Neutral Citation Number: [2024] EWHC 1786 (Ch)

Case No: BL-2023-000713

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9th July 2024

**Before** :

**SIR ANTHONY MANN**
**Sitting as a Judge of the High Court**

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**Between :**

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| **JOCKEY CLUB RACECOURSES LIMITED** | **Claimant** |
| **- and -** | |
| **(2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "RACE TRACK" ON THE DAY OF A "RACING FIXTURE", EXCEPT AT "CROSSING POINTS" WITH "AUTHORISATION", AS DESCRIBED BELOW** | |
| **(3) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY "CROSSING POINTS" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW** | |
| **(4) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "PARADE RING" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW** | |
| **(5) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY PART OF THE AREAS DESCRIBED BELOW AS THE "HORSES' ROUTE TO THE PARADE RING" AND/OR THE "HORSES' ROUTE TO THE RACE TRACK" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW** | |
| **(6) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE "HORSE RACES", AS** | |

**DESCRIBED BELOW**
**(7) PERSONS UNKNOWN INTENTIONALLY CAUSING ANY OBJECT TO ENTER ONTO AND/OR REMAIN ON THE "RACE TRACK" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW**
**(8) PERSONS UNKNOWN INTENTIONALLY ENDANGERING ANY PERSON AT THE LOCATION DESCRIBED BELOW AS THE "EPSOM RACECOURSE" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW**

**Defendants**

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**Alan Maclean KC and Antonia Eklund** (instructed by **Pinsent Masons LLP**) for the **Claimant**
**The Defendants did not appear and were not represented.**

Hearing date: 8th July 2024

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# Approved Judgment

**Sir Anthony Mann :**

## Background

1. This is the disposal hearing of these Part 8 proceedings in which the claimant, the Jockey Club, seeks a continuation of injunctive relief against persons unknown to restrain them from trespassing on certain parts of their property at Epsom racecourse.

2. This action has its origins in a fear of the claimant that its running of the Derby race in June 2023 would be disrupted by animal rights protesters, orchestrated, at least to some extent, by a loose association known as Animal Rising. That association (if that is the right word) does not have any apparent corporate or unincorporated existence, but it appears to be a form of movement in which those interested in its objectives can participate. Its object seems to be to prevent what it considers to be cruelty to animals which is said to take various forms, including, for present purposes, horseracing. It has a website whose content has a significance to these proceedings.

3. The claimant is the freehold owner of land at Epsom which comprises the racecourse and a number of ancillary buildings and areas. Its rights are, however, circumscribed by various rights of the public in relation to Epsom Downs. The scope of the ownership, and the nature of those public rights, appear from a previous judgement of mine on an application for an interim injunction which I granted in May 2023 – see [2023] EWHC 1811 (Ch). I do not propose to set out again here matters appearing in that judgement; they should, so far as necessary, be taken as incorporated in this judgement.

4. In 2023, before the running of the Derby, the claimant became aware of a threat to disrupt the running of the Derby by entering various parts of the Jockey club land and, in various potential ways, interfering with the race. Attempts had previously been made to disrupt the running of the Grand National, and indeed the start of that race in that year was delayed as a result. In those circumstances the Jockey club commenced these proceedings in order to restrain interference with its running of the race.

5. An application for an interim injunction was made to me and I granted it. The reasons for the grant of that injunction appear in the judgement to which I have just made reference. An account of the background to the grant of the injunction, and to the circumstances of my granting it, appear fully in that judgement and again I do not propose to repeat them here. They should be treated as incorporated into this judgement. In particular, that judgement explains the various areas of the racecourse affected.

6. At the time of the commencement of these proceedings and of the hearing of the injunction the claimant had been able to identify one particular individual who it was thought was threatening to interfere with the race. That was a Mr Daniel Kidby, and he was made the first defendant to the proceedings. Otherwise the claimant was unable to identify the various animal activists who threatened or planned to disrupt the race. In those circumstances they sought an injunction against persons unknown described in various ways by reference to the geographical or topographical areas which it was anticipated would be or might be affected. That was in line with authorities at the time dealing with the obtaining of injunctions against persons

unknown. How that technique worked in practice is apparent from the heading to this judgment.

7. When the race meeting took place the event was heavily policed and stewarded. One protester entered the actual racetrack by way of protest shortly after the race had started. That was a Mr Ben Newman. He was duly charged with a public order offence and served a number of weeks in prison on remand. He was joined as 9th defendant to these proceedings and also became the subject of committal proceedings for infringement of my order and on 11 October 2023 he was sentenced by Miles J to 2 months imprisonment, suspended.

8. These proceedings were restored before Roth J on 15 March 2024, on which occasion he ordered that Mr Kidby and Mr Newman take appropriate steps if they were going to defend the claim against them and gave permission to the Jockey Club to file further evidence. The Club duly availed itself of that opportunity.

