

# OPUS2

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

Day 1

April 24, 2023

Opus 2 - Official Court Reporters

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1 Monday, 24 April 2023  
 2 (10.30 am)  
 3 MR JUSTICE NICKLIN: Yes, Ms Bolton.  
 4 Housekeeping and other matters  
 5 MS BOLTON: My Lord, good morning. I appear on behalf of  
 6 the claimants in this matter with Ms Pratt. Mr Curtin  
 7 is here in person. Ms Jaffray cannot be here until  
 8 Wednesday, my Lord, because she has sentencing in the  
 9 criminal courts at present so she has to obviously be  
 10 there.  
 11 My Lord, there are a number of ---  
 12 MR JUSTICE NICKLIN: Which court is that, do you know?  
 13 MS BOLTON: It's Peterborough Magistrates' today. We don't  
 14 know what the court is tomorrow, my Lord. We can't see  
 15 anything on the list for tomorrow, but it may be that  
 16 it's a different court.  
 17 MR JUSTICE NICKLIN: It's not ideal to have somebody being  
 18 sentenced by two different courts on two different days,  
 19 but I'm sure there's a good reason for it.  
 20 MS BOLTON: All I know is --- I think the only notification  
 21 from the witnesses was for one day, so whether that's a  
 22 mistake, I don't know.  
 23 MR JUSTICE NICKLIN: All right. It doesn't matter. Just so  
 24 that you know, I don't know whether you were copied in,  
 25 but Ms Jaffray requested a link to enable her to

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1 participate on CVP, which has been provided to her.  
 2 We've not had a response, but she's used CVP before, not  
 3 without some difficulties on occasions, but she's been  
 4 provided with the link so I hope she'll be able to join  
 5 us as and when she can.  
 6 MS BOLTON: My Lord, yes. It seems to me that that may  
 7 cause some difficulties for her today. That's why  
 8 I flag it. It's, as I understand it, that she is in  
 9 court today.  
 10 MR JUSTICE NICKLIN: No, I understand that.  
 11 MS BOLTON: My Lord, there is also --- obviously late  
 12 evidence has been filed by Mr Curtin today. I had noted  
 13 originally it was an amendment to the defence but he  
 14 tells me it's a witness statement. My Lord, obviously  
 15 we haven't had a witness statement from Mr Curtin before  
 16 and I have explained to him the application he needs to  
 17 make and we've sent him by email the documents for  
 18 litigants in person as to how to make that application,  
 19 but it seems to me that's probably got to be dealt with  
 20 first today. Depending on your Lordship's decision ---  
 21 MR JUSTICE NICKLIN: Let me just be clear about what  
 22 I understand you're referring to. I've received this  
 23 morning Mr Curtin's what's described as "Defence  
 24 statement", which is a three-page document.  
 25 MS BOLTON: Yes.

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1 MR JUSTICE NICKLIN: Attached to that there's what's called  
 2 a "List of evidence" ---  
 3 MS BOLTON: Yes.  
 4 MR JUSTICE NICKLIN: --- which consists of various links,  
 5 some newspaper articles, some links to Facebook and  
 6 a Dropbox link referred to, "Undercover footage".  
 7 Unless there's a good reason for --- I understand that  
 8 you --- if you received this at a similar time to when  
 9 I did ---  
 10 MS BOLTON: Yes.  
 11 MR JUSTICE NICKLIN: --- obviously you're going to need time  
 12 to have a look at it. I don't think we need to spend  
 13 time doing that today. I think it's more profitable for  
 14 you to consider it with your team because Mr Curtin is  
 15 not scheduled to give his evidence until later in the  
 16 trial. So the parameters of his evidence we don't need  
 17 to decide today. It may be that, having reviewed the  
 18 material, you will focus your objections on some parts  
 19 of it or you may say that, actually, it doesn't cause  
 20 any problems. But let's see where we go with that  
 21 first.  
 22 MS BOLTON: Well, my Lord, it's quite important because it  
 23 raises a number of issues. At the moment Mr Curtin  
 24 doesn't have any witness evidence, he can't give oral  
 25 evidence, we don't have anything to cross-examine him on

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1 and he is limited at present to asking witnesses  
 2 questions on their witness statements, not advancing  
 3 positive case.  
 4 So it is quite important that that's dealt with  
 5 fairly soon in the proceedings because we don't know  
 6 what witnesses we need to call at the moment, which is  
 7 another issue, because your Lordship gave a direction  
 8 for the date for notification of that and otherwise the  
 9 witness evidence was to stand in chief, and the first  
 10 we've heard from Mr Curtin is at 2.45 this morning, so  
 11 it's quite relevant to whether they should be called and  
 12 what he can ask them.  
 13 We don't have --- if this is a witness statement,  
 14 then it is incredibly late ---  
 15 MR JUSTICE NICKLIN: I get that, but ---  
 16 MS BOLTON: --- and it does seem that it's rather affecting  
 17 the running of this trial as to whether we call  
 18 witnesses.  
 19 MR JUSTICE NICKLIN: Well, as I think I made clear last week  
 20 or the week before, it's very important that we don't  
 21 derail this trial on technicalities. It would be best  
 22 all round, not least for your clients, to deal with  
 23 matters on the merits, and because there is this  
 24 enormous case of persons unknown, I'm going to have to  
 25 look largely at evidence. Now, the extent to which

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1 witnesses are cross-examined is a different and  
 2 a separate topic, but just approaching this from  
 3 a pragmatic response, which is -- I've literally read  
 4 Mr Curtin's three-page document this morning. He is  
 5 largely indicating the extent to which he disputes --  
 6 let's just deal with his own case about what is alleged  
 7 against him. It would of course have been better if  
 8 Mr Curtin had filed a witness statement formally  
 9 disputing those things, but it can't come as a surprise  
 10 to anybody in these proceedings that Mr Curtin takes the  
 11 position that he -- nothing in this has surprised me and  
 12 I doubt it's surprised you. Essentially Mr Curtin says  
 13 as he's said throughout, which is, "I don't dispute  
 14 demonstrating but I do dispute that I've been doing  
 15 anything unlawful", in summary, and so his initial part  
 16 of his witness statement -- well, this document, his  
 17 defence statement, is essentially putting out or giving  
 18 that account.

19 Then there's the second aspect, the relevance of  
 20 which we could debate, which is, for example, he's  
 21 attached the decision of the court in Brescia from 2014.  
 22 Now, you may very well have some submissions to make on  
 23 the relevance of that but that's not going to detain us  
 24 very long, I suspect.

25 MS BOLTON: My Lord, I make a number of points. First of

1 all, if it is a witness statement, it needs to at least  
 2 contain a statement of truth if it's going to be  
 3 admitted.

4 MR JUSTICE NICKLIN: Right.

5 MS BOLTON: Secondly, it is on the first day of trial and  
 6 your Lordship was very clear to Mr Curtin at the PTR  
 7 that he had already missed the deadline, that there may  
 8 already be an objection to something being filed now,  
 9 and that he should do it within a week. He didn't do  
 10 that. He filed it at 2.45 this morning and obtaining  
 11 documents of that nature must have taken some time.  
 12 They couldn't have come at 2.45 this morning, so this is  
 13 very, very late in the day. It does mean time is needed  
 14 with my team. There are questions I need to ask my  
 15 team. There are Dropbox links which we haven't looked  
 16 at yet, we don't know what's in them --

17 MR JUSTICE NICKLIN: That's why I suggested what I did.

18 MS BOLTON: So we will need time for that first of all.

19 Secondly --

20 MR JUSTICE NICKLIN: Well, I don't think it need delay your  
 21 opening. My primary position is that we're going to  
 22 have to adopt a fairly pragmatic approach to this trial.  
 23 Unless you're asking me, on the basis of Mr Curtin's  
 24 alleged default, to grant some sort of default order  
 25 against him today, prevent him from giving evidence,

1 prevent him from asking any questions of any witnesses,  
 2 then it seems to me that -- if you're not asking for  
 3 that, then it's a question of how we manage the  
 4 material.

5 MS BOLTON: I think the point is, my Lord, that the court  
 6 has to decide whether they're going to permit him to do  
 7 that because he hasn't complied with any of the  
 8 directions. He is obliged to make a relief from  
 9 sanctions application and the court can only allow him  
 10 to give oral evidence if relief is given.

11 MR JUSTICE NICKLIN: Yes, I understand all of that. By far  
 12 and away the most important consideration that bears  
 13 upon that issue is the extent to which the lateness of  
 14 his evidence causes your clients prejudice in a real  
 15 sense. If it does, then I will listen to that and  
 16 I will make a decision on an informed basis, when you  
 17 and your team have had time to digest it and to marshal  
 18 considered arguments on the basis of that.

