



Neutral Citation Number: [2023] EWHC 1038 (KB)

Case Nos: QB-2021-003841  
and QB-2021-004122

**IN THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 3 May 2023

**Before :**

**THE HONOURABLE MR JUSTICE MORRIS**

-----

**Between:**

**TRANSPORT FOR LONDON**

**Claimant**

**- and -**

**(1) PERSONS UNKNOWN**

**(2) MR ALEXANDER RODGER AND 137**

**OTHERS**

**Defendants**

-----

-----

**Andrew Fraser-Urquhart KC and Charles Forrest** (instructed by TfL) for the **Claimant**  
**Barry Mitchell and David Rinaldi** (Named Defendants 9 and 135) attended.

No attendance by or representation for the other **Defendants**

Hearing dates: 29 and 30 March 2023

-----

**Approved Judgment**

**Mr Justice Morris :****Introduction**

1. By this action Transport for London (“the Claimant”) seeks a final injunction against 129 of the 138 named defendants (“the Named Defendants”) and certain defined persons unknown (“Persons Unknown”). The Defendants, including the Persons Unknown, are supporters of, and activists connected with, “Insulate Britain” (“IB”). This is the final trial of the action.
2. The claims arise from disruptive protests on the highway since September 2021 under the auspices of IB and other affiliated groups. A very large proportion of those protests have involved protesters deliberately blocking roads by sitting down in the road, and often gluing themselves to its surface and/or “locking” themselves to each other to make their removal more time-consuming. The 129 Named Defendants are all alleged to have taken part in one or more IB protests.
3. By the final injunction, the Claimant seeks an order that prevents the blocking, for the purpose of protests, of roads and surrounding areas at 34 identified locations, referred to as the “IB Roads”. The IB Roads are a very important part of the TfL Strategic Road Network (the “GLA Roads”). GLA Roads are, broadly speaking, the most important roads in Greater London, carrying a third of London’s traffic, despite comprising only 5% of its road network length. The locations fall into two categories: first, bridges or junctions of great importance and their surrounding access roads; and secondly, certain longer protected stretches of road, such as the A4 and the North Circular Road.
4. This case is the latest in a number of similar “protest” cases which have come before this Court and the Court of Appeal. In particular, some of those cases concern protests under the auspices of a related group “Just Stop Oil” (“JSO”). In a number of those cases, written judgments have been handed down, covering issues, both legal and factual, similar to those in this case. In particular I have in mind the judgments of Bennathan J and the Court of Appeal in the case which I refer to as *NHL v IB*, reported at [2022] EWHC 1105 (QB) and [2023] EWCA Civ 182 respectively, and the judgments of Freedman J and Cavanagh J in the case which I refer to as *TfL v JSO*, reported at [2022] EWHC 3102 (KB) and [2023] EWHC 402 (KB) respectively. I also refer to the judgment of Lavender J in another NHL case dated 17 November 2021 [2021] EWHC 3081 (QB). In this judgment, I do not repeat all of the relevant factual and legal background; rather, where uncontroversial or where I agree, I cross-refer to, and adopt, certain passages in those judgments.

**Summary conclusion**

5. For the reasons set out in this judgment, I am satisfied that the Claimant has established its case and that it is appropriate to grant a final injunction against 129 of the Named Defendants and against Persons Unknown in the terms set out in the orders which I make today.

**Brief procedural history**

6. The Claimant has brought two actions, commenced, respectively, on 12 October 2021 and 8 November 2021. Interim injunctions in the two actions had already been granted on an urgent and without notice basis, respectively, by May J on 8 October 2021 and by Jay J on 4 November 2021. At subsequent on notice hearings, these interim injunctions were extended, in some cases in varied form. On 11 October 2022 the interim injunctions which are currently in force were made by Cotter J. On the same occasion the judge ordered an expedited trial. Initially the Claimant intended to apply for summary judgment. However following the judgment of Bennathan J in *NHL v IB*, it decided to proceed instead to a final trial. That decision was made and the direction given before the Court of Appeal, more recently in February this year, granted full summary judgment in *NHL v IB*. In the course of the hearing before me, I indicated that the interim injunctions would remain in place until this judgment is handed down.
7. The final prohibitory injunction is sought against 129 Named Defendants and against Persons Unknown when acting for the purposes of protesting in the name of IB (as defined more specifically in the title to the claim). (The activities of the Named Defendants which are enjoined are not limited to them acting in the name of IB). The final order, as originally sought, was in terms very similar to the interim injunctions currently in force, and included provision both for alternative service and for third party disclosure from the Metropolitan Police. As matters developed at the hearing, the Claimant no longer seeks any order for third party disclosure: see further paragraph 62 below.
8. The Claimant's evidence for this trial comprises witness statements of Mr Abbey Ameen, the Claimant's principal in-house solicitor and Mr Glynn Barton, formerly the Claimant's Director of Network Management and now its Chief Operating Officer, both dated 27 February 2023. Each gave evidence in court verifying the contents of his statement. The former sets out at some considerable length, with extensive exhibits, detailed information about the various protest groups and the array of different proceedings brought by different parties (as set out below). He gave detailed evidence of the IB (and the JSO) protests that have taken place and of their effect, both in the London area and elsewhere, particularly around the M25. He also gave evidence of the service of documents and other steps taken to bring the proceedings to the attention of the Defendants and IB. Mr Barton's statement sets out the justification for the roads selected by the Claimant to be protected by the final injunction sought. He provides evidence as to why the IB Roads are so strategically important and why they should be protected. His evidence is that their strategic importance means that they are more likely to be targeted by IB protesters, whose intention is to cause maximum disruption and thus maximum damage is caused to other users of the highway and the wider public interest.