9. Shortly after the hearing before Roth J Mr Kidby and Mr Newman both settled with the Jockey Club, giving undertakings not to do the acts complained of, those undertakings lasting five years. Thus for practical purposes they fell out of these proceedings and they continued as proceedings against the various categories of persons unknown to which I have referred above. In a witness statement dated 4 October 2023 Mr Newman accepted that he had wrongfully breached the injunction and reflected on the fact that his time in prison had caused him to reflect on his actions and he expressed his regret for them. In his case it would appear that the threat of prison had become a real deterrent. One can draw the inference that it would be the same for others.

10. The evidence before me on this occasion comprised, first, a witness statement of Mr Nevin Truesdale, chief executive of the Jockey Club, which was the witness statement originally provided in support of these Part 8 proceedings and which was deployed on the interim application before me (along with other limited witness statements). That evidence set out the property background to the case and the reasons for supposing that persons were proposing to disrupt the race and thereby commit trespasses. Pursuant to the permission given by Roth J Mr Truesdale filed a second witness statement signed on 5 April 2024. That witness statement gives evidence of various public pronouncements of Animal Rising on its website, on its Facebook page and in press releases. That material boasted of previous activities of its members in disruptive protests and indicated intentions to carry on activities including disrupting race meetings, albeit that a press release of 4 April 2024 stated that it would not target the Grand National this year and it was suspending its campaign of direct action against racing indefinitely. The reason for not targeting the Grand National meeting was said to be that there was a "huge public conversation" since the Grand National and Derby, and it would appear that the public had in large part been convinced that they do not want racing to be part of the fabric of British culture going forward. The claimant does not accept the genuineness of that analysis. Mr Truesdale gave evidence of attendance figures at some race meetings which gainsay it and points to statements on the then website which threatened disruption of race meetings. That is material on the basis of which I am invited to view with suspicion any protestations that animal rising does not intend to disrupt race meetings. He also pointed to the disruption of other sporting events by other activists, such as throwing confetti, jigsaw puzzle pieces and orange paint variously at Wimbledon, the golf Open Championship,

the Ashes and the World Snooker Championship. I am invited to infer, and I do, that the claimant's race meetings are potentially vulnerable to such protests even if Animal Rising is genuine in its statement that its own disruptive activities in that area have been suspended indefinitely, which I do not accept is a strong enough assertion.

11. There has, however, been a recent change in the website. The claimant has made an application to adduce further evidence as part of its duty of full and frank disclosure. During the hearing I indicated that I would allow in the new evidence and give reasons in this judgment. That evidence takes the form of a witness statement of Julian Diaz-Rainey, a solicitor at Pinsent Masons, solicitors acting for the claimant. In that witness statement Mr Diaz-Rainey provides evidence that the Animal Rising website has recently been updated to remove references to plans to disrupt horse-racing activities. The material to which Mr Truesdale referred in his second witness statement which professed an intention to disrupt in that way have been removed – indeed the pages which evidence that intention have been removed. It is not known when that change happened, but it must be since Mr Truesdale's second witness statement. That is drawn to my attention because, quite properly, the claimant is aware of its obligation to draw adverse material to my attention.

12. I allow that evidence in in order that the claimant can fulfil its obligation of full and frank disclosure. Mr Diaz-Rainey's witness statement goes on to point out, as a counter to his earlier disclosure, that Animal Rising has not given up its challenge to the horse-racing industry and its intention to try to stop it, and that it trumpets what it calls its successes to date. This material appears in website and Facebook postings. I allow that evidence too. It is a legitimate counter to the evidence disclosed under the full and frank disclosure obligation.

13. The result of this evidence is the following findings, which I make:

    i) The claimant is the freehold owner of the racecourse property which it is trying to protect.

    ii) Animal rights protesters have no legal right to be on the property in order to carry out disruptive protests.

    iii) Despite Animal Rising's statement that is it suspending the disruption of horse-racing activities, there remains a serious risk that its members, or others, will try to disrupt the claimant's races in order to gain publicity unless restrained by this court. It is not possible to identify the individuals who would be concerned, but nonetheless there is a very serious risk.

    iv) That disruption, if it occurred, would give rise to a serious risk to life and limb of humans and horses, and would cause damage to the Jockey Club of the nature referred to in my earlier judgment. Damages would not be an adequate remedy for any disruption to racing activities.

    v) The disruption would be an actionable trespass and an actionable interference with the claimant's rights to hold races under the Epsom and Walton Downs Regulation Act 1984 (see my earlier judgment) and to manage its part of the Downs accordingly.

