



Neutral Citation Number: [2024] EWHC 1952 (Ch)

Claim No.BL-2022-001396

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

26 July 2024

**Before :**

**Jonathan Hilliard KC sitting as Deputy Judge of the High Court**  
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**B E T W E E N :**

**(1) ARLA FOODS LIMITED**

**(2) ARLA FOODS HATFIELD LIMITED**

**Claimants**

**-and-**

**(1) PERSONS UNKNOWN WHO ARE, WITHOUT THE CONSENT OF THE CLAIMANTS, ENTERING OR REMAINING ON LAND AND IN BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM (“the Sites”), THOSE BEING:**

- a. “THE AYLESBURY SITE” MEANING ARLA FOODS LIMITED’S SITE AT AYLESBURY DAIRY, SAMIAN WAY, ASTON CLINTON, AYLESBURY HP22 5EZ, AS MARKED IN RED ON THE PLANS AT ANNEXE 1 TO THE CLAIM FORM;**
- b. “THE OAKTHORPE SITE” MEANING ARLA FOODS LIMITED’S SITE AT OAKTHORPE DAIRY, CHEQUERS WAY, PALMERS GREEN, LONDON N13 6BU, AS MARKED IN RED ON THE PLANS AT ANNEXE 2 TO THE CLAIM FORM;**
- c. “THE HATFIELD SITE” MEANING ARLA FOODS HATFIELD LIMITED’S SITE AT HATFIELD DISTRIBUTION WAREHOUSE, 4000 MOSQUITO WAY, HATFIELD BUSINESS PARK, HATFIELD, HERTFORDSHIRE AL10 9US, AS MARKED IN RED ON THE PLANS AT ANNEXE 3 TO THE CLAIM FORM; AND**

**d. "THE STOURTON SITE" MEANING ARLA FOODS LIMITED'S DAIRY AT PONTEFRACT ROAD, LEEDS LS10 1AX AND NATIONAL DISTRIBUTION CENTRE AT LEODIS WAY, LEEDS LS10 1NN AS MARKED IN RED ON THE PLANS AT ANNEXE 4 TO THE CLAIM FORM**

**(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING FROM THE HIGHWAY THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM**

**(3) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM**

**(4) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING, OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF, OR ALONG THE ROADS LISTED AT ANNEXE 1A, 2A, 3A, AND 4A TO THE CLAIM FORM**

**(5) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO ANY VEHICLE WHICH IS ACCESSING OR EXITING THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM**

**(6) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO, ANY VEHICLE WHICH IS TRAVELLING TO OR FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM**

**(7) 34 OTHER NAMED DEFENDANTS LISTED AT SCHEDULE 1 OF THE INJUNCTION ORDER**

**Defendants**

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**Caroline Bolton and Natalie Pratt (instructed by Walker Morris LLP) for the Claimants  
The Defendants did not appear and were not represented  
Hearing date: 23 July 2024**

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**APPROVED JUDGMENT**

## **JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:**

### **Introduction**

1. The First Claimant is the largest farmer-owned dairy co-operative in Europe, owned by approximately 9600 dairy farmers, 2,400 of whom are in the UK. It provides 40% of the milk supplied to supermarkets in the UK and is the largest supplier of milk in the UK. While it operates from several sites in the UK producing a range of dairy products, the present proceedings concern four of those sites that produce and distribute milk (the “**Sites**”). The four sites are at Aylesbury Dairy, Samian Way, Aston Clinton Aylesbury HP22 5EZ (the “**Aylesbury Site**”), Oakthorpe Dairy, Chequers Way, Palmers Green, London N13 6BU (the “**Oakthorpe Site**”), Hatfield Distribution Warehouse, 4000 Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire AL10 9US (the “**Hatfield Site**”) and finally Pontefract Road, Leeds LS10 1AX and the National Distribution Centre at Leodis Way, Leeds LS10 1NN (the “**Leeds Site**”).
2. The Second Claimant, a wholly owned subsidiary of the First Claimant, holds the leasehold title to the Hatfield Site.
3. By the present Part 8 proceedings, the Claimants seek injunctions against a number of identified defendants and persons unknown to restrain future action at the Sites by animal rights activists associated with the protest group initially known as Animal Rebellion, which rebranded last year to Animal Rising (the “**Claim**”).
4. The Claimants sought and obtained from Bacon J on 31 August 2022 urgent and without notice relief to restrain apprehended unlawful acts of protest. The interim relief was continued by Fancourt J at a return date on 4 October 2022, and the Judge permitted the Claimants to add 31 named defendants. By way of a 25 October 2022 order, three further defendants were added, one of whom was identified only by a photograph rather than by name. Following the Claimants’ 12 January 2023 application, the final disposal of the claim was adjourned pending the expedited appeal to the Supreme Court in *Wolverhampton City Council and Others v London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45, which concerned whether injunctions could be granted against persons unknown and if so what the test for doing so should be. Following the handing down of the Supreme Court decision in *Wolverhampton* on 29 November 2023, the case was brought on for a final hearing before me to deal with the disposal of the claim against the identified Defendants and a continuation of the injunction order against the defendant persons unknown. This is my judgment following that hearing.
5. Therefore, the Defendants fall into two categories: 34 named or identified Defendants and six categories of persons unknown. 33 of the former category of Defendants are named and one- the 40<sup>th</sup> Defendant- identified by photograph. All 33 of the named Defendants have now agreed to stays of the proceedings through consent orders in return for the giving of undertakings.

6. That leaves the 40<sup>th</sup> defendant, who is identified by image 1 at Schedule 1A of the re-Amended Claim Form but whose name is not known by the Claimants and therefore who cannot be asked by them to sign an undertaking.
7. A number of the signed draft consent orders supplied to the Claimants at midnight the day before the hearing contained an error in the main body of it, so I agreed not to provide a draft judgment for 24 hours in order that these could be corrected, and I have duly made the consent orders in the terms sought.
8. The Claimants were represented before me by Caroline Bolton and Natalie Pratt. I am grateful for their submissions. The Defendants did not appear, were not represented, and have not acknowledged service or filed any evidence in the proceedings.

### **Decision**

9. For the reasons set out below, I grant the order sought.
10. I shall take first the relevant factual background, before setting out the law and then applying it.

### **Relevant factual background**

11. Animal Rising have two stated objections to the dairy industry: what they see as its contribution to climate change and its use of animals in the production of milk. For convenience, I shall refer to the individuals involved as animal rights protestors in this judgment.
12. The Claimants have adduced witness evidence from a number of sources:
  - (1) Four individuals to explain, among other things, the operation of the sites and the past actions on them: Joanne Taylor (Aylesbury), Melanie Savage (Hatfield); David Dons (Oakthorpe) and Anne-Frances Ball (Leeds);
  - (2) Nicholas McQueen (partner) and James Damarell (senior associate) of Walker Morris LLP, their solicitors;
  - (3) one of their directors; Afshin Amirahmadi; and
  - (4) Samantha Sage, the Quality, Environmental, Health and Safety Manager at the Aylesbury Site.
13. I have not had the benefit of having the evidence tested by arguments from the defendants. However, having considered it carefully, I have no reason to doubt its veracity or accuracy, and I accept it. I set out the key points from its below.
14. To understand the actions that have occurred and the causes of action relied on, it is first necessary to understand in outline the layout of the Sites and their operation.

