton City Council v London
12	of employees, have also been obtained by other means	12	Gypsies and Travellers.
13	and, as a result, employees have been targeted in their	13	The law on trespass, my Lord, first of all, that the
14	homes in the following ways: one in relation —— which	14	court needs to consider in this case.
15	directly concerns the 20th defendant, Ms Jaffray, was	15	The claimants' trespass claim arises out of numerous
16	the sending of funeral plans to the homes of employees,	16	incidents of trespass that have occurred at the Wyton
17	James Hardy, formerly known as Employee F, and	17	site, some of which involve the 11th and 20th
18	David Manning.	18	defendants, some of which involve persons unknown. The
19	My Lord, the relevant paragraphs of that are	19	claimants' position will be that the following is clear
20	paragraphs 79 to 81 of Mr Manning's witness evidence;	20	concerning the law of trespass: the defendants do not
21	and, in relation to persons unknown, paragraph 990,	21	have any right to trespass on the land of the first and
22	exhibit DM4, 7 to 16 —— apologies, my Lord. I do	22	third claimants. Peaceful protest is not

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a justification for trespass, there being no issue of

balancing the claimants' rights with the defendants'

rights of freedom of expression or freedom of assembly

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apologise. The persons unknown reference is the page

Exhibit DM4, pages 7 to 16 of the exhibit to

number, the other is the paragraph number, so apologies.

1	under Articles 10 and 11 of the ECHR $$	1	own the land up to the midpoint of the highway. The
2	MR JUSTICE NICKLIN: The Convention, yes.	2	presumption is known as the "ad medium filum viae
3	MS BOLTON: Sorry, the European Convention on Human Rights.	3	presumption", which for the purpose of the transcription
4	I was thinking —— my Lord, apologies. Blank moment and	4	and everybody is "up to the middle line". The
5	I was thinking European Court. What are we saying?	5	presumption and its operational and constituent elements
6	Apologies.	6	were discussed and summarised in detail by
7	A landowner or person or legal entity with an	7	Mr Justice Morgan in Paton v Todd. My Lord, I don't
8	immediate right to possession of land has the benefit of	8	intend to take the court to that in opening. It is
9	right pursuant to Article 1 of the First Protocol, what	9	a matter for closing, if necessary. It is the
10	we call the "A1P1 right". Trespass is an interference	10	claimants' position, though, that by reason of this
11	with A1P1 rights, which requires justification . The	11	presumption, the claimant holds both its registered
12	exercise of Articles 10 and 11 rights cannot normally	12	title to the Wyton site and also the unregistered
13	justify trespass.	13	freehold title to the midpoint of the highway.
14	My Lord, we will take the court in closing to the	14	Secondly, whilst an adjoining landowner may hold the
15	details on that which —— the case law in Cuciurean v	15	freehold title to land up to the midpoint of the
16	The Secretary of State for Transport and High Speed Two	16	highway, where the relevant land is adopted highway, the
17	Limited [2021] EWCA Civ 357 and Boyd v Ineos Upstream	17	material and scrapings vest in the local highways
18	Limited [2019] EWCA, Civ 515 and [2019] 4 WLR 100.	18	authority. That's pursuant to section 263 of the
19	My Lord, trespass is strict liability tort and it's	19	Highways Act 1980. Accordingly, where the land forms
20	actionable per se. Accordingly it does not require the	20	part of an adopted highway and the landowner does not
21	claimants to prove loss or damage and the claimants	21	have an immediate right to possession of the materials
22		22	
23	bring no claim for loss or damage in trespass. As the court is aware, the trespass claim has	23	and scrapings, they only have a right to possession of
	•		the sub-soil.
24	expanded more recently concerning the access land. The	24	As such, the key question for the court when
25	claimants' pleaded case asserts that the first claimant	25	deciding the scope of the trespass claim in these
	37		39
1	is the freehold owner of the Wyton site, including the	1	proceedings is what is the extent of the adopted
2	driveway. That's the area, my Lord, between the	2	highway. Where the highway adjoining the first
3	gates $$ we've defined the "Driveway" as the area	3	claimant's land is adopted highway, the first claimant
4	between the gates and the metal strip. That's outlined	4	cannot maintain an action in trespass on that land, it
5	in red on the plan which you can find in the core	5	not having an immediate right to possession. Where the
6	supplemental bundle at page 8.	6	land is not adopted highway, the first claimant can, by
7	MR JUSTICE NICKLIN: Is this the yellow strip or orange	7	reason of its immediate right to possession, maintain an
8	strip ——	8	action in trespass.
9	MS BOLTON: My Lord, indeed it is.	9	As explained in the 20th witness statement of
10	My Lord, as I say, the "Driveway" is defined in the	10	Susan Pressick, paragraphs 68 to 77, the claimants
11	particulars of claim as the land between the front gates	11	submit that the orange shaded land on the plan at page 8
12	of the Wyton site and the metal strip. The first	12	of the supplemental bundle is land to which the first
13	claimant also, though, holds the freehold title to the	13	claimant holds the freehold title and is not adopted
14	access land, that being the area of the land on the	14	highway, such that the first claimant can maintain an
15	access road, measuring 2.85 metres forward of the	15	action in trespass over that land. As Ms Pressick
16	boundary of the Wyton site, the latter of which includes	16	explains, that analysis is supported and indeed was
17	a ditch. The described land is highlighted in orange on	17	first raised by the local highway authority itself .
18	the plan at core supplemental bundle 8, which I think is	18	The presumption that allows the first claimant to
19	up on the screen.	19	assert rights over the access land is rebuttable but
20	MR JUSTICE NICKLIN: It is, yes.	20	only by evidence, and that evidence must show that
21	MS BOLTON: My Lord, the legal analysis relevant to the	21	someone else has better title to the land. There is no
22	ownership of the access land and the ditch —— that's the	22	such evidence before the court in relation to the extent
23	shaded orange area —— is as follows: one, the first	23	of the adopted highway.
24	claimant is presumed, by reason of its ownership of land	24	One, there is a rebuttal presumption that the

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One, there is a rebuttal presumption that the

highway will extend over a wayside strip, ie a verge,

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claimant is presumed, by reason of its ownership of land

adjoining the highway and, unless contrary is proven, to

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but the sub—soil belongs to an adjoining landowner, and, two, there is a rebuttable presumption that where there is a ditch on the wayside strip and the ditch has not been adopted for the exercise of the public or their rights to pass and repass, the ditch does not form part of the highway.

As I've said, my Lord, no evidence has been put forward to rebut the presumption and the claimant submits that no circumstances exist to rebut the presumption. The only party that could have a better claim is the Local Highways Authority and they have made their position clear. Further, the court heard several times at the pre—trial review that the ditch is covered in brambles and is unusable by the public, which supports again the presumption that the ditch does not form part of the highway.

Applying the above presumptions and remembering that the orange—shaded land comprises a ditch and that the access land tracks the passage of the ditch under the access road, it is submitted that, one, the orange—shaded land is within the freehold ownership of the first claimant, two, the orange—shaded land is not adopted highway and, three, the first claimant has an immediate right to possession of the orange—shaded land and can maintain an action in trespass over the same.

As I said earlier , my Lord, trespass is a strict liability tort. Trespass to land is an interference with possession of the rights of the landowner and includes instances in which a person intrudes upon a land without legal justification . It is well established that the extent of trespass is irrelevant for the finding of liability in trespass. The same was made clear by Chief Justice Lord Coleridge in Ellis v Loftus Iron Company (1874 to 75) LR 10 CP 10, where his Lordship stated:

"It is clear that, in determining the question of trespass or no trespass, the court cannot measure the amount of the alleged trespass. If the defendant places a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it [as read]."

The case is particularly illustrative of the principle as it highlights that even a minor trespass, in that case such as a horse's leg trespassing onto a neighbouring field by kicking through the fence, is sufficient to establish a trespass. Further, it is clear from Ellis that placing anything on or in land in possession of another is also a trespass.

One of the questions the court will need to consider in that case, given the defences advanced in particular

by Ms Jaffray, is: what if the person enters the land pursuant to a licence or it is not initially clear whether they are a trespasser? A person shall not commit a trespass where they enter or remain on land of another pursuant to a licence, whether express or implied. Accordingly, a licence is a legal justification for intrusion on the land of another. However, an important point in this case is that persons who enter land pursuant to a licence but who proceed to act in such a way that exceeds the scope of that licence or who remain on the land after the expiration of that licence commit a trespass.

That is important to consider in this case, where arguments have been raised in defence case statements of a noticeboard near the gate to the Wyton site being an excuse for trespass. Whilst the claimants' case will be that no such justification can be relied upon in these proceedings, even if it could be, the law is clear that the minute a person exceeds the scope of the licence, they become a trespasser. The proposition was considered by Lord Atkin in Hillen v ICI Limited, where his Lordship quoted from the judgment of Lord Justice Scrutton in The Calgarth, where he makes the comment:

"When you invite a person into your house to use

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a staircase, you do not invite him to slide down the bannisters [as read]."

The case of Hillen was more recently considered and applied in the Jockey Club Racecourse Limited v Persons Unknown case [2019] EWHC 1026 (Ch), the latter of which also considered the approach to trespass taken in R v Jones and Smith [1976] 1 WLR 672, in which case it was again confirmed that exceeding the scope of the licence is a trespass.

In the Jockey Club case, the court also considered the House of Lords' decision in Tomlinson v Congleton Borough Council and Others [2004] 1 AC 46, in which a visitor to a public park who disobeyed signs that forbade swimming made himself a trespasser on entering the water. Lord Hoffmann, citing Hillen, said:

"I can see no difference between a person who comes upon land without permission or one who, having come with permission, does something which he has not been given permission to do [as read]."

Accordingly the law is clear that, even where a person comes on to land with permission, where the person then does something on the land that he has not been given permission to do, he becomes a trespasser. The claimants will say that analysis will apply to the circumstances where a person enters land pursuant to

1	a licence and then, without permission, proceeds to	1	Ms Jaffray will not be able to see anything; the
2	engage in an act of protest on the claimants' land.	2	witnesses won't be able to see anything. We are going
3	Trespass to the air space above land.	3	to be playing videos that they won't be able to see.
4	My Lord, I still have a little way to go on trespass	4	That's what we're being told. That's part of the
5	so I think that may be a good place to break and give	5	problem. If it's just text, it's not a difficulty .
6	a 15-minute break for Opus.	6	MR JUSTICE NICKLIN: Well, it's going on the CVP platform,
7	MR JUSTICE NICKLIN: Sure. Okay. Right. We'll come back	7	isn't it? What's being done with the?
8	at $$ let's say we'll come back at midday. Thank you,	8	MS BOLTON: I'm going to need more information, my Lord,
9	everyone.	9	than what I've been told in the short break. I've
10	(11.43 am)	10	simply been told that that will be the problem, that
11	(A short break)	11	none of the witnesses will be able to see any of the
12	(12.04 pm)	12	video evidence. Yes, and apparently all of the video
13	MR JUSTICE NICKLIN: There's an issue about the $$ which	13	evidence is completely separate to the CVP and everybody
14	I don't understand because this court is used regularly	14	has separate access to Opus for that purpose.
15	for extremely high profile trials in which similar	15	MR JUSTICE NICKLIN: I've got 96 meg at the moment, sitting
16	facilities are provided. I'm told that it's a problem	16	here. I could probably run $$ you know, Heathrow Air
17	with the court wifi's bandwidth. I don't understand	17	Traffic Control could operate and set up in here with
18	that because of one thing I could say about the IT that	18	96 meg.
19	the building provides is it's very fast, very reliable	19	MS BOLTON: My Lord, I'm only raising what I'm being told.
20	internet, so I'll need $$ you know, the idea we're going	20	MR JUSTICE NICKLIN: 93 download; 76 upload. Now, somebo
21	to up sticks and move to another courtroom because	21	is going to have to explain to me why that isn't good
22	there's a problem with the wifi will have to be the last	22	enough; okay?
23	resort; okay? So we're going to try $$ they should try	23	MS BOLTON: My Lord.
24	the wifi that the court provides because, so far as I'm	24	MR JUSTICE NICKLIN: Right. Carry on.
25	concerned, that's more than sufficient and it's	25	MS BOLTON: My Lord, trespass of the air space above land.
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1	certainly robust.	1	In addition to trespass committed by way of entry onto
2	MS BOLTON: My Lord, I'm in the same position as you.	2	the first claimant's land, the first claimant also
3	I don't fully understand it, but I understand it's being	3	claims trespass to its air space by D11, Mr Curtin, and
4	raised as a real issue.	4	D33, persons unknown, flying drones above the first
5	MR JUSTICE NICKLIN: The other problem is I don't get to	5	claimant's air space. The same is pleaded in
6	say, "Oh, I'll go and sit in that court then".	6	paragraph 170.10, which is at pages 21 to 22 of

7 MS BOLTON: I understand, my Lord. MR JUSTICE NICKLIN: So the inconvenience to the court 8 9 system -- vesterday it was lucky we weren't sitting 10 because there was such a pressure on courts, this court 11 had to be used for another case. So it's not like I've 12 got a magic wand and I can say, "Oh, we'll go and sit in some other court".

13 $\label{eq:mspreciate} \mbox{MS BOLTON: I fully appreciate that, my Lord.}$ 14 15 MR JUSTICE NICKLIN: Sorry to be blunt, but if you're in the 16 business of court transcription, you need to have 17 a robust mechanism to operate in courtrooms. You can't 18 just said, "Oh, I'm sorry, this courtroom isn't good 19 enough". It doesn't work like that. So we'll try the 2.0 solution of the court wifi and somebody will need to 21 explain to me in terms that I can understand and take up 22 with the IT system here as to why the wifi isn't robust

23 enough to support this. I mean it's just text-based. 24 We're not sending massive video files down this line.

2.5 $\ensuremath{\mathsf{MS}}$ BOLTON: My Lord, we will be. That's the problem, is

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7 Mr Curtin's bundle, and 473 to 482, which is pages 379 8 to 384 of the persons unknown bundle, concerning the

9 particulars of claim. 10

The question for the court is twofold: does the first claimant have rights in the air space above the Wyton site such that interference with that air space could constitute a trespass and, if so, does the protesters' flying of drones in the air space above the Wyton site in fact constitute a trespass?

The answer to the first question is "Yes". It is well established that the owner of land has rights in the air space above the land, the interference with which can amount to trespass. That was made clear in Bernstein v Skyviews & General Limited [1978] QB 479 at pages 485 to 486 by Mr Justice Griffiths.