19 MS BOLTON: My Lord, I'm grateful.

20 MR JUSTICE NICKLIN: I really don't want to be a tribunal  
 21 that simply says, "You're in default, you're out of the  
 22 picture, that's the end of it", because it's not  
 23 ultimately likely to be productive of what would be  
 24 recognised as justice.

25 I recognise the importance of compliance with court

1 rules and I recognise that the authorities make clear  
 2 that those rules apply equally to litigants in person as  
 3 they do to represented parties, but I'm really anxious  
 4 what -- I think everybody here wants to avoid, at almost  
 5 all costs, anything that's likely to derail the trial.

6 MS BOLTON: My Lord, I agree. My Lord, I simply make the  
 7 point that you can't even hear summary judgment  
 8 applications until we know the outcome of that because,  
 9 obviously, that will have a bearing on whether we make  
 10 that application as to what is allowed in.

11 MR JUSTICE NICKLIN: Against Mr Curtin?

12 MS BOLTON: Yes.

13 MR JUSTICE NICKLIN: Right.

14 MS BOLTON: So, my Lord, it seems to me that today I can  
 15 deal with an opening --

16 MR JUSTICE NICKLIN: Well, you can deal with an opening.

17 I'm not going to say that you have in any way waived or  
 18 withdrawn what are, on their face, perfectly reasonable  
 19 complaints to make about Mr Curtin's failure to comply  
 20 with the court's orders --

21 MS BOLTON: My Lord.

22 MR JUSTICE NICKLIN: -- but what I want to look at -- and  
 23 we'll come back to it at a convenient point when you've  
 24 got the time. Fortunately we've got two days in this  
 25 week where we're not going to be sitting, so you're

1 going to get more time than would ordinarily be the case  
 2 and that's serendipitous for that purpose. But I'm  
 3 perfectly prepared to listen to the submissions that you  
 4 want to make on this, but I think the submissions  
 5 overall -- you'll be in a better position to make them  
 6 and I'll be in a better position to adjudicate upon them  
 7 when we can actually focus on what you say is real  
 8 prejudice and what should be the court's response to  
 9 Mr Curtin's non-compliance with the rules or orders.  
 10 MS BOLTON: My Lord, I'm grateful for that indication.  
 11 My Lord, the other point I raise -- and it's  
 12 a matter for your Lordship -- we're ready to open. I'm  
 13 conscious, though, that certainly this morning  
 14 Ms Jaffray cannot take part and whether that's fair --  
 15 MR JUSTICE NICKLIN: Are you sharing the transcripts with  
 16 them?  
 17 MS BOLTON: I'm not sure. (Pause)  
 18 My Lord, Ms Pratt makes a very good point.  
 19 Originally Tuesday and Wednesday were non-sitting days  
 20 because they were the days that Ms Jaffray was not here,  
 21 so I'm wondering if what we should be doing is rejigging  
 22 the timetable so that she can hear our opening and in  
 23 effect this should be the non-sitting day. It's just  
 24 unfortunate that she didn't tell us until after close of  
 25 business on Friday.

1 MR JUSTICE NICKLIN: There's perfect sense in that  
 2 suggestion. My hesitation about it is that there seems  
 3 to be a bit of uncertainty as to when Ms Jaffray may be  
 4 available to next attend.  
 5 MS BOLTON: She has emailed us and confirmed that she is  
 6 available after the first two days this week, so she's  
 7 available from Wednesday.  
 8 MR JUSTICE NICKLIN: From Wednesday?  
 9 MS BOLTON: Yes. She's made that clear, that she's  
 10 available from them.  
 11 MR JUSTICE NICKLIN: Is your preference to adjourn to  
 12 Wednesday?  
 13 MS BOLTON: My Lord, it is. I make a couple of points.  
 14 That is a point of fairness on Ms Jaffray as well.  
 15 MR JUSTICE NICKLIN: Yes.  
 16 MS BOLTON: Secondly, there is potential that, depending on  
 17 her sentence, we may not proceed against her anyway. It  
 18 depends on what the court decides. It might become  
 19 irrelevant --  
 20 MR JUSTICE NICKLIN: You'll be lucky if you find that out  
 21 immediately. What is she being charged with?  
 22 MS BOLTON: As I understand, it is for sentence, my Lord.  
 23 MR JUSTICE NICKLIN: Oh, it is for sentence. Right, okay.  
 24 MS BOLTON: So I'm not clear. I'm aware of some of the  
 25 charges but not all of them, so I'm not clear as to how

1 serious it is --  
 2 MR JUSTICE NICKLIN: Understood.  
 3 MS BOLTON: -- but it may be fairer on her in any event.  
 4 Also I will be, in my opening, referring to the case  
 5 against her, so that seems to me to be the fairest way.  
 6 I know that she's struggled with some of the documents  
 7 that are being sent to her electronically so it's  
 8 probably best that she does hear it.  
 9 MR JUSTICE NICKLIN: Yes.  
 10 MS BOLTON: It may also give -- whatever the outcome of any  
 11 application for certainly Mr Curtin, if I may just  
 12 highlight that it might be helpful to Mr Curtin if that  
 13 becomes a numbered document with a statement of truth  
 14 because then we're not into any technical issues and  
 15 it's purely the substance and the impact that we're  
 16 dealing with, because I appreciate they are matters that  
 17 Mr Curtin may not have appreciated. But if ultimately  
 18 this statement goes in and he's to be cross-examined on  
 19 it, it will certainly be very helpful if there are at  
 20 least numbered paragraphs for everybody.  
 21 My Lord, the pre-trial review order, Mr Curtin was  
 22 in court, but we haven't been able to serve it on him so  
 23 I do need your permission, my Lord, to give that to him  
 24 today in court. I would ask that we do that so he is  
 25 just aware what he should have done by now because

1 otherwise I'm going to be referring to something that,  
 2 whilst he heard you say what he needed to do, he doesn't  
 3 have a physical copy of.  
 4 MR JUSTICE NICKLIN: Mr Curtin, would it be helpful for you  
 5 to have a copy of this, the pre-trial order?  
 6 MR CURTIN: Yes, please.  
 7 MR JUSTICE NICKLIN: Okay. Fine. Very well. (Handed)  
 8 Right.  
 9 MS BOLTON: My Lord, I'm in your hands.  
 10 MR JUSTICE NICKLIN: Well, I think it's a perfectly sensible  
 11 suggestion and it will also give you the benefit of --  
 12 it will give you -- I imagine you've got 100 other  
 13 things to do as well, but you will be able to at least  
 14 consider with your team, having reflected on what  
 15 Mr Curtin has provided, whether it gives rise to any  
 16 particular prejudice that you want to bring to my  
 17 attention.  
 18 MS BOLTON: My Lord, also, if it's going to require any  
 19 further time, it allows us to look at the timetable and  
 20 deal with it that way, so I'm grateful, yes.  
 21 MR JUSTICE NICKLIN: All right.  
 22 Mr Curtin, you've heard what Ms Bolton has said.  
 23 She is making a complaint that what you've provided,  
 24 you've provided very late and the court operates on the  
 25 basis ordinarily that everybody, each litigant, whether

1 they're represented or unrepresented, must comply with  
2 the court's orders. You were already in default in  
3 providing your statement when I saw you at the pre-trial  
4 review. Providing it after what might be called the  
5 eleventh hour is possibly the latest that a litigant can  
6 leave it before providing the material.

7 Now, I want you to reflect upon a couple of things,  
8 please, because, depending on the approach that  
9 Ms Bolton takes, she's got every right to object to you  
10 having failed to comply with the orders because it  
11 threatens to disrupt the trial. So what you're going to  
12 need to consider are three particular things, please.

13 The first is, in order for it to be a witness statement,  
14 it has to have what's called a "statement of truth" on  
15 the bottom of it. If you look up "statement of truth"  
16 on the internet and you follow any of the Government  
17 links, gov.uk, it will take you to the Civil Procedure  
18 Rules.

19 What part is it, Ms Bolton?

20 MS BOLTON: It's 22, my Lord.

21 MR CURTIN: Is it similar to the handbook?

22 MS BOLTON: It's in the text of the PTR order.

23 MR JUSTICE NICKLIN: Ah. Good. Excellent. So it's in the  
24 text. Whereabouts in it, Ms Bolton?

25 MS BOLTON: We're just organising a copy, my Lord.

1 MR JUSTICE NICKLIN: You'll also see it at the bottom of  
2 every one of the claimant's witness statements. What it  
3 is is a form of wording which essentially says,  
4 "I confirm that the contents of my statement are true  
5 and that I'm aware that I might be prosecuted if I state  
6 anything I know to be untrue", words along that line.