### **The layout and operation of the Sites**

15. The First Claimant holds the freehold title to the Aylesbury Site. The Aylesbury Site is the largest dairy in the UK, processing around 10% of the milk in the UK. Therefore, it

is a significant contributor to the UK dairy industry. 700 members of staff are employed at the dairy and it is very busy, such that free access to the Site is required at all times to ensure that operations at the dairy can run, and that the surrounding road network remains free-flowing and is not adversely impacted by operations at the dairy. Around 300 trucks enter and leave the dairy each day, consisting of 160 raw milk deliveries and 140 outbound departures.

16. The trucks that enter and leave the site are a mixture of tankers and other HGV lorries, and as the A41 is the only access road to the site, apart from Samian Way, all vehicles travelling to and from the site use this road. There are three access points to the site, Gatehouses 1 to 3, each of which serves a different function: one is used for raw milk intake and outbound exits, another for access to the employee and visitor car park and the third as the outbound access. All of the access points are from Samian Way, which is an adopted highway for which the local highway authority is responsible. Gatehouses 1 and 2 are manned, and Gatehouse 3 is unmanned but visitors enter using a swipe-card at the barrier or by ringing the intercom to make themselves known to the security staff.
17. Significant security measures have been put in place at the site since the anticipation of protests in September 2022.
18. The Second Claimant holds a 15 year lease to the Hatfield Site. Arla operates the Hatfield Site as a distribution centre, employing 500 staff there. The centre handles around 350 million kilograms of palletised food products and around 520 million kilograms of fresh milk, which is delivered direct to the stores of Arla's customers, mostly supermarkets. The centre processes a very significant proportion of the total milk supplied by Arla in the UK. It also stores and processes significant proportions of the UK's cheese and other dairy product supply. The Site is like the Aylesbury Site a busy one, with around 400 vehicular movements a day: around 180 inbound and 220 outbound.
19. Most if not all of these vehicles will use the A1001 and/or A1(M) when travelling to and from the Site. There are two vehicular access points to the Site, both directly off adopted highways maintained by the local highway authority. The first is Gypsy Moth Avenue, from which the HGVs access and exit the site. They travel a short way along a private road into the site before coming to a manned entry barrier. The second is Mosquito Way, where cars access and exit the Site from. That access is controlled by a barrier that is operated by a swipe-card and intercom system. Pedestrian access to the Site is located at the Mosquito Way access, next to the vehicle barrier, through a swipe-card and intercom operated turnstile.
20. The Site is staffed around the clock by a security team so that two people are always on duty, it is fully fenced and it is monitored by CCTV.
21. The First Claimant holds the freehold title to the Oakthorpe Site. It operates a dairy business at the Site, processing 350 million litres of milk every year and employing approximately 200 staff. It produces fresh milk, organic milk and fresh cream products for major retailers. It also produces fresh organic milk under its Yeo Valley brand at the dairy.
22. The Site is busy with vehicular movements, and relies on the same for the operation of its business. There are around 40-50 inbound HGV vehicles a day and around 50-60

outbound HGVs, together with the movement of around 10-20 other vehicles, such as contractors, goods deliveries and waste collections.

23. The Site is surrounded by a perimeter fence, although access is possible from the bank of Pymmes Brooke, which runs along the southern and eastern boundaries of the Site. It could in theory also be possible to access the site from neighbouring properties, but Arla considers that both of these routes would be incredibly challenging.
24. There are 5 vehicular access points to the Site:
  - (1) Chequers Way, which is an adopted highway. There is a swing gate at the access point which is left open to facilitate HGV access. Inside the access point HGVs can turn left to access the dairy's intake or straight on, in which case they encounter a barrier preventing access to the rest of the Site, which is operated by a swipe-card and intercom system.
  - (2) There is a second access point off Chequers Way, which can be used by cars, larger vehicles and small trucks but not for tankers, trailers or larger vehicles. It is accessed through a swing gate, which is left open to facilitate access to the Site, and just inside the gate is a barrier and pedestrian access point which require swipe-card access or use of the intercom to contact the Site's security staff.
  - (3) There are two vehicle access points from Owen Road, which is a public highway: one facilitates inbound traffic and the other outbound traffic. They utilise a barrier requiring swipe-card access or use of an intercom to speak to the Site's security staff. There is also a pedestrian turnstile.
  - (4) There is a vehicular access off Ostcliffe Road, a highway, which utilises a barrier requiring the same measures to enter as set out above. This access is used only as an exit point and almost exclusively as the HGV exit, although temporary use can be made as an exist for all vehicles.
25. Aside the measures set out above, there is a security building on the site, vehicle barriers operate automatic number plate recognition cameras, all entry and exit points are covered by CCTV and monitored by security staff, and one vehicular access pointt is closed between 7pm and 7am to minimise disruption to local residents.
26. The First Claimant holds freehold title to the Leeds Site. The Site actually comprises two sites: the Stourton dairy and Arla's national distribution centre. The two sites are next to each other, linked by an inter-site gate, such that they form one large site. 450 Arla employees work at the dairy, along with 150 embedded contractors for various services, and the distribution centre employs 405 staff. The dairy processes just over 750 million litres of milk each year. It is the third largest dairy in the UK and Arla's second largest dairy, the Aylesbury Site being the largest. The dairy accounts for around 7% of the UK's milk supply output. The dairy produces own label milk for supermarkets, Arla's branded Cravendale filtered milk, fresh creams, fermented creams, cottage cheese, custard, alcohol cream and milkshake and ice-cream sundae products.
27. Like the other Sites, the Leeds Site is busy with vehicular movements and relies on the same for the operation of its business. There are around 300 vehicular movements a day

around the dairy and around 225 around the distribution centre. Most, if not all, of these vehicles will use the A639 and/or the M1 when travelling to or from the Site. There are four vehicular access points:

- (1) The distribution centre can be accessed from two points off Leodis Way, a highway, which are a few metres apart. One is the HGV entry and exit point and the second the entry and exit point to the car park that services the distribution centre, including for pedestrians. Access through the former is by barrier, controlled by a full-time manned security gatehouse. Access to the latter is by keycard- controlled automatic gate, and only be used to access the car park and not the rest of the site.
  - (2) The dairy can be accessed at two points off Pontefract Road, a highway. One is for HGVs and cars to enter, and the other, which is 200 metres away, is for their exit. One security guard is present in the gatehouse at the entrance, and the entrance and exit are controlled by keycard operated gates.
28. Each of the access points is well signed and utilise distinctive green fencing, so their location could be easily identified by protestors. Arla could, if the Pontefract Road access points were blocked, run its operation from the access points on Leodis Way. However, if all access points were blocked, operations would likely have to cease within a matter of hours, with the consequence that a significant volume of milk would be lost, and the distribution centre would have to cease operations within around two hours.
29. In addition to the security measures above, the dairy is surrounded by a security fence, most of its internal doors are keycard controlled, and around 75% of its internal areas are covered by CCTV. The distribution centre is also surrounded by a perimeter fence, has a significant CCTV system both externally and internally, and all staff at the distribution centre are issued with a security access card which must be used at strategic points of the site to allow access and to pass through the Site.

