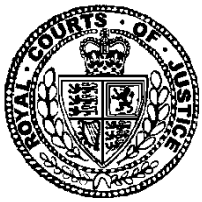

Neutral Citation Number: [2020] EWCA Civ 303

Case No: A2/2019/2604

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Nicklin J
[2019] EWHC 2459 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2020

Before :

THE MASTER OF THE ROLLS
LORD JUSTICE DAVID RICHARDS
and
LORD JUSTICE COULSON

- -

Between :

CANADA GOOSE UK RETAIL LIMITED (1)
James HAYTON (for and on behalf of the Employees, Security Personnel and Protected Persons pursuant to CPR 19.6) (2) — **Appellants**

- and -

PERSONS UNKNOWN WHO ARE PROTESTORS AGAINST THE MANUFACTURE AND SALE OF CLOTHING MADE OF OR CONTAINING ANIMAL PRODUCTS AND AGAINST THE SALE OF SUCH CLOTHING AT CANADA GOOSE, 244 REGENT STREET, LONDON W1B 3BR (1)
PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA) FOUNDATION (a charitable company limited by guarantee, in its own right and for and on behalf of its employees and members pursuant to CPR 19.6) (2) — **Respondents**

- -

Ranjit Bhose QC and **Michael Buckpitt** (instructed by **Lewis Silkin LLP**) for the **Appellants**
The **Respondents** did not appear and were not represented
Sarah Wilkinson appeared as Advocate to the Court

Hearing dates : 4 & 5 February 2020

- -

Approved Judgment

Sir Terence Etherton MR, Lord Justice David Richards and Lord Justice Coulson :

1. This appeal concerns the way in which, and the extent to which, civil proceedings for injunctive relief against "persons unknown" can be used to restrict public protests.

2. The first appellant, Canada Goose Retail Limited UK ("Canada Goose"), is the UK trading arm of Canada Goose, an international retail clothing company which sells products, mostly coats, which contain animal fur and down. In November 2017 it opened a store at 244 Regent Street in London ("the store"). The second appellant is the manager of the store. The appellants are the claimants in these proceedings, in which they seek injunctive relief and damages in respect of what is described in the claim form as "a campaign of harassment and [the commission] of acts of trespass and/or nuisance against [them]".

3. The first respondents ("the Unknown Persons respondents"), who are the first defendants in the proceedings, were described in the claim form as: "Persons unknown who are protesters against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at [the store]". The second respondent, who was added as the second defendant in the course of the proceedings, is People for the Ethical Treatment of Animals (PETA) Foundation ("PETA").

4. This is an appeal from the order of Nicklin J of 20 September 2019 by which he dismissed the application of the appellants for summary judgment for injunctive relief against the respondents and he discharged the interim injunctions which had been granted by Teare J on 29 November 2017 and continued, as varied, by HHJ Moloney QC (sitting as a Judge of the High Court) on 15 December 2017.

Factual background

5. From the week before it opened on 9 November 2017, the store has been the site of many protests from animal rights activists, protesting against Canada Goose's use of animal fur and down, and in particular the way that the fur of coyotes is procured. For a detailed description of the evidence about the protests, reference should be made to Nicklin J's judgment at [132]-[134]. The following is a brief summary.

6. A number of the protestors were members of PETA, which is a charitable company dedicated to establishing and protecting the rights of all animals. PETA organised four demonstrations outside the store. They were small-scale in nature, and PETA gave advance notice of them to the police. In addition, some protestors appear to have been coordinated by Surge Activism ("Surge"), an animal rights organisation. Other protestors have joined the on-going protest as individuals who were not part of any wider group.

7. The demonstrations have been largely small in scale, with up to 20 people attending and generally peaceful in nature, with protestors holding signs or banners and handing out leaflets to those passing or entering the store. On some occasions more aggressive tactics have been used by the protestors, such as insulting members of the public or Canada Goose's employees.

8. A minority of protestors have committed unlawful acts. Prior to the opening of the store, around 4 and 5 November 2018, the front doors of the store were vandalised with "*Don't shop here*" and "*We sell cruelty*" painted on the windows and red paint was splashed over the front door. On three occasions, 11, 18 and 24 November 2017, the number of protestors (400, 300, and 100, respectively) had a serious impact on the operation of the store. The police were present on each of those occasions. On one occasion five arrests were made. On 18 November 2017 the police closed one lane of the carriageway on Regent Street. There is also evidence of criminal offences by certain individual protestors, including an offence of violence reported to the police during the large protest on 18 November 2017.

The proceedings

9. Canada Goose commenced these proceedings against the Unknown Persons respondents by a claim form issued on 29 November 2017. As mentioned above, they were described in the heading of the claim form and the particulars of claim as:

> "Persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at Canada Goose, 244 Regent Street, London W1B 3BR"

10. They are described in paragraph 6 of the particulars of claim as including "all persons who have since 5 November 2017 protested at the store in furtherance of the Campaign and/or who intend to further the Campaign". The "Campaign" was described in the particulars of claim as a campaign against the sale of animal products by Canada Goose, and included seeking to persuade members of the public to boycott the store until Canada Goose ceased the lawful activity of selling animal products.

11. The particulars of claim stated that an injunction was claimed pursuant to the common law torts of trespass, watching and besetting, public and private nuisance and conspiracy to injure by unlawful means. The injunction was to restrain the Unknown Persons respondents from:

> (1) Assaulting, molesting, or threatening the Protected Persons [defined in the particulars of claim as including Canada Goose's employees, security personnel working at the store and customers];
>
> (2) Behaving in a threatening and/or intimidating and/or abusive and/or insulting manner towards Protected Persons.
>
> (3) Doing acts which they know or ought to know cause harassment, fear, alarm, distress and/or intimidation to the Protected Persons;
>
> (4) Intentionally photographing or filming the Protected Persons with the purpose of identifying them and/or targeting them;

(5) Making in any way whatsoever any abusive or threatening communication to the Protected Persons;

(6) Making or attempting to make repeated communications not in the ordinary course of the First Claimant's retail business to or with Employees by telephone, email or letter;

(7) Entering the Store;

(8) Blocking or otherwise obstructing the Entrances to the Store;

(9) Demonstrating at the Stores within the Inner Exclusion Zone;

(10) Demonstrating at the Stores within the Outer Exclusion Zone save that no more than 3 Protestors may at any one time demonstrate and hand out leaflets therein;

(11) Using at any time a Loudhailer within the Inner Exclusion Zone and Outer Exclusion Zone or otherwise within 50 metres of the Building Line of the Store.