7 MS BOLTON: Paragraph 10 of the PTR order.

8 MR JUSTICE NICKLIN: If you look at paragraph 10 in the  
9 order you've just been given, that will tell you what  
10 must be stated in order for your document to be  
11 a witness statement.

12 The other thing that Ms Bolton has pointed out --  
13 and it's a reasonable request, it's not a criticism of  
14 you. If you've not been involved in legal proceedings  
15 like these before, you wouldn't have been aware of the  
16 importance of it -- but you've set out narrative text in  
17 your document without paragraph numbers. It would be  
18 helpful if you could put paragraph numbers into it and  
19 then resend it with the paragraph numbers and with the  
20 statement of truth to Ms Bolton and her team.

21 That's not necessarily going to put an end to the  
22 objections that she's got but what she's going to do is  
23 consider what's in this document and consider whether it  
24 gives rise to any prejudice. That means puts her and  
25 her clients in difficulties which can't easily be

1 remedied, for example, if you were to have raised  
2 matters which she knows they could present evidence  
3 relating to which they weren't aware of prior to now  
4 because you've only sent this document in the last  
5 24 hours.

6 So she's going to think about that. Ms Bolton has  
7 proposed -- and I think it's a sensible proposal but  
8 this is your trial as well so I want to hear what you  
9 have to say about this -- which is that we were not  
10 going to sit two days this week because Ms Jaffray is in  
11 court elsewhere. We had thought that that was going to  
12 be Tuesday and Wednesday. It now appears she's in court  
13 today and tomorrow. So what Ms Bolton is proposing is  
14 that we don't sit today and tomorrow and that we sit on  
15 Wednesday. That will allow Ms Jaffray to be back. And  
16 the alternative would be that we go ahead today, but  
17 that's rather unsatisfactory because it's important that  
18 Ms Jaffray hears what Ms Bolton says in her opening  
19 speech insofar as it concerns her.

20 She could of course -- I could make a direction that  
21 she be provided with a transcript, but then that means  
22 she's going to have to spend time reading the transcript  
23 and it would be a lot easier if she were here listening  
24 to it as it's being given.

25 So what's your position on whether we should adjourn

1 today and come back on Wednesday to allow Ms Jaffray to  
2 be here?

3 MR CURTIN: Okay. First, I'd like to address you on the  
4 timing.

5 MR JUSTICE NICKLIN: Yes.

6 MR CURTIN: I'd ask you to believe what I say, that I've  
7 gone beyond here. Some of my traits you've gathered  
8 maybe can be a bit higgledy-piggledy, and I'm not  
9 defending myself. If this happened ten years ago,  
10 20 years ago, possibly a similar pattern would have  
11 happened, but I can't put it any other way.

12 To be honest, some of this case has triggered it.

13 I've sort of had very much a dark night of the soul sort  
14 of mental breakdown, a bit of one, I've had -- my dad  
15 died, I've had a lot of hatred and trolling due to this  
16 campaign ...

17 MR JUSTICE NICKLIN: Okay, Mr Curtin. Take a moment.

18 MR CURTIN: (Inaudible - overspeaking) but I'm not today a  
19 cheeky chappy. I don't want my wrists slapped. I would  
20 like some sort of general understanding and an  
21 acknowledgement that this is ridiculous. And that's why  
22 I did stay up til -- and I was working til quarter to  
23 3.00 last night because I realised it's -- and hopefully  
24 I've managed to just get in with the deadline.

25 MR JUSTICE NICKLIN: Well, you've missed more than one

1 deadline, Mr Curtin.  
 2 MR CURTIN: I have.  
 3 MR JUSTICE NICKLIN: Look, I appreciate the difficulties  
 4 that conducting litigation on your own presents. It's  
 5 difficult in ordinary cases. This is not an ordinary  
 6 case. I've tried to manage this case so that, so far as  
 7 possible, the case against you is clearly defined and it  
 8 enables you, so far as possible, to be shielded from the  
 9 more difficult aspects of this case, which are all to do  
 10 with the persons unknown litigation. But — and what we  
 11 will try and do is I will try and conduct the trial in  
 12 a way that will ensure that you understand what is  
 13 required of you and that you have a fair opportunity of  
 14 presenting your case and resisting or arguing against  
 15 the case being made against you.

16 Consistent with my role as a judge — I can't be  
 17 your advocate. I can only be somebody who, in discharge  
 18 of my independent function, points out the things that  
 19 you need to do or to suggest to you these are the things  
 20 that — based on my knowledge of your case, what you  
 21 need to, for example, be asking witnesses. That's one  
 22 of my obligations under CPR3.1(a), I think. Anyway, we  
 23 can all look at that.

24 But the important thing is for you not to become  
 25 overwhelmed. Set yourself tasks and, if you need time

1 to do things, you just need to ask me. If you don't  
 2 understand what's going on, you need to tell me. But  
 3 your side of the bargain is, when the court requires you  
 4 to do something, you must do it.

5 Now, we're going to not deal with the question of  
 6 what happens about your late witness statement today.  
 7 We're going to come back to that after Ms Bolton and her  
 8 team have had a chance to consider what you've actually  
 9 said in this document.

10 MR CURTIN: Yes.

11 MR JUSTICE NICKLIN: She may have some objections still  
 12 about the fact that it's late. You can't do anything  
 13 about that now. You need to correct the point about the  
 14 statement of truth in the document and the paragraph  
 15 numbers, but those are small things.

16 MR CURTIN: Yes.

17 MR JUSTICE NICKLIN: In relation to its lateness and the  
 18 fact you haven't complied with the court's orders,  
 19 there's nothing you can do to fix that at the moment.  
 20 Ms Bolton is quite right that you need to make an  
 21 application to me for relief from sanction, but I can  
 22 waive the requirement that you do it through an  
 23 application notice. In trial you can make various  
 24 applications that would ordinarily have to be made by  
 25 application notice. What attitude I ultimately take

1 about this is largely going to be guided by the extent  
 2 of the level of opposition or what the nature of the  
 3 application is from Ms Bolton's team about your  
 4 non-compliance with the order.

5 MR CURTIN: Yes.

6 MR JUSTICE NICKLIN: All right? So, so that you understand  
 7 what I need you to do over the next two days, assuming  
 8 that you don't object to us adjourning today and coming  
 9 back on Wednesday, is — one of the things that I need  
 10 you to do is to put the statement of truth on this  
 11 document and put paragraph numbers on it and send it to  
 12 Ms Bolton's solicitors and to the court; all right?

13 MR CURTIN: Okay.

14 MR JUSTICE NICKLIN: Now, let's just go back to the point  
 15 about are you happy for the case to be adjourned today  
 16 and for us to come back on Wednesday. I may be using  
 17 "happy" as not necessarily the perfect word, but are you  
 18 content that that's the best course?

19 MR CURTIN: I did feel like pinching myself we were actually  
 20 going to start this trial, so I've got some fear it's  
 21 a bit more long grass, a bit more long grass.

22 MR JUSTICE NICKLIN: No, no, it's perfectly understandable.  
 23 You probably know better than I do what Ms Jaffray's  
 24 position is. But she's not here today for perfectly  
 25 understandable reasons, because she's required in

1 a court elsewhere. She's going to be free on Wednesday.  
 2 The fairest thing — and I'd do the same for you if the  
 3 tables were turned. If you were required to be in  
 4 a court somewhere else, I wouldn't start without you  
 5 either or I certainly wouldn't want to start without you  
 6 unless there was a very good reason why we had to start  
 7 without you. And if we did start without you, I would  
 8 want to make sure you had a transcript of what was said  
 9 in your absence.

10 MR CURTIN: Yes, I obviously can't make any submissions on  
 11 behalf of Ms Jaffray.

12 MR JUSTICE NICKLIN: No, no, of course not.

13 MR CURTIN: I've got good lines of communication with her.  
 14 I'd be content to ask for the trial to go ahead today,  
 15 but only on the basis that I'm a friend of hers, I could  
 16 tell her exactly —

17 MR JUSTICE NICKLIN: No, no, that's no substitute for her  
 18 being here. She is ultimately, like you, going to be  
 19 responsible for conducting her own defence and, in order  
 20 to do that fairly, she needs to be here to understand  
 21 and to hear what's said against her.