## **The Parties**

### ***The Claimant***

9. The Claimant is a statutory corporation created by the Greater London Authority Act 1999. It is both the highway authority and the traffic authority for the GLA Roads. More detail of the Claimant's statutory functions, powers and duties in relation to the GLA Roads and the provisions under which it brings these proceedings are set out in Freedman J's judgment in *TfL v JSO* at §§8 and 9.

10. The Claimant makes this claim pursuant to its duties under section 130 Highways Act 1980 (power to take legal proceedings as part of performing the duty to assert and protect the rights of the public to use and enjoy the highway) and on the basis that the conduct of the Defendants in participating in the IB protests constitutes (i) trespass, (ii) private nuisance and/or (iii) public nuisance.

### *The Named Defendants*

11. The claim forms identify, at Annex 1, the 139 Named Defendants, each individually numbered from 1 to 139. The Named Defendants have all participated at IB protests (M25 or IB roads) or JSO protests.
12. Mr Ameen has explained in detail the steps taken to serve the Named Defendants with all relevant court documents in the course of the proceedings, following the making of earlier orders for alternative service. As regards this trial, the Named Defendants were sent, by first class post, the notice of hearing for this trial on 10 January 2023. It was also emailed to IB on 10 January 2023 and was put up on the TfL and Greater London Authority websites. In a further witness statement dated 2 April 2023, Mr Ameen has explained how all the written materials relevant to this trial were sent to the Named Defendants, including the evidence, draft final orders and skeleton argument, on dates between 28 February 2023 and 16 March 2023.
13. No defendant has acknowledged service or filed a defence. Up until the final trial, no defendant had attended any hearing in these claims since 12 November 2021; and no defendant has served any evidence or skeleton argument for this trial. However, at or leading up to this trial, four Named Defendants have made representations.
14. First, Matthew Tulley, Named Defendant 65, in advance of the hearing, offered an undertaking to the Court. In an email to Mr Ameen, he asserted that he has not breached the existing injunctions and that he has no intention of doing so. Secondly, Mr David Rinaldi, Named Defendant 135 both wrote to the Claimant and appeared on the first morning of the hearing. Thirdly, Mr Barry Mitchell, Named Defendant 9, also attended court on the first morning of the hearing. Each of these three Named Defendants has offered an undertaking in terms similar to the terms of the final injunction which I have decided to grant. Accordingly, whilst each remains a party to the claims, the final injunction is not made as against them and their names are now excluded from Annex 1 to the final injunction.
15. A fourth defendant, James Bradbury (Named Defendant 39), following notification on 10 January 2023, wrote to the Claimant on 16 January 2023, claiming that he had not blocked any TfL infrastructure and asking for clarification of the case against him. Following a rather general reply from the Claimant, he wrote again on 10 February 2023 maintaining his position and asking why his name had been added to the injunction. Following that email, the Claimant served all the trial materials on Mr Bradbury at his home address, which sets out the case against him both generally and the specific evidence against him individually. In this regard, and in response to my inquiry since the date of the hearing, Mr Ameen has provided a further witness statement dated 28 April 2023, explaining that the initial trial materials were sent to Mr Bradbury twice, by first class post on 28 February 2023 and by an email from him personally to Mr Bradbury sent on 8 March 2023 (responding in fact to Mr Bradbury's email of 16 January 2023). Mr Bradbury did not reply to that email. On

15 March 2023 further trial materials were sent by post to Mr Bradbury. He has not responded to any of those materials sent to him. Absent any such response, I am satisfied that the final injunction is properly made against Mr Bradbury.

16. However, in relation to six Named Defendants, the Claimant seeks permission to discontinue the proceedings pursuant to CPR 38.2(2)(a)(i). In the case of five of those Defendants, the Claimant has not been able to effect service of documents upon them, due to the lack of a correct, or any, address for service. In addition, one further Defendant has, unfortunately, since died. I therefore grant permission to the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) in respect of Named Defendants 8, 34, 91, 102, 108 and 112 and an order under CPR 6.28 dispensing with service of the Notice of Discontinuance on these six Named Defendants. I will order that the discontinuance of the proceedings against them will take effect on the date of the order of the Court; their names are thus excluded from Annex 1 to the final injunction. I will also order that these six Named Defendants will be entitled to their costs (if any).
17. In these circumstances, excluding these six Named Defendants and the two Named Defendants who appeared at the hearing, I was satisfied that it was appropriate to proceed to hear the trial in the absence of the remaining 131 Named Defendants, pursuant to CPR 39.3(1).
18. It further follows that the final injunction order is made against 129 Named Defendants as set out in Annex 1 to the order which I will make.

