



Neutral Citation Number: [2023] EWHC 1201 (KB)

Case No: KB-2022-003542

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 26th May 2023

Before :

MR JUSTICE EYRE

Between :

TRANSPORT FOR LONDON	<u>Claimant</u>
- and -	
(1) PERSONS UNKNOWN	<u>Defendant</u>
(2) MS ALYSON LEE AND 167 OTHERS	

Andrew Fraser-Urquhart KC and Charles Forrest (instructed by TfL) for the **Claimant Benjamin Buse, Carole Caldwell, Joanna Blackman, Mair Bain, Anthony Harvey, James Green, Benjamin Larson, Matthew Parry and Rachel Payne** (Named Defendants 8, 63, 65, 74, 102, 110, 140, 143, and 145) attended.

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

Hearing date: 4th May 2023

Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on Friday 26th May 2023.

Mr Justice Eyre :

Introduction.

1. The Claimant is the highway authority and traffic authority for the GLA Roads. Those are roads in the Greater London area which were formerly trunk roads. Although the GLA Roads comprise only 5% of the length of London's road network they carry approximately one-third of the traffic in the Greater London area.
2. This judgment follows the trial of the Claimant's claim for a final injunction against 168 named defendants ("the Named Defendants") together with persons unknown. As will be seen below the Claimant no longer seeks an injunction against most of the Named Defendants. The Claimant seeks an injunction preventing certain forms of disruptive protest on a number of the GLA Roads against the remainder of the Named Defendants and against persons unknown. The claim is brought in response to actions taken as a part of the campaigning activity of Just Stop Oil ("JSO").
3. The background to these proceedings is set out in detail in the judgments of Freedman and Cavanagh JJ at [2022] EWHC 3102 (KB) and [2023] EWHC 402 (KB) respectively given when granting the Claimant interim injunctions in this matter. The general history of related protest activity undertaken as part of campaigns by Insulate Britain and Extinction Rebellion is summarised by Morris J in his judgment in *Transport for London v Persons Unknown & others* [2023] EWHC 1038 (KB) ("*Insulate Britain*"). I adopt the analysis of the history set out in those judgments and need only give the shortest of summaries here. After the trial of this matter Cotter J handed down his judgment in *National Highways Ltd v Persons Unknown & others* [2023] EWHC 1073 (KB) which primarily addressed matters arising out the activities of the Insulate Britain campaign but which also referred to aspects of the JSO campaign.
4. JSO is a campaigning group. Its particular demand is that the government should halt all licensing consents for the exploration, development, and production of fossil fuels in the United Kingdom. However, it lends its name to a wider coalition of campaigning groups with related aims and overlapping bodies of supporters. Those groups include Insulate Britain and Extinction Rebellion. Their campaigns arise out of environmental concerns and in particular out of beliefs as to the action needed to address the effects of climate change and/or to prevent further harmful effects from the use of fossil fuels. The failure of the government to take the measures or at the speed which the members and supporters of these groups regard as adequate caused a number of those persons to engage in protests.
5. The protest action with which I am concerned has taken the form of the blocking of roads. It has involved those protesting taking various steps to hinder their removal from the roads in question; to extend the duration of the road blockage; and to heighten the effect of those blockages. The methods used have included the linking together of those engaged in obstructing the highway; the affixing of persons or objects to the highway or to structures on the highway; and the damaging of such structures (examples have included the covering of signs). Latterly the protests have taken the form of slow marching namely walking slowly in a body on a road so as markedly to reduce the speed and flow of traffic along the road. Those actions have had and have been intended to have a significant disruptive effect on the use of the

roads in question by other road users. That disruptive effect has not been limited to the roads actually obstructed nor to the immediate vicinity of the obstruction as Freedman, Cavanagh, and Morris JJ have explained. Those speaking for JSO and individual members of the campaign have asserted their intention to continue with such protests until their objectives are achieved. The peak of the activity was in October 2022 when for a period roads were being obstructed daily in London though there was also a high level of such activity in November and December 2022. There has been some reduction in this disruptive activity since then. The Claimant says that this reduction is not the result of any change of belief or of approach on the part of those engaging in these campaigns but that it has been caused by a combination of the harsher weather during the winter months and of the interim injunctions which have been granted in this matter (together with other court orders in related proceedings).

6. The judgments of Freedman and Cavanagh JJ set out the history to February 2023. As disclosed by the updating evidence from the Claimant the activities of the JSO campaign since then have been largely confined to instances of slow marching on various roads. However, it is of note that those speaking for JSO have said that the group has been engaged in a campaign of civil disobedience since 24th April 2023 and that there appears to have been an increase in the instances of slow marching since then. There has been no renunciation by JSO or those speaking on its behalf of the previous forms of disruption. It is also to be noted that there have been repeated assertions by those speaking for JSO that the campaign of disruption will continue until the group's objectives have been achieved.

The Procedural History.