As to the second question on whether flight above the land of another is in fact trespass, the answer will depend on the height of the plane, drone or other aircraft, whether manned or unmanned, and where it flies

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above the land. The approach taken by the court in Bernstein and the reasoning for the same, as I say, can be found at pages 485 to 488. One part of the judgment in particular, my Lord, that deals with this issue is that it states this:

"The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. The balance is, in my judgment, best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it and declaring that above that height he has no greater right in the air space than any other member of the public. Accordingly, for trespass to air space to be established, the first claimant will need to establish that the drones that are complained of are flown at a height above the land such that there is an interference with the first claimant's ordinary use and enjoyment of the land. If the drones are flown at such a height, then strict liability towards trespass will be established.

What is also clear from this case is that the interference with the ordinary use and enjoyment of the

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land is what it will mean is that it is likely to amount to trespass. Where a business cannot operate or retain its staff due in part to the flying of drones over the site, recording the staff's activities, that is an interference — the claimants will say — of an ordinary use and enjoyment of the claimants' premises. Accordingly, whatever the challenges that restricting these activities may present, the claimants say it is a trespass.

Can the conduct be justified?

So can the conduct of trespass be justified? It's no defence to a claim in trespass that trespass arose as a result of a mistake or negligence. My Lord, we cite and rely upon the Network Rail Infrastructure Limited v Cornaken Group Limited's case, [2010] EWHC 1852 (TCC), in particular paragraphs 55 to 67 of the judgment of Mr Justice Akenhead.

Further, there can be no justification on the basis that the trespass occurred whilst the defendants were exercising their Articles 10 and 11 rights. My Lord, I've covered that earlier in this submission, but again I highlight it's the Boyd v Ineos Upstream Limited case and the High Speed Two case from 2022.

Further, trespass is an interference with the first claimant's A1P1 rights and, again, my Lord, that again

goes to the justification issue. It can't be justified there is no balancing act.

My Lord, considering the position in the particular context of trespass, the case law concerning injunctions for trespass involving protest cases points strongly in favour of granting injunctions where, without the injunction, the trespass will continue or is reasonably anticipated. The Hampshire Waste Services Limited v Intending Trespassers upon Chineham Incinerator [2003] EWHC 1738 (Ch) is an example of where a claim in trespass can give rise to injunctive relief and where the cause of action can also be used to secure injunctive relief on a precautionary basis.

The Supreme Court confirmed in the Secretary of State for Environment, Food and Rural Affairs v Meier [2009] UKSC 11 that, where there are incidents of repeat trespass, the appropriate remedy is an injunction, in particular, my Lord, the judgment of Lord Rodger at paragraphs 1 and 2 of the judgment.

20 MR JUSTICE NICKLIN: When we come on to it, we'll need to ——
21 the difficulty is you've got to concentrate —— all these
22 principles are perfectly straightforward when they're
23 applied against known defendants. Meier was a known
24 defendant case. The rather more difficult question that
25 gives rise to really important issues for consideration

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1 is the idea that you show that some people have trespassed and then the court grants persons unknown 2 3 injunction against everybody, so what the court is doing then is $\,--\,$ and then by its enforcement powers, a private 5 citizen has achieved the criminalisation in advance of 6 trespass so it becomes almost like a privileged citizen. 7 It has managed to essentially say, "You are the 8 citizens, you'll just have to rely upon your normal 9 trespass rights. We have got an injunction from the 10 court which says that you must not -- nobody must 11 trespass on our land and, if you do, we can invoke the court's punishment, including sending people to prison". 12

MS BOLTON: My Lord, yes.
 MR JUSTICE NICKLIN: So in simple parlance you have
 criminalised trespass. The civil court has criminalised

criminalised trespass. The civil court has criminalised 16 trespass in a particular area. Now, bearing in mind 17 that there are -- that is an exercise which ought to be 18 carried out by a body with democratic legitimacy, 19 arguably, which the court doesn't have. So a PSPO, for 2.0 example -- looking at the exclusion zone we were talking 21 about, the exclusion zone could be achieved by a PSPO. 2.2 That would be done by a local authority exercising 23 powers given to it under the relevant act and it would 2.4 therefore have the element of democratic legitimacy.

Equally, I think there are specific statutory provisions

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1	which govern $$ that make it a criminal offence to	1	that there might well be an argument that there's an
2	trespass at certain highly sensitive sites in the	2	implied licence to do that. The minute you change your
3	United Kingdom.	3	conduct, though, you become a trespasser.
4	MS BOLTON: Well, yes.	4	MR JUSTICE NICKLIN: I know that, and you've raised all the
5	MR JUSTICE NICKLIN: So there's already, as it were, a map	5	reasons why that argument, you say, ought to be
6	which shows that if you want $$ so far as the law	6	rejected .
7	provides, there are instances where penalties can be	7	MS BOLTON: Yes.
8	provided for exclusion of the public generally from	8	MR JUSTICE NICKLIN: I've got that. But what you're asking
9	premises or property or land, but that this is a novel	9	the court to order is an exclusion backed up by the
10	use of civil proceedings.	10	court's coercive powers in civil proceedings which
11	MS BOLTON: My Lord, we say it's not a novel use because the	11	prohibit anybody from trespassing on your land.
12	difference in those cases is we're dealing with public	12	MS BOLTON: My Lord, yes.
13	land and there those $$	13	MR JUSTICE NICKLIN: If you're entitled to that order, why
14	MR JUSTICE NICKLIN: No, I'm thinking of nuclear facilities.	14	isn't anybody entitled?
15	They're one that I think of, one of them. They're	15	MS BOLTON: Well, anybody who can prove that they have bee
16	private land ——	16	targeted in this way or have good reason to believe they
17	MS BOLTON: But as a private law, it's an interference with	17	will be targeted in this way can come to the court and
18	the claimants' private law rights.	18	seek that relief because it's such a significant
19	MR JUSTICE NICKLIN: I understand that. You don't need to	19	interference with their private law rights.
20	persuade me that, broadly speaking $$ I don't need any	20	MR JUSTICE NICKLIN: Okay. So what about —
21	persuasion that the law says that the landowner has the	21	MS BOLTON: That's why there's no
22	right to exclude trespassers from its land. I don't	22	MR JUSTICE NICKLIN: What about —— shoplifting is a big
23	need any persuasion on that. The question is about	23	problem in Britain's supermarkets. Shoplifting is —— if
24	remedy. What you're asking the court to give you is an	24	you look at it through the prism of civil law, it's
25	order that says, "Everybody is prohibited from	25	conversion. What's to stop a supermarket from coming
	53		55
1	trespassing on that land and, if you do it, you'll be in	1	and getting a persons unknown injunction that prohibits
2	contempt of court, even though you've not been	2	anybody from converting the supermarket's goods?
3	personally served with the injunction order and you were	3	MS BOLTON: Well, my Lord, because they don't need to.
4	never a party to the proceedings".	4	MR JUSTICE NICKLIN: Why?
5	MS BOLTON: My Lord, indeed.	5	MS BOLTON: It's not preventing people accessing and using
6	MR JUSTICE NICKLIN: Yes. That's where the tension is	6	their land.
7	because that is putting the court in the position of	7	MR JUSTICE NICKLIN: Never mind about land. You're talking
8	legislator .	8	about different remedies. I'm talking about what is $$
9	MS BOLTON: My Lord, there is authority that confirms that	9	if you're right about the court's procedures and powers
10	the court has the power to do so, that the claimant is	10	entitling you to a remedy like this, why can't
11	entitled to assert those rights and seek precautionary	11	a supermarket come and ask for a persons unknown
12	relief to prevent further acts of trespass and for the	12	injunction which prohibits shoplifting, in short terms?
13	court $$ what the court has to consider in whether or	13	MS BOLTON: I don't think they're the same thing, my Lord.
14	not to grant that relief is whether there is evidence of	14	If you're asking for an injunction to prevent
15	newcomers, whether the $$ the scale of that evidence and	15	shoplifting, you're not asking for an injunction to
16	the likelihood of that continuing, bearing in mind that	16	prevent trespassing. Trespass has a particular status.
17	those who are acting lawfully or by an implied or	17	MR JUSTICE NICKLIN: Never mind if it's a different tort.
18	express licence are not caught by this. It's not	18	So we're moving the tort from trespass to $$ the tort
19	everyone. It's only those who are acting unlawfully	19	now is conversion rather than trespass.
20	that are caught by this $$	20	MS BOLTON: That's the point, my Lord. It's the
21	MR JUSTICE NICKLIN: By definition they're acting unlawfully	21	interference with a very particular right that gives
22	because they're trespassing.	22	trespass the rights it does. It doesn't —— conversion

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MR JUSTICE NICKLIN: Well, conversion is different because

in any case of conversion there's almost certainly going

made in these proceedings that one might have been going

onto the land to read something on the noticeboard and

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1	to be something of value that's taken so there's going	1	that it's for the court to determine that based on the
2	to be a loss. Trespass is unusual in the sense that,	2	legal tests ——
3	for example, if I walk $$ in the middle of the night, if	3	MR JUSTICE NICKLIN: Well, you know as well as I do that the
4	I walk across a supermarket's car park as a short—cut to	4	development of the persons unknown jurisdiction has
5	get home, arguably I'm a trespasser, but there's no	5	moved from the conventional, let's say, squatter—type
6	loss, no damage, nothing.	6	case, which is, "I don't know who you are but you're not
7	MS BOLTON: No, and there wouldn't be an injunction for that	7	entitled to be on this land and I have a right to
8	very reason, but ——	8	possession of this premises and you do not. You are
9	MR JUSTICE NICKLIN: Yes, but looking at it in those terms,	9	a trespasser. I'm going to court. I'm not going to be
10	that's a case where there's no damage and yet the court	10	frustrated or the law is not going to be frustrated by
11	is going to grant an injunction prospectively which	11	the fact I don't know who you are", and so the court, in
12	prohibits anybody from entering the land.	12	its infancy of persons unknown, used to say, "You, the
13	MS BOLTON: Yes, as a matter of policy they don't have to	13	people in occupation of the land, we don't know who you
14	require to prove damage because it's an interference	14	are but we can define you and we can point to you and we
15	with their private rights.	15	can serve you. You have to move because you're not
16	MR JUSTICE NICKLIN: Yes.	16	entitled to possession of the land". In the
17	MS BOLTON: —— but if ——	17	conventional inter partes litigation scenario, that's
18	MR JUSTICE NICKLIN: What I'm suggesting is there's a more	18	fine, but where persons unknown has departed from that
19	compelling case to grant a persons unknown injunction in	19	established litigation, as we know it, is to say, "Never
20	conversion cases because almost by definition there's	20	mind about these people, we're talking about other
21	going to be a loss in a conversion case.	21	people, so we'll talk about people generally, and you,
22	MS BOLTON: My Lord, that might depend on the individual	22	people generally, in the future, nobody can trespass on
23	facts. That's the point. Your Lordship makes the point	23	this land".
24	of crossing the car park. Apart from the fact that some	24	MS BOLTON: My Lord, indeed. That legal shift happened som
25	of that may or may not be all private land, the simple	25	20 years ago with Hampshire Waste. Indeed then it was
23	of that may of may not be all private land, the simple	23	20 years ago with Hampshire Waste. Indeed then it was
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1	fact of the matter is: would you restrain that? Well,	1	considered by the Court of Appeal both in Boyd v Ineos
2	no, if somebody cut across a car park. But if somebody	2	and the Cuadrilla Bowland case.
3	was trespassing on a private parking space repeatedly to	3	MR JUSTICE NICKLIN: These are all interim injunction cases.
4	protest, preventing access, interfering with private	4	The court has never really grappled with what this
5	rights over that land, then it becomes different.	5	really means.
6	That's why it's particular $$	6	MS BOLTON: My Lord, that of course is what's before the
7	MR JUSTICE NICKLIN: In terms of conventional litigation, if	7	Supreme Court at the moment because, of course, the
8	you show that Mr Smith, every day $$ it doesn't have to	8	Court of Appeal in Barking and Dagenham said it does
9	be protest —— every day parks his vehicle on private	9	apply final relief . So, as the law stands at the
10	land where he's not entitled to park it, almost the	10	moment, that is something which a claimant is entitled
11	natural response, the natural remedy to that, is an	11	to apply for and, as your Lordship knows, we've asked
12	injunction, but it's granted against an individual	12	for this to be kept open because we don't know what the
13	person in conventional inter partes litigation . What	13	Supreme Court will decide, but at the moment the law as
14	the person doesn't get is an injunction that says,	14	it stands still follows the approach taken in
15	"Nobody can park their car in my parking spot and, if	15	Hampshire Waste and Cuadrilla and Ineos even at final
16	they do, they might go to prison".	16	hearing. My submissions can only be based on that until
17	MS BOLTON: But, my Lord, as I'm about to come to, the	17	we hear from the Supreme Court as to what is the
18	courts have made it clear that that is available in the	18	definitive position on it . That's the position of the
19	area of trespass and primarily one of the reasons is the	19	law as it is today.
20	interference with the A1P1 rights, but, my Lord, it's —	20	MR JUSTICE NICKLIN: Right. Okay. Sorry, carry on.
21	and the courts have set out the test to be followed to	21	MS BOLTON: My Lord, as I say, I was about to come to the
22	do so. The claimant is here saying, "We meet those	22	two cases concerning anti-fracking protests, which have
23	tests and that order ought to be granted". That's our	23	confirmed the principles that apply to restraining
24	position, that the law has made it clear that is	24	trespass among other torts by persons unknown.
25	available and is available against persons unknown and	25	Those two cases, Boyd v Ineos Upstream Limited and
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Others [2019] EWCA Civ 515, in particular at paragraph 34 of the judgment of Lord Justice Longmore, and Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9, in particular paragraph 50 of Lord Justice Leggatt, as he then was, those cases concern the principles to be followed.

"One, there must be sufficiently real and imminent risk of the tort being committed to justify precautionary relief; two, it must be impossible to name all those likely to commit the tort unless restrained; three, it must be possible to give effective notice of the injunction and the method of such service must be set out in the order; four, the terms of the injunction must correspond as far as possible to the threat in tort that said lawful can be restrained if the court is satisfied that such a restriction is necessary in order to afford effective protection to the rights claimed in the particular case [as read]."

My Lord, that may be important in this case to consider, and I highlight this is not the only way the court can approach this, but as to whether an exclusion zone should be continued to final hearing to ensure that trespass does not arise, and the extent of any exclusion zone may very well be to restrict something lawful, but it may be, in particular on the grass verge immediately

next to the access road, that the court deems that that is necessary to prevent tort from arising.

"Five, the injunction should be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and, six, the injunction should have a geographical and temporal limit [as read]."