## Relevant law

14. The ability of the courts to grant injunctions against persons unknown, and the requirements for the exercise of that jurisdiction, have recently (and since my first judgment) been the subject of consideration by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 WLR 45. The case deals with "persons unknown" who are sought to be barred, being persons who are not identifiable as parties to the proceedings at the time when the injunction is granted, as opposed to persons whose current attributes are known but whose identities are not. In that case the persons unknown were Travellers. That category of persons unknown were designated as "newcomers", and injunctions of the kind sought in that case, and in other protester cases, were called "newcomer injunctions". I shall, of course, adopt the same nomenclature.

15. The court analysed the jurisdiction to grant injunctions against such persons and found that injunctions which in other contexts would be regarded as "final" (as opposed to interim) were not in fact properly so regarded but were of a distinct kind. After an extensive review the court held:

> "139 … In sympathy with the Court of Appeal on this point we consider that this constant focus upon the duality of interim and final injunctions is ultimately unhelpful as an analytical tool for solving the problem of injunctions against newcomers. In our view the injunction, in its operation upon newcomers, is typically neither interim nor final, at least in substance. Rather it is, against newcomers, what is now called a without notice (ie in the old jargon ex parte) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final."

16. This has consequences as to the requirements:

> "142. Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards. Viewed in that way they then need to be set against the established categories of injunction to see whether they fall into an existing legitimate class, or, if not, whether they display features by reference to which they may be regarded as a legitimate extension of the court's practice."

17. That case involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before an injunction is

granted, most of its requirements are equally applicable to other types of cases such as protest cases like the present (of which there now a number):

> "167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:
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> (i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.
> (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.
> (iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.
> (iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.
> (v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."

18. Later in the judgment the court returned to procedural safeguards to give effect to those matters of principle, and set out the following procedural and other matters. I omit some points that are relevant to Traveller cases and which have no counterpart in this case, and adjust others by omitting specific Traveller references and by making the wording applicable to the present (and similar) cases.

i) Any applicant for an injunction against newcomers must satisfy the court by detailed evidence that there is a compelling justification for the order sought. There must be a strong possibility that a tort is to be committed and that that will cause real harm. The threat must be real and imminent. See paragraphs 188 and 218. "Imminent" in this context means "not premature" – *Hooper v Rogers* [1975] Ch 43 at 49E.

ii) The applicant must show that all reasonable alternatives to an injunction have been exhausted, including negotiation – paragraph 189.

iii) It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of – paragraph 189.

iv) If byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction. However, the court seemed to consider that in an appropriate case it should be recognised that byelaws may not be an adequate means of control. See paragraphs 216 and 217.

v) There is a vital duty of full disclosure on the applicant, extending to "full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application." – paragraph 219. Although this is couched in terms of the local authority's obligations, that is because that was the party seeking the injunction in that case. In my view it plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.

vi) The court made it clear that the evidence must therefore err on the side of caution, and the court, not the applicant should be the judge of relevance – paragraph 220.

vii) "The actual or intended respondents to the application must be identified as precisely as possible." – paragraph 221.

viii) The injunction must spell out clearly, and in everyday terms, the full extent of the acts it prohibits, and should extend no further than the minimum necessary to achieve its proper purpose – paragraph 222.

ix) There must be strict temporal and territorial limits – paragraph 225. The court doubted if more than a year would be justified in Traveller cases – paragraph 125 again. In my view that particular period does not necessarily apply in all cases, or in the present one, because they do not involve local authorities and Travellers.

x) Injunctions of this kind should be reviewed periodically – paragraph 225. "This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made."

xi) Where possible, the claimant must take reasonable steps to draw the application to the attention of those likely to be affected – paragraph 226.

xii) Effective notice of the order must be given, and the court must disclose to the court all steps intended to achieve that – paragraphs 230ff.

xiii) The order must contain a generous liberty to apply – paragraph 232.

xiv) The court will need to consider whether a cross-undertaking in damages is appropriate even though the application is not technically one for an interim injunction where such undertakings are generally required.

19. The court recognised that not all the general requirements laid down will be applicable in protester, as opposed to Traveller, cases. I have borne that in mind, and have, as I have indicated, omitted reference to some of the matters which do not seem to me to be likely to apply in protester cases.

20. In the course of argument Mr MacLean drew to my attention two decisions of Ritchie J in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) and *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134, and to the decision of Farbey J in *Exolum Pipeline System Ltd v Persons Unknown* [2024] EWHC 1015 (KB). Other than to observe that in the third of those cases Farbey J drew attention to the need to balance the claimant's claim against the Article 10 (free speech) and Article 11 (freedom of association) rights of the protesters (which I shall do) I do not think it necessary to refer to those cases which apply *Wolverhampton* to their particular circumstances. I have, however, borne those cases in mind.

## Decision

21. Taking all those matters into account, I find that it is appropriate to grant a newcomers injunction in this case, with the appropriate safeguards. I deal with the procedural matters which *Wolverhampton* requires to be taken into account in the following manner, following the sub-paragraph numbering appearing above.