12. On the same day as the claim form was issued Canada Goose applied to Teare J, without notice, for an interim injunction. He granted an interim injunction restraining the Unknown Persons respondents from doing the following:

"(1) Assaulting, molesting, or threatening the Protected Persons (defined as including Canada Goose's employees, security personnel working at the store, customer and any other person visiting or seeking to visit the store);

(2) Behaving in a threatening and/or intimidating and/or abusive and/or insulting manner directly at any individual or group of individuals within the definition of Protected Persons;

(3) Intentionally photographing or filming the Protected Persons with the purpose of identifying them and/or targeting them in connection with protests against the manufacture and/or sale or supply of Animal Products;

(4) Making in any way whatsoever any abusive or threatening electronic communication to the Protected Persons;

(5) Entering the Store;

(6) Blocking or otherwise obstructing the Entrance to the Store;

(7) Banging on the windows of the Store;

(8) Painting, spraying and/or affixing things to the outside of the Store;

> (9) Projecting images on the outside of the Store;
>
> (10) Demonstrating at the Store within the Inner Exclusion Zone;
>
> (11) Demonstrating at the Store within the Outer Exclusion Zone A save that no more than 3 Protestors may at any one time demonstrate and hand out leaflets within the Outer Exclusion Zone A (but not within the Inner Exclusion Zone provided that no obstruction occurs other than that which is implicit in handing out leaflets;
>
> (12) Demonstrating at the Store within the Outer Exclusion Zone B [as defined in the order] save that no more than 5 Protestors may at any one time demonstrate and hand out leaflets within Outer Exclusion Zone B (but not within the Inner Exclusion Zone) provided that no obstruction occurs other than that which is implicit in handing out leaflets;
>
> (13) Using at any time a Loudhailer [as defined] within the Inner Exclusion Zone and Outer Exclusion Zones or otherwise within 10 metres of the Building Line of the Store;
>
> (14) Using a Loudhailer anywhere within the vicinity of the Store otherwise than for amplification of voice."

13. A plan attached to the order showed the Inner and Outer Exclusion Zones. Essentially those Zones (with a combined width of 7.5 metres) covered roughly a 180-degree radius around the entrance to the store. The Inner Exclusion Zone extended out from the store front for 2.5 metres. The Outer Exclusion Zone extended a further 5m outwards. The Outer Exclusion Zone was divided into Zone A (a section of pavement on Regent Street) and Zone B (a section of pavement in front of the store entrance and part of the carriageway on Regent Street extending to the pavement and the entire carriageway in Little Argyle Street). For all practical purposes, the combined Exclusion Zones covered the entire pavement outside the store on Regent Street and the pavement and entire carriageway of Little Argyle Street outside the entrance to the store.

14. The order permitted the claimant to serve the order on "any person demonstrating at or in the vicinity of the store by handing or attempting to hand a copy of the same to such person and the order shall be deemed served whether or not such person has accepted a copy of this order". It provided for alternative service of the order, stating that "The claimants shall serve this order by the following alternative method namely by serving the same by email to 'contact@surgeactivism.com' and 'info@peta.org.uk'".

15. The order was expressed to continue in force unless varied or discharged by further order of the court but it also provided for a further hearing on 13 December 2017.

16. The order was sent on 29 November 2017 to the two email addresses mentioned in the order: 'contact@surgeactivism.com' and 'info@peta.org.uk'. The claim form and the particulars of claim were also sent to those email addresses.

17. On 30 November 2017 Canada Goose issued an application notice for the continuation of Teare J's order.

18. On 12 December 2017 PETA applied to be joined to the proceedings. It also sought a variation of the interim injunction. On 13 December 2017 Judge Moloney added PETA to the proceedings as a defendant for and on behalf of its employees and members. He adjourned the hearing in relation to all other matters to 15 December 2017, when the issue of the continuation of the interim injunction came before him again.

19. At that hearing PETA challenged paragraphs (10) to (14) of the interim injunction concerning the exclusion zones and use of a loud-hailer on the basis that those prohibitions were a disproportionate interference with the right of the protestors to freedom of expression under Article 10 of the European Convention on Human Rights ("the ECHR") and to freedom of assembly under Article 12 of the ECHR.

20. Judge Moloney continued the interim injunction but varied it by amalgamating Zones A and B in the Outer Exclusion Zone and increasing the number of protestors permitted within the Outer Exclusion Zone to 12 people. He also varied paragraph (14) of Teare J's order, substituting a prohibition on:

> "… using at any time a Loudhailer within the Inner Exclusion Zone and Outer Exclusion Zone… [and] using a Loudhailer anywhere else in the vicinity of the Store (including Regent Street and Little Argyll Street) save that between the hours of 2pm and 8pm a single Loudhailer may be used for the amplification of the human voice only for up to 15 minutes at a time with intervals of 15 minutes between each such use."

21. Judge Moloney's order stated that the order was to continue in force unless varied or discharged by further order of the court, and also provided that all further procedural directions in the claim be stayed, subject to a written notice by any of the parties to the others raising the stay. That was subject to a long-stop requirement that no later than 1 December 2018 Canada Goose was to apply for a case management conference or summary judgment. The order provided that, if neither application was made by that date, the proceedings would stand dismissed and the injunction discharged without further order.

The summary judgment application

22. Regular protests at the store have continued after the grant of the interim injunctions, although none has been on the large scale that occurred before the original injunction was granted. Canada Goose alleges that there have been breaches of those orders.