My Lord, in Wensley v Persons Unknown [2014] EWHC 3702 (Ch), the court granted final injunctive relief against persons unknown on the basis that, whilst the trespass had ceased following the grant of an interim injunction, it was likely that, if the injunction was discharged, the trespass would continue. The judge, however, recognised that an injunction to restrain trespassers should have a clear temporal limit and granted a final injunction for a further two years.

In this case, while the incidence of trespass reduced following the interim injunction, they did not cease and both the named defendants have engaged in further acts of trespass and persons unknown have also engaged in further acts of trespass. Accordingly, the claimants will respectfully submit that the court should grant relief to prevent further acts of trespass.

Interference with the first claimant's common law right to access the highway.

The first question the court has to ask is: what is the first claimant's right? Common law right to access the highway is explained by Lord Atkin in Marshall v Blackpool Corporation [1935] AC 16 at page 22, as:

"The owner of a land joining a highway has a right of access to the highway from any part of his premises. This is so whether or not his predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the grounds sub—adjacent or not. The rights of the public to pass along the highway are subject to this right of access just as the right of the access is subject to the rights of the public and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway [as read]."

The common law right to access the highway is summarised in the 23rd edition of Clerk and Lindsell at paragraph 19.180. In that summary, it is noted that an interference with a right is actionable per se and if an interference is such as to cause loss to business, such as preventing customers entering the premises, damages can be obtained. Damages are not, however, a required element of the claim for the claim to be successful.

My Lord, the claimant takes this opportunity to highlight it's not particularly seeking to recover

damages in these claims but it does have to, for some of the claims, demonstrate the loss. But it would be content for those damages claims —— the assessment of quantification to be stayed. It's not looking for an award

Mr Justice Morgan, again in the Ineos case, my Lord, acknowledged the existence of a private landowner's right to access the highway from his adjoining land as distinct from the right of the landowner to use the highway itself as a member of the public; in particular paragraphs 42, 101, 107 and 150 of his judgment.

The first claimant is the freehold owner of the land that adjoins the highway. As set out in the particulars of claim, as explained in the 20th witness statement of Susan Pressick at paragraphs 54 to 55, the first claimant's primary position is that it holds the freehold title to both the Wyton site and the access land. In the alternative, the first claimant's position is that, if it's wrong about that, it holds the freehold title for the Wyton site which adjoins the adopted highway. So, my Lord, there is an overlap between the trespass and the interference claim. As such, either way, the first claimant had its licensees including but not limited to those in the second claimant class and assign(?) to enjoy the aforementioned common law right

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to access the highway from the first claimant's land.

Whilst the statutory provisions have since reduced the scope of the rights, where interference with this right is caused by the Highways Authority —— and you'll see I've cited Ching Garage Limited v Chingford Corporation [1961] 1 WLR 470 and 478 and Cusack v Harrow LBC [2013] UKSC 40; [2013] 1 WLR 2022 —— in all other regards, the common law right to access the highway remains. So the only change, my Lord, is primarily that which involves the Highways Authority and their rights over land.

The common law right to access the highway from adjoining land is a right grounded in private law; see paragraph 42 of Ineos. Moreover the claimants submit that the right is proprietary and shares many of the characteristics of an easement. To that end, the claimant submits that the interference with the common law right to access the highway should be treated in the same way as trespass and not public nuisance.

Specifically it is submitted that the defendants' Articles 10 and 11 rights do not carry with them the right to interfere with the first claimant's common law right to access the highway. Accordingly, the claimants submit that the courts need not engage in the same balancing act it must undertake when considering the

public nuisance of obstructing the highway and should approach this as a private law right where no such balancing act is required. If the balancing act is required and that is the conclusion that the court reaches, then the balancing act would be the same as under that for the public nuisance cases, but we say it's a private law right and therefore that balancing act does not apply.

Article 10 right to trespass on somebody's land for the purpose of demonstrating. It gets a bit more complicated when —— we can take by way of an example, if, once a year, Camp Beagle decide to advertise a protest where they ask people to come and march down the B1090 and say they attract 20,000 people on their annual protest and they process down the carriageway, there is going to be, for the time of the procession, an interference with your access to the Wyton site. If the court were being asked prospectively and focusing on the demonstration to prohibit it because it would interfere with your access rights, the court would have to balance the protest right against the inconvenience.

The court is likely in those circumstances -- if, let's say, it takes no more than an hour for $20,\!000\,$

people to process down the B1090, the court might reach the conclusion that the fact that you're prevented from going in and out of the Wyton site for an hour is, I'm afraid, the price you pay for the people demonstrating and exercising their rights to have a procession down the highway. It would be up to the police to decide whether that level of inconvenience might be -- require intervention or Public Order Act restrictions, et cetera. That's a separate issue.

So that shows you that it, in short term, it depends as to what remedy the court might grant. The problem with the persons unknown, prospective—looking anybody, the difficulty of issuing an injunction against persons unknown, saying, "Nobody can interfere with MBR Acres' ability to access its property", is that I'm then prospectively curtailing protest rights, so there is a difficulty —

18 MS BOLTON: There is, yes.

19 MR JUSTICE NICKLIN: — because in most of the other torts
20 that are relied upon, there is likely to be a balancing
21 exercise at the heart which makes doing it against
22 persons unknown and prospectively, particularly against
23 newcomers, very difficult.

MS BOLTON: My Lord, indeed. One of my submissions later
 into this piece will be that at present the common law

into this piece will be that at present the

1 right is protected by the exclusion zone.

2 MR JUSTICE NICKLIN: Yes, it is.

3 MS BOLTON: Now, the exclusion zone, actually as it stands 4 at present, wouldn't prevent that march. It would 5 prevent that march on one side of the carriageway.

6 MR JUSTICE NICKLIN: Yes.

 $7\,$ $\,$ MS BOLTON: The main concern for the claimant on the common

law right interference is actually getting — and you will hear this from the witnesses — is not just physical obstruction of somebody being in front of a car, but standing on a grass verge and preventing a party being able to actually look left, look right and safely gaining access to a road which is quite busy.

It seems that one of the things — and one of the things I will be submitting about the exclusion zone being anchored to a degree to the common law right is the extent of the exclusion zone that's needed. It may be that the way to deal with that is an exclusion zone which prevents the immediate use of the grass verge and not the carriageway because, as your Lordship has balanced with the highways obstruction so far in the interim injunction, there's ways of dealing with that on the highway rather than by an exclusion zone as to what is and isn't appropriate. But it seems that the issue of that difficulty for future protests is overcome by

1	the extent of the exclusion zone, which we will be	1	necessity because there will be other ways in which the
2	submitting is one of the most appropriate ways to deal	2	court could tackle the problem. I mean, for example,
3	with this $$	3	the direct order is, "You must not obstruct vehicles
4	MR JUSTICE NICKLIN: It's also the hardest aspect of this	4	entering or leaving the Wyton site". That's the direct
5	case. The hardest aspect of this case is the legal	5	order. That would be justified by the alternative
6	justification, particularly on a persons unknown basis,	6	engaged right and it would go no further than is
7	for an exclusion zone because that's the hardest legally	7	necessary to protect the right because it would be
8	to justify.	8	direct. It would have to have inbuilt into it, "save
9	MS BOLTON: Yes. There's two points. What is the	9	where \dots " —— because it's not a strict liability , so
10	interference with the common law right to access the	10	the fact that the procession might take half an hour to
11	highway? That primarily concerns the access road. That	11	go past the entrance of the Wyton site, which means that
12	doesn't prevent a march down the highway if that is in	12	even that couldn't be $$ so the order would have to
13	any way covered by an exclusion zone as a way of dealing	13	provide, "save as to the extent that you are lawfully
14	with the interference with that right, and you'll see	14	exercising a right of way along the carriageway", so
15	from the videos that that is where most of that	15	that would probably cover it.
16	interference takes place.	16	MS BOLTON: Yes.
17	The question, and the more difficult one, I accept,	17	MR JUSTICE NICKLIN: Then that might deal with the parallel
18	is the grass verge outside of what is the claimants'	18	analysis that would be required in relation to the
19	land, but again it still doesn't prevent people marching	19	engaged rights. Exclusion zones are very hard to
20	up and down the carriageway and it would be then about	20	justify because they are likely to fail either or both
21	extent and scope as to whether it is properly anchored	21	of necessity and proportionality.
22	to the cause of action, as to is that causing a $$ if	22	Not now, Mr Curtin.
23	that is interfering with that common law right, then	23	MS BOLTON: My Lord, I entirely accept that and I entirely
24	that is that point in the test that comes out of Ineos	24	accept that that is the alternative way of that right
25	and Cuadrilla of can you restrain something that's	25	being protected by an order. We ask the court to
	69		71
1	lawful only if that's the effective way to ensure that	1	consider it in a less extensive way, purely $$ and we
2	that right is not infringed, and only then, and so you	2	say the court does need to look at it, your Lordship is
3	would have to be convinced that that is the only way to	3	absolutely right, on a proportionality and necessity
4	manage that. We would say if you simply were to	4	basis $$ as to when you see the evidence and you see the
5	protect, for instance, the access road, that it would be	5	videos, whether you think that it probably is necessary
6	very easy to still interfere with that right by standing	6	for those to understand that that is an interference,
7	and blocking the driver left and right.	7	that they should not be on that part of the grass verge
8	MR JUSTICE NICKLIN: The problem you're going to encounter	8	because that immediate part, if you are standing there
9	that we're going to have to look at is that because $$	9	with a placard and you don't move, you will prevent
10	let's take the demonstration. Let's take the march down	10	visibility , and you will hear a lot from the witnesses
11	the B1090 as our litmus test for this . Because that's	11	about that. So that is why we ask, but I accept that
12	going to engage Articles 10 and 11, then you've got the	12	the court may take the view that there is a more direct
13	paradigmatic example of parallel analysis arguably with	13	way.
14	greater weight on the protest side because A1P1 isn't	14	MR JUSTICE NICKLIN: You see the answer $$ the wider society

23 MS BOLTON: Yes.

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24 MR JUSTICE NICKLIN: Almost by definition an exclusion zone

> is going to fail proportionality even if it doesn't fail 70

> a primary -- so you don't have the conventional battle

that I see regularly between Article 8 and Article 10,

which is the true parallel analysis. But let's assume

qualifying $\,--\,$ it's recognised in Articles $\,10$ and $\,11$

that. If it is parallel analysis, then it's about

because it's rights of others, so it broadly fits into

that -- so let's say that A1P1 is one of the

necessity and proportionality.

24 authority to impose a PSPO. 25 MS BOLTON: My Lord, I understand that the court will need

answer to that is civil proceedings are not the remedy

for this. It's either down to the local authority and

the Highways Authority to regulate the position, either

by physically erecting something which prevents people

this is a Highways Authority issue or alternatively it's

a local authority issue, and the police say, "The way of

dealing with this is to impose an exclusion zone around

the entrance to the site", and you persuade the local

from standing in an area because there is \mbox{risk} of --

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1	to look at the evidence and either conclude that that	1	point is the civil law entitles your clients to rely
2	isn't a necessary step, because I accept that we have to	2	on — they can point to causes of action, they can
3	demonstrate ——	3	demonstrate either past breach or threat of future
4	MR JUSTICE NICKLIN: No, I know it's not a necessary step,	4	breach and that, therefore, the natural result of that
5	but I've not got —— I don't consider myself, as the	5	should be a remedy. That's by far and away the
6	court, to be required to solve all the problems of the	6	strongest argument.
7	world through civil proceedings. There are some things	7	MS BOLTON: Yes.
8	that civil proceedings cannot resolve and they fall into	8	MR JUSTICE NICKLIN: Right. Okay. Carry on.
9	other people's responsibilities . One of the arguments	9	MS BOLTON: My Lord, I'm about to move on to my submissio
10	more broadly is the best people to decide how protests	10	on public nuisance and we've only got five minutes, so
11	should be regulated are the police because (a) they have	11	I think that's a good place to break.
12	the powers, (b) they're on the ground, (c) they can make	12	MR JUSTICE NICKLIN: That's fine. Let me just —— because
13	evidence—based decisions and exercise proportionality	13	I've indicated to Mr Curtin that I wasn't going to hear
14	and necessity assessments on the ground. They are	14	him and I'm going to try to explain.
15	immeasurably better placed than a civil court is,	15	Mr Curtin, what I'm doing at the moment $$
16	prospectively trying to marshall a protest and decide	16	I probably ought to shut up really because we're going
17	what the rules are and who can do what. In a society	17	to have to cover all of this anyway. The points I'm
18	sense, the police are better placed to decide those	18	putting to Ms Bolton are points that are occurring to me
19	issues than the civil court is.	19	as she's making her submissions. I'm sure all these
20	MS BOLTON: My Lord, I hear what your Lordship is saying.	20	points she's aware are going to come up later in the
21	I remind the court that, one, the police encouraged the	21	trial and I should just let her get on with making the
22	claimant to make an application for an injunction and,	22	submissions. It's not really now the point to have the
23	two, have indicated to the court in their evidence that	23	argument. I know that you've got a lot to say on these
24	the injunction has assisted them. Obviously the law has	24	points. If there's anything you wanted to say to me in
25	developed in a way which permits the claimant to come to	25	the five minutes before lunchtime, go ahead.
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1	court and ask for this assistance and it is an	1	MR CURTIN: I don't want to interfere with the opening

2 interference with its rights and it is seeking a remedy. 3 I understand that what your Lordship has made very clear is what that remedy should be is very much your Lordship's focus --5 6 MR JUSTICE NICKLIN: Well, the hardest point in this case is 7 what order the court grants. 8 MS BOLTON: Yes. 9 MR JUSTICE NICKLIN: There are some interesting points along 10 the way about, for example, drones and trespass and 11 things like that --12 MS BOLTON: Yes. MR JUSTICE NICKLIN: $\,\,--\,\,$ but, relatively speaking, that's not 13 where the difficulty in this case lies. The difficulty 14 15 in this case lies in what remedy should the court grant 16 and against whom. Those are the really difficult 17 issues. 18 MS BOLTON: My Lord, I accept that. 19 MR JUSTICE NICKLIN: And it seems to me that remedy --2.0 because it is ultimately discretionary, it does seem to 21 me the court has got to be alert to is this the best way 2.2 of dealing with this given the various downsides that 23 can be pointed to. And the court will have to -- I'll

have to grapple with those things and you'll make your

submissions on them and by far and away your strongest

2 statement. It was just to perhaps suggest -- you were 3 talking about a hypothetical demonstration point. I am already -- my alarm bells are ringing that all this talk 5 of the ditch $\,--\,$ and you've talked at length today $\,--\,$ for 6 two years, nearly two years, there's been Camp Beagle, 7 which is on the verge outside of the premises. I think 8 we're leading up to some sort of submission that that 9 should be included. That's my fear. So if you were 10 going to talk about a hypothetical, you don't have to 11 talk about a march, you can talk about a day-to-day 12 existence on the grass verge outside of MBR. So I'm 13 pleased to $--\ I$ was worried $--\ I$ thought that there was 14 no ... MS BOLTON: I've just assured Mr Curtin that that's not part 15 16 of our submission. 17 MR JUSTICE NICKLIN: It's not an eviction notice yet. 18 MS BOLTON: No, it is not an eviction notice. 19 MR JUSTICE NICKLIN: More broadly, Mr Curtin, it's important 2.0 during the $\mbox{trial}\ --\mbox{ and you too, Ms Jaffray}\ --\mbox{ which is,}$

if there's any part of the proceedings you don't

understand as to what we're doing -- you broadly

understand now that what Ms Bolton is doing is she's

really setting out her stall. What she's saying is,

25 "This is our case". Then she will call her evidence and

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then you'll get your chance to put your questions to the witnesses and ultimately, when we move to part 2 of the trial, which is when you present your evidence, which is essentially your opportunity to give evidence, Ms Bolton will be able to ask you questions. And then we get to the end of the trial, which is after we've had all of the evidence, then both parties or the relevant parties are able to make their submissions to me as to what they say I should do on the basis of that evidence, what findings of fact I should make, what conclusions I should reach on the evidence and how the law affects that.