#### Past animal rights protests at the Sites

30. There have been past animal rights protests at three of the sites: the Oakthorpe, Aylesbury and Hatfield Sites.
31. Animal rights protestors first entered one of the sites in March 2020. Animal Rebellion has claimed on its website that members of its group were responsible for the relevant action. On 3 March, two protestors entered the Oakthorpe Site and climbed on silos in which dairy product was stored. They were arrested and a minor delay in production operations was caused. Four days later, a much larger demonstration occurred, to which the 3 March demonstration appears to have been a precursor. Around 100 Animal Rebellion protestors entered the site and handcuffed themselves to the railings next to the tanker bay at the Site. They were removed by the Police. The protestors also erected a makeshift structure outside the site and attached themselves to it. They were removed and arrested. The protests came at a financial cost to the Claimants' business, both in the additional resources needed to protect the business and the adjustments needed to mitigate the impact.
32. On 31 August 2021, at around 5.30 am, around 50 protestors associated with Animal Rebellion attended the Aylesbury Site. The protest lasted approximately 24 hours. They

- (a) prevented access to the dairy by blocking Samian Way between the roundabout and first gatehouse; (b) erected two bamboo towers on Samian Way and attached themselves to the towers; and (c) parked a Luton-style van lengthways across the road, making the road impassable and locked themselves to the van. Further (d) several protestors sat in the road and erected and occupied tents on the grass verges, which are within Arla's freehold title.
33. Thames Valley Police arrived at the Site at around 6 am and remained there for the majority of the 24 hour period. They removed the protestors that had attached themselves to the bamboo structure, and dismantled the structure itself. Around twelve of the protestors were arrested. The blocking of access to the dairy necessitated the closure of the A41 for most of the day, Samian Way was closed for most of the 24 hour period and there was also significant traffic disruption caused in the neighbouring village of Buckland as a result of the closure of the A41.
34. Animal Rebellion's website, as it stood at 28 August 2022, details a campaign called "Down with Dairy", which includes a description of the campaign, stating, among other things, that:
- "The action is part of a sustained campaign, which saw a march and blockade of the Arla Factory by Animal Rebellion in March the previous year."*
- "Thirteen of the world's largest dairy corporations, including Arla, together emitted more greenhouse gases in 2017 than major polluters BHP and ConocoPhillips, mining and oil giants respectively."*
- "We're not just demanding that Arla go plant-based by 2025, we're demanding that the government supports companies like Arla by funding a just transition for workers in meat and dairy industries to just and sustainable alternatives."*
- "You can read more about some of those involved in our campaign against Arla here."*
35. More generally, the website explained the "Down with Dairy" campaign as follows:
- "Animal Rebellion is calling on the dairy industry to transition to plant-based production by 2025..."*
36. The August 2021 protests caused the following harm: (a) it prevented inbound deliveries of raw milk and other raw materials to the Aylesbury Site, which were all diverted elsewhere, and which in turn meant that around 80 farms could not have their milk collected; (b) outbound deliveries were disrupted, which caused disruption to 76 stores operated by Arla customers in the UK and impacted international cream products; (c) finished product went to waste; (d) other activities at the Aylesbury site were also impacted, customer audits of Arla's facilities were cancelled, tenants on other areas of Arla's land away from its dairies and distribution centres were impacted, and their operations stopped. The main financial loss was the loss of revenue from uncollected milk of around £170,000. There were also additional cleaning and security costs.



37. The following accommodations also needed to be made, which caused a significant disruption to Arla’s operations: (a) Arla staff were required to park on Samian Way, walk to work, or use the emergency access; (b) raw milk deliveries were diverted away from the Aylesbury Site; (c) planned deliveries such as fuel, bottle resin and packaging, were rescheduled for the following day; (d) outbound vehicles were stuck at the dairy and unable to leave, and no empty vehicles could enter the Site to load outbound deliveries; (e) the dairy only had 250 milk cages on-site due to the inability to replenish stocks and could not therefore run; and (f) additional security was requested to cover the third gatehouse and patrols.
38. Moving forward to 2022, in or around August 2022 the Claimants became aware from Animal Rebellion’s website of a plan to disrupt the dairy supply in the UK in September over a one to two week period. The website included a section entitled “*This Changes Everything- A Plant Based Future*”, which stated, among other things, as follows:

*“The near term goal is fairly simple, this September we will be disrupting the dairy supply across the UK with 500 people over a 1-2 week period, cutting off the supply of milk to supermarkets and causing unignorable high-level disruption which will be felt by tens of millions of people across the UK and be a sustained no.1 news story. This will result in more than one thousand arrests and put the damage and exploitation of animal agriculture at centre stage. We will then build on that momentum with a large-scale occupation in the centre of London...*

*This is the beginning of a long term civil resistance project, where we will be raising the stakes through the actions we take and also continuing our resistance through the court systems...*

**Strategy**

*The two key mechanisms / tools to achieve our aims are large-scale material disruption and the drama of interactions with the public by more localised disruptions...*

*We need to make sure we create a crisis at the start, so going in with maximum intensity to make sure our issue is a number one news story, and after that we can keep the debate going with relatively minimal effort....*

*A key action design principle is all actions must be “simple, unbeatable and repeatable”.*

...

**Action plan:**

*Phase 1- warm up actions and mobilisation starting at the beginning of June*

...

*Phase 2- two weeks high-intensity in September with 500+ people*

*The objective is simple- we are going to have supermarket shelves empty of milk for two weeks, and will stack all energy and mobilisation towards this goal. We will be asking for people to commit to taking one week off. This phase will have a clear end and a clear ask for people to join us at phase 3...*

*Phase 3- mobilise to the city*

*Phase 3 will be an openly-organised mass occupation in London with no barrier to entry. We will mobilise during Phase 2 and we can double down on this by taking out newspaper adverts and by our spokespeople press releases talking about the meeting date and location. This will happen a week or so after Phase 2 and may be part of a broader coalition with XR [Extinction Rebellion] and JSO [Just Stop Oil].”*

39. There was also a concern that the Leeds Site may have been surveyed by potential protestors and/or other persons associated with Animal Rebellion, because a dog-walker was seen on 24 August 2022 walking near the Leeds Site and appearing to be recording a video when doing so.
40. This all led to the 31 August 2022 without notice application, and order bearing the same date made by Bacon J against the persons unknown described in the heading to this judgment e.g. “*Persons unknown, who are, without the consent of the Claimants, entering into or remaining on land and in buildings on any of the sites listed in Schedule 2 of the Claim Form*”. The order barred the following acts: (a) entering into, entering onto, tunnelling under or remaining on the Sites (paragraph 2.1 of the order); (b) blocking, slowing down, obstructing or otherwise interfering with vehicular access to or from the highway at the Sites (paragraph 2.2); (c) approaching, slowing down, or obstructing any vehicle on or moving along the roads identified in various annexes to the order, for the purpose of (i) disrupting vehicular access to or from the Sites or (ii) protesting (paragraph 2.3); (d) entering, climbing onto, climbing into, or climbing under any vehicle travelling to or from the Sites (paragraph 2.4); (e) affixing themselves (“locking on”) to any vehicle on, entering or existing the Sites where the locking on is for the purpose of protesting (paragraph 2.5); (f) affixing themselves or any other items to any of the roads in (c) or any other person or object on, under or over those roads for the purposes of (i) disrupting vehicular access to or from any of the Sites; or (ii) protesting (paragraph 2.6); or (g) erecting any structure on those roads for the purpose of (i) disrupting vehicular access to or from any of the Sites or (i) protesting (paragraph 2.7).
41. Alternative service was allowed by a number of methods, including placing the order and documents leading to it on the First Claimant’s websites and Facebook pages, e-mailing a copy of this order to Animal Rebellion, and placing signs and/or notices on the perimeter of each of the Sites. The injunction order was duly placed on the First Claimant’s website on 2 September 2022, a relevant entry added to the First Claimant’s Facebook page the same day, an e-mail sent to Animal Rebellion the same day, which led to an auto-reply from two Animal Rebellion e-mail addresses, and signs placed on the perimeters of the Sites that day.
42. However, three protest incidents occurred a few days later in September 2022 at the Sites: one on 4<sup>th</sup> September at the Aylesbury Site, one on 5<sup>th</sup> September at the Aylesbury Site and one on 8<sup>th</sup> September at the Hatfield Site.