22 MR CURTIN: Okay. Is there any chance of a — I was going  
 23 to ask for an adjournment of an hour today for you to  
 24 read the documents. I —

25 MR JUSTICE NICKLIN: No, because (inaudible — overspeaking).

1 It's not in your interests to deal with it today and, in  
 2 fairness to Ms Bolton, she's not in a position to deal  
 3 with it today --  
 4 MR CURTIN: Okay.  
 5 MR JUSTICE NICKLIN: -- and you're not really in a position  
 6 to ask her to because you've dumped this on her and her  
 7 team in the small hours of this morning, so she needs  
 8 time to think about what you've said. Happily, it's not  
 9 a very long document and I don't think it will take  
 10 Ms Bolton long to -- it certainly won't take her long to  
 11 read it. She may need to make some enquiries about the  
 12 things that you've said and there may be things that she  
 13 wants to tell me about, particular items of what she  
 14 will say is prejudice potentially, and then she may take  
 15 an attitude or may make a submission later this week,  
 16 which is that your failure to serve that document on  
 17 time is serious and it has serious consequences, which  
 18 she will outline, and then she may ask me to exclude  
 19 that evidence and then I'll have to decide it and I'll  
 20 hear what you say about that, I'll hear what she says  
 21 about that. But she's not in a position to make that  
 22 submission today and you're not really in a position, as  
 23 I've said, being the person who is in default of the  
 24 court's orders, to ask her to do that.  
 25 MR CURTIN: Yes. You made a point about you hoped my

1 defence -- you tried to make that so simple, and when  
 2 I go through the documents, I find my case -- that's not  
 3 what's overwhelming. I find it remarkably simple. It's  
 4 been very easy to go through the documents. It's been  
 5 kind of idiot-proof. D11 sticks out.  
 6 The complication for me sort of dawned on the last  
 7 hearing, when it became clear that I was the sort of  
 8 last man standing, along with Lisa, there was just the  
 9 two of us, and I was hoping to tag on the tails of --  
 10 MR JUSTICE NICKLIN: No, I appreciate that.  
 11 MR CURTIN: -- the barristers and it was like, "Oh, no", and  
 12 that's when it began to crunch me and that's when the  
 13 delay started. So --  
 14 MR JUSTICE NICKLIN: Okay.  
 15 MR CURTIN: Can I make one point? Can you just tell me --  
 16 I do feel nervous when I talk in that I just feel like  
 17 I want to sit down, but I genuinely would like the  
 18 answer to this, that if I had accepted it all -- it's  
 19 a hypothetical question -- and Lisa Jaffray, that would  
 20 leave this trial to go ahead only against persons  
 21 unknown and there would be no one in this court that  
 22 would be allowed to cross-examine witnesses, which  
 23 I found astounding. So would that be the case?  
 24 MR JUSTICE NICKLIN: Hmm--hmm.  
 25 MR CURTIN: What about my role, which was the original one?

1 My case is simple, but it does get very complicated  
 2 with -- I feel like I've got some part to play in the  
 3 persons unknown case and it would actually help the  
 4 court.  
 5 MR JUSTICE NICKLIN: Well, I'd have to hear what Ms Bolton  
 6 said about that, but the position is that the claim  
 7 against persons unknown has been -- well, we'll need to  
 8 go through and check the service provisions, but  
 9 assuming that the claim form has been served in  
 10 accordance with the alternative service order, then the  
 11 law says that the persons unknown in the category as  
 12 defined have been served and are therefore parties to  
 13 these proceedings. In theory, a whole bus-load of  
 14 people could turn up and say, "I'm a person unknown.  
 15 I want to make submissions". The reality is, in cases  
 16 like that, nobody does attend.  
 17 MR CURTIN: No.  
 18 MR JUSTICE NICKLIN: And so the court is left with the  
 19 position, which is unusual for civil litigation in this  
 20 country -- which is usually based on an adversarial  
 21 system, where one side comes along and makes allegations  
 22 and the other side says, "I accept that, but I deny  
 23 that" and "You shouldn't have that remedy for these  
 24 reasons". All of that is absent from the persons  
 25 unknown litigation process. It puts an enormous strain

1 on the judge in the litigation because it's my job to  
 2 make sure -- I don't have anybody helping me with  
 3 raising points in answer to the claimants' case. It's  
 4 all my job. And that puts a strain on judges, who are  
 5 not used to having to operate an adversarial system  
 6 where one side isn't present. But there we are. Those  
 7 are the challenges that I have to face.  
 8 MR CURTIN: Now, this leaves me with some nervousness but  
 9 I'd rather deal with it now than later on. My  
 10 default -- it's a serious one, but it's happened now.  
 11 I don't envisage -- I know a bit about how my dark  
 12 nights of the soul work. I'm up and ready for action.  
 13 But this sounds really terrible and I'm not being  
 14 cheeky.  
 15 For example, there's -- but none of my defence --  
 16 none of my defence is complicated, I don't see. There's  
 17 a witness that I have not been able to get hold of.  
 18 She's a veterinary surgeon and I don't know what she's  
 19 going to put in her statement, but she's someone who  
 20 we've relied on in the past for statements to say that  
 21 the conditions inside MBR are -- just to bring some  
 22 dispute into it's a happy place, it's a place of normal  
 23 dog welfare.  
 24 You know you talked about rabbits in the hat. I do  
 25 not -- you can bang me now, which you could do anyway.

1 There's no 6-foot rabbit — 6-foot white rabbit coming  
 2 out of any hat. My defence is simple. Can I be allowed  
 3 some very simple extra points to that witness statement  
 4 or are you telling me, "No, you've blown it and that is  
 5 your — you cannot bring anything else in apart from  
 6 what's there"? As long as it's not complicated, because  
 7 I was exhausted last night when I finally finished it,  
 8 and I know that's —  
 9 MR JUSTICE NICKLIN: Well, Mr Curtin, you're going to get an  
 10 opportunity to file the updated, with paragraph numbers.  
 11 I'm not encouraging you to add anything more to it  
 12 because that just makes the position worse because in  
 13 the sense that Ms Bolton is going to go away and think  
 14 about the document that you've sent her.  
 15 MR CURTIN: Yes.  
 16 MR JUSTICE NICKLIN: If you've got any further points that  
 17 you think you want to raise by way of evidence, you need  
 18 to tell Ms Bolton and her team straightaway.  
 19 MR CURTIN: Yes.  
 20 MR JUSTICE NICKLIN: I'm not saying that she — and the more  
 21 complicated they are and the more unexpected they are,  
 22 the greater the argument that you're likely to be met  
 23 with, which is, "It's too late to be raising these  
 24 points", because if they're things that could have been  
 25 investigated but haven't been, you're almost — I'm not

1 making a decision, but I can tell you that you'll face  
 2 an uphill struggle to be permitted to advance a case  
 3 like that because it causes an unfairness to the  
 4 claimants.  
 5 MR CURTIN: Yes.  
 6 MR JUSTICE NICKLIN: Now, I don't want you to spend time  
 7 because I think ultimately it's not likely to be time  
 8 that's going to profit you. It is highly unlikely that  
 9 any evidence from a veterinary practitioner about the  
 10 conditions inside MBR Acres is going to be relevant for  
 11 the litigation that I have to deal with.  
 12 MR CURTIN: I expect in some — I would have — I know  
 13 you're going to stop — it's not going to be MBR's  
 14 vivisection on trial. I'm expecting that. But that's  
 15 why I brought in the — my friend of mine in that  
 16 I am — I can't — I've used it in that, I am disgusted,  
 17 and my disgust about how MBR treats dogs is a common  
 18 point of view.  
 19 MR JUSTICE NICKLIN: Yes, but the law works in your favour  
 20 in this respect in this case because the law of protest  
 21 and the Article 10 right that underpins protest doesn't  
 22 require somebody who protests against somebody to be  
 23 able to prove in a court of law that they are right to  
 24 think what they think. The law would be weak or freedom  
 25 of expression would be weakened if the law required

1 everybody to reach and express their opinions on the  
 2 basis of rigorous scientific analysis and fair-minded  
 3 assessment and a search for evidence and conclusions  
 4 drawn on it. The law doesn't require that.  
 5 All the law requires is that you protest honestly  
 6 and you're entitled to express your concerns about it,  
 7 even if they are entirely misplaced. The law doesn't  
 8 stop people from expressing wrong-headed opinions. That  
 9 would be a bad step for the law to do that and it  
 10 doesn't. So you're not required to show that you're  
 11 right in your protest belief about the activities of the  
 12 claimants. The law is on your side to that extent.  
 13 What the law won't — parts company is a protest  
 14 right doesn't give you the right to trespass on people's  
 15 land. It doesn't give you the right to damage their  
 16 property. It doesn't give you the right to obstruct  
 17 their employees or intimidate their employees going to  
 18 and from their workplace.  
 19 MR CURTIN: Absolutely.  
 20 MR JUSTICE NICKLIN: That is, in a nutshell, what this case  
 21 is about. It's about the conflict between the  
 22 protesters' rights to protest about what they regard —  
 23 their deep-seated convictions about what is wrong, they  
 24 believe, about what's taking place at MBR Acres, but on  
 25 the other side, the claimants' right, as a lawful