So Ms Bolton has two very important roles. One is that she's making submissions as to the law, and she has set out this morning the broad categories where she says the civil wrongs, so trespass, interference with access to the highway -- we're going to come on to the nuisance aspect and also harassment -- those are what are the legal wrongs which the claimants say have been committed by you and other people, the persons unknown, and she's going to say ultimately that those will justify the court making an order not unadjacent -- it may require some modifications, it may change slightly -- but largely the claimants would like an order that looks something similar to the interim injunction.

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When I'm talking about "remedy", that's -- really the main thing the claimants want is the remedy of an injunction. They're not so much caring about damages. That's what Ms Bolton was saying about some of her causes of action require the claimants to demonstrate they've suffered loss and they would in theory be entitled to claim that loss as part of their remedy, but they're saying that they would be content for that aspect of the remedy to be stayed, in other words they're not really -- they recognise they have to demonstrate that part of it in order to demonstrate they're entitled to some sort of remedy or relief from the court, but their primary concern, as has been pretty clear right from the outset, is about injunction.

So this case at the end is going to really be about the terms of any injunction the court might grant, and you'll get plenty of opportunity, when we get to that final stage, to make your submissions, as will Ms Jaffray, about what you say the court should do in terms of any injunction, even if the court is satisfied that an injunction should be granted: all right? MR CURTIN: Yes. It's not my role to object to the opening

The other thing, I went -- before -- someone arrived yesterday at the camp and they just wanted to -- they're

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making a documentary and they just wanted to fly the drone to literally show the buildings, the layout. You were talking about flying drones and I just wanted to give that specific example. Okay, let's talk about the drone in terms of the persons unknown. Someone has come along and they wanted to just | literally -- and they don't have to even fly across the land to get the buildings. What damage, what harm, and what would this injunction ever -- how would it affect that person who just wants to make the documentary and wants to show some buildings? MR JUSTICE NICKLIN: Anyway, there we are. Right. Let's come back at 2 o'clock then. Thank you very much. I'll do my best not to interrupt any further. (12.58 pm) (The short adjournment) (1.59 pm)

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MR JUSTICE NICKLIN: Yes, Ms Bolton. 19

20 MS BOLTON: My Lord, I'm now moving on to obstruction of the

21 highway. It's well established, my Lord, that it's 22

a public nuisance to obstruct or hinder the free passage

23 of the public along the highway; East Hertfordshire 2.4 District Council v Isabel Hospice Trading Limited [2001]

25 JPL 597. The first claimant's staff and members of the

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second claimant class have endured repeated incidents of obstruction and of hindering their free passage along the highway. Public nuisance caused by way of obstruction of the highway was considered in Ineos at paragraphs 42 to 46 and 64 to 65, specifically paragraph 44. Mr Justice Morgan refers to an extract from Halsbury's, which says:

"One, whether an obstruction amounts to a nuisance is a question of fact: two, an obstruction may be so inappreciable or so temporary as not to amount to a nuisance; three, generally it is a nuisance to interfere with any part of the highway; and, four, it is not a defence to show that, although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public [as read]."

Further, paragraph 44 goes on to state that: "The notes to paragraph 325 contain reference to a case where the test for obstruction is variously described. Thus it has been said that any wrongful act or omission upon or near a highway whereby the public is prevented from freely, safely and conveniently passing along the highway is a nuisance. An obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle [as read]."

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Obstruction of the highway may also be a criminal offence pursuant to the Highways Act, section 1371, which provides:

"If a person without lawful authority or excuse in any way wilfully obstructs the free passage along the highway, he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale [as read]."

The parties in Ineos assumed that the same basic principles applied to public nuisance and to the criminal offence. To that end, at paragraph 65, Mr Justice Morgan set out that, for there to be an offence under the Highways Act 1980, section 1371, it

"One, there is an obstruction of the highway which is more than de minimis. Occupation of part of a road thus interfering with people having the use of the whole road is an obstruction; two, the obstruction must be wilful, ie deliberate; and, three, the obstruction must be without lawful authority or excuse. Without lawful excuse may be the same thing as unreasonably or it may be that it must in addition be shown that the obstruction is unreasonable [as read]."

The claimants will say that that sets out the questions the court must ask. The claimants will say that the test for the obstruction can be satisfied in

these proceedings and that, without the benefit of an injunction, the obstruction will continue and in all likelihood increase.

Ineos refers to two of the leading authorities on obstruction of the highway by way of protest; first , Hubbard v Pitt and then DPP v Jones. The question of whether assembly on the highway was lawful was revisited by the House of Lords in DPP v Jones. The case is of particular importance, having been relied upon and approved by the Supreme Court in the recent decision in Reference by the Attorney General for Northern Ireland Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32 and [2023] 2 WLR 33.

The following passages of Jones outline the relevant principles for this case. At page 245, paragraph G, to 255, paragraph A, Lord Irvine said:

"The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place on which all manner of reasonable activities may go on. For the reason I have set out below in my judgment, it should provided these activities are reasonable, do not involve the commission of a public or private nuisance and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass. They

should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway [as read]."

 ${\small 4\qquad \qquad \text{Lord Irvine concluded, page 257, paragraph D:}}\\$

"I conclude, therefore, the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass. Within these qualifications, there is a public right of peaceful assembly on the highway [as read]"

At page 280, paragraph D, and page 281, paragraph C, Lord Clyde said:

"So far as the manner of exercise of the right is concerned, any use of the highway must not be so conducted as to interfere unreasonably with the lawful use by other members of the public for passing along it. The fundamental element in the right is the use of the highway for undisturbed travel. Certain forms of behaviour may of course constitute criminal actings in themselves, such as the breach of the peace, but the necessity also is that travel by the public should not be obstructed. The use of the highway for passage is

reflected in all the limitations, whether on extent. purpose or manner. While the right to use the highway comprises activities within those limits, those activities are subsidiary to the use for passage and they must be not only usual and reasonable but consistent with the use even if they are not strictly ancillary to it. In my view, the argument for the defendants and indeed the reasoning of the Crown Court went further than it needed to go in suggesting that any reasonable use of the highway, provided that it was peaceful and not obstructive, was lawful and so a matter of public right. Such an approach opens a door of uncertain dimensions into an ill -defined area of uses which might erode the basic predominance of the essential use of the highway as a highway. I do not consider that, by using the language which it used, Parliament intended to include some distinct right in addition to the right to use the road for the purpose of passage [as read].'

Accordingly, the law is such that, one, there is a right to peaceful assembly on the highway; two, that right does not extend so far as to allow the committing of public nuisance; three, while the right to use the highway comprises activities such as assembly on the highway, such activities are subsidiary to the use for

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passage and they must be not only usual and reasonable but consistent with the primary use of the highway to pass and repass, so obstructing a driver's view or obstructing passage along the highway is likely to be inconsistent with the primary use of the highway; four, the public nuisance may arise by an unreasonable obstruction of the highway, such as unreasonably impeding the private rights of the public to pass and repass; five, whether an obstruction of the highway is unreasonable is a question of fact but will generally require that obstruction is more than de minimis and must be wilful. The claimants will say that the acts are neither individually or cumulatively de minimis.

DPP v Ziegler and Others.

Until recently, the approach to Jones appeared to be modified by the case of DPP v Ziegler and Others [2021]

UKSC 23; [2022] AC 408. However, it is apparent from paragraphs 27 to 29 of Lord Reed's judgment in Reference by the Attorney General for Northern Ireland Abortion

Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32 and [2023] 2 WLR 33 that Ziegler may have been taken out of context and may have been misunderstood to have weakened the protection to the right to pass and repass without obstruction, as confirmed in Jones.

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Ziegler is relevant in the context of the claimants' claim for obstruction of the highway and the prohibition the claimant seeks requiring the defendant not to approach, slow down or obstruct any vehicle which is travelling to or from the first claimant's land along the B1090, Abbots Ripton Road, or within one mile in either direction of the first claimant's land at the Wyton site. The Ziegler test will be relevant. The court's attention is drawn to Ziegler at paragraph 70. per Lord Hamblen and Lord Stephens, which provides, after having surveyed the relevant jurisprudence, that, "It is clear from those authorities that intentional actions by protesters to disrupt by obstruction others enjoys the guarantee of Article 10 and 11 [as read]", but both disruption and whether it is intentional are relevant factors in relation to proportionality.

Accordingly, intentional action, even with an effect that it is more than de minimis, does not automatically lead to the conclusion that any interference with the protesters' Articles 10 and 11 rights is proportionate. Rather, there must be an assessment of the facts in each individual case to determine whether the interference with Article 10 or Article 11 rights are necessary in a democratic society. Their Lordships then, at 72, adopted the non—exhaustive list of factors to consider

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when evaluating proportionality, as set out by Lord Neuberger, Master of the Rolls, in City of London Corporation v Samede. Paraphrasing that content, those factors are, one, the extent to which the continuation of the protest would breach domestic law: two, the importance of the precise location to the protesters; three, the duration of the protest; four, the degree to which the protests occupy the land; five, the extent of the actual interference the protest causes to the rights of others, including property rights of owners of the land and the right of any member of the public; six, when of the view giving rise to the protest relates to very important issues and whether there are views which many would see as being of considerable breadth, depth and relevance; and, seven, whether the protesters believed in the views that they were expressing.

For context, in Ziegler, the protesters were opposed to the arms trade. They held a peaceful protest at the Defence and Security International Arms Fair at the ExCel Centre in London by laying down on one side of the road and locking on to an approach road leading to the Excel Centre for approximately 90 minutes before they were removed by police. The protest did not block all entry and access to the ExCel Centre, it did not target specific individuals working at the ExCel Centre and was

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part of a discrete protest that did not arise out of a continuing protest which has experienced multiple incidents of obstruction of the highway over a period of many months or years.

The order directing convictions against the defendant protesters under the Highways Act section 137 was set aside and dismissal of all charges was restored. The approach and decision in Ziegler was never intended to have universal application. The same has now been made clear by the Lord Reed in the judgment of Northern Ireland Abortion Services case, in which his Lordship made several important observations relevant to the approach of the Supreme Court and the Divisional Court in Ziegler and the approach to the case, whether civil or criminal, concerning obstruction of the highway.

Those observations include, one, section 137 and the equivalent predecessor provisions have a long and specific history and have been the subject of a great deal of judicial consideration. The approach adopted to section 137 and its predecessor for over a century prior to Ziegler was rooted in authorities which treated the question to be decided under the statute as similar to the question to be decided in civil nuisance cases of an analogous kind. On that basis it was held that it was necessary for the court to consider whether the activity

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being carried on in the highway by the defendant was reasonable or not; for example, Lowdens v Keaveney, [1903] 2 IR 82, 87 and 89. That question was treated as one of fact depending on all the circumstances of the case; Nagy v Weston [1965] 1 WLR 280 and 284; Cooper v Metropolitan Police Commissioner, [1985] 82 CR App R 238, 242 and 244.

That approach accorded with the general treatment in the criminal law of assessment of reasonableness as questions of fact. In cases where the activity in question took the form of a protest or demonstration, common law rights of freedom of speech and freedom of assembly were treated as an important factor in the assessment of reasonable user; see, for example, Hirst v Chief Constable of West Yorkshire (1986) 85 Cr App R 143. That approach was approved, obiter, by members of the House of Lords in Director of Public Prosecutions v Jones [1999 2 AC 240, "Jones".

Lord Irvine of Lairg summarised the position at 255: "The public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage. The same approach continued to be followed after the Human Rights Act entered into force: see, for example,

Buchanan v Crown Prosecution Service [2018] EWHC, 1773 (Admin); [2018] LLR 668, at paragraph 22.

Two, one of the issues in dispute in the Ziegler appeal was whether there can be a lawful excuse for the purposes of section 137 in respect of deliberate physically obstructive conduct by protesters where the obstruction prevented or was capable of preventing other highway users from passing along the highway.

Lord Hamblen and Lord Stephens concluded that there could be. However, Lord Reed in Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill observed that the case of Jones was neither cited nor referred to in Ziegler, paragraph 27, and it is plain from his Lordship's judgment that he was citing Jones with approval.

Three, Lord Reid observed that the dictum of Lord Hamblen and Lord Stephens in Ziegler had been widely treated as stating a universal rule. Lord Reed said:

"That view is mistaken. In the first place, questions of proportionality, particularly when they concern the compatibility of a rule or policy with Convention rights, are often decided as a matter of general principle rather than an evaluation of the circumstances of each individual case [as read]."

That's paragraph 29.

Four, the determination of whether an interference with a convention right is proportionate is not an exercise in fact—finding. It involves the application in a factual context, often not in material dispute, of the series of legal tests, set out at 24, together with a sophisticated body of case law and may also involve the application of statutory provisions such as sections 3 and 6 of the Human Rights Act or the development of the common law; see paragraph 30.