23. On 29 November 2018 Canada Goose applied for summary judgment against the respondents for a final injunction pursuant to CPR Part 24. The application came before Nicklin J on 29 January 2018. The injunction attached to the application

differed in some respects from the interim injunctions. The prohibitions in paragraphs (1) to (9) were the same but the restrictions applicable to the Zones were different. Only Canada Goose was represented at the hearing. At the invitation of Nicklin J, Mr Michael Buckpitt, junior counsel for Canada Goose, delivered further written submissions after the hearing, including a new description of the Unknown Persons respondents, as follows:

> "Persons who are present at and in the vicinity of 244 Regent Street, London W1B 3BR and are protesting against the manufacture and/or supply and/or sale of clothing made of or containing animal products by Canada Goose UK Retail Limited and are involved in any of the acts prohibited by the terms of this order"

24. Canada Goose says that the further written submissions made clear that it no longer pursued summary judgment against PETA.

25. Nicklin J handed down his judgment on 30 September 2019, the delay being principally due to the sensible decision to wait for the decisions in *Cameron v Liverpool Insurance Co Ltd* [2019] UKSC 6, [2019] 1 WLR 147, and *Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515, [2019] 4 WLR 100, which we consider in the Discussion section below, and no doubt also due to the need to consider the successive further sets of written submissions on behalf of Canada Goose.

26. Bearing in mind that only one party was represented before him, Nicklin J's judgment is an impressive document. With no disrespect, we shall only give a very brief summary of the judgment, sufficient to understand the context for this appeal.

27. The judgment addressed two main issues: a procedural issue of whether there had been proper service of the proceedings, and a merits issue as to the substance of the application for summary judgment.

28. Nicklin J held that the claim form had not been validly served on the respondents. There had been no service of the claim form by any method permitted by CPR 6.5, and there had been no order permitting alternative service under CPR 6.15. Teare J's order only permitted alternative service of his order. Nicklin J declined to amend Teare J's order under the "slip rule" in CPR 40.12 and he refused to dispense with service of the claim form on the Unknown Persons respondents under CPR 6.16 without a proper application before him.

29. Nicklin J also considered that the description of the Unknown Persons respondents was too broad as, in its original form, it was capable of including protesters who might never even intend to visit the store. Moreover, both in the interim injunctions and in its proposed final form, the injunction was capable of affecting persons who might not carry out any unlawful activity as some of the prohibited acts would not be or might not be unlawful.

30. He was critical of the failure of Canada Goose to join any individual protestors, bearing in mind that Canada Goose could have named 37 protestors and had identified up to 121 individuals. He regarded as a fundamental difficulty that, as the Unknown

Persons respondents were not a homogeneous unit, the court had no idea who in the broad class of Unknown Persons, as defined, had committed or threatened any civil wrong and, if they had, what it was.

31. Nicklin J also considered that the form of the proposed final injunction was defective in that it would capture new future protesters, who would not have been parties to the proceedings at the time of summary judgment and the grant of the injunction.

32. Nicklin J said the following (at [163]), in conclusion on the form of the proposed final injunction:

> "For the reasons I have addressed above, it is not impossible to name the persons against whom relief is sought and, more importantly, the terms of the injunction would impose restrictions on otherwise lawful conduct. Further, the interim injunction (and in particular the size and location of the Exclusion Zones) practically limits the number of people who can demonstrate outside the Store to 12. This figure is arbitrary; not justified by any evidence; disproportionate (in the sense there is no evidence that permitting a larger group would not achieve the same object); assumes that all demonstrators share the same objectives and so could be 'represented' by 12 people; and wrong in principle ... Who is to decide who should be one of the permitted 12 demonstrators? Is it 'first-come-first-served'? What if other protestors do not agree with the message being advanced by the 12 'authorised' protestors?"

33. His conclusion on whether the respondents had a real prospect of defending the claim were stated as follows:

> "164. The Second Defendant (in its non-representative capacity) does have a real prospect of defending the claim. As I have set out above, the present evidence does not show that the Second Defendant has committed any civil wrong. As such, I am satisfied that it has a real prospect of defending the claim.
>
> 165. In relation to the First Defendants, and those for whom the Second Defendant acts in a representative capacity, it is impossible to answer the question whether they have a real prospect of defending the claim because it is impossible to identify who they are, what they are alleged to have done (or threaten to do) and what defence they might advance. Whether any individual Defendant in these classes was guilty of (or threatening) any civil wrong would require an analysis of the evidence of what s/he had done (or threatened) and whether s/he had any defence to resist any civil liability. On the evidence, therefore, I am not satisfied that the Claimants have demonstrated that the Defendants in each of these classes has no real prospect of defending the claim. On the contrary, on the evidence as it stands, it is clear that there are a large number of people caught by the definition of "persons unknown" who

> have not even arguably committed (or threatened) any civil wrong. As there is no way of discriminating between the various Defendants in these categories, it is impossible to identify those against whom summary judgment could be granted (even assuming that the evidence justified such a course) and those against whom summary judgment should be refused."

34. For those reasons, Nicklin J refused the application for summary judgment. He also held that, in view of the failure of the interim injunction to comply with the relevant principles, and also in view of fundamental issues concerning the validity of the claim form and its service, the interim injunction then in force could not continue. He said:

> "I am also satisfied that, applying the principles from *Cameron* and *Ineos*, the interim injunction that is currently in place cannot continue in its current form, if at all. There are fundamental issues that the Claimants need to address regarding the validity of the Claim Form and its service on any defendant. Presently, no defendant has been validly served. Subject to further submissions, my present view is that if the proceedings are to continue, whether or not a claim can be properly maintained against "persons unknown" for particular civil wrongs (e.g. trespass), other civil claims will require individual defendants to be joined to the proceedings whether by name or description and the nature of the claims made against them identified. Any interim relief must be tailored to and justified by the threatened or actual wrongdoing identified in the Particulars of Claim and any interim injunction granted against "persons unknown" must comply with the requirements suggested in *Ineos*."