### **The Factual Background**

#### **Insulate Britain**

19. Insulate Britain (IB) is an environmental activist group which takes direct protest action in furtherance of two demands: first, that the UK government immediately promises to fully fund and take responsibility for the insulation of all social housing in Britain by 2025; and secondly that the UK government immediately promises to produce within four months a legally binding national plan to fully fund and take responsibility for the full low-energy and low-carbon whole-house retrofit, with no externalised costs, of all homes in Britain by 2030 as part of a just transition to full decarbonisation of all parts of society and the economy. IB says doing so will provide warmer homes and contribute to reducing the UK's carbon emissions.
20. The Named Defendants are those who have been engaging in deliberately highly disruptive protests under the banner "Insulate Britain". All protests are peaceful. IB has repeatedly made un-retracted statements that its protests will continue until his demands are met.

#### **Other groups: Extinction Rebellion and Just Stop Oil**

21. There are two other similar groups: Extinction Rebellion and Just Stop Oil (JSO). Extinction Rebellion describes itself as an international movement that uses non-violent civil disobedience in an attempt to halt mass extinction and minimise the risk of social collapse through, inter alia, reducing greenhouse gas emissions to net zero by 2025. Extinction Rebellion has engaged in deliberately disruptive protests on, inter

alia, public highways. However on 31 December 2022 it announced that it would temporarily cease disruptive protests. IB was founded by six members of Extinction Rebellion.

22. JSO is a group, formed in December 2021, which has been demanding that the government halt all future licensing consents for the exploration, development and production of fossil fuels in the United Kingdom. There is an intersection between the groups Insulate Britain, JSO and Extinction Rebellion. In February 2022 IB joined the JSO coalition, although IB and JSO are not in formal coalition with each other. JSO has also repeatedly said that it will continue its deliberately disruptive protests until its demands are met. More detail about JSO is set out at §§19 to 21, and 23 to 26 of Freedman J's judgment in *TfL v JSO*.
23. Since September 2021, the courts have granted a number of other injunctions, similar in form to the interim injunctions granted in this case, against members and supporters of those organisations. These were obtained at the behest of other bodies, including National Highways Limited ("NHL") and HS2 Ltd. Many of the same named defendants appear in a number of the cases.

### **IB protests**

24. Mr Ameen refers to a substantial number of IB protests. IB protests started in about September 2021. The last protest on the road solely under the IB banner was on 4 November 2021. Individual acts of IB protest took place up until April 2022. The last IB protest on the roads, as part of the JSO coalition, but retaining the IB identity took place on 12 October 2022. Mr Ameen's evidence is that the interim injunctions had been effective in reducing and/or pausing IB protests.
25. Despite this, in early 2023 IB made a public statement that it would continue with its protests, and despite the announcement from Extinction Rebellion. An article in *The Guardian* dated January 2023 reported as follows:

*Insulate Britain and Just Stop Oil have doubled down on their commitment to disruptive climate "civil resistance" after Extinction Rebellion announced new tactics prioritising "relationships over roadblocks".*

*Insulate Britain said its supporters remained prepared to go to prison. "Insulate Britain supporters remain committed to civil resistance as the only appropriate and effective response to the reality of our situation in 2023," its statement said.*

*"In the UK right now, nurses, ambulance drivers and railway workers are on strike because they understand that public disruption is vital to demand changes that governments are not willing or are too scared to address."*

26. As of 30 March 2022, 174 people had been arrested, 857 times, during IB protests on public highways. Mr Ameen's evidence is that the IB and JSO protests have been very dangerous and disruptive, creating an immediate threat to life, putting at risk the lives of those protesting, those driving on the roads and those policing the protests.

At times, the protests have also caused a risk of violence between protesters and ordinary users of the highways; in some cases force has been used to remove protesters from the highway. He gives examples of particular such incidents.

### **JSO protests: April 2022 onwards**

27. JSO protests started in March or April 2022. These protests have, until recently, largely involved protesters blocking highways with their physical presence, normally either by sitting down or gluing themselves to the road surface. There were protests daily by JSO between 1 October and 31 October 2022. During that period, there were, on a daily basis, large scale protests at key areas of largely the central London road system. On many occasions, JSO have been reported as saying that they will not cease their protests until their demands are met and that they will not be discouraged from doing so by injunctions from the court. The protests on roads in London have continued, even after interim injunctions were made and served. More detail of these JSO protests is set out at §§27 and 28 of Freedman J's judgment in *TfL v JSO*. Since November 2022 there have been further JSO protests, including a new tactic of "slow marches", as explained by §13 of Cavanagh J's judgment.

### **Other proceedings**

#### ***The Claimant and GLA Roads: proceedings in relation to JSO***

28. In addition to the current proceedings, in October 2022 the Claimant commenced proceedings in respect of JSO protests, *TfL v JSO*, and was granted an urgent without notice interim injunction against certain named defendants and persons unknown in connection with protests which involved JSO protesters sitting down in and blocking GLA Roads. This injunction was continued, on notice, on 31 October 2022 by Freedman J and again by Cavanagh J on 24 February 2023, who at the same time directed an expedited final trial and made an order under CPR 31.22. These are the judgments referred to at paragraph 4 above.
29. There is a large overlap between the defendants named in the *TfL v JSO* injunctions and the Defendants in this case. Of the 138 Named Defendants in this case, 65 are also named defendants in the *TfL v JSO* claim. As regards those 65 individuals the injunctions sought in this case and those granted (and now applied for) in *TfL v JSO* have precisely the same effect, since, in their case, the prohibition is not limited by reference to the banner under which any protest might take place. It follows that the final injunction against the Named Defendants in this case will also cover their participation in any future JSO protests on the IB Roads.