Five:

"... the European Court has repeatedly emphasised that the Convention is intended to protect rights that are practical and effective and that its concern is therefore with matters of substance rather than form. It would be inconsistent with that approach to draw a fundamental distinction in our domestic application of the Convention in relation to legal measures restricting protesters' rights under Articles 9 to 11 according to the domestic classification of the measure as civil or criminal. That is illustrated by the fact that one of the Government's responses to the decision in Ziegler was to obtain a civil injunction covering the national network of motorways and other major roads and prohibiting activities which would obstruct them. Such

injunctions, although classified as civil remedies, are generally directed against persons unknown as well as any protester whose identities are known and contain a power of arrest. They are enforceable by proceedings for contempt in which unlimited fines or sentences of imprisonment can be imposed. Those are more serious penalties than are available under the present bill."

That's paragraph 40.

Six, a defence of lawful or reasonable excuse may provide a route by which a proportionality assessment can be carried out, where the defence can properly be interpreted, having recourse, if needed, to section 3 of the Human Rights Act, as including the exercise of Convention rights; paragraph 57 of the judgment.

Seven, the mistake should not be made of assuming that the presence of a reference to lawful or reasonable excuse in the definition of an offence necessarily means that a proportionality assessment in respect of Convention rights is appropriate; paragraph 58 of the judgment.

Accordingly, the following can be understood from the Supreme Court's decision in the Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill: one, Ziegler is not to be applied universally to cases concerning the obstruction of the highway and the

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approach that is set out by Lord Irvine in Jones; namely, "the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for the purpose of passage and repassage [as read]".

Two, when considering Articles 10 and 11 of the Convention, no fundamental distinction should be drawn between the criminal and civil law as both are capable of regulating the conduct of protesters on the highway, as acknowledged by Lord Reed at paragraph 41 of the judgment.

Three, not every case of obstruction of the highway in the context of a protest case will require a proportionality assessment. If the ingredients of the tort are proved, that may strike the correct balance. The reference in Jones to the protesters' conduct needing to be consistent with the general public's primary use to pass and repass may be deemed to strike the right balance. If the proportionality assessment is to be undertaken, the decision in Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill suggests a well—recognised but slightly different set of questions to Samede, albeit the difference, we would accept. is limited.

The test is as follows:

- 1. Is what the defendant did in exercise of one of the rights in Article 10 or 11?.
- "2. If so, is there an interference by a public authority with that right?
- 3. If there is an interference, is it prescribed by law?
- 4. If so, is the interference in pursuit of a legitimate aim as set out in paragraph 2 of Article 10 or Article 11, for example the protection of the rights of others?
- 5. If so, is the interference necessary in a democratic society to achieve that legitimate aim?

That last question will in turn require consideration of the well—known set of sub—questions which arise in order to assess whether the interference is proportionate.

- 1. Is the aim sufficiently important to justify interference with the fundamental right?
- 2. Is there a rational connection between the means chosen and the aim in view?
- 3. Are there less restrictive alternative means available to achieve that aim?

And, 4, is there a fair balance between the rights of the individuals and the general interest of the

community, including the rights of others?

So, my Lord, we say that, one, you first have to decide whether the proportionality balance is required under obstruction of the highway in this case and whether or not the test already strikes the correct balance, and, two, if you do, that it is that set of questions in undertaking that proportionality assessment that the court must undertake.

My Lord, there is only one —— one of the elements of the obstruction of the highway case that has to be established is that the claimants have suffered loss and damage. Loss and damage is the principles concerning the obstruction of the highway and the proof of damages are as follows:

One, a private individual has a right of action in respect of public nuisance if he can prove that he has suffered particular damage other than and beyond the general inconvenience and injury suffered by the public and that the particular damage which he has suffered is direct and substantial. That's the Jan de Nul (UK) Limited case, [2000] 2 Lloyd's Rep 700.

Two, particular damage is not limited to special damage in the sense of actual pecuniary loss.

Particular damage may consist of proved general damage, for example inconvenience and delay, provided that it is

substantial and appreciably greater in degree than any damage suffered by the general public.

My Lord, that's the part of The Wagon Mound (No 2) case that wasn't overruled. That comes from [1963], 1 Lloyd's Rep. 402 at 430.

Three, unlike negligence, in an action for public nuisance, once the nuisance is proved and the defendant is shown to have caused it, then the legal burden shifts to the defendant to justify or excuse himself. That's again the Wagon Mount (No 2), page 428 and Southport Corporation v Esso Petroleum [1954], 2 QB 182 at 194 and

Four, the approach to particular damage and the ability for it to constitute general damages rather than specific loss was restated by Mr Justice Moore—Bick in the Jan De Nul case, in particular paragraphs 41 to 44, which paragraphs include consideration of the House of Lords' decision in Tate & Lyle v Greater London Council, [1983] 2 AC 509.

Accordingly, the quantification of damages and the specific sum which could be attributed to each individual defendant does not need to be established. It is enough for the claimant to show that obstruction has caused the claimants' damage that is different to the rest of the public. That is particularly relevant

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in these proceedings as the claimants must prove particular damage as part of the cause of action relevant relating to the obstruction of the highway. But, as I said earlier, my Lord, it is not seeking to enforce those damages as an award and would be content for the quantification of damages to be stayed.

Harassment.

The claimants also bring a claim to restrain harassment. The claim in harassment is, in many instances, parasitic on the other causes of action in these proceedings. It is the repeated occurrence of those alleged wrongs that amount to the course of conduct required for a claim in harassment. The claimants rely upon sections 1, 1(1A), 3 and 3A of the Protection from Harassment Act 1997.

Where an individual is bringing the claim, that person has a cause of action under section 1(1) and where he or she is a victim of a course of conduct pursued by another person that amounts to harassment and which the other person knows or ought to have known amounts to harassment.

In the case of a company, the cause of action may exist under section 1(1A). In particular section 1(1A) provides that a person must not pursue a course of conduct which involves the harassment of two or more

persons which he knows or ought to know involves harassment of those persons and by which he intends to persuade any person, which does not necessarily have to be the same person experiencing the course of conduct, one, not to do something that he is entitled or required to do or, two, to do something that he is not under any obligation to do.

Accordingly, under section 1(1A) and section 3A, the first and third claimants can seek relief against a defendant who pursues or, if it is apprehended that they will pursue, a course of conduct which the defendant knows or ought to know involves harassment of two or more individuals, such as their staff, service providers and contractors, with the intention of persuading those persons, or the first and third claimants themselves, not to do something which they are entitled to do or to do something which it is not under an obligation to do. Mr Justice Morgan, paragraphs 47 [sic] to 45 of Ineos considered how these statutory provisions apply in the context of protest cases in which a company brings a claim in harassment and seeks an injunction to restrain the same.

References to "harassing" a person includes alarming the person or causing a person distress . It is clear from the Protection of Harassment Act, section 7(2). In

Majrowski v Guy's and St Thomas' NHS Trust [2006] UKHL 34; [2007] 1 AC 224, as extracted at paragraph 53 of Ineos, it is said that harassment is conduct which crosses the boundary between "the regrettable to the unacceptable" and that the conduct must be "oppressive and unacceptable".

In Dowson v Chief Constable of Northumbria Police [2010] EWHC 2612 QB, Mr Justice Simon set out, at paragraph 142, six elements which must be established before liability for harassment can be found. He said, one, that there must be conduct which occurs on at least two occasions: two, which is targeted at the claimant although the Court of Appeal has since held that conduct merely needs to have been targeted at the individual; three, which is calculated in an objective sense to cause alarm or distress: and, four, which is objectively judged to be oppressive and unacceptable; five, what is oppressive and unacceptable may depend on the social or working context in which the conduct occurs: and, six, a line is to be drawn between conduct which is unattractive and unreasonable and conduct which has been described in various ways as "torment" of the victim "of an order that would sustain criminal liability

The evidence of the claimants' witnesses show the torment they have suffered as a result of the

defendants' actions. Their evidence references their inability to sleep, becoming withdrawn, having to be medicated to cope with the anxiety, moving home and leaving their jobs as well as being sent funeral plans and handwritten letters threatening them.

Precautionary relief .

The test for precautionary $\mbox{ relief }.$

Precautionary relief has been an important component of the relief granted in many protester cases. The claimants' claim is brought on the basis of past acts and feared future acts. Therefore, this is a claim seeking precautionary relief, also known as quia timet relief.

The flexible principles that apply to the grant of precautionary relief were revisited by Mr Justice Marcus Smith in Vastint Leeds v Persons Unknown [2019] 4 WLR 2, a case approved by the Court of Appeal in London Borough of Barking and Dagenham and Persons Unknown [2022] EWCA Civ 13; [2022] 2 WLR 946 at 83.

The relevant principles to be applied when granting such relief are set out in paragraphs 26 to 31 of the judgment in Vastint. Paragraphs 29 to 31 of Vastint were recently quoted and reproduced in full in the judgment of Mr Justice Meade in the Philips case, [2022], EWHC 1703 (Pat) at 18. This case emphasises the

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flexible approach the court will take to precautionary relief and considers in particular the question of reasonable apprehension when granting a prohibitory injunction. The Philips case concerns the steps a defendant would take to harm the claimants' legal proceedings by seeking an anti—suit injunction in China, which would be terminal to the legal proceedings that the claimant was bringing before the English court, such that the case concerned a prohibitory injunction.

In Philips the issue was the risk of the defendant bringing an anti—suit injunction proceedings in China, with the defendant disputing their intention to do so. The key concern for the court when deciding to grant injunction was the harm that could be caused if, contrary to the defendant's position, it did seek an anti—suit injunction. The court emphasised that the test for precautionary relief was multi—factorial but that the harm to the claimant if the defendant acted as apprehended by the claimant was a significant consideration.

Third, the courts did not simply accept the defendant's submission that it would not seek an anti—suit relief and looked at the harm that would be caused if it did. When considering the relevant test, Mr Justice Meade stated at paragraphs 19 to 20:

"It is clear from the decision of Mr Justice Marcus Smith and the earlier cases that he cites, including Islington Council v Elliot and Lloyd v Symonds that assessment of the appropriateness of quia timet relief is not a multi—factorial test. The court is not just to assess as a percentage the likelihood of the defendants doing the act which is sought to be restrained, but must have regard to the other matters identified in those paragraphs.

"That is of relevance here because Philips relies on the fact, as it asserts there to be, that if the defendants had obtained an anti—suit injunction in China, that would have been irreversible and terminal for these proceedings. I accept those submissions. Nonetheless, whilst the likelihood of the defendant doing that which is sought to be restrained is not the only factor, it is clearly always going to be a very significant one and perhaps the most significant one in many cases. A central argument by the defendant on this application is that there is no likelihood of anti—suit relief being sought in the People's Republic of China [as read]."

The court's approach to precautionary relief in Philips as a whole can be found at paragraphs 25 to 36 of the judgment. The claimants will say that that

approach will be highly relevant in these proceedings.

Final orders against persons unknown.

The approach to final orders against persons unknown should be definitively determined once the Supreme Court hands down the awaited judgment in the Wolverhampton case. The current position pending that decision is as follows: London Borough of Barking and Dagenham and Others v Persons Unknown has confirmed that, where a final injunctive relief is sought against persons unknown — sorry — that the court can grant a final injunctive relief against persons unknown.

Where the final injunctive relief against persons unknown has been defined to only capture those who are engaged in the wrongdoing and those who can be served appropriately with an order for alternative service, there is no bar to granting such an order at the final hearing.

In Barking and Dagenham, the Court of Appeal confirmed the application of the test as set out by Lord Justice Longmore in Ineos and as modified by Lord Justice Leggatt, as he then was, in Cuadrilla, as referred to above in paragraph 52. The claimants have attempted to identify persons unknown where they can, as can be seen by the recent claims brought against Lauren Gardener and Louise Boyle, the latter of which

cannot be pursued by reason of the claimant being unable to serve Ms Boyle, and the previous defendants who have been added to the claim.

So, my Lord, this isn't a case where no one has been identified and indeed the claimant has added on a number of occasions additional defendants to the claim form where they can identify them and serve them.

Cuciurean v Secretary of State [2022] EWCA (Civ) 1519, paragraphs 37 to 47, confirm that it is not necessary to name every defendant who could come within persons unknown, an important factor in a part 7 claim as there must be a point where adding defendants would in any event jeopardise the trial timetable as they would not have the ability to serve a defence and for the witness evidence to be before the court in good time.

The claimants will make further submissions on persons unknown and the test to be applied following the decision of the Supreme Court as agreed with the court at the pre—trial review, but, for now, the claimant present its case on the basis of the law as it is today but recognises that that is currently fluid and may well change

The named defendants.

As I said at the beginning of this opening, the

that that 25 As I said at the beginning

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claim has -- save for being stayed against Mr Broughton and the claim against the 11th defendant, Mr Curtin, and the 20th defendant, Ms Jaffray, the claim against the named defendants has all now been settled.

The claim against Mr Curtin. The allegations concerning Mr Curtin can be found in the particulars of claim with specific allegations found — sorry, particulars of claim, which, in Mr Curtin's bundle, is at pages 3 to 62 of his bundle, with specific allegations found at the following paragraphs. Paragraph 170.1 to 170.10 particularise ten allegations of trespass that the first claimant alleges against Mr Curtin between 13 July 2021 and 21 June 2022. Those can be found at pages 19 to 22 in Mr Curtin's bundle.

Two, paragraphs 181.1 to 181.11 particularise
11 allegations of D11's interference with the first
claimant's common law right to access the highway
between 13 July 2021 and 22 September 2021. Those
allegations can be found at pages 33 to 37 in
Mr Curtin's bundle.

Three, paragraphs 173.1 to 173.17 particularise the 16 allegations of obstruction of the highway between 13 July 2021 and 11 July 2022.

And, four, paragraphs 184 to 188 particularised the claims for harassment against Mr Curtin, which claim

relies on 37 allegations particularised in the other causes of action, some of which are duplicates across multiple causes of action, my Lord, and three stand—alone incidents in relation to harassment at paragraphs 184.1 to 184.3. Those can be found in Mr Curtin's bundle at pages 37 to 39.

The claimants rely on the legal principles outlined in this opening and the written submissions that it's already submitted and will make further submissions on the relevant tests and their applications during the closing. The claimants will say that it is these allegations which are the focus of this trial as it relates to Mr Curtin and not the protesters' sincerely held views on the claimants or their views on medical research that includes the use of animals in pre—clinical trials.

Mr Curtin does not dispute the factual allegations made against him but denies that his actions would have caused harassment, alarm and distress. While this denial addresses some parts of the harassment claim, the claimant will say that Mr Curtin has not addressed the other parts of the claim brought against him.

Mr Curtin's recent exhibits in evidence are largely relevant to the issues this court must determine, save potentially in relation to the harassment claim.