43. The incident at the Aylesbury Site on 4 September 2022 started at about 5.30 am. Four protestors entered the Site and climbed on top of four milk silos, where they stayed for the next 10 to 12 hours. As a result of this, and the risk of contamination to the milk product contained in the silos, it was necessary to dispose of 640,000 litres of milk. Trespassing on the Aylesbury Site was a breach of paragraph 2.1 of the 31 August 2022 injunction order, so this appears to have breached that order.
44. Six protestors entered the Site and climbed on top of three raw milk tankers. Again, that appears to have been a breach of paragraph 2.1 of the 31 August 2022 injunction order.
45. Several protestors also blocked 'College Road', one of the access routes to the Site, which was protected under the injunction order, and climbed aboard and occupied vehicles on the road. It took until approximately 1.30 pm for all of the protestors to be removed from the road and vehicles in the vicinity of the Site, and for free access to the Site to recommence. These actions appear to have been in breach of paragraphs 2.2 to 2.5 of the injunction order.
46. 23 protestors were arrested in connection with the incident.
47. The next morning, 5 September 2022, at around 2.30 am, approximately 6 protestors entered the Site, and climbed aboard tankers or lay in the loading areas. All protestors were removed by around midday and 4 protestors were arrested.
48. Three days later, on 8 September 2022, at around 10 am, approximately 20 supporters of Animal Rebellion entered the Hatfield Site. A number of them caused physical damage by drilling into tyres and/or cutting the valves off lorry tyres to immobilise the lorries, before climbing onto a lorry in the loading bay and occupying the site. Over 400 tyres were either drilled or had their valves cut and had to be disposed of. The costs of replacement would be over £170,000. 17 people were arrested for aggravated trespass and criminal damage.
49. There were no similar incidents in September 2022 at the other two Sites, namely the Oakthorpe and Leeds Sites.
50. However, there were a number of other actions taken in relation to the dairy campaign between 3 and 8 September 2022. These included protests on 4 September at three sites owned by Muller, entering two Muller facilities on 5 September, disrupting three dairy sites on 6 September (including one of Muller), staging a sit in at four supermarkets and preventing customers at those stores accessing dairy and meat products, staging a protest at Westminster, and again entering a Muller facility on 8 September, blocking entry to the site and gluing themselves to the entry to the site.
51. The period of protest was temporarily paused on 8 September because of the death of Queen Elizabeth II.

#### *Developments since September 2022*

52. When the matter came back before Fancourt J on 4 October 2022 for the return date of the injunction, the Claimants applied to add 31 persons as named defendants in light of their involvement in the September 2022 incidents, and an order was made continuing the injunction and adding them.

53. Following the pause for the death of Queen Elizabeth II, Animal Rebellion engaged in a number of pieces of direct action protest in October to December 2022, including attending Fortnum & Mason, Harrods and supermarkets in London, Norwich, Manchester and Edinburgh and pouring milk taken from the shelves of those shops onto the floor. Three of the individuals named in the 25 October 2022 order appear each to have been involved in or linked to one of the acts. Of the remaining named defendants, Rosa Sharkey is stated in an Animal Rebellion website article to be the spokesperson for the 12 supporters of Animal Rebellion who broke into and took 18 beagle puppies from the MBR Acres facility in Wyton, Cambridgeshire on 20 December 2022.
54. As explained above, the final disposal of the claim was adjourned in light of the Supreme Court proceedings in the *Wolverhampton* case.
55. There have not been any further cases of direct action against the dairy industry since the matters set out above. Animal Rising have focused largely, although not exclusively, on animal-related sporting events in 2023, such as high-profile horse racing events, although there was at least one farming-related incident, where three Animal Rising activists entered the Appleton Farm on the Sandringham Estate, from which they removed three lambs without the permission of the owner of the animals.
56. However, the Claimants remain concerned that future acts of direct action and protest will occur. This is largely for a combination of the following reasons:
- (1) The Animal Rebellion website continues to seek the support of new activists.
  - (2) The August 2022 website entry described the September 2022 intended action as the start of a long-term civil resistance project that stated that it would include large scale disruption.
  - (3) That website specifically, in its reporting of the 2021 incident, named and targeted Arla as a large dairy producer.
  - (4) The campaign against the dairy industry has, from Animal Rising's perspective, not been won.
  - (5) On the contrary, the plan to bring about a transition to a plant-based system by 2025 is now more pressing than ever given how close 2025 is. Given that the Claimants supply 40% of milk to UK supermarkets, and the stated aim of Animal Rising of stopping the supply of dairy to UK supermarkets, achieving their aim is likely in their minds to involve further action against the Claimants' Sites.
  - (6) The Claimants consider that the September 2022 action was not as extensive as Animal Rebellion had hoped, given the statements made on its website in August 2022 about the scale of the action planned.
  - (7) There was further direct action in October to December 2022, including in relation to the dairy industry.
  - (8) The Claimants consider that the absence of action since September 2022 is a product in large part of the injunctions in place. Therefore, were they to fall away, that deterrent would be lost. They accept that the September 2022 action against the Claimants occurred despite the injunction, but contend that other dairy and

distribution sites, particularly those operated by Muller, appeared to be disproportionately targeted, and the Claimants infer this is because Muller has no such injunction.

57. Therefore, the Claimants seek draft orders, with the same substantive restrictions as in the orders sought before and granted by Bacon J and Fancourt J, but for five years with annual review in respect of the element of the order relating to persons unknown.
58. It was explained to me, in response to a question that I asked during the hearing, that the website was changed around 10 days before the hearing, and that as part of this it removed reference to the specific plan to bring about a transition to a plant-based system by 2025. I asked for a witness statement to evidence the points that I was told of orally, and this was duly provided the next day. While I think it would have been desirable for this to be provided before the hearing started, I consider it appropriate to admit this in so that the duty of full and frank disclosure can be satisfied.
59. The website appears to have been revamped. As part of the description of Animal Rising's activities, it states that "*the key solution to these challenges [the challenges caused by the animal farming and fishing industries] is to support farming and fishing communities in the necessary and urgent transition to a sustainable and just plant-based food system*". The "*How We Achieve It*" section contains three routes. The first is "[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns", the second is supporting local people to create change for themselves, and the third is building alliances with key stakeholders. There is a page on previous campaigns, which states under "*2022 PLANT-BASED FUTURE*" that those involved "*successfully stopped the supply of milk to supermarkets across the South of England*".

*The evidence relating to the named defendants who have not signed consent orders*

60. Finally, I set out a summary of the evidence in relation to the remaining identified defendant who has- necessarily- not signed a consent order, namely the 40<sup>th</sup> Defendant.
61. The 40<sup>th</sup> Defendant appears to be female and have blue hair on the basis of a video taken of the 8 September incident at the Hatfield Site. There is video evidence of her trespassing on the Hatfield Site during the 8 September 2022 incident and filming the activities of the Animal Rebellion protestors. Such filming appears to have been carried out for Animal Rebellion, who post footage of their incidents on their website. In the video evidence, she is seen leaving the site by herself before arrests were made.