#### ***National Highways Limited and the M25 (SRN): IB and JSO***

30. NHL has also obtained injunctions in respect of major parts of The Strategic Road Network, namely the M25 and feeder roads on to the M25. NHL initially obtained interim injunctions, and has now obtained a final anticipatory injunction against IB protesters – in part from Bennathan J on 9 May 2022 and then more extensively from the Court of Appeal recently on 14 March 2023. The judgments in this case are referred to in paragraph 4 above. Since autumn of 2022, NHL also has an ongoing

claim against JSO protesters protecting structures on the M25 such as overhead gantries. On 21 November 2022 Soole J granted an interim injunction in respect of such JSO protests.

### **The Issues**

31. I consider the position of the Named Defendants and Persons Unknown in turn. The issues that fall for consideration are as follows
- (1) *The Named Defendants*: whether the Court should grant a final injunction in the terms sought against the remaining Named Defendants. This involves consideration, in particular, of the following:
- the Claimant’s underlying causes of action, in general;
  - the conditions for the grant of a final anticipatory prohibitory final injunction, in general;
  - the position under Articles 10 and 11 European Convention of Human Rights (“ECHR”).
- (2) *Persons Unknown*: whether the Court should grant a final injunction in the terms sought against Persons Unknown. This involves, additionally, consideration of the provision for alternative service and briefly, the now withdrawn application for a third party disclosure order. The three orders (as originally sought) - an injunction against Persons Unknown, an order for alternative service and a third party disclosure order – are closely interrelated. In general and in practice, to date, the Claimant (and others) have sought and obtained injunctions against persons unknown and at the same time obtained a direction for alternative service and third party disclosure orders against the police in order to identify persons hitherto unknown who had taken part in protests. Once the identity of those protesters was then disclosed, the Claimant was then able to serve the protesters with the relevant court documents, through the provision for alternative service.

#### **(1) The grant of a final injunction against the Named Defendants**

##### **The relevant legal principles**

##### ***The causes of action***

32. In the present case, the Claimant’s case is that its rights are or will be infringed by the Defendants committing one or more of the torts of trespass, public nuisance and private nuisance. The relevant principles applicable to each of these torts, particularly in the context of protests on the highway, are set out by Bennathan J in *NHL v IB* at §§28 to 31. See also *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB) (“*HS2*”) at §§74, 77-79, 84-90.
33. Trespass to land is the commission of an intentional act which results in the immediate and direct entry onto land in the possession of another without justification. If land is subject to a public right of way or similar, a person who unlawfully uses the land for any purpose other than that of exercising the right to



which it is subject is a trespasser. However the public have a right of reasonable use of the highway which may include protest. A protest involving obstructing the highway may be lawful by reason of Articles 10 and 11 ECHR.

34. Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonably interference with a claimant's land or his use or enjoyment of that land. In the case of an easement, such as a right of way, there must be a substantial interference with the enjoyment of it.
35. A public nuisance is one which inflicts damage, injury, or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of its operation (*HS2* at §84). The position in relation to an obstruction of the highway for the purposes of public nuisance is stated in *Halsbury's Laws* Vol 55 (2019) at §354: (a) a nuisance with reference to a highway has been defined as 'any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along it'; (b) whether an obstruction amounts to a nuisance is a question of fact; (c) an obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle; but an obstruction may be so inappreciable or so temporary as not to amount to a nuisance; (d) generally, it is a nuisance to interfere with any part of the highway; and (e) it is not a defence to show that, although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public.

### ***The requirements for a final anticipatory injunction***

36. The Claimant seeks a final anticipatory (also referred to as a precautionary or *quia timet*) prohibitory injunction against the Named Defendants. To grant such an order the Court must be satisfied that (1) there is a strong probability that the defendants will imminently act to infringe the claimant's rights and (2) the ensuing harm would be so grave and irreparable that damages would be an inadequate remedy: see *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch) at §31(3)-(4). There is no requirement for the Claimant to prove that its rights have already been infringed; but only that there is a real and imminent risk that they will be infringed: *NHL v IB* (CA) at §§37-39 and 19. The question here therefore is whether there is a real and imminent risk that one or more of the three torts will be committed by the Defendants.

### ***Articles 10 and 11 ECHR***

37. A protest which obstructs the highway may be lawful by reason of Articles 10 and 11 ECHR. (Articles 10 and 11 ECHR are set out at §34 of Freedman J's judgment in *TfL v JSO*). If so, this provides a defence to the alleged torts of trespass (and private and public nuisance). The relevant principles are derived from *DPP v Ziegler* [2021] UKSC 23 approving *City of London Corp v Samede* [2012] EWCA Civ 160 at §§38-44. In summary, the issues which arise under Articles 10 and 11 require consideration of the following five questions:
  - (1) Is what the defendant did in exercise of one of the rights in Articles 10 or 11?
  - (2) If so, is there an interference by a public authority with that right?