The grounds of appeal

35. The grounds of appeal are as follows.

> "Ground 1 (Service of the Claim Form): In relation to the service of the Claim Form, the Judge:
>
> Erred in refusing to amend the Order of 29 November 2017, pursuant to CPR 40.12 or the court's inherent jurisdiction, to provide that service by email was permissible alternative service under CPR 6.15; alternatively
>
> Erred in failing to consider, alternatively in refusing to order, that the steps taken by the Appellants in compliance with the undertaking given to Teare J on 29 November 2017 constituted alternative good service under CPR 6.15(2); alternatively
>
> Adopted a procedurally unfair practice in refusing to consider an application to dispense with service of the Claim Form

> under CPR 6.16, alternatively erred in law in refusing to exercise that power of dispensation.
>
> Ground 2 (Description of First Respondents): The Judge erred in law in holding that the Appellants' proposed re-formulation of the description of the First Respondents was an impermissible one.
>
> Ground 3 (Approach to Summary Judgment): In determining whether summary judgment should be granted for a final prohibitory *quia timet* injunction against the First Respondents (as described in accordance with the proposed reformulation) the Judge erred in law in the approach he took. In particular, and without derogating from the generality of this, the Judge:
>
> Erred in concluding that the proper approach was to focus (and focus alone) on the individual evidence of wrongdoing in relation to each identified individual protester (whether or not that individual was formally joined as a party); and/or
>
> Erred in concluding that the Appellants were bound to differentiate, for the purposes of the description of the First Respondents, between those individuals for whom there was evidence of prior wrongdoing (whether of specific acts or more generally) and those for whom there was not; and/or
>
> Erred in concluding that evidence of wrongdoing of some individuals within the potential class of the First Respondents could not form the basis for a case for injunctive relief against the class as a whole.
>
> Ground 4 (Approach to and assessment of the evidence): The judge erred in his approach to alternatively his assessment of the evidence before him, reaching conclusions which he was not permitted to reach."

36. In a "supplemental note" Canada Goose asks that, if the appeal is allowed, the summary judgment application be remitted.

Discussion

Appeal Ground 1: Service

37. The order of Teare J dated 29 November 2017 directed pursuant to CPR 6.15 that his order for an interim injunction be served by the alternative method of service by email to two email addresses, one for Surge (contact@surgeactivism.com) and one for PETA (info@petga.org.uk). There was no provision for alternative service of the claim form and the particulars of claim or of any other document, other than the order itself. In fact, the claim form and the particulars of claim were sent to the same email addresses as were specified in Teare J's order for alternative service of the order itself.

38. Canada Goose submits that it is clear that there was an accidental oversight in the limitation of the provision for alternative service in Teare J's order to the service of the order itself. That is said to be clear from the fact that the order of Teare J records that Canada Goose, through its counsel, had undertaken to the court, on behalf of all the claimants, "to effect email service as provided for below of the Order, the Claim Form and Particulars of Claim and application notice and evidence in support".

39. Canada Goose submits that in the circumstances Nicklin J was wrong not to order, pursuant to CPR 40.12 or the inherent jurisdiction of the court, that Teare J's order should be corrected so as to provide for the same alternative service for the claim form and the particulars of claim as was specified for the order.

40. Canada Goose submits, alternatively, that Nicklin J should have ordered, pursuant to CPR 6.15(2) that the steps already taken to bring the claim form to the attention of the defendants was good service.

41. In the further alternative, Canada Goose submits that Nicklin J should have dispensed with service of the claim form pursuant to CPR 6.16.

42. We do not accept those submissions. Canada Goose can only succeed if Nicklin J, in refusing to exercise his discretionary management powers, made an error of principle or otherwise acted outside the bounds of a proper exercise of judicial discretion. We consider it is plain that he made no error of that kind.

43. CPR 40.12 provides that the court may at any time correct an accidental slip or omission in a judgment or order. It is well established that this slip rule enables an order to be amended to give effect to the intention of the court by correcting an accidental slip, but it does not enable a court to have second or additional thoughts: see, for example, *Bristol-Myers Squibb Co. v Baker Noton Pharmaceuticals Inc (No. 2)* [2001] EWCA Civ 414, [2001] RPC 45.

44. We do not have a transcript of the hearing before Teare J. From what we were told by Mr Bhose QC, for Canada Goose, it is clear that the order was in the form of the draft presented to Teare J by those acting for Canada Goose and it would appear that the issue of service was not addressed orally at all before him. In the circumstances, it is impossible to say that Teare J ever brought his mind to bear upon the point of alternative service of the claim form and the particulars of claim. The most that can be said is that he intended to make an order in the terms of the draft presented to him. That is what he did. In those circumstances, Nicklin J was fully justified in refusing to exercise his powers under the slip rule. The grounds of appeal refer to the inherent jurisdiction of the court but no argument was addressed to us on behalf of Canada Goose that any inherent jurisdiction of the court differed in any material respect from the principles applicable to CPR 40.12.

45. Nicklin J was not merely acting within the scope of a proper exercise of discretion in refusing to order pursuant to CPR 6.15(2)) that the steps taken by Canada Goose in compliance with the undertaking of counsel constituted good alternative service; he was, at least so far as the Unknown Persons respondents are concerned, plainly correct in his refusal. The legal context for considering this point is the importance of service of proceedings in the delivery of justice. As Lord Sumption, with whom the other justices of the Supreme Court agreed, said in *Cameron* at [14] the general rule is

that service of the originating process is the act by which the defendant is subjected to the court's jurisdiction; and, at [17]:

> "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."

46. Lord Sumption, having observed (at [20]) that CPR 6.3 considerably broadens the permissible methods of service, said that the object of all of them was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain the contents of the proceedings or was reasonably likely to enable him to do so within any relevant period of time. He went on to say (at [21]), with reference to the provision for alternative service in CPR 6.15, that:

> "subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant".

47. Sending the claim form to Surge's email address could not reasonably be expected to have brought the proceedings to the attention of the Unknown Persons respondents, whether as they were originally described in Teare J's order or as they were described in the latest form of the proposed injunction placed before Nicklin J. Counsel were not even able to tell us whether Surge is a legal entity. There was no requirement in Teare J's order that Surge give wider notice of the proceedings to anyone.