7. The claim form was issued on 20th October 2022.
8. On 18th October 2022 by an order sealed on 19th October 2022 Yip J granted an interim injunction. The injunction was with some modifications extended until the disposal of this matter by orders made by Freedman and Cavanagh JJ on 4th November 2022 and 27th February 2023 respectively. Those judges also gave various directions for the further conduct of the case.
9. There was some addition of further named defendants in the course of the proceedings. By the time of the trial before me there were 168 Named Defendants. However, the Claimant no longer sought relief in respect of two of those. They were Arne Springorum and Xavier Gonzalez Trimmer (Named Defendants 5 and 48 respectively): the former had not been served and the latter had sadly died in the course of the proceedings.
10. Nine of the Named Defendants attended the hearing. At the hearing eight of these gave undertakings in terms mirroring the injunction sought by the Claimant and the ninth, Joanna Blackman (Named Defendant 65) provided a signed form of undertaking subsequently. In light of that the Claimant no longer sought injunctive relief against those defendants.
11. With the exception of Joanna Blackman those Named Defendants who attended the hearing had sent written submissions to the court or to the Claimant. In the case of Anthony Harvey (Named Defendant 102) I was told that the submission had been approved by and was being made on behalf the other Named Defendants who

attended the hearing (with the exception of Joanna Blackman) and further forty-two Named Defendants. I gave those Named Defendants who attended the hearing an opportunity to address the court. A number of them did so while others chose to confirm that they stood by the contents of their written submissions. Those written and oral submissions explained the conduct and motivation of their makers and commented on the actions of JSO more generally. In addition they raised matters relevant to the assessment of the degree of risk of further conduct of the kind which the Claimant seeks to enjoin and of the proportionality of and need for relief by way of injunction. Although those Named Defendants who have given undertakings are no longer at risk of being subject to the injunction sought I have taken account of their submissions when considering the position of the other Named Defendants and of Persons Unknown in the ways I will explain below.

12. A further six of the Named Defendants did not attend but did send written submissions to the court or to the Claimant. Those were David Crawford (Named Defendant 15), Louise Lancaster (Named Defendant 30), Meredith Williams (Named Defendant 33), Jane Neece (Named Defendant 63), Christine Welch (Named Defendant 64), and Adrian Howlett (Named Defendant 71).
13. At the hearing I indicated that I would not hand down any judgment until after Friday 19th May 2023 to give further Named Defendants an opportunity to proffer undertakings. A considerable number of those defendants did so (including the six Named Defendants listed in the preceding paragraph) with the consequence that no further relief is sought against them. The consequence is that there only remain ten Named Defendants against whom the Claimant seeks a final injunction.
14. No other Named Defendant either attended the hearing or made any representations. I was, however, satisfied that there had been compliance with the directions for alternative service made by Cavanagh J and that it was appropriate to proceed with the trial in the absence of the other Named Defendants.

The Relief sought by the Claimant.

15. In the course of this action the Claimant has revised the relief it is seeking. It now seeks an injunction mirroring that granted by Morris J in *Insulate Britain*.
16. The proposed order would last for a period of five years with annual reviews. The Claimant seeks to enjoin the Named Defendants and persons unknown from blocking, slowing down, obstructing, or otherwise interfering with access to or the flow of traffic onto or along twenty-three specified roads or junctions for the purpose of protesting and from causing, assisting, or encouraging other persons to do so. The proposed order identifies a number of activities including locking onto other persons or to the roads or structures thereon which are within the proposed prohibition. However, it expressly provides that the prohibition does not extend to the practice of slow marching.
17. The Claimant says that these roads and junctions are of particular strategic importance to the London traffic network. It says that they were chosen to be the subject of the proposed order for two reasons. The first is that they are perceived because of that strategic importance to be at higher risk than other roads of being subject to protests in the form of obstruction of the flow of traffic on or along them. The second is the

extent of the harm and disruption which would result from a blockage of the particular roads. It is said that in respect of each a blockage would have effects spreading more widely affecting the surrounding areas and potentially affecting the traffic network more widely. Glynn Barton is the Claimant's Chief Operating Officer and he has provided a witness statement explaining the reasoning for the choice of each road. In respect of each road he has identified the volume of traffic involved; the effect which a blockage of the traffic at that point would be likely to have; and particular facilities, such as hospitals, which would be affected by such a blockage of traffic. Of the twenty-three roads or junctions eleven have previously been the subject of protests involving the disruption of traffic flow as part of the campaign by JSO and associated groups.

18. In enforcing the interim injunction against persons unknown the Claimant has adopted an approach of not seeking to commit a person breaching the injunction for contempt on the first occasion that such a person breaches the order. The Claimant's response to the first breach by a person who becomes a defendant by reason of such a breach has been to serve notice of the injunction on that person with an indication that the person in question would be at risk of committal proceedings in the event of a further breach. The Claimant says that it intends to continue that approach if the final injunction is granted in the terms sought. I have concluded that this cannot be a material factor in my consideration of the appropriateness or otherwise of the order sought. I have to consider whether it is appropriate to make the proposed injunction against persons unknown in circumstances where a single breach would suffice to put a person in breach at risk of committal proceedings.

The Applicable Law.

19. In his judgment in *Insulate Britain* at [33] - [35] Morris J explained the necessary elements of the three causes of action on which the Claimant relies thus:

“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.”