- (3) If there is an interference, is it prescribed by law?
  - (4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11?
  - (5) If so, is the interference ‘necessary in a democratic society’ so that a fair balance was struck between the legitimate aim and the requirements of freedom of expression and freedom of assembly?
38. Question (5) is the requirement of “proportionality” – a fact-specific inquiry which requires evaluation of the circumstances in the individual case. Question (5) in turn requires consideration of four sub-questions as follows:
- (1) Is the aim sufficiently important to justify interference with a fundamental right?
  - (2) Is there a rational connection between the means chosen and the aim in view?
  - (3) Are there less restrictive/intrusive alternative means available to achieve that aim?
  - (4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

As regards sub-question (4), a non-exhaustive list of relevant factors is set out in *DPP v Ziegler* at §§59, 61, 70-78, 81-86 and 116.

### **Application to the facts of this case**

39. I turn to apply these legal principles to the facts of this case.

#### ***The causes of action: the torts***

40. On the evidence before me I am satisfied that, subject to the considerations arising under Articles 10 and 11 ECHR, the conduct, both in the past and threatened in the future, of the Defendants in protesting on the IB Roads by deliberately blocking and obstructing those roads, prima facie constitutes the torts of trespass, private nuisance and public nuisance. As to trespass, the protesters directly enter on to land in the possession of the Claimant and use the land for a purpose other than exercising a public right of way; whether they are justifiably exercising a right to protest turns upon the application of Articles 10 and 11. Secondly, as to private nuisance the protests causes a substantial and unreasonable interference with the enjoyment and exercise of the rights of way of other road users. Thirdly, as to public nuisance, as a result of the protests, the public are prevented from freely, safely and conveniently passing along the IB Roads (the highway); the protests deliberately cause a physical obstacle on the IB Roads rendering them impassable or more difficult to pass along. I consider in paragraphs 44 and 45 below, whether, nevertheless, the protests are lawful under Articles 10 and 11.

#### ***Requirements for grant of final anticipatory injunction***

41. First, I am satisfied that, on the facts here, that there is a real and imminent risk of further protests (on the part of the Defendants) and that, subject to the Article 10 and 11 issues, those protests will infringe the Claimant's rights. The evidence of Mr Ameen demonstrates that the Named Defendants have repeatedly, deliberately and over a long period carried out those protests in order to cause the maximum disruption to the Claimants and the public. IB has repeatedly stated that they will continue to protest and that they will not be discouraged by injunctions. Further the fact that, apart from those Defendants referred to in paragraphs 14 and 15 above, none of the Named Defendants has sought to engage with the proceedings suggests that there is no arguable defence to the Claimant's claim including its claim for a final anticipatory injunction; see *NHL v IB (CA)* at §§40 and 41. The final injunction sought *in relation to the Named Defendants* is not limited to protesting under the IB banner; it applies to them individually protesting under whatever banner they choose.
42. I have considered whether the fact that the last protest solely under the IB banner took place in November 2021 (and last joint protest in October 2022) affects my assessment of whether there is a real and imminent risk of further future IB protests on the IB Roads, such that an anticipatory injunction is not justified. I have concluded that nevertheless there is such a real and imminent risk. First, IB itself (and expressly in contrast to the position of Extinction Rebellion) continues to state that it will continue its protests and has so stated recently (see paragraph 25 above). Secondly, I accept that the level of IB protests since November 2021 is likely to have been affected by a combination of the effect of the interim injunctions granted in this case and colder weather in the winter months. It follows that in the summer months the prospect of protest activity is likely to increase. Moreover if no final injunction were to be granted, then the chilling effect of the court injunctions to date would be removed, increasing the risk of the resumption of protests. Thirdly, if no final injunction were to be granted in respect of protests under the IB banner, then, it might well be that the recent switch from protests under the IB banner to protests under the JSO banner would be reversed, not least because of the more recent imposition of interim injunctions in the *TfL v JSO* case. (I note that in *NHL v IB* both Bennathan J and CA granted injunctions "against IB", despite the fact that, by that time, the transition from IB to JSO had occurred). Finally, in the case of the Named Defendants, since the final injunction will apply to them, regardless of the banner under which they protest, I take account of the fact that JSO protests have been continuing and of JSO's recent statements of intent. This is particularly relevant in the case of the 65 Named Defendants who are also defendants in the *TfL v JSO* case.
43. Secondly, I am satisfied and find that the ensuing harm from further protests at IB Roads will be grave and irreparable. As demonstrated by the evidence relating to past protests, the deliberate blocking of roads so that vehicles of all types cannot pass would cause serious disruption to many people, risk to life and of violence, economic harm, nuisance and the diversion of public resources. Damages would be an inadequate remedy for such harm, in the light of the matters to which I have referred; first, because much of it will be unquantifiable; secondly because the Claimant could not recover for losses sustained by others; and thirdly, the Defendants would be unlikely to be able to pay such damages as might be quantifiable.