48. The same acute problem for Canada Goose applies to its complaint that Nicklin J wrongly failed to exercise his power under CPR 6.16 to dispense with service of the claim form. It is not necessary to focus on whether Nicklin J was right to raise the absence of a formal application as an obstacle. Looking at the substance of the matter, there was no proper basis for an order under CPR 6.16.

49. Nicklin J referred in his judgment to the evidence that 385 copies of the interim injunction had been served between 29 November 2017 and 19 January 2019, and that they had been served on a total of 121 separate individuals who could be identified (for example, by body-camera footage). The claimants have been able to identify 37 of those by name, although Canada Goose believes that a number of the names are pseudonyms. None of those who can be individually identified or named have been joined to the action (whether by serving them with the claim form or otherwise) even though there was no obstacle to serving them with the claim form at the same time as the order. Moreover, Canada Goose is not just asking for dispensation from service on the 121 individuals who can be identified. It is asking for dispensation from service on any of the Persons Unknown respondents to the proceedings, even if they have never been served with the order and whether or not they know of the proceedings. There is simply no warrant for subjecting all those persons to the jurisdiction of the court.

50. Furthermore, it would have been open to Canada Goose at any time since the commencement of the proceedings to obtain an order for alternative service which would have a greater likelihood of bringing notice of the proceedings to the attention

of protesters at the shop premises, such as by posting the order, the claim form and the particulars of claim on social media coverage to reach a wide audience of potential protesters and by attaching or otherwise exhibiting copies of the order and of the claim form at or nearby those premises. There is no reason why the court's power to dispense with service of the claim in exceptional circumstances should be used to overcome that failure.

51. Canada Goose says that, in view of the number of orders that have been served on individuals, it is reasonable to conclude that their existence, and likely their terms, will be well known to a far larger class of protester than those served with the order. It also relies on the fact that no person served with the order has made any contact with Canada Goose's solicitors or made any application to the court to vary or discharge the order for to apply to be joined as a party.

52. We have already mentioned, by reference to Lord Sumption's comments in *Cameron*, the importance of service in order to ensure justice is done. We do not consider that speculative estimates of the number of protesters who are likely to know of the proceedings, even though they have never been served with the interim injunction, or the fact that, of the 121 persons served with the order, none has applied to vary or discharge the order or to apply to be joined as a party, can justify using the power under CPR 6.16 in effect to exonerate Canada Goose from failing to obtain an order for alternative service that would have been likely to draw the attention of protesters to the proceedings and their content. Those are not the kind of "exceptional circumstances" that would justify an order under CPR 6.16.

53. In its skeleton argument for this appeal Canada Goose seeks to make a distinction, as regards service, between the Unknown Persons respondents and PETA. Canada Goose points out that Nicklin J recognised, as was plainly the case, that service of the claim form by sending it to PETA's email address had drawn the proceedings to PETA's attention. Canada Goose submits that, in those circumstances, Nicklin J was bound to make an order pursuant to CPR 6.15(2) that there had been good service on PETA or, alternatively, he ought to have made an order under CPR 6.16 dispensing with service on PETA.

54. Bearing in mind that (1) PETA was joined as a party to the proceedings on its own application, (2) Canada Goose says that it informed Nicklin J before he handed down his judgment that judgment was no longer pursued against PETA (which was not mentioned in the proposed final injunction), and (3) Nicklin J reached the conclusion, which is not challenged on this appeal, that there was no evidence that PETA had committed any civil wrong, there would appear to be an air of unreality about that submission. The reason why it has assumed any importance now is because, should the appeal fail as regards Nicklin J's decision on service on the Unknown Persons respondents and PETA, Canada Goose is concerned about the consequences of the requirement in CPR 7.5 that the claim form must be served within four months of its issue. We were not shown anything indicating that the significance of this point was flagged up before Nicklin J as regards PETA. It certainly is not made in the further written submissions dated 28 February 2019 sent on behalf of Canada Goose to Nicklin J on the issue of service. Those submissions concentrated on the question of service on the Unknown Persons respondents. It is not possible to say that in all the circumstances Nicklin J acted outside the limits of a proper exercise of judicial

discretion in failing to order that there had been good service on PETA or that service on PETA should be waived.

55. For those reasons we dismiss Appeal Ground 1.

Appeal Ground 2 and Appeal Ground 3: Interim and Final Injunctions

56. It is convenient to take both these grounds of appeal together. Ground 3 is explicitly related to Nicklin J's dismissal of Canada Goose's application for summary judgment. Appeal Ground 2 appears to be directed at, or at least is capable of applying to, both the dismissal of the summary judgment application and also Nicklin J's discharge of the interim injunction originally granted on 29 November 2017 and continued by the order of Judge Moloney of 15 December 2017. We shall consider, first, the interim injunction, and then the application for a final injunction.

Interim relief against "persons unknown"

57. It is established that proceedings may be commenced, and an interim injunction granted, against "persons unknown" in certain circumstances. That was expressly acknowledged by the Supreme Court in *Cameron* and put into effect by the Court of Appeal in the context of protesters in *Ineos* and *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9.

58. In *Cameron* the claimant was injured and her car was damaged in a collision with another vehicle. She issued proceedings against the owner of the other vehicle and his insurer. The owner had not in fact been driving the other vehicle at the time of the collision. The claimant applied to amend her claim form so as to substitute for the owner: "the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013". The Supreme Court, allowing the appeal from the Court of Appeal, held that the district judge had been right to refuse the application to amend and to give judgment for the insurer.

59. Lord Sumption, referred (at [9]) to the general rule that proceedings may not be brought against unnamed parties, and to the express exception under CPR 55.3(4) for claims for possession against trespassers whose names are unknown, and other specific statutory exceptions. Having observed (at [10]) that English judges had allowed some exceptions to the general rule, he said (at [11]) that the jurisdiction to allow actions and orders against unnamed wrongdoers has been regularly invoked, particularly in the context of abuse of the internet, trespasses and other torts committed by protesters, demonstrators and paparazzi. He then referred to several reported cases, including *Ineos* at first instance.