20. The requirements which have to be satisfied before an anticipatory injunction can be granted are well-established. The effect of the decision of Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch), [2019] 4 WLR 2 and of the decision of the Court of Appeal in *National Highways Ltd v Persons Unknown & others* [2023] EWCA Civ 182 is that such an injunction will only be granted where there is a strong probability that unless restrained the defendant will act in breach of the claimant’s rights and that the harm resulting from such a breach would so grave and irreparable that damages would not be an adequate remedy. At [31] Marcus Smith J identified a non-exhaustive list of factors relevant to that assessment. The words and actions of a defendant will be of particular significance in making that assessment. The court can be satisfied that there is a sufficiently strong probability of breach even in respect of a defendant who has not yet breached the claimant’s rights (see the Court of Appeal’s decision at [37] – [39]). However, as Julian Knowles J pointed out in *High Speed Two Ltd & another v Persons Unknown & others* [2022] EWHC 2360 (KB) at [95] – [96], as a matter of common sense rather than law the court may be more readily satisfied that there is sufficient probability that a defendant will act in breach a claimant’s rights unless restrained when the defendant in question has already breached those rights. Again as a matter of common sense this will be all the more so where the defendant has not disavowed those past actions and still more where an intention of repetition has been expressed.
21. A protest on a highway may amount to an exercise of the protester’s rights of freedom of expression and/or freedom of assembly under articles 10 and 11 of the European Convention on Human Rights. In those circumstances the effect of the decisions in *DPP v Zeigler* [2021] UKSC 23, [2022] AC 408, *City of London Corporation v Samede* [2012] EWCA Civ 160, [2012] PTSR 1624, and *Cuadrilla Bowland Ltd & others v Persons Unknown & others* [2020] EWCA Civ 9, [2020] 4 WLR 29 is that the court must consider five further questions namely:
 - (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? The relevance of this requirement being that article 10 envisages the right to freedom of expression being subject to such restrictions as are prescribed by law and that article 11 provides that only such restrictions as are prescribed by law shall be placed on the right to freedom of assembly.
 - (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’ such that a fair balance is struck between the legitimate aim and the requirements of freedom of expression and freedom of assembly?
22. The fifth of those questions raises an issue of proportionality which requires the court to consider a further four sub-questions which are:
- (1) Is the aim of the interference which would result from the injunction sufficiently important to justify interference with a fundamental right?
 - (2) Is there a rational connexion between the means chosen and the aim in view?
 - (3) Are there less restrictive or 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?
23. The assessment of proportionality is a fact-specific exercise requiring close consideration of the circumstances of the particular case. Potentially relevant factors were identified by Lord Neuberger MR in *Samede* at [39] and following and by Lords Hamblen and Stephens in *Zeigler* at [71] – [78]. In addition to those matters it can, as explained by Leggatt LJ in *Cuadrilla* at [94] – [95], be relevant to consider whether the disruption resulting from a protest was a side-effect or an intended consequence of the actions in question and whether those engaged in a protest are seeking to persuade others or are attempting to compel those others to act or to desist from acting in a particular way.
24. The sincerity of the views of those protesting and the importance of the issue or issues being addressed are potentially relevant to the balancing exercise. Thus the freedom of expression rights of those genuinely seeking to raise concerns on matters of political or economic importance and of general concern will carry more weight than those of persons seeking to give vent to matters of more limited concern or of less importance. However, it is important to note both the limited weight that attaches to that factor and also that the court’s agreement or disagreement with the views expressed by those protesting or with the outcome which the protesters wish to achieve is entirely irrelevant to that exercise and can play no part in the court’s conclusion as to the grant or refusal of relief. It is not for the court to evaluate the views being expressed and still less to express agreement or disagreement with them: see the explanations given in *Samede* at [39] – [41]; by Freedman J in his judgment at the interim stage in this case at [53] – [55]; by Lavender J in *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (QB) at [34] – 37]; and by Cotter J in *National Highways Ltd v Persons Unknown* at [83] and [106] – [107].
25. I have had regard to the approach to the balancing exercise which Morris J adopted in the *Insulate Britain* case together with the decisions of Lavender J in *National Highways Ltd v Persons Unknown* and of Bennathan J in *National Highways Ltd v Persons Unknown & others* [2022] EWHC 1105 (QB). In doing so, however, I bear in mind that the balancing exercise is fact-specific and that regard must be had to the particular circumstances of the current case. It follows that those decisions illustrate factors which can be relevant and conclusions which can be reached as to where the

applicable balance falls but that they cannot determine the outcome of the balancing exercise which I must undertake. I have also had regard to the judgments of Freedman and Cavanagh JJ in this case. In their judgments Freedman and Cavanagh JJ were considering the particular circumstances of this case as they were at the time of those judgments. It follows that the identification by those judges of the potentially relevant factors and of the proportionality of granting relief in this case must carry great weight. It is nonetheless to be remembered that Freedman and Cavanagh JJ were identifying relevant factors and assessing proportionality at the interim stage. I have to assess the position at the stage of trial with a view to the making of a final injunction (with the Claimant seeking an injunction to run for five years). It is possible that the weight to be attached to particular factors might be different at the interim and final stages of the process and also possible that the conclusion as to proportionality might be different at those stages.