### ***Articles 10 and 11 ECHR***

44. In the present case the answers to the first four questions set out in paragraph 37 above are as follows:
- (1) By participating in IB protests on the public highway, the Defendants have been, and will be, exercising their rights to freedom of expression and freedom of assembly in Articles 10 and 11 ECHR respectively: see Lavender J at §31(1) and Freedman J in *TfL v JSO* at §39.
  - (2) The grant of a final injunction would be an interference with those Article 10 and 11 rights.
  - (3) Any such interference is prescribed by law i.e. by the power contained in section 37 Senior Courts Act 1981, the case law which govern the exercise of that power and the Claimant's duties as a highway and traffic authority under section 130 Highways Act 1980: see Lavender J at §31(3) and *HS2* at §200.
  - (4) The interference is in pursuit of a legitimate aim, namely the protection of the rights and freedoms of others, such as other lawful highway users (under Article 11(2)) and in the interests of public safety and the prevention of disorder on the IB roads (under Articles 10(2) and 11(2)).
45. Turning then to question (5) - whether the interference is "necessary in a democratic society" - and each of the four sub-questions in paragraph 38 above, I find as follows:
- (1) The aims of preventing the obstruction of the public using the important IB roads and preventing the violence and danger which occur when this is jeopardised are sufficiently important to justify the interference with the Defendants' rights. The evidence is that the IB protests have caused considerable disruption and a risk to safety (see paragraph 26 above).
  - (2) There is a rational connection between the means chosen (final injunctive relief) and the aim in view. The aim is to allow road users to exercise their right to use the road system and final injunctive relief would prohibit the deliberate obstruction of the IB Roads by protesters which prevents or hinders the exercise of that right. The grant of interim injunctions in this case and in other cases has been successful to date in reducing such deliberately obstructive protests on the highways: see paragraph 24 above.
  - (3) There are no less restrictive or alternative means to achieve these aims than a final injunction in the form sought. Damages would not prevent any further protests, for the reasons given in paragraph 43 above. Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force in May and June 2022, have not changed the approach of protesters.

(4) Finally, as to sub-question (4) I find that making a final injunction strikes “a fair balance between the rights of the individual and the general interest of the community, including the rights of others”. Applying the factors enumerated in *Ziegler*, the factors favouring the grant of the final injunction include the ten points referred to by Freedman J in *NHL v JSO* at §§43 to 51. Whilst in that case his findings were directed towards JSO protests, I am satisfied that they apply with equal force to past and future IB protests. As regards the fourth point made by Freedman J (intention to block the highway), in the present cases, the locations of the IB protests have varied widely across London and have been chosen with a view to causing maximum disruption. Further a final injunction relating to the IB Roads does not prevent the Defendants from continuing to express their views at another location or near to the IB Roads provided they do not breach the terms of the injunction. In addition a failure to make a final injunction would encourage the continuation of IB’s protests on the IB Roads which are liable to be targeted because of their strategic importance and the damage and disruption which would necessarily entail. IB has repeatedly and recently stated that it will continue to protest until its demands are met. On the other side of the balance, I have taken into account, to the appropriate degree, the sincerity of the protesters’ views on what is an important matter of public interest, the nature of their message and objectives and the potential availability of alternative routes or modes of transport around the protest. As to the protesters’ views, I refer to the observations of Lord Neuberger MR in *Samede* at §41. It is not appropriate for the Court to express agreement or disagreement with those views. Overall, and having myself considered all matters relevant to the balance under sub-question (4), in reaching this conclusion on the “fair balance”, I have taken into account and endorse the final balance of points made by Freedman J at §61

46. In these circumstances I am satisfied that it is just and convenient for a final injunction to be made against the Named Defendants.

(2) **The position of Persons Unknown, Alternative Service and Third Party Disclosure**

47. I turn to consider whether the final injunction should also be granted against “persons unknown”. On the present case, the “persons unknown” are identified specifically through an express link to Insulate Britain. The final injunction applies only to a “person unknown” who is protesting “on behalf of, in association with, under the instruction or direction of, or using the name of, Insulate Britain”. (The position of Named Defendants is different in this regard: see paragraph 41 above). As explained in paragraph 31(2) above, this issue and the issues of alternative service (and third party disclosure) are interrelated to some extent.

**An order against Persons Unknown in principle**

*The relevant legal principles*

*Barking and Dagenham LBC v Persons Unknown*

48. In principle, “persons unknown” include both anonymous defendants who are identifiable at the time the proceedings commence, but whose names are unknown

and also what have been referred to as “newcomers”, that is to say people who at the relevant time of the issue of proceedings and at the time of the grant of the injunction are unknown and unidentified, but who in the future will join the protest and as a result with then fall within the description of the “persons unknown”.

49. As regards the making of a final injunctive order against “newcomer” persons unknown, the relevant principles are contained in the decision of the Court of Appeal in *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13 [2022] 2 WLR 946 (“*Barking and Dagenham*”) at §§75,77, 79-89, 91, 107-108, 117. The principles can be summarised as follows:
- (1) The court has power to grant a final injunction that binds individuals who are not parties to the proceedings at that time, including against persons who at the time of the grant of the injunction are unidentified and unknown (i.e. “newcomers”).
  - (2) A person unknown (newcomer) who subsequently *knowingly* acts in breach of the terms of the injunction thereby makes himself a party to the proceedings and is bound by the injunction. It is the act of infringing the order (with knowledge of the order) that makes the infringer a party. There is no need to serve formally that person with the proceedings in order for him or her to become a party to the proceedings and be bound by the injunction.
  - (3) Even after a final injunction is granted the court retains the right to supervise and enforce it; the proceedings are not at an end until the injunction is discharged.
  - (4) Where a newcomer breaches the injunction and thereby makes himself a new party to the proceedings, he can apply to set aside the injunction.
  - (5) Persons unknown must be described with sufficiently clarity to enable persons unknown to be served with proceedings.
  - (6) These principles apply to the tortious actions of protesters (as well as to persons unknown in other types of case, such as those setting up unauthorised encampments).
  - (7) All persons unknown injunctions, including final injunctions ought normally to have a fixed end point for review and it is good practice to provide for a periodic review.