D20, Ms Jaffray. The claimants' specific pleaded case against Ms Justify can be found at paragraphs 292 to 312 of the particulars of claim, which are at pages 19 to 37 in Ms Jaffray's bundle. The claimants rely on the following causes of action:

Trespass. 19 allegations of trespass are made against Ms Jaffray, ranging from 17 July 2021 to 2 July 2022. They can be found at paragraphs 294.1 to 294.19 of the particulars of claim, which are pages 19 to 23 in Ms Jaffray's bundle.

Two, interference with the first claimant's common law right to access the highway from the Wyton site. Ten allegations are made against Ms Jaffray, ranging from 17 July 2021 and 23 September 2021. They can be found at paragraphs 305.1 to 305.10 in the particulars of claim, which are at pages 32 to 35 of Ms Jaffray's bundle.

Public nuisance on the highway, 13 allegations are made against Ms Jaffray ranging between 17 July 2021 and 23 September 2021; see paragraphs 297.1 to 297.13. They can be found at pages 23 to 28 of the bundle.

Four, paragraphs 308 to 312 of the claim for harassment against Ms Jaffray, which claim relies on 42 allegations particularised in the other causes of action, some of which are duplicated, and a single

stand—alone incident in relation to harassment at paragraph 308.1, which can be found at pages 36 to 37 of the claim against Ms Jaffray.

Ms Jaffray appears to make several admissions in relation to the trespass claim but appears to erroneously assume that, one, the incidence of trespass can be balanced against her Article 11 rights, which is not the case, and, two, she appears to conflate the exclusion zone with trespass.

It is submitted that no part of Ms Jaffray's defence provides any answer to the claimants' claims and instead broadly relies upon proportionality in Article 11. As stated in these submissions, these are not even relevant considerations to some of the causes of action pleaded by the claimants, nor is it clear why Ms Jaffray states that her actions are proportionate.

The same is not accepted by the claimant. The claimant acknowledges, my Lord, that we're obviously going to have further evidence, but on the case as outlined at present that would certainly appear to be the position.

In relation to some elements of the harassment claim, in particular in relation to the funeral plans sent to certain of the claimants' staff, Ms Jaffray has pleaded guilty in the Criminal Court to the offence of

2	convicted. I flag to the court now, because it may	2	MR JUSTICE NICKLIN: Oh, yes.
3	ultimately be relevant to any determination, that it's	3	MS BOLTON: There's a 12-month community order, 200 hours of
4	understood that there is an application by the	4	unpaid work, up to 20 days, and $$ your Lordship may
5	prosecution for Ms Jaffray to be the subject also of	5	know what this means more than I do $$ RAR.
6	a criminal behaviour order and that therefore may have	6	MR JUSTICE NICKLIN: Rehabilitation and something
7	a bearing on what it is that your Lordship decides is	7	requirement.
8	appropriate in relation to the 20th defendant. We	8	MS BOLTON: Cost of £200 plus £200 victim compensation. So
9	understand that that is to be determined later in May.	9	the last part to be dealt with is the criminal behaviour
10	So, my Lord, I flag that now.	10	order but everything else has been dealt with. As
11	MR JUSTICE NICKLIN: That's a restraining order. "Criminal	11	I understand it, there is another hearing but I don't
12	behaviour order" is the global term which embraces other	12	know what that relates to.
13	types of order the Criminal Court can make but	13	MR JUSTICE NICKLIN: The offence for which she received that
14	specifically in this case it's likely to be	14	sentence was what?
15	a restraining order.	15	MS BOLTON: That was the offence of harassment without
16	MS BOLTON: My Lord, indeed.	16	violence, which was, as I understand it, to do with the
17	MR JUSTICE NICKLIN: Yes, okay.	17	sending of the funeral plans to the employees.
18	Ms Jaffray may have $$ the proceedings $$ what,	18	MR JUSTICE NICKLIN: And was a victim statement provided to
19	there's going to be a sentencing hearing, is there,	19	the court by the employee?
20	in May?	20	MS BOLTON: I believe that there was an impact statement,
21	MS BOLTON: There has been a sentencing hearing. As	21	yes.
22	I understand it, the prosecution applied this week for	22	MR JUSTICE NICKLIN: I'll need to see that because it's
23	the criminal behaviour order which was opposed by the	23	potentially relevant to issues.
24	defence, so the judge has adjourned that part of it for	24	MS BOLTON: My Lord, I will do my best, but, as
25	hearing.	25	your Lordship may imagine, I have been trying to obtain
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harassment in relation to those incidents and has been

- 1 MR JUSTICE NICKLIN: Yes. MS JAFFRAY: It's going to be heard on the -- sorry. 2. 3 MR JUSTICE NICKLIN: Carry on, Ms Jaffray. MS JAFFRAY: Sorry, yes. That's going to be heard on the 5 22nd and we are opposing it. 6 MR JUSTICE NICKLIN: Do you have a copy of the terms that 7 the prosecution are asking for the order? MS JAFFRAY: I have, yes. 8 9 MR JUSTICE NICKLIN: Okay. Do you know what order $--\ {\rm can}$ 10 you tell me what order they're seeking, Ms Jaffray? 11 MS JAFFRAY: Yes, a lot of it is a standard not to contact 12 members of staff, et cetera, but one of them is 13 a five-year ban from attending MBR and Labcorp. MR JUSTICE NICKLIN: Okay, right. 14 15 MS BOLTON: My Lord, obviously, if that was to be ordered --16 and I know that a similar order was made to somebody 17 else $\,\,--\,\,$ then obviously, depending on its terms, it may 18 not be relevant for us to be pressing for anything 19 further because that comes into whether you need to 2.0 grant any relief. 21 MR JUSTICE NICKLIN: Well, it's not for me to say anything 2.2 about whether the Criminal Court would find itself able
- 1 that information and it's not --MS_JAFFRAY: I have that information. 2. 3 MS BOLTON: That's very helpful, then, because we haven't been able to get it from the police or the CPS. I think 5 it's with the CPS and it seems to go into a black hole 6 from what I understand at the moment, which 7 I appreciate --MS JAFFRAY: I can send it all over. 8 9 MR JUSTICE NICKLIN: Ms Jaffray, if you could send the 10 victim statement, please, to me and to the claimants' 11 side, please. 12 MS JAFFRAY: Yes, I will do. MR JUSTICE NICKLIN: That would be very helpful. Thank you 13 14 15 MS BOLTON: My Lord, there was also an offence regarding 16 smoke grenades, but I'm not clear whether that smoke 17 grenade was at MBR, at Labcorp or somewhere else. 18 MS JAFFRAY: It was at Labcorp -- sorry, I may as well 19 answer these questions. MS BOLTON: Ms Jaffray can answer the questions much better 2.0 21 than anybody. 22 MS JAFFRAY: Yes, so it was two smoke grenades in 2021 at 23 the end of -- at Labcorp, two separate occasions to

so far but I don't know if the court is wanting --

MS BOLTON: My Lord, I do have the details of the sentence 110

to grant such an order. But, yes, we'll look at that

when we know what the terms of any order are.

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which the police didn't on one occasion tell me I wasn't

allowed to do it, therefore we are appealing.

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Τ	MR JUSTICE NICKLIN: Okay. I don't know what the law on
2	smoke grenades is. Is it an offence to possess them?
3	MS JAFFRAY: No, it's an offence to use them on a public
4	highway. Now, I thought because the lane was almost
5	closed because of the protest and there were no moving
6	cars that it was safe to do so. I didn't realise that
7	law applied.
8	MR JUSTICE NICKLIN: Okay. Right. Thank you very much.
9	MS BOLTON: My Lord, we don't have the details on that, but
10	they're the two offences. I think $$ Ms Jaffray will
11	confirm if I'm wrong, but I think there's another
12	hearing ——
13	MS JAFFRAY: That would be the appeal.
14	MS BOLTON: Okay. That's the appeal. We have very scant
15	details on the criminal proceedings. I think there's
16	also a hearing on Tuesday. I don't think that's the
17	appeal but Ms Jaffray will confirm what the position is.
18	MR JUSTICE NICKLIN: Do you have a hearing on Tuesday,
19	Ms Jaffray?
20	MS JAFFRAY: No, we haven't. I asked if I could not attend
21	court on the Tuesday $$
22	MR JUSTICE NICKLIN: My court or somewhere else?
23	MS JAFFRAY: No, yours, yours. The Tuesday afternoon. I'm
24	not sure if you're aware, my partner is currently on
25	remand, I won't have seen him for three weeks and he has

equipment along the highway known as B1090; three, D30 are those who are obstructing vehicles exiting the first claimant's land at MBR Acres Limited, Wyton, Huntingdon, P28 2DT, and accessing the highway known as the B1090; four, D31, are those who are protesting outside the premises of the first claimant and against the first claimant's lawful business activities in pursuing a course of conduct causing alarm and/or distress to the second claimant and/or the staff at the first claimant for the purpose of convincing the second claimant and/or the staff of the first claimant not to (a) work for the first claimant and/or (b) provide services to the first claimant and/or (c) supply goods to the first claimant and/or (d) to stop the first claimant's lawful business activities at MBR Acres Limited, Wyton, Huntingdon, PE28 2DT.

pass and repass with or without vehicles, material and

At five, D33, are those who are, without the consent of the first claimant, trespassing on the first claimant's land by flying drones over the first claimant's land and buildings outlined in red on the plan at annex 1 to the amended claim form, that being the land and buildings owned by MBR Acres Limited, Wyton, Huntingdon, PE28 2DT; and, six, D36, who are those who are, without the consent of the first

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1 made an appointment that afternoon. But myself and 2 Mr Curtin, if it's okay with yourself, were going to 3 talk through the different witnesses that we were going to call and see if we could make some kind of 5 arrangement whereby we would share a day or share the 6 days where we are both questioning the same witnesses --7 MR JUSTICE NICKLIN: Okav. MS JAFFRAY: -- so that we aren't --8 9 MR JUSTICE NICKLIN: We'll talk about that at the end of 10 today if we can, Ms Jaffray. 11 MS JAFFRAY: Okay. 12 MR JUSTICE NICKLIN: Thank you. 13 Right. $\ensuremath{\mathsf{MS}}$ BOLTON: My Lord, so they're submissions in relation to 14 15

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JUSTICE NICKLIN: Thank you.
Right.
BOLTON: My Lord, so they're submissions in relation to Ms Jaffray.
Then we have persons unknown, my Lord. The categories of persons unknown that an order is sought against at trial are, one, D28, those who are, without the consent of the first claimant entering or remaining on land and in buildings outlined in red on the plan at annex 1 to the amended claim form; those being land and buildings owned by the first claimant, MBR Acres, at Wyton, Huntingdon; two, D29, are those who are interfering without lawful excuse with the first claimant's staff and the second claimant's rights to

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claimant, entering or remaining on the land shaded in orange in the plan at annex 1 to the re—re—re amended claim form, which land measures 2.85 metres from the boundary outlined in red on the plan at annex 1 to the re—re—amended claim form, that boundary marking those land and buildings owned by the first claimant at MBR Acres, Wyton, Huntingdon, PE28 2DT, and only where the boundary runs adjacent to the highway known as the B1090, my Lord, that being the access land trespass category.

Each of these categories of persons unknown are capable of being served by the appropriate order for alternative service, as required by Cameron. The proposed method of service is to, one, affix large signs to the perimeter fence of the Wyton site at regular intervals, including at the front and sides of the site where protesters are known to congregate. Those signs will include a weblink and QR code to the injunction website; two, stationing signs along the highway in either direction of the Wyton site such that the signs will be visible on the approach to the Wyton site. Those signs will include a weblink and a QR code to the injunction website; and, three, affix a copy of the injunction order to the noticeboard that is stationed on the grass verge opposite the gateway of the Wyton site,

aimant's rights to 25 the grass verge opposite the g

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which noticeboard is currently in use for the purpose of The claimants will take the court through the evidence in relation to each category of persons unknown at trial. What follows is a brief summary only. As to D28, the specified pleaded case can be found at paragraphs 431 to 436 of the particulars of claim. In the persons unknown bundle, that's pages 340 to 345. The claimants on several incidents pleaded by way of cross-reference to the pleaded case against the named defendants and 12 incidents that relate purely to persons unknown are set out in those paragraphs. Examples of such incidents include 2 July 2022, persons unknown entered the driveway for the purpose of obstructing Mr Manning's vehicle as he tried to enter the Wyton site. The evidence in relation to this

the Wyton site. The evidence in relation to this incident can be found at the 20th witness statement of Susan Pressick at paragraph 287, persons unknown bundle, page 574, and the second witness statement of David Manning, paragraph 86, persons unknown bundle, page 992 and video 754; and, two, 27 June 2021, an incident of persons unknown who entered the driveway and threw and/or assisted in throwing metal barriers over the gate to the Wyton site. The evidence in relation to this incident can be found at the 20th witness statement

of Susan Pressick, paragraph 220, persons unknown bundle 515 to 517 and video 1003.

My Lord, we will obviously take the court through all the incidents concerning persons unknown and the video evidence to support it.

As to D29, the specified pleaded case can be found at paragraphs 437 to 466 of the particulars of claim. The claimants on several incidents plead the following.

On the 9 July 2021, persons unknown crowded onto the highway such that the highway was impassable and exit from the Wyton site impossible. The incident lasted for around one hour and 45 minutes. The evidence in relation to this incident can be found at the second witness statement of Mr Manning, paragraphs 50 to 55, Employee P, paragraph 17 to 23, Employee AA at paragraphs 23 to 29, Ms Read at paragraphs 34 to 43, Production Manager at paragraphs 24 to 32, Employee B at paragraphs 21 to 28 and Employee F at paragraphs 43 to 55, and videos 141, 814, 815, 829 and 830.

My Lord, they are persons unknown bundle page references 978 to 979, 1678 to 1679, 1301 to 1302, 1095 to 1097, 1131 to 1132, 1365 to 1366, 1435 to 1437.

A further incident is 20 November 2021, persons unknown obstructed and slow—walked along the highway for around 55 minutes whilst escorting Employee Q's car

along the highway. The evidence in relation to this incident can be found in Employee F's statement at paragraphs 144 to 153, Employee I's statement at paragraph 4, 41 to 44, Employee P's statement at paragraphs 89 to 93, Mr Markou's statement at 37 to 43, Employee G, paragraphs 43 to 59 and the 20th witness statement of Susan Pressick at 342. And in videos 451, 706, 794, 795, 796, 797, 798, 799 and 860. The page references are the persons unknown bundle pages 1464 to 1466, 1591, 1704 to 1705, 1059 to 1060, 1537 to 1540 and 596.