**The legal test**

62. The injunction is sought to restrain:
  - (1) trespass on the Claimants' Sites;
  - (2) interference with the Claimants' common law rights, and the rights of their assigns and licensees, to access the highway from the Claimants' Sites; and
  - (3) public nuisance caused by obstruction of the highway.

63. I shall start with the requirements of (1), (2) and (3), and then deal with what must be shown in the present case to order (a) an injunction against the 40<sup>th</sup> Defendant as an identified defendant and (b) against persons unknown.

Trespass to land

64. Starting with trespass to land, that consists of any unjustifiable intrusion by one person upon land in the possession of another. No further elaboration is necessary for present purposes.

65. The Claimants submitted that deciding whether a trespass has occurred (or in the present case would or might occur in the future) does not involve any balancing of the Claimants' rights to possession with the Defendants' rights of expression or freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights ("ECHR"), because:

(1) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 at [36]-[37] per Longmore LJ;

(2) trespass is a blatant and significant interference with the Claimants' rights under Article 1 of the First Protocol to the ECHR; and

(3) the exercising of rights under Articles 10 and 11 cannot normally justify a trespass: *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 359 ("*Cuciurean (2021)*") at [9(1)] to [9(2)] per Warby LJ.

66. I accept that submission.

67. Article 10 provides as follows:

"10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

68. Article 11 provides as follows:

"(1) Everyone has the right to freedom of peaceful assembly ...

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ...”

69. Article 1 of the First Protocol provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.”

70. The other provision to mention is section 12 of the Human Rights Act 1998 (“HRA”). Section 12(1) provides that section 12 applies if a Court is considering whether to grant any relief which, if granted, might affect the exercise of the ECHR right to freedom of expression, namely that in article 10. Where section 12 applies, then, among other things, the Court must have particular regard to the importance of the ECHR right to freedom of expression: section 12(4).

71. In *DPP v Ziegler* [2021] UKSC 23; [2022] AC 408, the Supreme Court endorsed at [58] the Divisional Court’s identification of the five questions that arise when an Article 10 or 11 right may be engaged, which was expressed in the following terms by the Divisional Court:

“63. That then calls for the usual enquiry which needs to be conducted under the HRA. It requires consideration of the following questions:

(1) Is what the defendant did in exercise of one of the rights in articles 10 or 11?

(2) If so, is there an interference by a public authority with that right?

(3) If there is an interference, is it ‘prescribed by law’?

(4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 or article 11, for example the protection of the rights of others?

(5) If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?

64. That last question will in turn require consideration of the well-known set of sub-questions which arise in order to assess whether an interference is proportionate:

(1) Is the aim sufficiently important to justify interference with a fundamental right?

(2) Is there a rational connection between the means chosen and the aim in view?

(3) Are there less restrictive 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?”

In *Ziegler*, the question arose in the context of a statutory provision, namely section 137(1) of the Highways Act 1980.

72. It is convenient to deal in this section on the legal principles with whether Articles 10 and 11 could justify a trespass in the present case. In my judgment, they could not, for the following reasons:

(1) The exercising of rights under Articles 10 and 11 cannot normally justify a trespass: *Cuciurean (2021)* at [9(1)] to [9(2)]. Here, I see nothing to take this out of the ordinary case.

(2) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd* (above) at [36]-[37]. The reason for that is that Articles 10 and 11 do not contain any right to protest on privately owned land: *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661 (“*Cuciurean (2022)*”) at [31], applying the European Court of Human Rights decision in *Appleby v UK* (2003) 37 EHRR 38. The Court of Appeal endorsed in the latter case the explanation of the Divisional Court at [45] of its judgment, where Lord Burnett CJ and Holgate J explained that:

*“there is no basis in the Strasbourg jurisprudence to support the respondent’s proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. Instead, it has consistently said that articles 10 and 11 do not “bestow any freedom of*



*forum” in the specific context of interference with property rights (see Appleby at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The further that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of destroying the essence of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.”*

(3) As the European Court explained in *Appleby* at [43], one must also consider the rights under Article 1 of Protocol 1: “*while freedom of expression is an important right, it is not unlimited. Nor is it the only Convention right at stake. Regard must also be had to the property rights of the owner of the shopping centre under Article 1 of Protocol No.1*”. That underlies the specific points in (1) and (2) above.

(4) It appears that the result of the application of the above principles is that the proportionality exercise does not apply in a case where the protest takes place on private land: *Cuciurean (2022)* at [33].

73. Therefore, as did Ritchie J in *Valero Energy Limited v Persons Unknown* [2024] EWHC 134 (KB), I do not consider that articles 10 and 11 provide any defence to what would otherwise constitute a trespass in the present case.

74. It was accepted by the Claimants that I should consider whether articles 10 and 11 are engaged here, whether as a result of considering whether section 12 of the HRA applies, and if so in having particular regard to the importance of the ECHR right to freedom of expression, or the Court’s duty as a public authority under section 6(1) of the HRA. Therefore, I do not need to consider that question further.

### Public nuisance

75. As in *Ineos* (above), the Claimants asked me to proceed on the basis that the same core principles applied to public nuisance and the criminal offence of obstructing the highway under section 137(1) of the Highways Act 1980. I am content to do so, and would expect the two to march hand in hand.

76. As explained at [65] of that judgment, for there to be an offence under section 137(1), it must be shown that:

“(1) *There is an obstruction of the highway which is more than de minimis; occupation of part of a road, thus interfering with people having the use of the whole road, is an obstruction...*

(2) *The obstruction must be wilful, ie. deliberate;*

(3) *The obstruction must be without lawful authority or excuse; ‘without lawful excuse’ may be the same thing as ‘unreasonably’ or it may be that it must in addition be shown that the obstruction is unreasonable.”*

77. The purposes for which a highway may be used are not limited to travelling. As Lord Irvine stated in *DPP v Jones* [1999] 2 AC 240 at 245G-255A:

*“The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I have set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway.”*

78. A highway may be put to many other uses. It would be surprising if “two friends who meet in the street and stop to talk are committing a trespass; so too a group of children playing on the pavement outside their homes; so too charity workers collecting donations; or political activists handing out leaflets; and so too a group of Salvation Army singing hymns and addressing those who gather to listen”: [1999] AC 240 at 254F-G. Therefore, there is a right to peaceful assembly on the highway.
79. As Lord Reed explained in *The Safe Access Zones Bill Reference* [2022] UKC 32 at [22], the approach in *Jones* was, prior to the coming into force of the HRA, to use *common law* rights of freedom of speech and assembly as an important factor in assessing whether the use of the highway was reasonable. That would apply equally to section 137(1) as it would to the Public Order Act 1986 offence considered in *Jones*.
80. In *Ziegler* the Supreme Court considered the interaction of section 137(1) with Articles 10 and 11 in light of the coming into force of the HRA. The Court held that section 137 has to be read and given effect, in accordance with section 3 of the HRA, on the basis that the availability of the defence of lawful excuse, in a case raising issues under Articles 10 or 11, depends on a proportionality assessment, as the Divisional Court had considered.
81. Their Lordships in *Ziegler* adopted at [72] the non-exhaustive list of factors to consider when evaluating proportionality that had been set out by Lord Neuberger MR in *City of London Corporation v Samede* [2012] EWCA Civ 160 at [39]-[41]. Paraphrasing that content, those factors are:
- (1) the extent to which the continuation of the protest would breach domestic law;
  - (2) the importance of the precise location to the protestors;
  - (3) the duration of the protest;
  - (4) the degree to which the protestors occupy the land;
  - (5) the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public;
  - (6) whether the views giving rise to the protest relate to ‘very important issues’ and whether they are ‘views which many would see as being of considerable breadth, depth and relevance’; and
  - (7) whether the protestors ‘believed in the views that they were expressing’.