1 company, carrying out a lawful business, to go about  
 2 their business and not have their employees intimidated,  
 3 obstructed and their property damaged and their property  
 4 trespassed upon. It's as simple as that.  
 5 MR CURTIN: (Inaudible — overspeaking) to balance the  
 6 statement of Wendy Jarrett. They are bringing Wendy  
 7 Jarrett. She appears to appear like an expert witness.  
 8 MR JUSTICE NICKLIN: Well, I haven't given permission for  
 9 any expert evidence and Ms Bolton will have to persuade  
 10 me that that evidence is (a) admissible, and she'll have  
 11 heard what I've said. Just as it's irrelevant for you  
 12 to prove that your opinions are right, it's just as  
 13 irrelevant for the claimants to seek to prove that your  
 14 opinions are wrong. The court is not going to  
 15 adjudicate on either of those issues.  
 16 MR CURTIN: Okay. They're not?  
 17 MR JUSTICE NICKLIN: No.  
 18 MR CURTIN: So when we deal with Wendy Jarrett —  
 19 MR JUSTICE NICKLIN: I don't — you can take it, Mr Curtin,  
 20 that you're objecting to Ms Jarrett's evidence. As I've  
 21 said, Ms Bolton does not have permission for that  
 22 evidence in an expert context and I struggle at the  
 23 moment to see the relevance of it.  
 24 MR CURTIN: Okay. Good. I'll sit down then. Again,  
 25 I apologise to everyone, but in this case — my sister



1 explained to me the other day, take ten seconds. I've  
 2 got some bad habits and it's like they're all -- they're  
 3 rolled into one.  
 4 MR JUSTICE NICKLIN: Well, Mr Curtin, one relevant  
 5 consideration that I have to consider at any question of  
 6 relief from sanction -- that's the court's term for, as  
 7 it were, giving you permission to rely upon your witness  
 8 statement notwithstanding that it's come late -- one of  
 9 the factors the court takes into account and must  
 10 consider is the reason why there has been a default.  
 11 Now, you've told me a little bit about that today but if  
 12 you want to tell me more about that, you might need to  
 13 write it down in a separate witness statement to explain  
 14 what difficulties you've been under and why it is you  
 15 didn't comply with the court's deadline.  
 16 MR CURTIN: Okay.  
 17 MR JUSTICE NICKLIN: All right? Give some thought to that  
 18 because it is an important consideration, and if you  
 19 want to rely upon your own difficulties -- you mentioned  
 20 your father's death, for example -- or that you've  
 21 struggled with preparing for this case, then just  
 22 explain that to me. All right?  
 23 MR CURTIN: Thank you.  
 24 MR JUSTICE NICKLIN: Right. Ms Bolton, is that about as far  
 25 as we can take it today, is it?

1 MS BOLTON: My Lord, it is. If I may just pick up on  
 2 a couple of things because it may be of assistance to  
 3 Mr Curtin. He said if he had taken a deal. First of  
 4 all -- because I think your Lordship has indicated to  
 5 Mr Curtin that this isn't a trial about people's beliefs  
 6 and indeed it's not, and my concern is that some of what  
 7 is wanted to be asked to witnesses is actually to do  
 8 with those beliefs and I'm not sure that Mr Curtin  
 9 appreciates that won't be relevant points to put to the  
 10 witnesses or that they would be -- that the court is  
 11 likely to find them obliged to answer. What I wouldn't  
 12 want him to do is to put himself through a trial where  
 13 he would otherwise have accepted a deal because he  
 14 didn't appreciate that this is not the time for those  
 15 political statements and those beliefs. That's not what  
 16 happens at trial.  
 17 So I simply in court make that clear to Mr Curtin  
 18 because, obviously, the claimant is -- I looked at his  
 19 defence. His defence did indicate he was prepared to  
 20 accept the injunction that the court ordered, but,  
 21 unfortunately, we've had no further progress with him.  
 22 So he should be clear that if he is struggling and that  
 23 was his intention, to put questions of that nature to  
 24 the witnesses, that he may still want to think about  
 25 whether he takes the claimants' offer because the

1 claimant hasn't withdrawn its offer. So I just make that  
 2 as a point of assistance.  
 3 My Lord, the other thing is whilst the position with  
 4 witnesses and evidence is up in the air, may I ask that  
 5 Mr Hardy, Mr Jacklin and Mr Markou also give their  
 6 evidence by videolink because, one, they are needed at  
 7 the claimants' premises and, two, we simply don't know  
 8 if they're going to be called, when they're going to be  
 9 called, whether there's any relevant questions for them.  
 10 So I would ask -- the others are giving evidence by  
 11 videolink --  
 12 MR JUSTICE NICKLIN: Yes, I'm largely happy with that, but  
 13 I don't have Ms Jaffray here. There are disadvantages  
 14 with videolinks and I'm not saying that I'm giving my --  
 15 as it were, I'm making a ruling now that they can. What  
 16 I'll say so that everybody hears, Mr Curtin as well, is  
 17 that I'm broadly sympathetic to that. Certainly from my  
 18 point of view, I'm happy with that as long as the  
 19 necessary arrangements are made at the remote end that  
 20 all of the relevant documents are there and somebody is  
 21 there to monitor and ensure that everything operates as  
 22 it should.  
 23 My only reservation is the litigants are going to  
 24 have to deal partly in this case with -- on a day-to-day  
 25 experience and their ability to marshal their arguments

1 at a point that's divorced from the event may be not as  
 2 good as legally trained people.  
 3 MS BOLTON: Yes.  
 4 MR JUSTICE NICKLIN: So I will give them the opportunity to  
 5 make any submissions they want to about requiring the  
 6 witnesses' attendance, but I am absolutely clear that  
 7 I don't want them to be inconvenienced to the extent  
 8 that they're having to come down to court to be on  
 9 standby. That's not an option. Even if I were to be  
 10 persuaded that one or other of them ought to be required  
 11 to attend, we will make the necessary arrangements in  
 12 the timetable for that person to come. But that will be  
 13 after I've heard submissions and, as it were, I've been  
 14 persuaded that my preliminary view, which is it's  
 15 acceptable for them to give their evidence by videolink,  
 16 is, for whatever reason, I'm persuaded by one or other  
 17 of the defendants that I should take the course of  
 18 requiring the witness to attend.  
 19 MS BOLTON: My Lord, the witnesses I'm talking about are  
 20 those that are not primarily covered by that order, so  
 21 the anonymity --  
 22 MR JUSTICE NICKLIN: No, I know that. You're talking about  
 23 routine videolink evidence, which is the one that we're  
 24 all familiar with.  
 25 MS BOLTON: Yes. I believe Ms Pressick will still be

1 attending, my Lord. Regarding Ms Jarrett, I will only  
 2 be seeking to rely upon Ms Jarrett for impact, not for  
 3 expertise. I just make that very clear.  
 4 MR JUSTICE NICKLIN: Right. Well, you've heard what I've  
 5 said. I'll need some persuading. Anything she wants to  
 6 opine about research on animals is irrelevant. She can  
 7 talk about the impact on her of -- does she go to and  
 8 from?  
 9 MS BOLTON: No, my Lord, the impact in respect of if the  
 10 claimant had closed, that's --  
 11 MR JUSTICE NICKLIN: Why is that relevant?  
 12 MS BOLTON: Well, it's relevant, my Lord, because it's  
 13 relevant to your discretion on granting an injunction.  
 14 The impact is going to be relevant to these proceedings.  
 15 That's the limit. I'm certainly not looking to get into  
 16 a debate over what is or what isn't permitted to be  
 17 tested without first -- proceed to clinical trials  
 18 without being tested on animals.  
 19 MR JUSTICE NICKLIN: Let's just test that submission  
 20 because, if it were right and you could bring evidence  
 21 and say, "We're entitled to bring this evidence about  
 22 what the consequence would be if this facility closed  
 23 down", I think that's right -- even if it were relevant  
 24 to my discretion, I think it would be right at the  
 25 periphery of it.