As to defendant 30, the specific pleaded case can be found in paragraphs 477 to 454 of the particulars of claim at pages 359 to 365. The claimants' claim is based on several incidents, again pleaded by cross—reference to the other pleaded incidents. Examples of such incidents include 11 August 2021, persons unknown constructed a barricade of dog crates at the gate to the Wyton site and obstructed vehicles by the first claimant's staff and members of the second claimant class as they sought to exit the Wyton site and join the highway.

The evidence in relation to this incident can be found in the Production Manager's witness statement at paragraph 44, Employee P's witness statement,

paragraphs 45 to 62, and Employee A's witness statement, paragraphs 45 to 51, and in videos 114, 16 and 117.

The 17 July incident, 17 July 2021, persons unknown prevented vehicles driven by the first claimant's staff and members of the second claimant class exiting the Wyton site and joining the highway. The evidence in relation to this incident can be found in Employee F's witness statement at paragraphs 65 to 72 and videos 25, 170, 827 and 828. Those page references in the persons unknown bundle are 1139, 1688 to 1691, 1260 to 1263 and 1442 to 1443.

As to D31, the specific pleaded case can be found at paragraphs 455 to 463 of the particulars of claim in the persons unknown bundle at pages 366 to 374. Again, the claimants' case is based on several incidents pleaded by way of cross—reference and 12 incidents that relate purely to persons unknown. Examples of those incidents include one on 5 May 2022, persons unknown attending the home address of Employee L, Employee K and David Manning and vandalising their property with spray—paint. The evidence in relation to these incidents can be found in the second witness statement of Mr Manning at paragraphs 70 to 78, the video at 187 and 704 and the witness statement of Employee L at paragraphs 28 to 44, and that's persons unknown bundle, pages 988 to 989,

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1658 to 1660 and 1276 to 1277.

A further incident is on 30 September 2022. Persons unknown threw an unidentified item at Employee A's car, causing the windscreen to break. The evidence in relation to this incident can be found in Employee A's witness statement at paragraphs 75 to 81 and videos 836 and 839. That happened, my Lord, obviously whilst Employee A was driving along the highway. That evidence can be found at pages 1276 to 1277 in the persons unknown bundle

As to D33, the specific pleaded case can be found at paragraphs 473 to 482 of the particulars of claim: persons unknown bundle, pages 379 to 384.

The claimants rely on nine incidents that relate purely to persons unknown. Examples of such incidents include but are not limited to, on 16 June 2022, a drone was flown at a height of 50 metres above the Wyton site. The evidence in relation to this incident can be found in the 20th witness statement of Susan Pressick at paragraph 331, page 589, in the persons unknown bundle.

Two, on 6 June 2022, a drone was flown at roof height over the Wyton site. The evidence in relation to this incident can be found in the 20th witness statement of Susan Pressick at paragraph 330, page 589 of the persons unknown bundle.

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So D36, the specific pleaded case can be found in paragraphs 531 to 536 of the particulars of claim. The claimants rely on several incidents pleaded by way of cross-reference and three incidents that relate purely to persons unknown. Examples of such incidents include but are not limited to, one, on 2 July 2022 persons unknown entered the access land for the purpose of obstructing Mr Manning's vehicle as he tried to enter the Wyton site. The evidence in relation to this incident can be found at the 20th witness statement of Susan Pressick at page 287, page 574 of the persons unknown bundle and at paragraph 86 of the second witness statement of Mr Manning, page 992 of the persons unknown bundle and video 754.

And on 17 July 2021, persons unknown prevented vehicles driven by the first claimant's staff and members of the second claimant class exiting the Wyton site and joining the highway. The evidence in relation to this incident can be found at paragraphs 65 to 72 of Employee F's witness statement and videos 25, 170, 827

Accordingly, my Lord, the claimant will say that there is evidence under each head of claim which makes out the causes of action the claimant relies upon and the claimant seeks judgment and a final injunction order

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against Mr Curtin, the 11th defendant, against 2 Ms Jaffray, the 20th defendant, and against the 28th, 3 29th, 30th, 31st, 33rd and 36th defendants, being all 4 categories of persons unknown.

> That order is in the form of the draft provided, my Lord, or alternatively in terms that the court thinks fit . The claimant also seeks orders for alternative service, again in the appropriate form, in relation to the various prohibitions which the claimant seeks from the court

MR JUSTICE NICKLIN: Where is the draft order, please, 11

12 Ms Bolton?

13 MS BOLTON: My Lord, the draft order ...

Bear with me. It was supposed to be attached to the particulars of claim but I think it's moved. (Pause).

MR JUSTICE NICKLIN: I'll tell you what. We're going to 16 17 have our break shortly --

18 MS BOLTON: It's the last thing I was going to take you to,

19 my Lord. I do apologise. It was attached to the 20 particulars of claim, but it's moved in the bundle and

2.1 I'm iust --

MR JUSTICE NICKLIN: It must have been updated since the --22

 $\label{eq:mspace} \mbox{MS BOLTON: Yes. I'm just checking because it's not ...}$ 2.3

2.4 MR JUSTICE NICKLIN: Don't worry. Let me know when we come

2.5 back after the break.

123

 $\ensuremath{\mathsf{MS}}$ BOLTON: It was originally one of the schedules to the 1 2 POCs but --3 MR JUSTICE NICKLIN: I know I've seen it in various forms

but I want to get just definitively what the order we're 5 aiming at for the purposes of --6

MS BOLTON: My Lord, indeed, and our case is pleaded as we understand that, one, the court has to, as part of its exercise, decide not just the appropriate relief but the exact terms of that relief. It is obviously pleaded as a case which gives the court that flexibility as to the terms. You will see when the draft materialises in a moment that it provides for an alternative service in square brackets at present because, again, depending on what the court orders, we accept that those terms will also change as to what it is the court requires us to

16 do. But, as you have heard in the opening, we have set 17 out all the things we can readily do for the purposes of

18 service

19 MR JUSTICE NICKLIN: Yes. On the alternative service, one 2.0 thing that I would like your team to do, please --21 there's no particular urgency in it, but it needs to be 2.2 something that we address at some point during the 23 trial, which is for each of the categories of person

2.4 unknown, I just want, as it were, a table telling me

2.5 what was the order granting permission to amend to bring

1	that category into the litigation , and I suspect that	1	the injunction prohibited. Short of the elusive
2	will be the same order which will then give permission	2	description of "car cruising" which of course at first
3	to serve the claim form by alternative means.	3	instance sounds like quite an enjoyable pastime but
4	In light of the McGivern judgment where there was	4	apparently it's not.
5	a failure to comply with the order, I just want to be	5	MS BOLTON: No, I believe it
6	clear about whether there is evidence of compliance with	6	MR CURTIN: Just for information, in the 22 months I've been
7	that order so as to be able to be clear that the steps	7	there $$ well, no, how long has the board been up?
8	are being taken, and then the date on which the claim	8	Maybe a year. I've yet to see a single human being
9	form was thereafter deemed served on the relevant	9	actually read that board. You said in reality what
10	category of persons unknown.	10	happens. It's ——
11	MS BOLTON: My Lord, yes.	11	MR JUSTICE NICKLIN: Well, Mr Curtin, the law has reached
12	MR JUSTICE NICKLIN: That's just so that I've got $$	12	the position where it doesn't matter whether anybody
13	MS BOLTON: Yes.	13	reads it or not. But it might become important later if
14	MR JUSTICE NICKLIN: It's important because we've reached $$	14	any individual person says he didn't or she didn't read
15	well, subject to the wrinkle in Dagenham, we've reached	15	it .
16	the position, in persons unknown, which is that,	16	MR CURTIN: I'm just making the point in general $$
17	providing the alternative service order has been sought	17	MR JUSTICE NICKLIN: I know you are.
18	and granted, then notwithstanding what the position is	18	MR CURTIN: $$ I've yet to see a single person read it.
19	in reality, the claim form is deemed served on the	19	They look at it and then they don't $$ I've yet to see
20	defendants.	20	someone read it.
21	MS BOLTON: Yes.	21	MR JUSTICE NICKLIN: Well, there we are.
22	MR JUSTICE NICKLIN: At that point the defendants become $$	22	Right. We'll have our break now so we'll come
23	the category of defendant becomes a defendant in the	23	back $$ is that all right with you, Ms Bolton?
24	proceedings and thereafter can be bound by any order the	24	MS BOLTON: My Lord, I think we have the bundle reference.
25	court makes and then you've got the Gammell principle	25	I do apologise. It was attached to the $$
	125		127
1	that brings them into the $$	1	MR JUSTICE NICKLIN: I'm sure I've seen it. I've definitely
2	MS BOLTON: Yes.	2	seen it in pre—reading but I can't now find it.
3	MR JUSTICE NICKLIN: At a subsequent point, if they aren't	3	I should put more tabs on things.
4	already in the They've either already done the act,	4	MS BOLTON: It's my fault, my Lord. I picked it up earlier,
5	in which case they're a defendant, or they do it in the	5	I put it on a Post—it note and then I rejigged the
6	future and they become a defendant because of the	6	Post—it note to somewhere where it's not very helpful to
7	Gammell principle.	7	me, so apologies.
8	MS BOLTON: Yes.	8	For Ms Jaffray's bundle, it's pages 50 to 57. For
9	MR JUSTICE NICKLIN: So it's an important, as it were,	9	Mr Curtin's bundle, it's pages 49 to 59. And for the
10	pitstop on the way to the court being satisfied that	10	persons unknown bundle, it's pages 431 to 441.
11	it's appropriate to make an order against these people.	11	MR JUSTICE NICKLIN: Thank you very much.
12	MS BOLTON: My Lord, indeed.	12	MR CURTIN: What's that?
13	My Lord, I should also just reiterate because	13	MR JUSTICE NICKLIN: That's the order that they're actually
14	•	14	asking the court to make against you, Mr Curtin.
	I appreciate it's been done differently and it's not in substitution of that service, but one of the additional		
15		15 16	MR CURTIN: Is there a pre—planned order you've already got
16	things, as I've just outlined, that the claimant will do		written out then? That's one you'll be sticking to? It
17	is put up notices but not notices that simply say,	17	will not depend on the evidence?
18	"Injunction, beware", but actually provide a QR code	18	MR JUSTICE NICKLIN: No, that's what Ms Bolton is going to
19	that from some distance can be scanned which provides	19	be asking for . I mean — she may have to rejig it if
20	that information.	20	something strange happens in the evidence but that's
21	MR JUSTICE NICKLIN: Somebody kindly sent me a picture of	21	her —— she's required to set out at the beginning what
22	a very fluorescent or reflective road sign in the	22	she's actually going to ask the court, in fairness to
23	West Midlands that told people helpfully that there was	23	you, so that you can focus on what she's asking. That's

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not a foregone conclusion, it's me that decides whether

that order is made and I will hear you and your

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an injunction granted, but tantalisingly left out any

details as to whether they might be a defendant or what

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	arguments as to whether you say either none of it should		see what's going on. I in more than happy to look at
2	be granted or you may have particular things to say	2	this at the end of the day.
3	about particular paragraphs. But that's a long way down	3	I'm sure that the parties will be reasonable about
4	the track. I'm just trying to get a focus on where	4	accommodating this but so that you, Mr Curtin and
5	things are. I'll get better at it as the trial goes on.	5	Ms Jaffray, know, the claimants have already been
6	I'll learn more where things are as we progress. But at	6	subject to orders that I've made in the way that this
7	the moment, because I've done general reading, I haven't	7	trial is being conducted which puts a significant burden
8	done the sort of marking—up that I would do as I do	8	on them. It's been done specifically to assist the two
9	during a trial.	9	of you. Be careful in terms of not asking for too much
10	MR CURTIN: Thank you, my Lord.	10	because you're already having this trial, as it were,
11	MS BOLTON: My Lord, it says "Further housekeeping matters"	11	altered from its normal course to reflect the fact that
12	after the break and I think there are some additional	12	you're litigants in person. There's a limit to how much
13	dates where Ms Jaffray or Mr Curtin may not be	13	I can impose restrictions or requirements on the
14	available, so I'll try to resolve that over the break.	14	claimants because it's not fair on them and it's
15	MR JUSTICE NICKLIN: Yes. Broadly speaking, I thought it	15	particularly not fair on their witnesses.
16	was something we would probably have to discuss together	16	Just in the way that I've said you can't expect the
17	because, from my understanding of what's being asked,	17	two of you to surrender your lives for five weeks and be
18	I'm not sure that it's going to work. I'll say this	18	at the beck and call of the court, neither can
19	because it may help the discussions you're going to have	19	I reasonably expect particularly witnesses who are not
20	in the break, if you are, which is it's entirely up to	20	parties to the litigation similarly to put their lives
21	Ms Jaffray and Mr Curtin which parts of the trial they	21	on hold. Fairness to them means they've got to have
22	attend. Obviously, when a witness comes that they want	22	a degree of certainty about when they're coming to give
23	to ask questions of that witness, they have to be here	23	their evidence. Okay?
24	to ask the question or be on the videolink.	24	MR CURTIN: Absolutely.
25	I've seen reference to a proposal that Ms Jaffray	25	MS BOLTON: My Lord, I've got the updated timetable, if
	129		131

and Mr Curtin might divide up the questioning of the

witnesses. That's fine but neither can represent the

ate as to whather you say sither name of it should

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3
         other. So, Mr Curtin, you can't represent Ms Jaffray
         and you can't ask questions of a witness on her behalf
 5
         and vice versa.
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     MR CURTIN: Yes, no, that was more based on a simple
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         conversation I had with her at dinner time. Why don't
 8
         we -- if she can't make any dates, why don't we do the --
 9
         if she knows she can't make a date, have a witness that
10
         she's not calling anyway --
11
     MR JUSTICE NICKLIN: Okay, that's fine. I'm sure that the
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         claimants will be reasonably accommodating in relation
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         to this but there's a limit to what they can do in terms
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of how they structure the witnesses. 15 MS BOLTON: My Lord, there is indeed, in particular 16 Ms Pressick who has already travelled for tomorrow and now we're being told Ms Jaffray may not be available tomorrow. She has a probation appointment, we've asked what time.

2.0 MR JUSTICE NICKLIN: I've been told it's 10.30 and it might be capable of being moved and it could be capable of 21 22 being moved to next week.

23 MS BOLTON: Ah. I'm being told stuff has happened since 24 I was updated.

MR JUSTICE NICKLIN: Fine. You have a discussion. Let's

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I can hand that up.

MR JUSTICE NICKLIN: Good. Thank you very much. (Handed). 2. 3 Right. We'll come back at 3.35 if that's all right.

what's going on I'm mare than hanny to look at

MS BOLTON: My Lord.