82. In the *Safe Access Zones Bill Reference* case, Lord Reed, giving the judgment of the Court, considered that the Divisional Court in *Ziegler* should- before resorting to the special interpretative duty imposed by section 3 of the HRA- have considered whether the established interpretation of section 137, as stated for example by Lord Irvine in *Jones*, would result in a breach of Convention rights: [23]. However, given that the question of the need to apply in the context of section 137 the proportionality test set out in *Ziegler* was not before the Court, Lord Reed made no specific comment on it: [26].
83. What he did address was the comment in *Ziegler* at [59] that “[d]etermination of the proportionality of an interference with ECHR rights is a fact-sensitive enquiry which requires the evaluation of the circumstances in the individual case”. He stated that while this might be the useful position in a criminal trial of offences charged under section 137 where Article 9, 10 or 11 rights were engaged, if the section was interpreted as it was in *Ziegler*, that would not universally be the case: [28]-[29]. Questions of proportionality, particularly where they concerned the compatibility of a *rule or policy* with ECHR rights, are often decided as a matter of general principle, rather than on an evaluation of the circumstances of each individual case: [29]. Further, it is possible for a piece of legislation to ensure that its application in individual circumstances will meet the proportionality requirements under the ECHR without any need for evaluation of the circumstances in the individual case: [34].
84. Therefore, when a defendant relies on Article 9, 10 or 11 in the defence of a protest-related defence, the Court should- if those articles are engaged- consider whether the ingredients of the defence themselves strike the proportionality balance: [55]. If it considers that they do not strike such a balance, the Court’s duty under section 6 of the HRA is to consider whether there is a means by which the proportionality of a conviction can be ensured, whether through using the interpretative duty under section 3 in the case of construing the legislation creating a statutory offence or developing the common law where the offence arises at common law: [56]-[61].
85. In the present case, the Claimants accept, as explained above, that the requirements for public nuisance should be the same as those in section 137 of the Highways Act 1980. Therefore, on the face of it, the proportionality requirements set out in *Ziegler* would apply, and I consider that I should apply them given that Lord Reed made clear in *Safe Access Zones Bill Reference* that he was not specifically considering this point in the context of section 137.
86. The Claimants submit in relation to the injunction sought against persons unknown that it is not possible to apply the proportionality requirements under the ECHR to *specific individual* protestors because by definition the identity and circumstances of those individuals is not presently known. Rather at one should apply a proportionality test to the restrictions imposed by the draft order sought with future protests in mind. I accept that I should take the latter course.
87. As explained below, I consider that the order sought satisfies that test.

Right to access the public highway

88. Lord Atkin explained this right with characteristic succinctness in *Marshall v Blackpool Corporation* [1935] AC 16 at 22:

*“The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so...whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to this right of access; just as the right of access is subject to the rights of the public and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.”*

89. An interference with the right is actionable without proof of loss, and if an interference does cause a loss, then damages can be obtained.
90. Taking the last part of the extract from *Marshall* above, in my judgment the key question here is the qualification of the right of access by the rights of the public. In *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch), Morgan J considered at [107] the interaction of the adjoining landowner’s right of access to the highway with the protestors’ right to a reasonable use of the highway. He assumed in favour of the protestors that if they were carrying on a reasonable use of the highway which impacted on the rights of the claimants in that case to access the highway, that would not be an infringement of the right of access to the highway.
91. While Morgan J did not have to decide the point, because the claimants in that case put their case on the basis of public nuisance rather than the landowner’s right to access the highway, in my judgment that is correct and I should take the same approach here. The rights of the public include the right to reasonable use of the highway. Therefore, applying the principles set out in *Marshall*, a reasonable use of the highway by members of the public will not constitute unlawful interference with the adjoining landowner’s right to access the highway.
92. It was submitted by the Claimants that the decision of Julian Knowles J in *High Speed Two (HS2) Limited v Four Categories of Persons Unknown & Monaghan & Others* [2022] EWHC 2360 (KB) at [196] suggests that no balancing act is to be applied between the right to access the highway and the Article 10 and 11 rights of the defendants, because in a claim under this cause of action much, if not all, of the relevant protest is taking place on private land. I do not take Julian Knowles J to be going so far in [196]. Rather he simply put forward the fact that in the case before him much if not all of the protests had taken place on private land as being the first of three reasons why there was no unlawful interference with Articles 10 and 11 on the facts before him. Further, here, the Claimants rely on the obstruction of the highway, such as by protestors mounting and affixing themselves to vehicles on it, as future acts that would breach their right to access the highway, and that acts are not taking place on private land.
93. However, as set out below, I consider that the apprehended actions would amount to a violation of the Claimants’ right to access the highway whether or not such a balancing act is to be applied. Therefore, I do not consider it necessary to consider further the question of whether such a balancing act needs to be applied.

*Test for a precautionary injunction against named defendants*

94. The test for a precautionary injunction against named defendants is as set out by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31], as applied in

*Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd* [2022] EWHC 1703 (Pat) (*Koninklijke*) and approved by the Court of Appeal in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13 at [83]. That requires the following two questions to be asked and answered in the affirmative:

- i) Is there a strong probability that unless restrained by injunction the defendant will act in breach of the claimant's rights?
- ii) If the defendant did an act in contravention of the claimant's rights would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy in damages would be inadequate?

95. If those questions are answered in the affirmative, the Court will consider whether it is just and convenient to make the order as envisaged by section 37(1) of the Senior Courts Act 1981.

*Test for an injunction against persons unknown*

96. The Claimants submit that the test laid down in *Wolverhampton* has helpfully been summarised by Sir Anthony Mann in his recent decision in *Jockey Club Racecourses Limited v Persons Unknown* [2024] EWHC 1786 at [17]-[19], which also concerned Animal Rising. I agree and set out those paragraphs:

*"17. That case [Wolverhampton] involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before an injunction is granted, most of its requirements are equally applicable to other types of cases such as protest cases like the present (of which there now a number):*

*"167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:*

*(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.*

*(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima*

*facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.*

*(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.*

*(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*

*(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97. As comes through clearly from the above extracts, an injunction against persons unknown, who I shall refer to as “newcomers” as in *Wolverhampton*, is a novel exercise of an equitable discretionary power and therefore its limits and requirements must be carefully articulated and observed.