26. There are additional requirements which have to be satisfied before the court will grant an anticipatory injunction against persons unknown. As explained by Morris J in *Insulate Britain* at [50] the seven guidelines for the grant of an interim injunction against such persons unknown as identified by the Court of Appeal in *Canada Goose UK Retail Ltd & another v Persons Unknown & others* [2020] EWCA Civ 303, [2020] 1 WLR 2802 at [82] also govern the grant of final injunctions against persons unknown. I will address those guidelines below when considering the appropriateness or otherwise of the relief sought against Persons Unknown.
27. I turn now to the application of those requirements to the circumstances of this case. In respect of the Named Defendants it will be necessary to consider their positions individually though as will be seen they fall into three categories with substantially the same considerations applying to all of those in a particular category but with marked differences between the positions of those in each category. It is of note that none of the remaining Named Defendants have chosen to engage in the court or the Claimant in any way. I have taken account of the submissions and the statements made by those of the Named Defendants who gave undertakings when considering the issues of risk and proportionality more generally. In respect of the other remaining Named Defendants their decision not to participate in the proceedings whether by way of attendance or the provision of submissions is of considerable relevance as explained by the Court of Appeal in *National Highways Ltd v Persons Unknown & others* at [40]. At that point the Chancellor (delivering the judgment of the court) was addressing relevance for the purposes of summary judgment but the position is all the greater at trial. The failure of those Named Defendants to participate in the proceedings or to make submissions is to be taken as indicating that they have chosen not to challenge the case being asserted in relation to them. In addition a failure to engage with the court or with the Claimant can, particularly when combined with the failure to take an opportunity to resolve matters through the giving of an undertaking, give an insight into the intention of the defendant in question as to his or her future conduct (as Cotter J explained in his judgment at [121]).

The Causes of Action.

28. In *Insulate Britain* Morris J was satisfied that the actions in question would if committed be a breach of the Claimant's rights. With the substitution of the roads with which I am concerned for "the IB roads" the analysis in the following terms at [40] of Morris J's judgment applies here.

“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. ...”

Is there a strong Probability that the Remaining Named Defendants and/or Persons Unknown will act in Breach of the Claimant’s Rights?

29. I will first consider whether there is in general terms a risk of the resumption or initiation of the actions which the Claimant seeks to restrain at the locations with which I am concerned and then turn to address the positions of the particular Named Defendants.
30. I take account of the fact that during 2023 the principal tactic of those engaged in the JSO campaign has been that of slow marching, an activity which the Claimant does not seek to restrain. Nonetheless I am satisfied that in the absence of an injunction there is a strong probability that at least some of those engaged in that campaign will resume the blocking of roads along the lines of the action taken in October 2022 and immediately thereafter. In that regard I accept the Claimant’s contention that the reduction in such activity has been in part due to weather conditions and also that it has been a consequence of the injunctions which have been imposed. It is highly likely that the onset of warmer weather combined with the discharge of the existing injunction would be followed by a resumption of the blocking of roads.
31. It is also of note that not only has there been no assertion by those speaking on behalf of JSO that there will be no resumption of its former activities but that rather on 24th April 2023 it was said that JSO was committed to a campaign of civil disobedience. There has, moreover, been an increase in the frequency of protests taking the form of slow marching since then.
32. Considerable caution is needed in taking account of the submissions made by those Named Defendants who did participate in the proceedings as a basis for conclusions about the intentions of those who did not. Nonetheless I do take account of those submissions as providing an insight into the state of mind of those associated with the JSO campaign. That is because I am satisfied that the submissions made by those of the Named Defendants who participated in the court process throw light on the state of mind of those who have associated themselves with the JSO campaign. This is particularly so as the picture which emerges from those submissions is consistent as between the submissions and is consistent also with the position as revealed by the other evidence. It is relevant that none of those making submissions disavowed the objectives or tactics of the JSO campaign and none of them said that the objectives of the campaign had been achieved such that protest action was no longer needed. Rather

those persons have chosen for differing reasons to give undertakings rather than be subject to a continuing injunction and to the risks of liability for costs.