(i) It is clear enough that there is a threat of wrongful behaviour against which the Jockey Club with its proprietary rights is entitled to be protected. Real harm will be caused if it is not stopped – see my earlier judgment. There plainly was a very substantial risk of wrongdoing when I made my first order in the case, and that is demonstrated by the acts of Mr Newman which were carried out in the face of the injunction. The greater risk is to the running of the Derby meeting because of the publicity and attention which that race involves, but there still a risk to other meetings. The only question about this is whether that risk should be seen to have gone away because of the more recent pronouncements of Animal Rising and the removal of the threats from the website. I do not consider that it has gone away.

Those who associate themselves with Animal Rising have been shown to be vehement in their cause. The reasons given for suspending the campaign against racing are not plausible. They give the appearance of seeking to find some justification for the ostensible abandonment of the campaign to mask what is really going on. It is not plausible that the real reason is that those behind the website have changed their minds about racing. It is more plausible that the statements and the withdrawal of references to horse racing are some sort of tactical move, leaving open the real possibility that the campaign and the unlawful activities associated with it will be re-ignited, which could happen at short notice. The ostensible withdrawal of the horse racing campaign came only after Mr Kidby and Mr Newman were served with the second witness statement of Mr Truesdale, which pointed up the then references to the campaign against horse racing. It looks as though the withdrawal was a tactical response to that. I consider that there is still a compelling case and a strong possibility of a risk of disruption.

(ii) I am satisfied that there is no practical alternative to an injunction. Before the 2023 Derby the Jockey Club sought to negotiate a peaceful protest mechanism by proffering a site within the racecourse premises at which Animal Rising could promote its cause peacefully, but that was turned down. The activities might contravene some of the byelaws, but not all of them, and in any event the only remedy under those is a fine capped at £50, and that is not going to be a deterrent. There may be criminal sanctions for the sort of activities which are threatened, but the Jockey Club is not a prosecuting authority and it is impractical to suppose that they are a deterrent in themselves. If they were the threats would not be real. An injunction is the only practical answer. It provides a real risk of punishment and its prosecution is in the hands of the claimant, not prosecuting authorities. The case of Mr Newman suggests that committal proceedings are likely to be perceived as a cogent deterrent against infringement.

(iii) I am satisfied that there are no other practical steps that the Club can take to prevent the wrong. See (ii). It is not practical to suppose that the activities of the protesters can be completely prevented by any sensible levels of policing or stewarding, though obviously stewarding and policing have a part to play in the overall strategy.

(iv) As to byelaws, see (ii) above.

(v) The Jockey Club is obviously aware of its duty of full and frank disclosure, as is demonstrated by the evidence of Mr Diaz-Rainey referred to above. I am as satisfied as I can be that this duty has been fulfilled.

(vi) I am satisfied that this requirement has been fulfilled.

(vii) This point arose on the application for the interim injunction. The order proposes the same technique of identifying defendants by reference to their specific intended activities. This is effective and adequate.

(viii) I will ensure that the order achieves this objective. The present draft seems to do so but it will be considered further after this judgment has been delivered.

(ix) The territorial limits will appear in the order. They will be clearly limited to the racecourse and particular areas, which will be delineated by maps and plans. This has already been achieved in the interim injunction. A time limit of 5 years is proposed. I agree that that is an appropriate limit. The one year which the Supreme Court thought would be prima facie appropriate in Traveller cases is too short to deal with a campaign such as that of the animal rights activists. In the case of an annual event like the Derby it would lead to an annual application. An annual review (see below) is more appropriate.

(x) The claimant proposes an annual review. That is sensible.

(xi) I am satisfied that proper notice of this application has been given. This has been done by posting it on the Club's website page and Facebook page, and by emailing to Animal Rights at its website. It has also posted at at least 2 locations on its racecourse. These methods of service are in accordance with directions given by Roth J in his order of 15 March 2024.

(xii) Service of the order will be dealt with in the order. It will largely mirror the technique for service of the proceedings, though extra steps will be appropriate in the period of, and leading up to, race meetings.

(xiii) The order will contain a liberty to apply, as the draft before me reflects.

(xiv) I cannot see that any cross-undertaking in damages is appropriate in this case.

22. The satisfaction of those matters will fulfil the requirements of the Supreme Court as set out in paragraph 167 of its judgment and the later paragraphs dealing with procedural matters. The only other matter left for consideration is the interaction with the Article 10 and Article 11 rights of the newcomers. Insofar as the injunction would impinge on those rights it is quite plain that it falls within the qualification of those rights in those Articles as being necessary in a democratic society to prevent disorder and crime and to protect the rights of others – the claimants and those wishing to attend race meetings. The balance is clearly in favour of granting the injunction.

## Conclusion

23. In all the circumstances I will grant the relief sought, subject to such adjustments as emerge from further consideration after this judgment has been delivered.