### **Applying the law to the facts**

#### **Precautionary injunction against named defendants**

98. In my judgment, there is a strong probability that unless restrained by an injunction the 40<sup>th</sup> Defendant will act in breach of the Claimants’ rights, and it is just and convenient that an injunction be ordered in the terms applied for by the Claimants.
99. I shall:
- (1) start with the question of whether there is a strong probability that the 40<sup>th</sup> defendant will be involved in action in the future against the Claimants if not restrained by injunction, then
  - (2) consider whether such action would be in breach of the Claimants’ rights, and
  - (3) then consider whether it is just and convenient to grant an injunction.
100. The cumulative reasons why I consider that question (1) should be answered in the affirmative are as follows:
- (a) The 40<sup>th</sup> Defendant was involved in the action against Arla on 8 September 2022.
  - (b) Further, she was willing to trespass on the Claimant’s land to do so.
  - (c) On the basis of the video evidence before me, I consider that she was filming the incident for Animal Rebellion, including for example the damaging of HGV tyres, and infer that her involvement with their cause therefore did not end immediately at the end of the action on the 8<sup>th</sup> September 2022.
  - (d) She appears to me to have left the scene before she could be arrested. This is what the video evidence before me suggests and Ms Savage explains that it appears that she is the third protestor that the Hertfordshire Constabulary believe fled the scene. The other two were arrested in the days following the incident. Therefore, at present she has not faced any sanction that I am aware of for her past actions that would deter her from future action.



- (e) The mission statement of Animal Rebellion stated that the acts in September 2022 were “*the beginning of a long term civil resistance project*”. This ties in with their stated desire to bring about a transition from reliance on the dairy industry by 2025, which has not yet from their perspective been achieved.
  - (f) These views are plainly strongly held by those participating, and I have no reason to doubt that this includes the 40<sup>th</sup> Defendant.
  - (g) Arla, as producer of 40% of the milk in the UK, is an obvious target for Animal Rising.
  - (h) While there have not been direct acts against the Claimants since the September 2022 incidents, in my judgment there is a strong probability that this is because of the injunctions in place. Refusing to order a final injunction would immediately come to the notice of Animal Rising, who the Claimants’ solicitors have been corresponding with over the consent orders, and therefore in my judgment there is a strong probability that this would be regarded as removing an important impediment to taking direct action against Arla. It is true that the September 2022 incidents occurred despite the injunction, but they were considerably smaller than one would have taken from the plan on the website in August 2022, so it appears to me very likely that the injunction had some deterrent effect.
101. I have considered specifically whether the absence of acts against Arla since September 2022 suggests that further incidents of direct action against Arla are unlikely, or at least means that there is not a strong probability of them in the event of me declining to grant the injunction.
  102. However, I consider that the features above, taken in combination, suggest that there is a strong probability.
  103. I do not consider that the change to the website shortly before the hearing affects this. It does not indicate a shift in the views of Animal Rising towards the dairy industry, one would not expect such a shift, and Animal Rising knew of the impending Court date at the time the website was changed so I am reluctant to regard it as indicating a significant shift in their intended plans. Further, the first route stated in the current version of the website for achieving change is “[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns”, which wording seems to me to encompass direct action to disrupt the supply of dairy and food that is reliant on animals.
  104. I have also taken into account in this regard that the Leeds Site has not been the subject of action to date.
  105. I consider that these anticipated actions would be in breach of the Claimants’ rights.
  106. Some of the past action occurred in the Sites themselves, and therefore amounted to trespass, and I would expect that to be repeated in the future.
  107. As far as public nuisance is concerned:
    - (1) The past acts deliberately obstructed the relevant parts of the highway to a significant degree in a way that was designed to, and did, disrupt the Claimants’

business, albeit temporarily, to a significant extent and caused them significant financial loss, together with affecting members of the public who needed or wished to use the highway and other surrounding roads that could be blocked through its obstruction. A good example of this is the blocking of College Road during the incident at the Aylesbury Site on 4 September, when protestors climbed aboard and occupied vehicles on the road. Therefore, Articles 10 and 11 aside, it would constitute a public nuisance and this is the type of action that would likely be repeated absent an injunction because it is part of disrupting the passage of vehicles to and from the Sites.

- (2) I have carefully considered the factors set out in *Ziegler* to be taken into account when assessing proportionality, which I summarised at paragraph 81 above. Taking them in turn:
- (a) Future protests of the same type would breach domestic law for the reasons given in relation to trespass, public nuisance and access to the highway set out in this section of my judgment.
  - (b) The location of the protests is important to the protestors, because their intended aim is to disrupt the supply of milk from the Sites and therefore the obvious location for their action is at and immediately outside the Sites.
  - (c) The protests were significant in duration, lasting in one case for 24 hours. Unlike in *Ziegler*, they were not a one-off one-hour occurrence, and one cannot expect future incidents to be.
  - (d) Future protests are likely to involve occupation of and climbing aboard vehicles on the highway.
  - (e) Their significant duration together with the other features of the action, caused significant financial harm to the Claimants by disrupting their supply of milk. Unlike in *Ziegler* there is not an alternative route of access: the Sites were and could again be completely blocked. Further, the protests are likely to block entire roads, as was the case at the Aylesbury Site in 2021, when the A41 was blocked for most of the 24 hour period, making the road impassable to all. Moreover, the road outside the Sites give immediate access to major roads, or are in close proximity to them, so the obstructions affect the public at large. The other obvious impact of successful action is that this could restrict the amount of milk on supermarket shelves for a period.
  - (f) The views giving rise to the protest do relate to important issues, namely climate change and animal welfare, both of which are prominent features of current public and political debate.
  - (g) The protestors plainly believe in their cause and are prepared to risk arrest to take such action.
- (3) I also take into account the fact that the past actions, and likely future acts, go beyond attempts to persuade Arla of the correctness of Animal Rising's aims, into seeking to disrupt their business in a way that will assist in bringing about change in the dairy industry. Therefore, the action intends harm to Arla as a necessary

feature of its intended ends, and correspondingly an injunction leaves it open to carry out peaceful protest through acts like standing on the pavement with a placard, making noise or shouting their message loudly through a loud hailer. Rather the order prevents only real and significant harm caused by unlawful acts.

- (4) Taken together, I consider that the factors in (2)(a), (c), (d) and (e) and (3) above mean that the past action and similar future action would constitute a public nuisance, and that this is consistent with the 40<sup>th</sup> Defendant's Article 10 and 11 rights. This was and would in the future be action intended to significantly disrupt Arla's business and the injunction is tailored to prevent that end while allowing future protests within those parameters.
108. I consider that the past actions and the anticipated future actions would also violate the Claimants' rights as adjoining landowners to access the highway. The Claimants were blocked from accessing the highway for a significant period and this would likely be the intended aim of future action. For the reasons set out in relation to public nuisance, in my judgment the Claimants' actions do not constitute a reasonable use of the highway so as to legitimately qualify on the facts the Claimants' rights to access the highway, and this is consistent with the 40<sup>th</sup> Defendant's Article 10 and 11 rights.
109. Turning to whether it is just and convenient to grant an injunction, I have taken into account the reasons set out in paragraph 107(4) above.
110. Further, future action would cause financial harm to Arla that it would be difficult to redress, given the difficulty in seeking and enforcing effective recompense from the protestors individually. Moreover, climbing onto structures and lorries or entering the highway to stop lorries poses a risk of physical harm to staff or the protestors. The Claimants have taken a number of steps to seek to mitigate the harm, such as investing in future security, but the serious risk of significant future financial loss and the above risk of physical harm remains.
111. Therefore, it would be difficult for the Claimants to undo after the fact harm suffered through future pieces of direct action.
112. For these reasons taken collectively, I consider it just and convenient to grant an injunction in the terms sought.
113. I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order an injunction. The Claimants properly put this point before me. Section 12 is engaged where the Court is considering whether to grant any relief which might affect the exercise of the ECHR right to freedom of expression. Section 12(2) provides that if the respondent is not present or represented, no such relief should be granted unless the Court is satisfied that the applicant has taken all practicable steps to notify the respondent, or that there are compelling reasons why the respondent should not be notified. Section 12(3) provides that no such relief is to be granted to restrain publication before trial unless the Court is satisfied that the applicant is likely to establish that publication should not be allowed. Taking section 12(2) first, I am satisfied that the applicant has done all practicable to notify the respondent, through trying to ascertain her identity and through the alternative service routes.