33. In those circumstances I am satisfied that there is a real and imminent risk that in the absence of an injunction there would be protests under the banner of the JSO campaign and taking the form of the blocking of roads at the locations identified by the Claimant. I have taken account of the fact that not all of those locations have previously been the site of such protests. Nonetheless all are locations in London where the blocking of the road will be liable to cause substantial and widespread congestion. They are precisely the kind of location at which such protests have previously occurred and the fact that a particular location has not previously been targeted is not an indication of the absence of risk. That risk is not confined to the remaining Named Defendants but also extends to other persons both those whose identity is currently unknown but who have participated in such protests previously and those who join or associate themselves with the JSO campaign in the future. It follows that there is a real and imminent risk of obstruction of these locations by persons unknown.
34. I turn to the remaining Named Defendants. It was open to each of them to give an undertaking or to engage with the court process as the great majority of the other Named Defendants have done. There has been no response from these defendants to the proceedings let alone any indication that they do not intend to engage in the blocking of roads. As explained above such a failure to engage is to be seen as a deliberate decision on the part of the relevant defendants not to challenge the case advanced against them and as an indication of their intentions in terms of future conduct.
35. The remaining Named Defendants fall into three broad groups. The first is made up of those defendants who have at least once engaged in the blocking of roads or related actions in furtherance of the JSO and/or Insulate Britain campaigns and who have also participated at least once in further actions in the context of those protests. Several have done so repeatedly; a number have been subject to injunctions; and three have acted in breach of injunctions. That category comprises Named Defendants 3, 7, 20, 45, 46, 56, 84, and 137. The second category contains only Named Defendant 51 in respect of whom the case is simply that he has been subjected to two injunctions in other proceedings. The final category is made up of Named Defendant 142 who is said to have engaged on one occasion in the blocking of a road as part of the JSO activities in October 2022.
36. In Schedule 1 I have listed those Named Defendants in the first category and have summarised the matters which are said to justify the conclusion that there is a strong probability that they would, if unrestrained, act in breach of the Claimant's rights. Each of these defendants has engaged in JSO or Insulate Britain protests at least twice when at least one of those occasions has involved the blocking of roads. In the case of several of these defendants there have been multiple instances of such conduct combined with acting in breach of an injunction and/or the gluing of the defendant to court furniture. I have included Andrew Worsley Named Defendant 3 in this category because although only one instance of the blocking of a road is expressly put forward in his case he has been subject to two injunctions in connexion with JSO or Insulate Britain protests. One of those injunctions was that granted by the Court of Appeal in *National Highways v Persons Unknown* and as I will explain below the effect of that

is that he had been found to have engaged in a protest in relation to the events leading up to that injunction. In circumstances where there has been no engagement with the court by any of these defendants and where none has disavowed the objectives or tactics of the JSO campaign I am satisfied that there is a strong probability that in the absence of an injunction each of these defendants would act in breach of the Claimant's rights by obstructing one or more of the roads with which I am concerned.

37. Ben Newman Named Defendant 51 falls into a different category. The justification advanced for including him as a named defendant is that he has been subject to two other injunctions in respect of protests as part of the JSO or Insulate Britain campaign. He was subject to the injunctions granted in *Thurrock Council & another v Adams & others* [2022] EWHC 1324 (QB) and to the injunction granted by the Court of Appeal in *National Highways v Persons Unknown*. The effect is that on two separate occasions the court has concluded that there is a sufficiently grave and imminent risk of this defendant engaging in protest activity to warrant the grant of an injunction against him. If the evidence went no further than that I would doubt whether this defendant's inclusion in the current injunction would be warranted. The fact that a court is satisfied that there is a risk of particular activity at a different location would not without more suffice to establish the necessary degree of risk that there would be protest activity at the locations with which I am concerned. However, on proper analysis the evidence does go further than that. It is apparent from paragraph 8 of HH Judge Simon's judgment in the *Thurrock Council* case and from paragraph 35 of Bennathan J's judgment in the *National Highways Ltd* case that in order to have been joined in those actions as a named defendant it was necessary that Mr Newman had been arrested in connexion with protest activity at the sites with which those injunctions were concerned. As Bennathan J noted it is possible that a particular arrest was mistaken or unjustified. The position, however, is that Mr Newman has twice been arrested in the context of JSO or Insulate Britain protest activity with the arrests being at different locations. Mr Newman has chosen not to participate in these proceedings. It would have been open to him to contend that his presence at the sites in question was unrelated to the protest activity or to disavow that activity. He has chosen not to take such a step and in those circumstances I am satisfied that the Claimant has established that there is a real and imminent risk of Mr Newman engaging in the obstruction of the roads in question here if not restrained.
38. Finally, Gregory Dring Named Defendant 142 was involved in obstructing one of the roads with which I am concerned on a single occasion as part of the protests by JSO in October 2022. I note that there has been no relevant protesting activity by him since October 2022 and in his case there was only one instance of such activity. I have reflected whether this conduct is sufficient to establish that there is a strong probability that if unrestrained this defendant will act in breach of the Claimant's rights. I am satisfied that such a strong probability is shown here. The balance is tipped in favour of that conclusion by the combination of the facts that he took part in a JSO protest on a relevant road; that he has chosen not to engage in the court process; and that he has neither disavowed the aims of the JSO campaign nor stated that he will no longer engage in the same.
39. It follows that the necessary strong probability that the defendant will act in breach of the Claimant's rights has been established in respect of each of the remaining Named Defendants.

Will such a Breach cause grave and irreparable Harm such that Damages will not be an adequate Remedy?

40. I am satisfied that the breach of the rights of the Claimant and of others by the blocking of roads at the locations in question here would cause grave and irreparable harm. I will address the nature and extent of the harm further when considering the question of proportionality below. It suffices at this stage to say that the blocking of these roads will inevitably cause serious disruption to the lives of many people. The harm will be to their economic interests but also to their personal lives in ways which although not measurable in financial terms will be real and lasting. Some of those affected will be prevented from attending meetings or appointments or taking part in particular one-off activities in circumstances where the opportunity to participate which has been lost will never be regained. In addition there will be a substantial diversion of finite public resources from other tasks of public value.
41. In *Insulate Britain* at [43] Morris J explained that damages would not be an adequate remedy because much of the harm would be unquantifiable; the Claimant would not be able to recover for the losses sustained by others; and because the ability of the Defendants to pay such damages as could be quantified is questionable at best. The same considerations apply here and I adopt that analysis.