60. Lord Sumption identified (at [13]) two categories of case to which different considerations apply. The first ("Category 1") comprises anonymous defendants who are identifiable but whose names are unknown, such as squatters occupying the property. The second ("Category 2") comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The critical distinction, as Lord Sumption explained, is that a Category 1 defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further enquiry whether he is the same as the person described in the form, whereas that is not true of the Category 2 defendant.

61. That distinction is critical to the possibility of service. As we have said earlier, by reference to other statements of Lord Sumption in *Cameron*, it is the service of the claim form which subjects a defendant to the court's jurisdiction. Lord Sumption acknowledged that the court may grant interim relief before the proceedings have been served or even issued but he described that as an emergency jurisdiction which is both provisional and strictly conditional.

62. Lord Sumption said (at [15]) that, in the case of Category 1 defendants, who are anonymous but identifiable, and so can be served with the claim form or other originating process, if necessary by alternative service under CPR 6.15 (such as, in the case of anonymous trespassers, attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found, and posting them if practical through the letterbox pursuant to CPR 55), the procedures for service are well established and there is no reason to doubt their juridical basis. In the case of the Category 2 defendant, such as in *Cameron*, however, service is conceptually impossible and so, as Lord Sumption said (at [26]), such a person cannot be sued under a pseudonym or description.

63. It will be noted that *Cameron* did not concern, and Lord Sumption did not expressly address, a third category of anonymous defendants, who are particularly relevant in ongoing protests and demonstrations, namely people who will or are highly likely in the future to commit an unlawful civil wrong, against whom a *quia timet* injunction is sought. He did, however, refer (at [15]) with approval to *South Cambridgeshire District Council v Gammell* [2005] EWCA Civ 1429, [2006] 1 WLR 658, in which the Court of Appeal held that persons who entered onto land and occupied it in breach of, and subsequent to the grant of, an interim injunction became persons to whom the injunction was addressed and defendants to the proceedings. In that case, pursuant to an order permitting alternative service, the claim form and the order were served by placing a copy in prominent positions on the land.

64. Lord Sumption also referred (at [11]) to *Ineos*, in which the validity of an interim injunction against "persons unknown", described in terms capable of including future members of a fluctuating group of protesters, was centrally in issue. Lord Sumption did not express disapproval of the case (then decided only at first instance).

65. The claimants in *Ineos* were a group of companies and various individuals connected with the business of shale and gas exploration by hydraulic fracturing, or "fracking". They were concerned to limit the activities of protesters. Each of the first five defendants was a group of persons described as "Persons unknown" followed by an unlawful activity, such as "entering or remaining without the consent of the claimants on [specified] land and buildings", or "interfering with the first and second claimants' rights to pass and repass … over private access roads", or "interfering with the right of way enjoyed by the claimants … over [specified] land". The fifth defendant was described as "Persons unknown combining together to commit the unlawful acts as specified in paragraph 10 of the [relevant] order with the intention set out in para 10 of the [relevant] order". The first instance Judge made interim injunctions, as requested, apart from one relating to harassment.

66. One of the grounds for which permission to appeal was granted in *Ineos* was that the first instance judge was wrong to grant injunctions against persons unknown. Longmore LJ gave the lead and only reasoned judgement, with which the other two

members of the court (David Richards and Leggatt LJJ) agreed. He rejected the submission that Lord Sumption's Category 1 and Category 2 defendants were exhaustive categories of unnamed or unknown defendants. He said (at [29]) that it is too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued. He said that Lord Sumption was not considering persons who do not exist at all and will only come into existence in the future. Longmore LJ concluded (at [30]) that there is no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort (who we call "Newcomers").

67. Longmore LJ said (at [31]) that a court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance. He also referred (at [33]) to section 12(3) of the Human Rights Act 1998 ("the HRA") which provides, in the context of the grant of relief which might affect the exercise of the right to freedom of expression under Article 10 of the ECHR, that no relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed. He said that there was considerable force in the submission that the first instance judge had failed properly to apply section 12(3) in that the injunctions against the fifth defendants were neither framed to catch only those who were committing the tort of conspiring to cause damage to the claimant by unlawful means nor clear and precise in their scope. Having regard to those matters, Longmore LJ said (at [34]) that he would "tentatively frame [the] requirements" necessary for the grant of the injunction against unknown persons, as follows:

> "(1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief; (2) it is impossible to name the persons who are likely to commit the tort unless restrained; (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order; (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; (5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and (6) the injunction should have clear geographical and temporal limits."

68. Applying those requirements to the order of the first instance judge, Longmore LJ said that there was no difficulty with the first three requirements. He considered, however, against the background of the right to freedom of peaceful assembly guaranteed by both the common law and Article 11 of the ECHR, that the order was both too wide and insufficiently clear in, for example, restraining the fifth defendants from combining together to commit the act or offence of obstructing free passage along the public highway (or to access to or from a public highway) by slow walking in front of the vehicles with the object of slowing them down and with the intention of causing inconvenience and delay or otherwise unreasonably and/or without lawful authority or excuse obstructing the highway with the intention of causing inconvenience and delay, all with the intention of damaging the claimants.

69. Longmore LJ said (at [40]) that the subjective intention of a defendant, which is not necessarily known to the outside world (and in particular the claimants) and is susceptible of change, should not be incorporated into the order. He also criticised the concept of slow walking as too wide and insufficiently defined and said that the concept of "unreasonably" obstructing the highway was not susceptible to advance definition. He further held that it is wrong to build the concept of "without lawful authority or excuse" into an injunction since an ordinary person exercising legitimate right to protest is most unlikely to have any clear idea of what would constitute lawful authority or excuse: if he is not clear about what he can and cannot do, that may well have a chilling effect also. He said (at [40]) that it was unsatisfactory that the injunctions contained no temporal limit.