114. As for section 12(3), the order does not restrain the 40<sup>th</sup> Defendant *publishing* her views. Rather restricts *where* she may express her views. Therefore, as in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (QB), where Johnson J considered the limits of the concept of ‘publication’ in some detail at [66]-[76], it does not appear to me that section 12(3) is engaged. Further and in any case, (a) this is a final order against the 40<sup>th</sup> Defendant, so section 12(3) has no application for that reason too, and (b) in any case, in my judgment any interference with “publication” is proportionate and justified for the reasons set out in paragraph 107(4) above.
115. The order sought against the named Defendants is final, so in my judgment no further cross-undertaking in damages should be required.

#### *Injunction against newcomers*

116. I have considered carefully and applied the requirements in [167] of *Wolverhampton*, as expanded upon later in the judgment in the way summarised by Sir Anthony Mann in *Jockey Club*. The relevant newcomers in this case are those persons unknown within the classes set out in the description of the first to sixth defendants.

#### ***Compelling justification for the remedy***

117. I have set out above the strong probability of the future disruption to their business absent an injunction, coupled with the effects on others set out above, from future unlawful acts of trespass, public nuisance and interference with the Claimants’ right of access to the highway. As Sir Anthony Mann explained in *Jockey Club* at [18], the threat must be real and imminent, and imminent means in this context “*not premature*” rather than immediate. This chimes with the approach of Julian Knowles J in his *HS2* decision at [176]-[177]. As he explained at [176], “[*a*]s the authorities make clear, the terms ‘real’ and ‘imminent’ are to be judged in context and the court’s overall task is to do justice between the parties and to guard against prematurity”. I am satisfied for the reasons set out above that there is a real and imminent risk if I do not grant an injunction of further direct action occurring.
118. There are a number of reasons why the Claimants have sought an order against persons unknown rather than limit the order to named or otherwise specifically identified defendants, and in my judgment they are compelling ones:
- (1) It has not been possible to identify all protestors who might undertake future action.
  - (2) The evidence before me is that the Animal Rising site continues to recruit new members.
  - (3) It is an organisation whose membership fluctuates.
  - (4) While the Claimants know the identity of the group, they do not know the identity of all individuals involved with it.
  - (5) The Claimants do not have confidence that all those who participated in the earlier acts have been arrested.
119. Similarly, given the difficulty in identifying the membership of Animal Rising, its fluctuating membership and the presence of like-minded protest groups, in my

judgment there is also a compelling reason not to limit the definition of persons unknown to those who are members of Animal Rising.

120. As explained above, the Claimants have put in place significant security measures at their Sites, and sought to improve them after the September 2022 incidents. It is not realistic to suppose these will completely prevent future action, and nor would sensible levels of policing or the use of byelaws.
121. The harm that could be caused by future unlawful acts is serious, consistent with the intended purpose of such action being to significantly disrupt the supply of dairy products.
122. Taking these reasons for relief together with the limits of the restrictions imposed by the injunction explained above, in my judgment there is a compelling justification for the remedy.
123. As in relation to the injunction against identified persons, I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order such an injunction. In my judgment, there are compelling reasons why the persons unknown cannot be notified before the order is made before the alternative service of the previous documents, such as by posting on the Claimants' site or by notices put at the perimeter of the Sites, as their identity is not known. In any event they will be notified insofar as is practicable through the alternative service routes after the order is made. In my judgment, s.12(3) is not violated for similar reasons to those set out in paragraph 111 above. The order does not restrain what can be published, so section 12(3) is not engaged, and even if it is, the acts apprehended are unlawful and interfere significantly with the rights at others, so I am satisfied that the Claimants are likely to obtain the relief sought at a final hearing (if there was one).

***Full and frank disclosure***

124. The Claimants have complied with this duty, including drawing to my attention a number of points that may be taken against their position. I have dealt above with the update to the Animal Rising website.

***Evidence must err on the side of caution***

125. Further, the evidence has satisfied this requirement, and as far I can see has been careful not to overstate the position.

***Identifying the respondents to the application as precisely as possible***

126. In my judgment the order sought does so. The means of identification are in the same form as the orders previously granted by Bacon J and Fancourt J. As summarised at paragraph 40 above, the qualifying conditions for falling into the category of respondents are clear and precise, and focus on carrying out particular acts of interference with the Sites and access to them, such as affixing themselves or any items to any of the relevant roads for the purpose of disrupting vehicle access to the Sites and protesting, to take one example.

***Is the injunction clear in its terms and confined to the minimum necessary to achieve its proper purpose?***

127. The Claimants seek orders in the same substantive form as granted previously, subject to the temporal limits set out below. Those orders were, and the present order sought is, clearly drafted. The Claimants have not gone further, despite the breaches of the order, and the order sought allows for peaceful protest in the manner set out in paragraph 107(3) above. Rather it focuses on particular acts that would disrupt the Claimants' operations at the Sites. Therefore, I am satisfied that it does not go beyond the minimum necessary to achieve its purpose.

***Is there a strict temporal and territorial limit?***

128. As in the *Jockey Club* case, I agree that the one year period that the Supreme Court thought prima facie appropriate in Travellers cases is too short to deal with a campaign such as that of the animal rights activists. That can readily be seen from the fact that incidents have already occurred in 2020, 2021 and 2022. However, given those annual events in my judgment an annual review is more appropriate in case the position changes in the interim, as has been sought by the Claimants, and as was ordered in the *Jockey Club* case. The annual review will allow a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate and the five year maximum adds an appropriate end-point. In my judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review.

129. The territorial extent of the order is clearly set out in the maps and plans annexed to it. It is broadly limited to the roads immediately surrounding the sites, and the Claimants have not sought to include the larger roads such as the A41 to which they lead, and some of which were blocked by the earlier actions. Similarly, they have not sought to include their other dairy-related sites beyond the Sites, despite the breaches of the original injunctions order made. Therefore, I am satisfied that there is a strict territorial limit.

***Have reasonable steps been taken to bring the application to the attention of those likely affected?***

130. In my judgment, it has. The documents in the claim, including notice of this hearing, have been served on the named defendants and persons unknown in accordance with the alternative service orders made. The methods of service have included e-mail, posting on the Claimants' social media pages and notices at the Sites.

***Is the proposed notice of the Order likely to be effective?***

131. In my judgment it is. There are a number of routes specified in the alternative service provisions of the orders granted to date by Bacon J and Fancourt J, which in my view remain appropriate, including notices at the premises and e-mail.

***Have the Claimants provided a generous liberty to apply clause?***

132. In my judgment, they have, because the order sought provides for the ability to apply to vary or discharge the Order on 48 hours' notice.

***Should a cross-undertaking be required?***

133. Given that the order only prohibits acts that are in any event unlawful or highly likely to be unlawful, in my judgment as in *Jockey Club* it is not necessary for the Claimants to provide a cross-undertaking in respect of the injunction against newcomers.

### **Conclusion**

134. I therefore grant the orders sought.