The first four Zeigler Questions.

42. These questions can be answered shortly and as will be seen I substantially adopt the approach taken by Freedman J in his judgment at the interim stage in this matter; by Lavender J at [31] in *National Highways Ltd v Persons Unknown*; and by Morris J in the *Insulate Britain* case at [44].
43. It was accepted by the Claimant that participation by the Named Defendants and by persons unknown in JSO protests on the public highway would be an exercise of their article 10 and article 11 rights of freedom of expression and assembly. I proceed on that basis.
44. The grant of a final injunction would clearly be an interference with the exercise of those rights.
45. The grant of an injunction would also clearly be an interference prescribed by law as being one flowing from the court's powers under section 37 of the Senior Courts Act 1981 and by way of enforcement of the Claimant's rights and duties under the Highways Act 1980 and at common law.
46. The interference with the Defendants' article 10 and 11 rights would be in pursuit of a legitimate aim within the scope of those articles. That aim would be protection of the rights and freedoms of others being not just the Claimant but also those whose passage along and use of the highway would be impeded by the actions which the Claimant asks the court to restrain.

The Balancing Exercise and Consideration of whether the Interference with the Named Defendants' Article 10 and Article 11 Rights is Necessary and Proportionate.

47. The first three of the sub-questions forming part of the balancing exercise can be addressed shortly before I turn to the issue of proportionality and of the drawing of a fair balance between the Defendants' rights and those of others and the interests of the wider community. In the following analysis it will be seen that I have drawn heavily on the conclusions reached by Freedman J in his judgment at the interim stage in this matter and by Morris J in *Insulate Britain*.
48. The aim of protecting the rights of the Claimant and the rights and freedoms of others to use these important roads is of sufficient importance to warrant an interference with the Defendants' Convention rights provided that a proper balance is drawn and the interference is proportionate.
49. There is a clear rational connexion between the way in which there is an interference with the Defendants' rights and the aim of protecting the rights and freedom of others. The aim is to allow others to use the roads with which the court is concerned and the proposed injunction would prohibit the obstruction of those roads in such a way as to interfere with those rights.
50. I am satisfied that there are no less restrictive or intrusive ways in which that aim could be achieved. As I have already noted damages would be an inadequate remedy for the harm to the rights of the Claimant and of the public more generally. It is apparent that the risk of being liable for damages has not deterred those Named Defendants who have chosen not to give undertakings. In addition I adopt by reference to the roads with which I am concerned the analysis of Morris J [45(3)] that:
- “... 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.”
51. I turn then to the question of proportionality and the fair balance between the Defendant's Convention rights and the rights of others.
52. The following factors operate in particular against the granting of an injunction:
- i) Proper regard must be had to the importance of the Defendants' Article 10 and 11 rights. The court must not simply pay lip service to such rights but must give them real weight. In that context there is force in the contention that some degree of disruption to others is if not necessarily inherent in the right to protest then a likely corollary of many forms of protest.
 - ii) The subject matter of the Defendants' protests is an issue of real seriousness and importance. In that regard it is of note that those engaging in the protests have not done so lightly and it is apparent that many of them feel that they are compelled to act in this way believing that no other action is effective to prevent future harm to others.

- iii) The protests are not violent. This was a point which was made in a number of the submissions put to me but in the context with which I am concerned it has only very limited weight. It is correct that those engaging in the obstruction of roads are not themselves violent to others but the purpose of their actions is to obstruct others. The persons affected by the obstruction of the roads are compelled to suffer that impact until those creating the obstruction choose to depart or are physically removed. Those involved in the JSO campaign do not depart from the roads which they have chosen to block voluntarily. Moreover, in many instances their actions by way of linking themselves together or attaching themselves to structures are deliberately designed to hinder and delay their removal.
- iv) It was said in the submissions made to me that those engaged in the JSO protests deliberately leave a “blue light” lane free or that they will voluntarily clear the road sufficiently to allow an ambulance or fire engine displaying its flashing lights to pass through an obstruction. This point was combined with an argument that the drivers of emergency vehicles are trained to deal with congestion and are experienced in working their way through congested streets. In addition the point was made that congestion can occur on London’s roads as a consequence of accidents or road works or a host of other matters and that these are not generally regarded as thwarting the movement of emergency vehicles. I accept that those engaged in the protests will be prepared to allow through an emergency vehicle with flashing lights at the point of their obstruction of the road. However, when regard is had to the nature and effect of the obstructions this is of little weight. The effect of the obstruction of the roads with which I am concerned is to cause substantial congestion of traffic over a wide area. Indeed that is its objective. Such congestion will necessarily have an impact on the passage of emergency vehicles and will do so over an area extending beyond the immediate point of obstruction. Skilled and experienced though the drivers of such vehicles are their passage through congested traffic will inevitably be slower than their passage along roads which are not heavily congested. It barely needs stating that delay in the passage of emergency vehicles creates a risk of harm to health or property: that is why they are equipped with sirens and flashing lights and why other road users cede them right of way. The lifting of an obstruction at the point of obstruction to allow the passage of an emergency vehicle is only a minor amelioration of the effect on such vehicles and of the risk to those awaiting their arrival or travelling in them. There is similarly little force in the point that congestion can and does arise from other causes. That is because the congestion resulting from the obstruction of roads such as those in issue here is in addition to that occurring in the normal course of events. Moreover, the importance of these roads and junctions to the flow of traffic is such that their obstruction will cause more extensive congestion than that resulting from road works or accidents at other locations.