5 (3.18 pm)

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(A short break)

7 (3.33 pm)

MR JUSTICE NICKLIN: Right. Did you want to leave 8 9 housekeeping to the end of the day? I don't want to

10 unduly interrupt your submissions.

11 MS BOLTON: No, my Lord, I've concluded.

12 MR JUSTICE NICKLIN: Oh, good.

MS BOLTON: Apologies. That was what I --13

MR JUSTICE NICKLIN: That's fine. 14

MS BOLTON: Sorry, we had a discussion at the end over the 15 16 draft order and so I didn't actually finally say that --

17 apologies. My Lord, it's really matters of housekeeping

18 now.

2.4

19 MR JUSTICE NICKLIN: Yes.

2.0 MS BOLTON: We have Ms Pressick and Ms Jarrett scheduled for

21 tomorrow.

22 MR JUSTICE NICKLIN: Yes.

23 MS BOLTON: Ms Jaffray has indicated a problem next Tuesday.

Let me make sure I've got that right -- yes, next

2.5 Tuesday in the afternoon. She may have some questions

1	for Employee AF. What I've suggested to her over the	1	identified things you object to in your defence
2	adjournment is that she has a look at what they are,	2	statement or witness statement. If you can do something
3	because I think she still needs to go through that	3	similar, it doesn't have to be long, but it will help me
4	evidence, and lets us know because it may be something	4	tomorrow in understanding your argument $$
5	that we're content for her to deal with in submission,	5 i	MR CURTIN: Okay.
6	which removes the problem, otherwise we'll have to look	6 1	MR JUSTICE NICKLIN: $$ because we won't have a lot of tim
7	at it again and see what we can do.	7	and I need to understand immediately what your points
8	MR JUSTICE NICKLIN: One obvious answer is to advance	8	are, so it would help me $$ all right? $$ for that
9	witness AF to be the first witness on that day.	9	purpose.
10	MS BOLTON: It may be, but I'm not sure if she has questions	10 1	MR CURTIN: Yes, if we could have some $$ just a few minutes
11	for the other witnesses as well though. I think what it	11	now to help me, a technical point. For example, I was
12	may be, in all fairness, is that when she realised she	12	just going through it now and there was a point $$ you
13	needed to give notice, that she gave notice in a hurry,	13	said $29.1 -\!\!\!\!\!-$ and this would be a classic example. I've
14	so I've asked her to have a look at who she needs.	14	got no problem at all with her saying what she my
15	Again, if it's something quite straightforward, like,	15	case is that she's a lobbyist, she's a professional
16	"I just want to point out in that video that that is	16	lobbyist, her wages tomorrow will be partially paid by
17	happening", it may be something I'm happy to say,	17	Marshall Bioresources. She's funded by the industry.
18	"Please deal with that in submissions". I'm not going	18	She is, she is, and I'll be asking her. Hopefully I can
19	to jump up and say, "You didn't put that to the	19	ask her, "You are funded by these people, Marshall
20	witness", so it may resolve itself.	20	Bioresources?".
21	MR JUSTICE NICKLIN: Okay. Thank you.	21	But she $$ to read the statement, it looked like an
22	MS BOLTON: I think, apart from that —— there's obviously	22	expert witness. I saw, just for an example, in
23	a question mark over the timing for Ms Pressick tomorrow	23	a cursory glance, point 29.1, no dogs are being flown in
24	and Ms Jaffray, but it sounds like her appointment is	24	from America. If you shut MBR Acres down, they would
25	more flexible so hopefully if we get Ms Pressick up ——	25	have no way of getting hold of dogs. It would be
	133		135
1	MS JAFFRAY: Sorry, my appointment for tomorrow, probation	1	unbelievable because these $$ they say these drugs have
2	has said that it was sent in error so tomorrow I'm	2	to be tested. There is an argument to that. Legally as
3	available all day.	3	we stand today, that is the law, but that's why you have
4	MS BOLTON: Right. That resolves that problem then.	4	components to change the law. But, for example, that's
5	MR JUSTICE NICKLIN: Good. Thank you for that, Ms Jaffray.	5	wrong. 29.1, she doesn't know, she's got no idea.
6	MS BOLTON: Your Lordship will be delighted to know that the	6	I do.
7	Opus issue has been resolved as well $$	7	I know that $$ I've got the flight numbers of
8	MR JUSTICE NICKLIN: Good.	8	flights that were coming in from America, from
9	MS BOLTON: —— so we don't need to move court.	9	Marshall Bioresources, this year into this country. So
10	MR JUSTICE NICKLIN: Good. Well	10	it's just —— so she purports to know these things and
11	MS BOLTON: Yes, I appreciate my Lord's	11	she doesn't know. She talks about China, a policy of
12	MR JUSTICE NICKLIN: As I scour the building for an empty	12	China.
13	courtroom. Right, okay.	13	So I'd be really worried if there was a jury here
14	MS BOLTON: My Lord, I think for today, that's everything we	14	and she was —— and I hadn't done enough work, but you've
15	need to deal with.	15	said vivisection is not on trial so I'll have some
16	MR JUSTICE NICKLIN: All right. Now, Mr Curtin, you wanted	16	balance and she's only here for —— like Susan Pressick,
17	to address your objections to Ms Jarrett.	17	in part of her statement she gives a long sort of
18	MR CURTIN: Yes.	18	diatribe from the government minister, and if a jury was
19	MR JUSTICE NICKLIN: Can I ask you to do this overnight,	19	here, we'd be like, "Oh my God, what she misses out",
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and tonight I will do it -- it's very late -- the

Hansard debate. I know where it is, I can refer to it,

and I don't want to go into it tomorrow because you

won't let me go into the intricacies, but what she's

missed out is every single MP who has stood up at the

committee -- at the petition -- what was it? It was

which would help me: if you can distill your argument to

you object to about Ms Jarrett's evidence. It doesn't

have to be a long, detailed argument; just "I object to

the same way that you've gone through and you've

one page -- it can be bullet points, that's fine -- what

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1	a hearing and a committee. Every single MP that stood	1	ought to be cross—examined [as read]."
2	up was in opposition to the current situation and she	2	Now, you'll remember that Ms Bolton said the purpose
3	gave what I would call the La La Land speech, "No,	3	of Ms Jarrett's evidence and the way the claimants are
4	everything is okay". It was in direct opposition to the	4	relying upon it is to say that if the protest activities
5	rest of the debate.	5	forced the closure of MBR Acres, it will have very
6	So I'm worried $$ I'm going to work hard on it	6	serious repercussions for medical research in this
7	tonight and I'm not going to $$ so I'm not $$ if I can	7	country. Now, you may say there's quite a big "if" at
8	introduce some simple $$ for example, answer this one	8	the beginning of that sentence, which is, "If the
9	more question. It's the last question I'll ask. In	9	protest activities close down MBR Acres, then this will
L 0	America, at the start of this year, 1 January $$ and	10	follow", so that's one legal view, or a lawyer might
L1	Wendy Jarrett will know all about it $$ so it's not $$	11	take the view that that is a matter of argument in
L2	there's no rabbits out of the hat $$ the FDA, the	12	submission rather than it is evidence for the witness.
L3	Federal Drug Administration, passed a very important law	13	But it's that that is what $$ if you wanted to challenge
L4	in America, the FDA Modernization $Act\\ it's\ what\ we$	14	it, that would be the point.
L5	want to happen in this country $$ where they took out	15	So if you put to her that there are other sources of
L6	the legal requirements to do animal experiments.	16	animals that could be brought into the country for the
L7	I just wanted to know if you were aware of $$ so	17	purposes of $$ or reared here for the purposes of
L8	this presentation that she might give that animal	18	medical research, then the fact of MBR closing wouldn't
L9	experiments are absolutely critical , I just want to make	19	actually have the consequences that Ms Jarrett is
20	sure that that's challenged and that she is not the	20	suggesting. But that's an area that you might want to
21	authority.	21	explore with her on the basis that that's what the
22	MR JUSTICE NICKLIN: Well, you can challenge that.	22	claimants have said that her evidence is relevant to.
23	MR CURTIN: But I'm just me, a scruffy little man with a few	23	MR CURTIN: Okay. My fear is that I do such a bad job with
24	scruffy (inaudible) $$	24	the limited time. I've put myself into this position
25	MR JUSTICE NICKLIN: I know you may find the process of	25	now, I talked about $$ I've just had a kind of
	137		139
1	cross—examination tricky in the sense that the best	1	breakdown.
2	cross—examinations are always done when you have at your	2	MR JUSTICE NICKLIN: Look. Don't get worked up about it.
3	fingertips evidence which you can direct the witness'	3	Ms Jarrett is really quite at the periphery of this
4	attention to, which impeaches their answer. Now, I'm	4	case. Her evidence is not going to be particularly
5	not sure that you're going to have that.	5	important so don't beat yourself up about the importance
6	MR CURTIN: Isn't that rabbits out of the hat, ha ha?	6	of asking questions.
7	MR JUSTICE NICKLIN: Well, you're entitled —— you have	7	MR CURTIN: I do, yes, and here I had a golden opportunity,
8	given —— for example, you have talked about	8	but you wanted to stop it anyway, to put vivisection —
9	Ms Pressick's evidence to the House of Commons.	9	wherever she is $$

13 about what was said at that -- if she's brought up the 14 question of evidence to the committee, then you can ask 15 her questions about it. 16 MR CURTIN: Yes. For the sake of punctuality, I don't need 17 to go into -- I would like to, if we had three weeks, 18 but we can't --19 MR JUSTICE NICKLIN: No, it's fine. I'm just reminding myself of what my obligation is under CPR 3.1A. I am 2.0 21 22 "At any hearing where the court is taking evidence 23 [so it is] this may include ascertaining from the

may be able to give evidence or on which the witness

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MR JUSTICE NICKLIN: If you've got the relevant extracts

from Hansard, you're perfectly entitled to question her

MR CURTIN: Yes.

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MR CURTIN: Yes, yes.
 MR JUSTICE NICKLIN: Those are the issues I'm concerned

the MBR Acres employees --

MR JUSTICE NICKLIN: No, no, it's not that I -- don't

characterise me as trying to prevent you asking

questions. I'm trying to guide you as to what is

relevant. What I said on Monday was to sketch out the parameters of civil $\;$ litigation . I can't be, however

animals being used for medical research. That's not my

job. As a judge involved in civil proceedings, where

the question is have people been trespassing on the

land, have people been obstructing access to the facilities at the Wyton site, have people been harassing

much anybody would want me to be, somebody carrying out a public inquiry into MBR Acres, the whole question of

unrepresented party the matters about which the witness 24 MR JUSTICE NICKLI

with. That's why Ms Jarrett's evidence is right at the

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1	periphery of what's relevant because it's not the	1	claimant, MBR Acres $$ she does not work for MBR Acre
2	court's responsibility in this litigation to decide	2	She does not work for the first claimant. She works for
3	whether or not medical research should be carried out on	3	the $$ they've got the same boss.
4	animals. That's not my responsibility. Other people	4	MR JUSTICE NICKLIN: Well, she's given evidence about that
5	are responsible for making those decisions. Happily	5	in her 20th witness statement $$
6	it's not a responsibility I have.	6	MR CURTIN: She has.
7	MR CURTIN: Okay. That will help me. I can sit down now.	7	MR JUSTICE NICKLIN: so look at that first.
8	Just on that bullet point, I know now that tomorrow	8	MR CURTIN: Yes.
9	morning I won't get told off, "Mr Curtin, it's too late	9	MR JUSTICE NICKLIN: But if there remain points that you
10	for presenting the Hansard". And I don't ever propose	10	want to ask her about those paragraphs in her witness
11	to read anything in the Hansard, I would just like it	11	statement, that's the focus of your questions.
12	there to say, "Actually you've cherry—picked the	12	MR CURTIN: Okay.
13	Government's statement when the debate was" $$	13	MR JUSTICE NICKLIN: All right.
14	MR JUSTICE NICKLIN: That's fine and that's a perfectly	14	MR CURTIN: Okay. Thank you.
15	legitimate cross—examination question and it's not	15	MR JUSTICE NICKLIN: Right. 10.30 tomorrow then.
16	rabbit out of a hat. A rabbit out of a hat would be you	16	MS BOLTON: My Lord.
17	to say to Ms Jarrett, "Aha, Dr So—and—so is going to be	17	MR JUSTICE NICKLIN: Thank you very much.
18	coming next week and he or she is going to say the	18	(3.48 pm)
19	complete opposite". That is a rabbit out of the hat.	19	(The hearing adjourned until
20	You asking probing questions of Ms Jarrett about what	20	Thursday, 27 April 2023 at 10.30 am)
21	she said to the Select Committee or whatever it was.	21	,
22	That is legitimate cross—examination.	22	
23	MR CURTIN: Okay, thank you.	23	
24	MS BOLTON: My Lord, if it helps, the link to the full	24	
25	debate is actually in the witness statement. We're	25	
	141		143
1	and the second of the second o	1	INDEX
	not —— we acknowledge that it's only an extract.	2	INDEX
2	MR JUSTICE NICKLIN: Right. Well, that doesn't surprise me.	3	Housekeeping1
	MS BOLTON: The other thing I have said to Mr Curtin is, if	4	Housekeeping1
4 5	he has evidence of flights, then please provide them as soon as he can and we will look at them. If they're	5	Onesian submissions by MS BOLTON
	•	6	Opening submissions by MS BOLTON26
6	clearly evidence of flights in, well, I'm sure		
7	your Lordship is going to allow that in to be put to	7	
8	Ms Jarrett. So I've made that clear, that that's not an	8	
9	issue.	9	
10	MR JUSTICE NICKLIN: Mr Curtin, to assist me, this	10	
11	interchange that you have with me, with you telling me	11	
12	what you're concerned about a witness' evidence or the	12	
13	areas that you would like to explore, that's perfectly	13	
14	legitimate. It helps me do the job that I'm supposed to	14	
15	do because I can help $$ either tell you that's not	15	
16	a relevant issue for these proceedings, in which case	16	
17	you don't need to worry about it, or I can say, "Well,	17	
18	it is something and you might want to ask these sort of	18	
19	questions" or "These are the topics that you ought to be	19	
20	probing". That is one of the responsibilities I have to	20	
21	assist a litigant in person. But we'll deal with	21	
22	that ——	22	
23	MR CURTIN: Can I ask one more question then?	23	
24	MR JUSTICE NICKLIN: Go on.	24	
25	MR CURTIN: On Ms Pressick, it's my case that the first	25	

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