



Neutral Citation Number: [2022] EWHC 3497 (KB)

Case No: KB-2022-004333

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
London WC2A 2LL

21/11/2022

Before:

MR. JUSTICE SOOLE

Between:

NATIONAL HIGHWAYS LIMITED

Claimant

- and -

**(1) PERSONS UNKNOWN ENTERING OR
REMAINING WITHOUT THE
CONSENT OF THE CLAIMANT ON, OVER,
UNDER OR ADJACENT TO A
STRUCTURE ON THE M25 MOTORWAY
(2) AARON GUNNING AND 64 OTHERS**

Defendants

Mr Michael Fry and Mr Michael Feeney for the Claimant
The Defendants did not appear and were not represented

JUDGMENT

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MR JUSTICE SOOLE:

1. This is the return date of an application by the Claimant (NHL) for injunctive relief against protesters, organised by or linked to a protest group called Just Stop Oil (JSO), to prevent unlawful trespass on various structures, notably gantries, on the M25 motorway. NHL is the owner and entitled to possession of those structures and the claim is framed in the tort of trespass.
2. On Saturday 5 November 2022 NHL applied without formal application or notice to the urgent applications judge, Chamberlain J, for such relief. The judge granted that relief until 23.59 hours on 10 December 2022 but in the usual way the order required an early return date for a hearing on notice. The order identified that return date as 21 November, i.e. today.
3. The injunction was against two Defendants, identified respectively as Just Stop Oil and as Persons Unknown entering or remaining without the consent of the Claimant on, over, under or adjacent to a structure on the M25 motorway.
4. The injunction was in terms that the Defendants and each of them were forbidden from (a) entering or remaining upon or affixing themselves or any object to any Structure on the M25 Motorway; or (b) causing, assisting, facilitating or encouraging any other person to enter or remain upon or affix themselves or any object to any Structure on the M25 motorway. "Structure" was defined to mean "any gantries, traffic tunnels, traffic bridges and other highway structures whether over, under or adjacent to the M25 Motorway, together with all supporting infrastructure, including all fences and barriers, road traffic signs, road traffic signals, road lighting, communications installations, technology systems, police observation points/park up points and to which the general public has no right of access". Those final words are of particular importance.
5. Amongst other ancillary provisions, the Order permitted alternative service on the Defendants pursuant to CPR 6.27. This included emailing a copy to two email addresses of JSO and providing a direct link to the Order on the National Highways Injunctions website: para.6. By para.7, such service was "good and sufficient service of this Order on the Defendants and each of them and the need for personal service be dispensed with".
6. The Order also provided for third party disclosure pursuant to CPR 31.17, namely that Chief Constables for listed police forces must disclose to the Claimant "all of the names and addresses of any person who has been arrested by one of their officers in the course of, or as a result of, protests on the M25 motorway; and all arrest notes, body camera footage and/or all other photographic material relating to possible breaches of this Order."
7. NHL's undertakings recorded in the recital to the Order included undertakings "to file a claim by Wednesday 9 November at 5pm" and "to identify and name Persons Unknown and to apply to add them as named Defendants to the proceedings as soon as reasonably practicable".
8. On 9 November NHL issued a Claim Form against the two Defendants. The "brief details of claim" on the face of that form seek "Possession of the Land, to which the

Claimants have an immediate right, known as the M25 Motorway...” and a range of details as to what that motorway includes. It continues “This claim does not involve possession of a house, demotion of a tenancy or the suspension of a right to buy”.