An appeal to the Supreme Court in *Barking and Dagenham* was heard in February this year and judgment is now awaited. Nevertheless the foregoing represents the current state of the law: see *NHL v IB* (CA) at §42.

#### *The Canada Goose guidelines*

50. In the earlier case of *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 at §82, the Court of Appeal set out seven guidelines for the grant of *interim* injunctions against persons unknown. These are set out at §84 of Freedman J’s judgment in *TfL v JSO* and were applied to the facts in that case at §§85 to 91. Subject to necessary modifications and in so far as applicable, it appears that these

guidelines apply also to the grant of a *final* injunction against persons unknown: see *Barking and Dagenham* at §89. I am satisfied that each of the seven guidelines are met in this case. Whilst he was considering *interim* relief in respect of *JSO* protests, in my judgment the analysis and reasoning of Freedman J at §§85 to 91 applies with equal force to persons unknown protesting under the IB banner. Taking each in turn:

- (1) At the beginning of and during the course of these proceedings, identified defendants have been joined as Named Defendants and have been served with the Claim and subsequent documentation. As regards the future, the provisions for the alternative service (see section on this below) ensure fairness for any newcomers who will, under the final injunction, have liberty to apply to the Court to vary or discharge the final injunction against him/her specifically or everyone.
- (2) The identification of “Persons Unknown” is clear, precise and targets their conduct, and derives further clarity from the fact that the conduct in question has been ongoing for many months and is threatened to continue. The identification of Persons Unknown through the express link with IB provides further clarity and precision and limits the scope of Persons Unknown.
- (3) In so far as this applies also to *final* anticipatory relief, there is a sufficiently real and imminent risk of a tort being committed: see paragraphs 41 and 42 above.
- (4) The final injunction identifies the Named Defendants individually and, as regards persons unknown, the final injunction contains provisions for alternative service, which will enable them to be served with the order.
- (5) The concern that the prohibited acts must correspond to the threatened tort is not acute in the present case; in both trespass and nuisance, defining the unlawful conduct is straightforward. It involves the deliberate interference with the free passage of the public along the highway by land for the purposes of protesting.
- (6) The prohibited conduct and the description of persons unknown uses non-technical language without reference to any cause of action and is clear in its scope and application and capable of being understood by a defendant. Its reliance on personal intention (i.e. “deliberate” actions for “the purpose of protesting”) can be proven without undue complexity and it is necessary to prevent capturing what may otherwise be lawful ordinary highway use, by Named Defendants or anyone else.
- (7) The final injunction has a clear geographical limit, being restricted to the IB Roads which are select in number, of high strategic importance, and which are therefore also liable to be targeted by IB. The temporal limit is less acute in relation to final injunctions, but here it is satisfied by the time limit, review and liberty to apply provisions referred to in paragraph 52 below.

51. For these reasons I am satisfied that it is just and convenient to grant the final injunction against the Persons Unknown.

### ***Time limit and review***

52. In order to protect the public and the Claimant's rights, and given the extent and nature of the Defendants' disruptive protests and IB repeated statements that they will not stop protesting until their demands are met, the final injunction will last for a period of 5 years. In addition provision is made for a yearly review by the Court for supervisory purposes. A review provision was included in the final injunctions made by Bennathan J and the Court of Appeal in *NHL v IB*. This will also enable the Court to consider the implications, if any, of the Supreme Court judgment in the *Barking and Dagenham* case. In any event, the final injunction will provide for liberty for any Defendant (Named or Person Unknown) to apply to vary or discharge the injunction at any time.