53. The following matters stand in the other side of the balance:

- i) First is the extent and effect of the disruption which will be caused by the obstruction of these roads. As explained at [17] above the obstruction of the passage of traffic at the roads in question will have wide-ranging effects. There

is likely as a consequence to be congestion of traffic across a wide area. In a number of instances there is no alternative or no practicable alternative to use of the roads in question. As Freedman J said, at [61], “the protesters choose where to protest, but they deprive other road users of any choice to avoid the protests and to avoid being held up for long periods of time with all the personal or economic consequences which may follow.” Those personal and economic consequences will be varied but they will be real and will affect many people.

- ii) Addressing the protests and dealing with the congestion resulting from the obstruction of these roads has occupied the time and resources of the police service and of the Claimant as the highway authority. That time and those resources are finite and the time and money spent in addressing these matters cannot be used in other ways conducive to the public good. The harm resulting is necessarily difficult to identify with precision but it is nonetheless real and at the very lowest the consequence is that there is a delay in achieving the public goods which would otherwise be achieved by use of that time and those resources.
- iii) Next it is significant that the objective of the blockage of the roads is the disruption of the lives of others and the diversion of resources to which I have just referred. The obstruction of others; the infliction on those others of the personal and economic consequences; and the diversion of public resources are not side-effects of these protests rather they are the objectives of the protest. This is apparent from the fact that the obstructions have taken place without warning and without cooperation with the police. Those obstructing the roads are not seeking thereby to persuade others of their arguments nor thereby to bring their arguments to the attention of others who would be otherwise unaware of them. This is not a case where the protesters are seeking to force others to stop acting in a way of which the protesters disapprove but their objective is nonetheless coercion rather than persuasion. Their objective is to put pressure on the government not by way of persuasion or democratic argument but by disrupting the lives of their fellow citizens and by the contention that the price to be paid for the ending of the disruption is implementation of the measures for which they are campaigning. In that regard it is of note that the locations in question are not connected with parliament or with government other than by chance. As Freedman J said, at [61], “the protests in this case are not directed at a specific location which the subject of the protest”.
- iv) Where inconvenience to others is a side-effect of a protest and particularly where the inconvenience is modest then the reaction to the protest of those subjected to the inconvenience can carry little weight in the balancing exercise. In many cases the anger of those inconvenienced cannot be a reason of substance for curtailing the Convention rights of others. Such modest inconvenience may be seen as inherent in a democratic society. However, the position is different where the inconvenience to others is the intended effect of the protest and where large numbers of persons are subjected to a significant interference with their lives. That is the position here and in those circumstances it is relevant, albeit still a factor of only limited weight, that the

protest gives rise to a risk of public disorder. Those whose passage along these roads is obstructed and whose lives are as a consequence disrupted will in some instances be liable through anger and frustration to seek to remove the protesters themselves. The risk of the consequent disorder is a factor operating in favour of the injunction.

- v) Next, as Freedman and Morris JJ both noted the injunction sought does not prohibit all protest. It prohibits protest of a particular kind at a limited number of locations. The Defendants will not be in breach of the injunction by protesting at other locations and even at the specified locations slow marching will not be prohibited by the injunction. Echoing the point made by Freedman J the Defendants will remain free to choose where to protest subject only to the exclusion of the locations covered by the injunction.
 - vi) Finally, just as proper regard must be had to the Defendants' Convention rights so proper regard must be had to the importance of the rights which the proposed injunction will protect. The importance of enabling large numbers of citizens to go about their normal lives and occupation and to pursue their personal and economic interests is a potent factor.
54. In those circumstances I am satisfied that the proposed injunction is proportionate and strikes a fair balance between the Convention rights of the Defendants and the rights of others including the community generally.
55. I will consider the duration of the injunction and the issue of whether it should be in the same terms against all the Named Defendants when I consider the form of the order below.

The Position in respect of Persons Unknown.

56. I have already explained that I am satisfied that there is a real and imminent risk of the obstruction of the roads with which I am concerned by persons in addition to the Named Defendant. In *Insulate Britain* Morris J set out at [47] –[51] the additional requirements for the grant of a precautionary injunction against Persons Unknown and explained why the requirements were satisfied on the facts of that case. I agree with and adopt his analysis of the applicable law. Similarly, for the same reasons as Morris J but with the substitution of JSO for IB I am satisfied that the requirements of the *Canada Goose* guidelines are met in this case and that it is just and convenient to grant the final injunction sought against Persons Unknown.

The Form of the Order.