1 But if it's admissible, relevant evidence on that  
 2 question of discretion, then it would have to be  
 3 admissible and relevant for the defendants. So if they  
 4 wanted to call a battery of experts who wanted to come  
 5 along and say, "In fact, animal testing is moving along  
 6 and it's only a matter of time before the legislation  
 7 will change and so actually the impact of this protest  
 8 carrying out or the scope of an injunction the court may  
 9 grant wouldn't have the effect that Ms Jarrett is  
 10 suggesting at all", I just -- I regard that as so far  
 11 away from the issues I have to decide as to open up an  
 12 issue that I don't -- I mean, purely on case management  
 13 grounds I would be inclined to be reluctant to go into  
 14 it because it's a one-sided argument about the merits of  
 15 animal testing and that's not what the court is  
 16 adjudicating upon.  
 17 MS BOLTON: Well, my Lord, I make the point it did feature  
 18 in people's defences, that they were going to bring that  
 19 evidence and they could have brought that evidence and  
 20 they haven't, so in all fairness to the claimants, it  
 21 would be probably unwise of them not to have provided  
 22 the evidence they have. But my position is that, as  
 23 things stand at present, the only thing it can be  
 24 relevant to is impact if the premises were to close.  
 25 I make that clear. But that's why Ms Jarrett's evidence

1 is in, because that was the position taken in some of  
 2 the defences, that they would be adducing that evidence.  
 3 MR JUSTICE NICKLIN: Right. Okay. Well, we'll look it up.  
 4 But I'm not ...  
 5 MS BOLTON: Mr Curtin, do you want to say something?  
 6 MR CURTIN: You are able to do your job. I just ask for  
 7 some sort of -- can I call it common sense, that we're  
 8 not dealing with a potato factory. It is a place of  
 9 high emotion. The reason I get passionate and very,  
 10 very angry there sometimes for things like, you know, at  
 11 the weekend, the dogs are left from 11.00 am to 7.00 am  
 12 the next morning.  
 13 MR JUSTICE NICKLIN: Okay, Mr Curtin, I don't want to --  
 14 MR CURTIN: So I would want to ask the workers --  
 15 MR JUSTICE NICKLIN: I don't think your honesty of belief is  
 16 going to be challenged in these proceedings. I don't  
 17 think the sincerity with which you hold your opposition  
 18 to what happens at MBR Acres will be challenged. You  
 19 won't need to prove it.  
 20 MR CURTIN: But I would want the workers to -- I would want  
 21 to guide the workers, "Do you understand the level of --  
 22 have you any ..." -- because their statements are,  
 23 "Everything's fine. It's a totally non-dog breeding  
 24 centre, with (inaudible)". So when they're talking  
 25 about being frightened of being shouted at, have they

1 got any understanding of how controversial the place  
 2 they're working in is?  
 3 MR JUSTICE NICKLIN: Well, Mr Curtin, I think you need to  
 4 understand that the parameters of this litigation are  
 5 not going to dwell, even if they're permitted at all, on  
 6 the question as to whether the employees that work for  
 7 MBR Acres understand these things, whether they ought to  
 8 think about whether they ought to be working there.  
 9 It's not part of your case or your defence -- it's not  
 10 a defence for you to try and persuade any of the  
 11 employees about whether they ought to reflect on their  
 12 employment choices. That's not the purpose of asking  
 13 these witnesses questions.  
 14 MR CURTIN: Yes, but --  
 15 MR JUSTICE NICKLIN: They are entitled to go to and from  
 16 their workplace, the law says, without being subject to  
 17 obstruction or intimidation or harassment.  
 18 MR CURTIN: Yes, I understand that.  
 19 MR JUSTICE NICKLIN: That really is the point. So it  
 20 doesn't matter what -- largely, for the purpose of the  
 21 civil litigation, and so that I'm not misunderstood, I'm  
 22 not saying that it's not important in the wider context,  
 23 but in this litigation, what takes place at MBR Acres is  
 24 relevant only because it is what is the source of or  
 25 gives rise to the sincerely held protest beliefs of

1 those who have attended and protested over the years.  
 2 But that's the limit of it. Just as much as you aren't  
 3 required — the court is not going to require you to  
 4 demonstrate your bona fides in your protest belief, it  
 5 is just as much irrelevant to enquire as to whether or  
 6 not the employees are concerned about the job they do.  
 7 That's not relevant.  
 8 MR CURTIN: Okay. One more. A hypothetical example, then.  
 9 It would be my case to the security guard, say  
 10 Mr Manning, the boss of security — he knows who comes  
 11 in at those gates. It's his job. What happens at  
 12 4 o'clock, when the workers leave? "I suppose you know,  
 13 security guard, is there a worker on site who is able to  
 14 deal with an emergency?". It's a puppy factory.  
 15 Puppies are being bred all the time. Is there anyone on  
 16 site — or is it — it's my case that it's just  
 17 security, so not to go into any — so that type of —  
 18 MR JUSTICE NICKLIN: I can't see what the relevance of that  
 19 question would be.  
 20 MR CURTIN: It would go to the reason why there's people  
 21 going outside, going ... because —  
 22 MR JUSTICE NICKLIN: But you don't have to prove that you're  
 23 right. That's not what protesters require — the law  
 24 doesn't require protesters to prove that they are right.  
 25 In some areas that attract the most serious conflict

1 between people's beliefs, it would be impossible to  
 2 prove who is right because it's about what you believe.  
 3 MR CURTIN: But would that be a harmful question or answer  
 4 to ask Mr Manning? At 4 o'clock, or on a Saturday at  
 5 11 o'clock, when the workers appear to leave, "Are there  
 6 just security guards on site?". I can't see the harm of  
 7 that type of question. That's not an exploration into  
 8 the —  
 9 MR JUSTICE NICKLIN: Okay. It's just not relevant,  
 10 Mr Curtin. The important thing for you to understand is  
 11 that the court is not carrying out a public inquiry —  
 12 MR CURTIN: I understand that.  
 13 MR JUSTICE NICKLIN: — into MBR Acres, just as much as it's  
 14 not carrying out a public inquiry into the protesters.  
 15 The limits of the litigation are really quite simple,  
 16 which is, in your case, a series of allegations have  
 17 been made against you about your protest activities and  
 18 it being alleged that on occasions you have been guilty  
 19 of obstructing access or vehicles and that you have  
 20 trespassed on land. Those are the allegations that are  
 21 made against you. They're set out in the particulars of  
 22 claim that are relevant to you.  
 23 What the court is going to be adjudicating upon is,  
 24 one, whether the claimants have demonstrated, by their  
 25 evidence, that you did that and then, number two,

1 assuming that they prove that to be right, assuming that  
 2 they persuade me that, on the balance of probabilities,  
 3 on the evidence that's produced in the trial and taking  
 4 into account your evidence as well, whether I conclude  
 5 that you have in fact on one or more occasions  
 6 obstructed vehicles, obstructed access to the land,  
 7 trespassed on the land, I will then make the findings as  
 8 to how many times that took place and then I'll consider  
 9 if it's — Ms Bolton's case is that you've done that in  
 10 the past and you should be restrained from doing it in  
 11 the future.  
 12 So the second part of the trial process that we will  
 13 go through is Ms Bolton's arguments, assuming that she's  
 14 right in demonstrating that you've been guilty of some  
 15 civil wrong in the past, whether you should be the  
 16 subject of an injunction going forward. Those are the  
 17 two fundamental aspects of the trial.  
 18 MR CURTIN: Yes.  
 19 MR JUSTICE NICKLIN: You'll notice in that that none of that  
 20 investigates what's going on at MBR Acres and it doesn't  
 21 involve investigating what people are doing at  
 22 Camp Beagle. It only concerns individual defendants and  
 23 what the allegations and the evidence is as to what they  
 24 are alleged to have done. That's it.  
 25 MR CURTIN: But Wendy Jarrett's statement and

1 Susan Pressick's — especially Wendy Jarrett's is  
 2 absolutely full of La La Land comments about the  
 3 situation; "There's absolutely nothing wrong.  
 4 Everything is fine. It's perfectly regulated".  
 5 I understand — it's never been my point that —  
 6 unfortunately it's legal for this company to leave the  
 7 dogs from 11.00 am to 7.00 am because it's the  
 8 Home Office. No one else in the world could do it.  
 9 I won't be contesting that — I would have put it down  
 10 by now — categorical breaking the law, no. Let's see  
 11 how we get on.  
 12 But that's the sort of question that I was thinking  
 13 of asking Mr Manning; "You, as a security guard, do you  
 14 know who comes in?". I've been there 20 months.  
 15 There's been one overnight vet call which he would be  
 16 able to help the court, and that's remarkable.  
 17 MR JUSTICE NICKLIN: Okay. Mr Curtin, I've made clear that  
 18 I don't think that's relevant. If you want to think  
 19 about it more because I'm not making a decision today —  
 20 if you want to think about it and advance an argument as  
 21 to why it's relevant to the issues I have to decide,  
 22 then I'll listen to what you say about it and then I'll  
 23 make a decision. But at the moment I have difficulty in  
 24 seeing what the relevance of that evidence would be,  
 25 and, therefore, because it's my job to control the