70. The result of the appeal was that the injunctions made against the third and fifth defendants were discharged and the claims against them dismissed but the injunctions against the first and second defendants were maintained pending remission to the first instance judge to reconsider whether interim relief should be granted in the light of section 12(3) of the HRA and, if so, what temporal limit was appropriate.

71. *Cuadrilla* was another case concerning injunctions restraining the unlawful actions of fracking protesters. The matter came before the Court of Appeal on appeal from an order committing the three appellants to prison for contempt of court in disobeying an earlier injunction aimed at preventing trespass on the claimants' land, unlawful interference with the claimants' rights of passage to and from their land and unlawful interference with the supply chain of the first claimant. One of the grounds of appeal was that the relevant terms of the injunction were insufficiently clear and certain to be enforced by committal because those terms made the question of whether conduct was prohibited depend on the intention of the person concerned.

72. The Court of Appeal dismissed the appeal. The significance of the case, for present purposes, is not simply that it followed *Ineos* in recognising the jurisdiction to grant a *quia timet* interim injunction against Newcomers but also that it both qualified and amplified two of the requirements for such an injunction suggested by Longmore LJ ("the *Ineos* requirements"). Although both David Richards LJ and Leggatt LJ had been members of the Court of Appeal panel in *Ineos* and had given unqualified approval to the judgment of Longmore LJ, they agreed in *Cuadrilla* that the fourth and fifth *Ineo*s requirements required some qualification.

73. Leggatt LJ, who gave the lead judgment, with which David Richards LJ and Underhill LJ agreed, said with regard to the fourth requirement that it cannot be regarded as an absolute rule that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct. He referred to *Hubbard v Pitt* [1976] 1 QB 142 and *Burris v Azadani* [1995] 1 WLR 1372, which had not been cited in *Ineos*, as demonstrating that, although the court must be careful not to impose an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case.

74. Although the point did not arise for decision in *Cuadrilla*, the point is relevant in the present case in relation to injunctions against persons unknown who are Newcomers because the injunction granted by Teare J and continued by Judge Moloney prohibited

demonstrating within the Inner Exclusion Zone and limited the number of protesters at any one time and their actions within the Outer Exclusion Zone.

75. In *Hubbard v Pitt* [1976] 1 QB 142 the issue was whether the first instance judge had been right to grant an interim injunction restraining named defendants from, in effect, protesting outside the premises of an estate agency about changes in the character of the locality attributed to the assistance given by the plaintiff estate agents. The defendants had behaved in an orderly and peaceful manner throughout. The claim was for nuisance. The appeal was dismissed (Lord Denning MR dissenting). Stamp LJ said (at pp. 187-188) that the injunction was not wider that was necessary for the purpose of giving the plaintiffs the protection they ought to have. Orr LJ said (at p. 190):

> "Mr. Turner-Samuels, however, also advanced an alternative argument that, even if he was wrong in his submission that no interlocutory relief should have been granted, the terms of the injunction were too wide in that it would prevent the defendants from doing that which, as he claimed and as I am for the present purposes prepared to accept, it was not unlawful for them to do, namely, to assemble outside the plaintiffs' premises for the sole purpose of imparting or receiving information. I accept that the court must be careful not to impose an injunction in wider terms than are necessary to do justice in the particular case; but I reject the argument that the court is not entitled, when satisfied that justice requires it, to impose an injunction which may for a limited time prevent the defendant from doing that which he would otherwise be at liberty to do."

76. In *Burris* the defendant had persistently threatened and harassed the plaintiff. The plaintiff obtained an interim injunction preventing the defendant from assaulting, harassing or threatening the claimant as well as remaining within 250 yards of her home. Committal proceedings were subsequently brought against the defendant. On the issue of the validity of the exclusion zone, Sir Thomas Bingham MR, with whom the other two members of the court agreed, said (at pp.1377 and 1380-1381):

> "It would not seem to me to be a valid objection to the making of an "exclusion zone" order that the conduct to be restrained is not in itself tortious or otherwise unlawful if such an order is reasonably regarded as necessary for protection of a plaintiff's legitimate interest … Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed, whether trespass to the person or to land, interference with goods, harassment, intimidation or as the case may be. But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff; or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and disturbing to a plaintiff. In such a situation the court may properly judge that in the plaintiff's interest —

> and also, but indirectly, the defendant's — a wider measure of restraint is called for.

77. Nicklin J, who was bound by *Ineos*, did not have the benefit of the views of the Court of Appeal in *Cuadrilla* and so, unsurprisingly, did not refer to *Hubbard v Pitt*. He distinguished *Burris* on the grounds that the defendant in that case had already been found to have committed acts of harassment against the plaintiff; an order imposing an exclusion zone around the plaintiff's home did not engage the defendant's rights of freedom of expression or freedom of assembly; it was a case of an order being made against an identified defendant, not "persons unknown", to protect the interests of an identified "victim", not a generic class. He said that the case was, therefore, very different from *Ineos* and the present case.

78. It is open to us, as suggested by the Court of Appeal in *Cuadrilla*, to qualify the fourth *Ineos* requirement in the light of *Hubbard* and *Burris*, as neither of those cases was cited in *Ineos*. Although neither of those cases concerned a claim against "persons unknown", or section 12(3) of the HRA or Articles 10 and 11 of the ECHR, *Hubbard* did concern competing considerations of the right of the defendants to peaceful assembly and protest, on the one hand, and the private property rights of the plaintiffs, on the other hand. We consider that, since an interim injunction can be granted in appropriate circumstances against "persons unknown" who are Newcomers and wish to join an ongoing protest, it is in principle open to the court in appropriate circumstances to limit even lawful activity. We have had the benefit of submissions from Ms Wilkinson on this issue. She submits that a potential gloss to the fourth *Ineos* requirement might be that the court may prohibit lawful conduct where there is no other proportionate means of protecting the claimant's rights. We agree with that submission, and hold that the fourth *Ineos* requirement should be qualified in that way.