***Alternative service (and third party disclosure)***

53. The Claimant seeks an order for alternative service, similar to that contained in the existing interim injunctions (and in many other NHL and TfL cases). It also sought an order for third party disclosure, again similar to that contained in the interim injunctions. In the course of the hearing, it withdrew that application for reasons I explain below.
54. The alternative service to be permitted is service of all documents by email to IB itself coupled with individual posting through the letterbox, or affixing to the front door, a package, with a notice in prominent writing. In principle, the underlying purpose of the provision for alternative service is to provide a method of ensuring that those who might breach its terms are made aware of the order's existence: see *NHL v IB* (Bennathan J) at §50 and *TfL v JSO* (Cavanagh J) at §32. I am satisfied that, for the reasons set out in Mr Ameen's witness statement and by Cavanagh J at §32, it is appropriate to permit alternative service in the terms proposed in the draft final injunction
55. In my judgment, there might appear to be a tension between the rationale for the provision for alternative service and the analysis in *Barking and Dagenham* in relation to persons unknown. On the one hand, it is said that alternative service is required so as to make a person aware of the proceedings and the injunction; on the other hand, *Barking and Dagenham* establishes that merely knowingly acting in breach of the injunction is sufficient to render a person party to the proceedings and automatically in breach and that formal service itself is not necessary.
56. I note that in the orders made in *NHL v IB* by both Bennathan J and the Court of Appeal there was express provision that persons who had not been served would not be bound by the terms of the injunction (and the fact that the order had been sent to the relevant organisation's website or otherwise publicised did not constitute service). Bennathan J explained at §52 that the effect of that provision was that anyone arrested at a protest could be served and risked imprisonment if they *thereafter* breached the terms of the injunction. The making of such a provision however seems to me to be inconsistent with the decision in *Barking and Dagenham* that merely *knowingly* acting in breach of the injunction is sufficient to render a person party to the proceedings and that service is not required to make such a person bound or in breach. This was picked up by Cavanagh J in *TfL v JSO* at §52 where he pointed out that (1) given the wide media coverage and publicity, it was "vanishingly unlikely" that anyone minded to take part in a protest was unaware that injunctions had been granted by the courts; (2) as a result it was not necessary to include an order in the terms made by



Bennathan J; and (3) he noted TfL's stated intention of not commencing committal proceedings against a person unknown unless that person had previously been arrested and then served with the order.

57. In the present case Mr Fraser-Urquhart KC has indicated that the Claimant will continue to adopt this "two strike" practice: it would not seek to commit a person unknown who attends a prohibited protest (even with knowledge of the injunction) first time round, but would only do so if that person is then served with the injunction and attends a second prohibited protest. By that time, such a person would no longer be a Person Unknown.
58. In the light of this indication, I then questioned the purpose of the inclusion of Persons Unknown in the final injunction. Mr Fraser-Urquhart accepted that the Claimant's intended practice could be seen to dilute the deterrent effect of the Persons Unknown element of the final injunction. He nevertheless submitted that its inclusion would increase the preventative effectiveness of the final injunction by way of wider publicity; and further that an injunction limited only to Named Defendants would substantially weaken that wider deterrent effect. I accept these contentions. There is a distinction between, on the one hand, the making a final injunction against a newcomer and, on the other, the consequences of such a final injunction – i.e. whether a person unknown becomes a party and is subject to, and in breach of, the injunction, which depends on knowingly acting contrary to the terms of the final injunction. *Barking and Dagenham* is not authority for the proposition that the court can only grant a final injunction against a newcomer person unknown where the Court can be sure that the person unknown acting in breach of its terms in the future will know that he is acting in breach.
59. As a result, I do not consider that the Claimant's intended practice undermines the appropriateness of including Persons Unknown in the final injunction nor of making orders for alternative service.
60. One final point in this regard: since mere knowledge of the injunction on the part of a person unknown is sufficient to render him potentially bound by its terms, and in order to increase the preventative purpose of the injunction, I took the view that the Claimant should bolster the steps it takes to publicise more widely the making of the final injunction. As a result the Claimant has now included at paragraph 7b of the draft final injunction additional provisions: to email a copy of the order not only to IB, but also to JSO, and other environmental protest groups; to post on the Claimant's twitter feed; to notify the Press Association and to place a notice in the London Gazette. In this way the likelihood of someone minded to take part in protests being unaware of the Court's order will be further diminished.

### ***Third party disclosure order***

61. To date, in many cases, claimants have sought and obtained an order for third party disclosure under CPR 31.17 directing the police to disclose to the claimant details of those who have been arrested at protests. Such orders were made in the interim injunctions in the present case, providing, first, for disclosure of the name and address of any person arrested at an IB protest on the IB Roads and, secondly, for all arrest notes and footage relating to any breach or potential breach of the injunction or any predecessor injunctions. (The former provision concerned persons unknown and the

latter was directed to support possible contempt proceedings against Named Defendants). Moreover, and significantly, those injunctions provided for those disclosure duties to be “continuing” duties, for as long as the injunction remained in force. Similar orders have been made in the *NHL v IB* and *TfL v JSO* cases.

62. In the present case, the Claimant sought the inclusion in the final injunction of a third party disclosure order in the same terms. In advance of the hearing, I raised with the Claimant questions in relation to this issue, and in particular as to the Court’s jurisdiction to make an order in the terms sought (under CPR 31.17, s.34 Senior Court Act 1981 or otherwise), including whether there is power to order disclosure of documents/information which are/is not yet in existence, but which may only come into existence in the future (and if so, whether it should) – in other words, in relation to protests which have not yet happened. Subsequently, in the course of argument, Mr Fraser-Urquhart informed the Court that the Claimant did not pursue the application for third party disclosure order. It did not require any information about protests which had already taken place. He indicated that the Claimant might come back to the Court and seek a disclosure order in the event that a further protest had occurred. I say no more about this issue, save to say that in my judgment, if it arises for consideration again, the Court would greatly be assisted by detailed submissions for and against the making of such an order.

### **Conclusion**

63. In the light of my conclusions at paragraphs 46, 51 and 54 above, there will be judgment for the Claimant for a final injunction in the terms of the draft order submitted.