1 evidence and the questions of witnesses strictly to that  
 2 which is relevant to the issues the court has to decide,  
 3 if you were to ask those questions, almost certainly  
 4 Ms Bolton will object and, if I don't think that you've  
 5 demonstrated that the evidence or the answer to the  
 6 question is going to be relevant to the issues I have to  
 7 decide, then I will tell you that you can't ask the  
 8 question.  
 9 MR CURTIN: Okay. Well, on one hand I would ask you now to  
 10 strike out Wendy Jarrett's statement because of its  
 11 flowery language about how great everything is there.  
 12 Otherwise justice is not being seen to be done.  
 13 MR JUSTICE NICKLIN: Well, we'll look at -- I don't want you  
 14 to be under the burden of having to argue every point  
 15 that comes up in the trial at the beginning of the  
 16 trial.  
 17 MR CURTIN: Yes.  
 18 MR JUSTICE NICKLIN: The sensible time for you to raise your  
 19 argument about Ms Jarrett -- and what you need to do is  
 20 sit down with her statement, go through it, marshal  
 21 your argument about why you say the relevant paragraphs  
 22 of it are irrelevant to the issues the court has to  
 23 decide and I will hear those arguments before we get to  
 24 the stage of Ms Jarrett's evidence; all right? But you  
 25 will have a lot to do during the trial so it's about

1 managing your time. So focus on -- look at the  
 2 timetable you've been given so that you know what  
 3 witnesses are coming on which day and then you can focus  
 4 your energies on raising any points you want to, for  
 5 example about Ms Jarrett, on the day on which she's  
 6 going to be giving evidence.  
 7 Ms Bolton now knows that you're going to take an  
 8 objection to that and she's given me an indication now  
 9 what her position is likely to be on that and we will  
 10 have the argument on that day and I'll make a decision  
 11 about it.  
 12 MR CURTIN: Yes, because mine is a simple objection, that if  
 13 I can't ask it, she can't be allowed in the dock to give  
 14 this La La Land statement about all the animal  
 15 experiments if I can't --  
 16 MR JUSTICE NICKLIN: Well, Ms Bolton has a point, which is,  
 17 if you wanted to run that argument, then you needed to  
 18 provide your evidence, as it were, to the counterpoint,  
 19 which may be why you were talking about a vet. But  
 20 I don't know. I mean, it's very late to be getting that  
 21 evidence now.  
 22 MR CURTIN: It is.  
 23 MR JUSTICE NICKLIN: But, you know, if you do get it and you  
 24 can --  
 25 MR CURTIN: If it's simple and I'm able to persuade you --

1 MR JUSTICE NICKLIN: And you're able to persuade me, then  
 2 fine.  
 3 MR CURTIN: (Inaudible -- overspeaking) case, where I've  
 4 stumbled, and this is a catastrophe, what I've done this  
 5 time is with the written word. I've come to every  
 6 single hearing and I'm engaged in this case and I will  
 7 continue to be.  
 8 MR JUSTICE NICKLIN: All right. Okay.  
 9 Anything more we need to deal with today?  
 10 MS BOLTON: My Lord, no.  
 11 MR JUSTICE NICKLIN: Okay. Can I give you advance warning  
 12 of a little bit of work that I'm going to be needing you  
 13 to do on the persons unknown case --  
 14 MS BOLTON: My Lord, yes.  
 15 MR JUSTICE NICKLIN: -- which is that Ms Pressick's various  
 16 witness statements have, as a fairly regular feature,  
 17 updated me on each occasion as to what has happened  
 18 since the last hearing. That is evidence which is  
 19 likely to have its bearing on persons unknown because  
 20 it's essentially a recitation of what various events  
 21 have happened and there are a series of what I'll call  
 22 "persons unknown" who are said to have engaged in that.  
 23 I want a bit more, as it were, focus on identifying, as  
 24 it were, these people.  
 25 So what I want is -- so take, let's say,

1 hypothetically, Ms Pressick's third witness statement  
 2 that says, in paragraphs 39 to 66 -- sets out two months  
 3 worth of activities that have taken place. Essentially  
 4 I want each person unknown to be given an identifying  
 5 characteristic, so PU1, PU2, PU3, PU4, so I've got  
 6 a scale of what the evidence has been about the number  
 7 of persons unknown and the extent of the activities that  
 8 are complained of in the evidence.  
 9 MS BOLTON: My Lord. My Lord, just to canvass with  
 10 your Lordship now -- and it's one of the reasons for the  
 11 summary judgment application to cover them -- it isn't  
 12 to prevent anything from being looked at but from the  
 13 point of view of the perspective -- of how much is  
 14 looked at, what we were proposing to do was to take  
 15 a large number of incidents for each persons unknown  
 16 category, but not every single one, because I have  
 17 a feeling, if we do that, we have to watch literally  
 18 every video and I think --  
 19 MR JUSTICE NICKLIN: I don't want to go in -- I don't want  
 20 to delve into all of them. I want an order of magnitude  
 21 issue, which is that -- one of the things I have  
 22 ultimately to consider is the extent of the wrongdoing,  
 23 what is being alleged, so to the extent that it's  
 24 trespass, to the extent that it's obstruction of access.  
 25 So I need, as it were ... you need to group them so

1 I have a scale of it.  
 2 MS BOLTON: Yes, we've done that, my Lord. What you will  
 3 have -- and you don't yet because in the versions that  
 4 we've got at the moment there was a few clarifications  
 5 I need so I've written them into it -- we will have  
 6 schedules for you and we will take you through those  
 7 schedules --  
 8 MR JUSTICE NICKLIN: Okay.  
 9 MS BOLTON: -- and that -- incidences where the persons  
 10 unknown are, at what times. So I'm going to take you  
 11 through it category by category, and if it will assist  
 12 the court, the court can have a copy of that.  
 13 Yes, I hadn't expected the court to deal with it  
 14 from the point of view of, "Well, we've had loads and  
 15 loads of incidents and here's a few videos". We've  
 16 broken it down, we've got the moments that are relevant  
 17 and we'll take your Lordship through them in that  
 18 manner. But what we haven't done is -- I mean,  
 19 sometimes there's -- for some categories there's, say,  
 20 300 incidents. We haven't taken 300 incidents and  
 21 tabled them because just the amount of time and videos,  
 22 but they are all large numbers of incidents. You'll  
 23 have seen the cross-referencing. We section out where  
 24 the cross-referencing is in the particulars of claim in  
 25 the schedule so you'll be able to link it to the

1 incident. Obviously there will also be persons unknown  
 2 in the videos relevant to D11 and D20, which we would  
 3 also highlight to you.  
 4 No, we had thought about that and it does obviously  
 5 need to be marshalled in a way that's helpful to the  
 6 court.  
 7 MR JUSTICE NICKLIN: That's fine. I'm not entirely sure  
 8 exactly what a summary judgment gives you because --  
 9 I can see the purpose of a summary judgment application.  
 10 If you've got defendants who are present and you're just  
 11 about to embark upon a very long trial, which -- in that  
 12 type of case, there's a very real benefit of a summary  
 13 judgment application because it means the court cuts  
 14 out -- if the application is well founded, it cuts out  
 15 perhaps days or even weeks of evidence.  
 16 MS BOLTON: Yes.  
 17 MR JUSTICE NICKLIN: I perfectly understand the good sense  
 18 of that, but in a persons unknown case where there isn't  
 19 going to be any evidence and I'm going to have to  
 20 consider, at least on a sampling basis the categories of  
 21 persons unknown because it's going to be ultimately  
 22 a matter which is relevant to even -- it's not so much  
 23 judgment, it's more remedy.  
 24 MS BOLTON: Yes.  
 25 MR JUSTICE NICKLIN: And that's the -- in the persons

1 unknown case, granting summary judgment against persons  
 2 unknown might be thought to be a walk in the park to the  
 3 extent that all you have to show is, "Oh, look, I've  
 4 done my alternative service order. We haven't got an  
 5 acknowledgement of service. Gosh, I could get judgment  
 6 default or summary judgment". The tricky aspect is what  
 7 comes next, which is what remedy do you get on the back  
 8 of that.  
 9 MS BOLTON: Yes.  
 10 MR JUSTICE NICKLIN: One of the trickiest areas in this  
 11 case -- and this it won't come as a surprise to you, I'm  
 12 sure -- is the question of an exclusion zone. An  
 13 exclusion zone as part of a final order is a very  
 14 different beast from an interim order because, unlike  
 15 a PSPO, where the local authority can say, "We have  
 16 balanced the rights and decided that we are going to  
 17 exercise our legislative power to impose an exclusion  
 18 zone" -- fine, that's an exercise of legislation, no  
 19 problem. For me, because as we've, on this journey  
 20 discovered, there are -- it is possible to do something  
 21 in the exclusion zone which is covered by the terms of  
 22 the injunction but not otherwise unlawful, so let's  
 23 say -- well, I say "civilly unlawful", obstructing the  
 24 police van.  
 25 MS BOLTON: Yes.