57. The Claimant seeks an injunction lasting for five years with provision for annual reviews and for a Defendant or any other person affected by the order to apply on notice for its variation or discharge. In those respects the proposed order mirrors the terms of the order made by Morris J in *Insulate Britain*. I agree with Morris J for the reasons he gave in his judgment at [52] that an order of that duration is necessary for there to be adequate protection of the rights of the members of the public generally. I am also satisfied that an injunction of that duration is proportionate having regard to the balancing exercise I have explained above. However, because of the close relation between these proceedings and those leading to the *Insulate Britain* order and to avoid

any confusion or uncertainty the injunction will run for five years from the date of the order made by Morris J in that action with the consequence that both will come to an end at the same time.

58. A number of the Named Defendants in this action are already subject to the injunction granted by Morris J in *Insulate Britain*. Those are Named Defendants 3, 7, 20, 45, 46, 51, and 56. That injunction applies to many of the roads and junctions in relation to which the Claimant has sought relief in this action. Of the twenty-three roads and junctions with which I am concerned only six are not also covered by Morris J's order. Those are Millbank, A4 Knightsbridge and Scotch Corner, St Georges Circus/Road, Shoreditch, Victoria Embankment, and Talgarth Road around Barons Court tube station.
59. The proceedings leading to Morris J's order were triggered by protests under the banner of the Insulate Britain campaign. However, Morris J made it clear that the terms of his order are such that obstructing the roads in the ways specified was prohibited regardless of the campaign of which the actions were a part. In particular Morris J spelt out that such actions would be a breach of the injunction if undertaken as part of the JSO campaign: see at [29] and [41].
60. For the Claimant Mr Fraser-Urquhart KC nonetheless contended that it was appropriate for me to grant an injunction in respect of all twenty-three locations against all the remaining Named Defendants even though it would mean that some of them were subject to two injunctions each granted to the Claimant and each prohibiting the same conduct at the same location. He said that this would be conducive of certainty and clarity because the focus of Morris J's order was the Insulate Britain campaign while the Claimant was seeking from me an order focussed on the JSO campaign. He also said that in practice the Claimant would only seek the committal of a defendant under one or other but not both of the injunctions. I do not accept that submission. In light of the terms of Morris J's order and of his judgment there is no uncertainty nor is there any scope for confusion. Indeed rather than being conducive of clarity there would be a risk of confusion as to the basis on which action was being taken against a defendant said to be in breach of the order if there were two orders in respect of the same conduct at the same location. Moreover, it cannot be said that injunctive relief in respect of obstructing the road at a particular location is necessary against a particular Named Defendant if that person is already subject to a final injunction in favour of the Claimant prohibiting the same behaviour at the same location.
61. Accordingly, in respect of those Named Defendants who are subject to the *Insulate Britain* order the injunction I will grant will be confined to the six locations which are not subject to Morris J's order. I will invite submissions in due course as to the appropriate form of order to achieve this result.
62. As explained above a large number of Named Defendants have signed undertakings which have been provided to the Claimant and which are in the course of being sent to the court. Initially I had concerns as to the steps which might be necessary for the court to be satisfied that those giving these undertakings understood the gravity of the step they were taking. However, I have reflected further on the terms of the undertakings and have considered the approach set out by Cotter J in his judgment at [116] – [118]. In light of those matters I am satisfied that the terms of the undertaking

are clear and that the effect of a breach are sufficiently spelt out on the face of the undertaking such that there is no realistic risk that any Named Defendant who signs the undertaking will not understand the consequences of doing so. Accordingly, I will not require any further communication to the court from those who have signed the undertakings. I will in due course invite submissions as to the recording of the undertakings in the final order.

Alternative Service.

63. The provisions of the proposed order in relation to service mirror those of Morris J's *Insulate Britain* order. Morris J addressed these at [53] – [60] and the proposed order here includes the additional provisions identified by him at [60]. I agree with Morris J that these are appropriate and that they are sufficient to minimise the risk of a person who is minded to take part in protests at a relevant location being unaware of the court order.
64. It follows that an injunction in the terms proposed by the Claimant subject to the modifications indicated above is to be granted against the remaining Named Defendants and Persons Unknown.

Costs.

65. My provisional view subject to further submissions is that those Named Defendants against whom I have granted an injunction are to be ordered to pay the Claimant's costs.

SCHEDULE 1

Defendant Number	Name	Summary of Activity
3	Andrew Worsley	Subject to two injunctions and has also taken part in an Insulate Britain road blockage.
7	Ben Taylor	Subject to three injunctions; repeated involvement in the blocking of roads in the context of JSO and Insulate Britain protests including acting in breach of an injunction.
20	Emily Brocklebank	Repeated involvement in the blocking of roads in the context of JSO and Insulate Britain protests including acting in breach of an injunction.
45	Tessa-Marie Burns	Subject to two injunctions; multiple instances of involvement in the blocking of roads in the context of JSO protests.
46	Theresa Norton	Subject to two injunctions; in breach of two injunctions; two instances of involvement in the blocking of roads in the context of JSO protests; and one instance of gluing herself to court steps.
56	Samuel Johnson	Engaged in digging tunnels as part of a JSO protest and in blocking a road as part of an Insulate Britain protest.
84	Lora Johnson	Involved in blocking roads on two occasions in JSO protests in October 2022.
137	Tristan Strange	Involved on one occasion in blocking in a JSO protest in October 2022 and in one instance of gluing himself to a painting in a JSO protest.