79. The other *Ineos* requirement which received further consideration and qualification in *Cuadrilla* was the fifth requirement – that the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. As mentioned above, Longmore LJ expressed the view in *Ineos* that it was wrong to include in the order any reference to the subjective intention of the defendant. In *Cuadrilla* Leggatt LJ held that the references to intention in the terms of the injunction he was considering did not have any special legal meaning or were difficult for a member of the public to understand. Such references included, for example, the provision in paragraph 4 of the injunction prohibiting "blocking any part of the bell-mouth at the Site Entrance … with a view to slowing down or stopping the traffic … with the intention of causing inconvenience or delay to the claimants".

80. Leggatt LJ said (at [65]) that he could not accept that there is anything objectionable in principle about including a requirement of intention in an injunction. He acknowledged (at [67]) that in *Ineos* Longmore LJ had commented that an injunction should not contain any reference to the defendants' intention as subjective intention is not necessarily known to the outside world and is susceptible to change, and (at [68]) that he had agreed with the judgment of Longmore LJ and shared responsibility for those observations. He pointed out, however, correctly in our view, that those observations were not an essential part of the court's reasoning in *Ineos*. He said that he now considered the concern expressed about the reference to the defendants' intention to have been misplaced and (at [74]) that there was no reason in principle

why references to intention should not be incorporated into an order or that the inclusion of such references in terms of the injunction in *Cuadrilla* provided a reason not to enforce it by committal.

81. We accept what Leggatt LJ has said about the permissibility in principle of referring to the defendant's intention when that is done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so. As Ms Wilkinson helpfully submitted, this can often be done by reference to the effect of an action of the defendant rather than the intention with which it was done. So, in the case of paragraph 4 of the injunction in *Cuadrilla*, it would have been possible to describe the prohibited acts as blocking or obstructing which caused or had the effect (rather than, with the intention) of slowing down traffic and causing inconvenience and delay to the claimants and their contractors.

82. Building on *Cameron* and the *Ineos* requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protester cases like the present one:

> (1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
>
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
>
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief.
>
> (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
>
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.
>
> (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as

> trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.
>
> (7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.

83. Applying those principles to the present proceedings, it is clear that the claim form is defective and that the injunctions granted by Teare J on 29 November 2017 and continued, as varied, by Judge Moloney on 15 December 2017, were impermissible.

84. As we have said above, the claim form issued on 29 November 2017 described the "persons unknown" defendants as:

> "Persons unknown who are protesters against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at Canada Goose, 244 Regent Street, London W1B 3BR".

85. This description is impermissibly wide. As Nicklin J said (at [23(iii)] and [146]), it is capable of applying to person who has never been at the store and has no intention of ever going there. It would, as the Judge pointedly observed, include a peaceful protester in Penzance.

86. The interim injunction granted by Teare J and that granted by Judge Moloney suffered from the same overly wide description of those bound by the order. Furthermore, the specified prohibited acts were not confined, or not inevitably confined, to unlawful acts: for example, behaving in a threatening and/or intimidating and/or abusive and/or insulting manner at any of the protected persons, intentionally photographing or filming the protected persons, making in any way whatsoever any abusive or threatening electronic communication to the protected persons, projecting images on the outside of the store, demonstrating in the Inner Zone or the Outer Zone, using a loud-hailer anywhere within the vicinity of the store otherwise than for the amplification of voice. Both injunctions were also defective in failing to provide a method of alternative service that was likely to bring the attention of the order to the "persons unknown" as that was unlikely to be achieved (as explained in relation to Ground 1 above) by the specified method of emailing the order to the respective email addresses of Surge and PETA. The order of Teare J was also defective in that it was not time limited but rather was expressed to continue in force unless varied or discharged by further order of the court.

87. Although Judge Moloney's order was stated to continue unless varied or discharged by further order of the court, it was time limited to the extent that, unless Canada Goose made an application for a case management conference or for summary

judgment by 1 December 2018, the claim would stand dismissed and the injunction discharged without further order.

88. Nicklin J was bound to dismiss Canada Goose's application for summary judgment, both because of non-service of the proceedings and for the further reasons we set out below. For the reasons we have given above, he was correct at the same time to discharge the interim injunctions granted by Teare J and Judge Moloney.

Final order against "persons unknown"

89. A final injunction cannot be granted in a protester case against "persons unknown" who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the "persons unknown" and who have not been served with the claim form. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney-General v Times Newspapers Ltd* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* (at [17]) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.

90. In Canada Goose's written skeleton argument for the appeal, it was submitted that *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch), [2019] 4 WLR 2 (Marcus Smith J), is authority to the contrary. Leaving aside that *Vastint* is a first instance decision, in which only the claimant was represented and which is not binding on us, that case was decided before, and so took no account of, the Court of Appeal's decision in *Ineos* and the decision of the Supreme Court in *Cameron*. Furthermore, there was no reference in *Vastint* to the confirmation in *Attorney-General v Times Newspapers* of the usual principle that a final injunction operates only between the parties to the proceedings.

91. That does not mean to say that there is no scope for making "persons unknown" subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's Category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at [159]) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB) at [132].

92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim

relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.

93. As Nicklin J correctly identified, Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters. It wishes to use remedies in private litigation in effect to prevent what is sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protesters. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, *Dulgheriu v Ealing London Borough Council* [2019] EWCA Civ 1490, [2020] 1 WLR 609. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.

94. In addition to those matters, the order sought by Canada Goose on the summary judgment application before Nicklin J (the terms and form of which were not finalised until after the conclusion of the hearing before Nicklin J), suffered from some of the same defects as the interim injunction: in particular, as Nicklin J observed, the proposed order still defined the Unknown Persons respondents by reference to conduct which is or might be lawful.

95. In all those circumstances, Nicklin J having concluded (at [145] and [164]) that, on the evidence before him, PETA had not committed any civil wrong (and, in any event, Canada Goose having abandoned its application for summary judgment against PETA, as mentioned above) he was correct to refuse the application for summary judgment.

Appeal Ground 4: Evidence

96. This ground of appeal was not developed by Mr Bhose in his oral submissions. In any event, in the light of our conclusions on the other grounds of appeal, it is not necessary for us to address it.

Conclusion

97. For all those reasons, we dismiss this appeal.