1 MR JUSTICE NICKLIN: It's all very well for the court to  
 2 strike a happy medium and accommodation and a pragmatic  
 3 way of holding the ring pending a trial to do it through  
 4 an exclusion zone. I'm not sure that I'm altogether  
 5 happy with the idea of going forward with that and  
 6 I don't know what the answer to that is and I don't know  
 7 because I haven't got that far -- I don't even know  
 8 whether it's in the bundle, but have you provided me  
 9 with a draft order that you're going to be seeking at  
 10 the end of all this?  
 11 MS BOLTON: My Lord, we have done.  
 12 MR JUSTICE NICKLIN: Does it include exclusion zone?  
 13 MS BOLTON: My Lord, it does for this reason: my  
 14 understanding of the authorities on exclusion zones at  
 15 final order is that they would have to be anchored to  
 16 a cause of action usually. The court has discretion,  
 17 but it's not usually the way the court would deal with  
 18 final (inaudible), I entirely accept.  
 19 We will be saying that there are grounds for you to  
 20 do that on the causes of action and on the injunction  
 21 tests in this case because they serve a real purpose  
 22 that, on one of those causes of action, it would be  
 23 prohibiting a lawful act, but we say you will be able to  
 24 justify that under the refinement of the Ineos test that  
 25 took place in Cuadrilla. And secondly, one of the other

1 causes of action we say you should grant that anyway and  
 2 that that is actually a good way of managing those  
 3 breaches and those unlawful activities . So we say we  
 4 can link them to the causes of action in this case, so  
 5 That would be the approach we would be taking.  
 6 MR JUSTICE NICKLIN: Okay, that's fine.  
 7 MS BOLTON: I understand --  
 8 MR JUSTICE NICKLIN: We don't need to take time on it now.  
 9 If I had to identify -- of all of the bristlingly  
 10 difficult issues I have to deal with, that's probably,  
 11 I regard, the thing that troubles me the most --  
 12 MS BOLTON: I'm alive to that, my Lord.  
 13 MR JUSTICE NICKLIN: -- because it is the issue about  
 14 prohibiting something that's lawful against a category  
 15 of person unknown, so it's looking into the future and  
 16 the court trying to imagine the circumstances and  
 17 prejudge them to an extent. And whilst there's  
 18 perfectly sensible authority based on the exclusion zone  
 19 around the victim's house, that's where you've got one  
 20 person, so the court, as it were, is saying, "Okay,  
 21 based upon your conduct in the past, I am satisfied that  
 22 this order is necessary and proportionate, et cetera,  
 23 and to the extent it curtails your ability to do  
 24 something lawful, I'm satisfied that that's an  
 25 appropriate order to make because it's the only

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1 effective way of ensuring that there's no future  
 2 breach".  
 3 MS BOLTON: Yes.  
 4 MR JUSTICE NICKLIN: But all of that is focused on an  
 5 individual. Where I find it difficult is trying to map  
 6 that across into a category of person who the order on  
 7 the basis of the law as it stands is going to catch  
 8 entire newcomers --  
 9 MS BOLTON: Yes.  
 10 MR JUSTICE NICKLIN: -- so this is people who the court  
 11 isn't even aware of what they've done and they haven't  
 12 yet done anything that would justify the court making an  
 13 order against them, and so I am curtailing what would  
 14 otherwise be their lawful right in advance.  
 15 MS BOLTON: Yes.  
 16 MR JUSTICE NICKLIN: That's the issue.  
 17 MS BOLTON: Yes, my Lord.  
 18 MR JUSTICE NICKLIN: Anyway, let's -- I'm sure of a variety  
 19 of very interesting points we're going to have to  
 20 consider, that is one of them that I would welcome  
 21 assistance on.  
 22 MR CURTIN: All those points you will be having at trial  
 23 whether me or Ms Jaffray are here or not?  
 24 MR JUSTICE NICKLIN: Correct. Mr Curtin, if you or  
 25 Ms Jaffray or anybody else wants to come along to that

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1 trial, you'll be very welcome and you're perfectly  
 2 entitled to come and attend that trial.  
 3 MR CURTIN: Can a person unknown -- can someone ask to  
 4 cross-examine the witness of a person unknown?  
 5 MR JUSTICE NICKLIN: That's unlikely because, if I'm only  
 6 going to be dealing with persons unknown, I'm not going  
 7 to require any of the witnesses to come and give their  
 8 evidence. There's no point because there's nobody to  
 9 cross-examine them.  
 10 MR CURTIN: Then do you take their statement as read?  
 11 MR JUSTICE NICKLIN: Yes.  
 12 MR CURTIN: That's scandalous.  
 13 MR JUSTICE NICKLIN: It's not. Trust me, it's not. It's  
 14 a standard feature of civil litigation. Just because  
 15 they've said it and just because the evidence has been  
 16 admitted, I'm not bound to accept it. Also, probably in  
 17 this case of more importance is the legal consequences  
 18 of that evidence rather than there being a dispute.  
 19 You've got to separate out, as it were, the facts and  
 20 largely there isn't going to be a large amount of  
 21 dispute about the facts because it's all on video  
 22 evidence.  
 23 MR CURTIN: Yes.  
 24 MR JUSTICE NICKLIN: I know what's happened outside the  
 25 facility. The more difficult question -- that's what

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1 I've just been having this discussion with Ms Bolton  
 2 about -- is what the legal consequences of that are,  
 3 particularly in terms of an injunction against persons  
 4 unknown. So whilst I wouldn't permit a person -- some  
 5 random member of the public that might be conceivably  
 6 caught by the injunction order to come and question  
 7 witnesses without, as it were, applying to join the  
 8 proceedings, to the extent that anybody wanted to  
 9 make -- when we get to the second phase, which is the  
 10 discussions about the legal consequences of what happens  
 11 and what order the court might make against persons  
 12 unknown, then I'm not shutting the door to people who  
 13 have been engaged with these proceedings -- you for  
 14 example or others that I recognise in the public gallery  
 15 who have been previously defendants in the proceedings,  
 16 I'm not shutting the door.  
 17 If you want to make notes and want to raise points  
 18 that you think I should be considering, then I'm not  
 19 shutting the door to giving you an opportunity, in  
 20 a short defined period of the trial -- you telling me  
 21 what you think I should have regard to or what points  
 22 you think are important in dealing with the persons  
 23 unknown case. That's rather different. That's about  
 24 legal submissions.  
 25 MR CURTIN: Thank you.

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1	MR JUSTICE NICKLIN: All right?	1	INDEX
2	Right. Well, thank you, everybody. We will	2	
3	reconvene on Wednesday then. Mr Curtin, what have you	3	
4	got to do?	4	Housekeeping and other matters .....1
5	MR CURTIN: I've got to do the statement of truth ---	5	
6	MR JUSTICE NICKLIN: Yes.	6	
7	MR CURTIN: --- I've got to put numbers on the paragraphs ---	7	
8	MR JUSTICE NICKLIN: Yes.	8	
9	MR CURTIN: --- and if I do --- if I feel I've got the nerve	9	
10	to add a little bit more evidence, I'll put it on	10	
11	a separate document to this so you can say "It's all too	11	
12	late".	12	
13	MR JUSTICE NICKLIN: To them. And a statement of truth on	13	
14	anything that you want to admit as evidence, and if it's	14	
15	late, it's an important consideration for you to explain	15	
16	to me why it's late; all right? Do that in a separate	16	
17	witness statement.	17	
18	MR CURTIN: (Inaudible -- overspeaking) because I do rely on	18	
19	and I've asked continually to be allowed for my verbal	19	
20	evidence to actually be evidence.	20	
21	MR JUSTICE NICKLIN: It doesn't work like that, Mr Curtin,	21	
22	but it's not unreasonable because if you are in	22	
23	a position to tell me what you want me to hear, you're	23	
24	in a position to write it down. So just write it down.	24	
25	The important thing is you've made certain references	25	

1	earlier today about the difficulties you've had in	56
2	preparing for this case.	
3	MR CURTIN: Yes.	
4	MR JUSTICE NICKLIN: If you want to tell me more about that,	
5	write it down and put a statement of truth on the bottom	
6	of it and send it to the claimants and put paragraph	
7	numbers on it.	
8	MR CURTIN: Yes.	
9	MR JUSTICE NICKLIN: All right? Right. Thank you,	
10	everybody. We'll sit again at 10.30 on Wednesday.	
11	(11.54 am)	
12	(The hearing adjourned until	
13	Wednesday, 26 April 2023 at 10.30 am)	
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