9. The original without notice application was supported by a witness statement of Mr. Sean Foster Martell dated 5 November 2022. He is the Head of Service Delivery at NHL. His second witness statement dated 17 November 2022 exhibits emails from NHL’s solicitors, DLA Piper UK LLP (DLA), dated 5 and 7 November 2022, respectively serving unsealed and sealed copies of the Order of Chamberlain J in accordance with its terms and also identifies detailed steps taken on 5 and 6 November by DLA to comply with the other modes of service. Certificates of service have been filed with the Court.
10. Mr. Martell also states that following confirmation of the hearing date from the Court on 15 November, DLA filed an application notice on that date. That application notice seeks the following order: “The Court is asked to list this matter for a return date hearing pursuant to paragraph 15 of the order of Chamberlain J dated 5 November 2022.”
11. Mr. Martell states that by email on 15 November DLA had taken steps to notify the Defendants of the return date by email and on 16 November to serve the sealed application notice for this hearing and a copy of the Court’s email confirming the hearing date on the Defendants both by email and post. In any event, leaving aside that evidence, the return date was identified in the Order of Chamberlain J which was duly served by the permitted mode of alternative service.
12. NHL appears today by Counsel Mr. Michael Fry and Mr. Michael Feeney. On the other side, there has been no presence or representation. However, shortly after the hearing began, Mr. Jack Whitby came into court. He is a journalist who was arrested at the M25 but subsequently released. He attended because of the information in one or other of the forms served that NHL was seeking to add 66 named Defendants, including him. As I shall detail later, it is said that those proposed additional Defendants were all people who were arrested, almost all in the events of 7-10 November that I shall describe, and for earlier events in July 2022.
13. However a letter dated 8 November 2022 from Spring Films Limited to the Court, handed up by Mr. Whitby, states: “This is to confirm that Mr. Jack Whitby is working in association with Spring Films Limited on a documentary film about climate change activists. Mr. Whitby is the director of this film project.” The letter is signed by the Chief Creative Officer of Spring Films Limited, Dr André Singer OBE. Thus it became apparent that Mr. Whitby was in no way involved in unlawful activity.
14. Having heard and read that information, Mr. Fry inevitably made clear that NHL would not be seeking to add him as a Defendant. Accordingly I was able to reassure him that no such order would be made against him. He had acted entirely properly. Mr Whitby then left the court.
15. The issues for consideration today comprise both substantive and procedural questions. Before I turn to those, I set out a brief background, which is taken from the witness statements of Mr. Martell.

16. Between 13 September and 2 November 2021 protesters associated with the environmental activist group Insulate Britain sought to block and disrupt traffic on various roads within the Strategic Road Network which is owned and operated by NHL. These in particular included the M25 and resulted in the grant of injunctions and subsequent applications for contempt. By Order of Bennathan J made on 9 May 2022 three sets of different proceedings were joined together and both interim and some final injunctions granted until 9 May 2023.
17. In the meantime, in April 2022 activists associated with JSO targeted various oil facilities in various forms of protest. In consequence injunctions were granted.
18. On 20 July 2022 JSO's protests took place in three separate locations on the M25. Five protesters climbed up and fixed themselves to overhead gantries between junctions 10 and 11, 14 and 15 and 30 and 31. A press release by JSO on 20 July declared the M25 "a site of civil resistance". The resulting closures of the motorway and delays to traffic and members of the public are very well known and are set out in detail in the witness statement.
19. When protesters scale gantries, that inevitably requires the road to be shut down and specialist police officers to be brought in to remove the protesters. In some cases protesters used climbing equipment to circumvent the locking of ladders to gantries.
20. Further acts of disruption to the M25 were carried out by activists associated with JSO on 24 August 2022. On 17 October 2022 protesters climbed the suspension cables at the QE2 bridge at the Dartford Crossing on the M25 and suspended a large JSO banner between the cables. The two protesters also suspended themselves, each in a small hammock, at a height of approximately 200 feet above the carriageway. The police had to close both carriageways of the bridge. The protesters did not cooperate with the police and remained at height until 16.00 hours on 18 October 2022. The protest caused delays from 3.53 a.m. on 17 October until 21.54 on 18 October.
21. On 20 October 2022 NHL received intelligence from the National Police Coordination Centre (NPoCC) of plans by JSO to disrupt the motorway network on 7-10 November, including by scaling motorway gantries. A press release on the JSO website on 1 November 2022 included: "from today Just Stop Oil will pause its campaign of civil resistance. We are giving time to those in the government who are in touch with reality to consider their responsibilities to the country at this time. If, as we sadly expect, we receive no response from ministers to our demand by the end of Friday 4th November, we will escalate our legal disruption against this treasonous government." This was further confirmed by videos obtained of a Microsoft Teams meeting between the members of JSO on 2 November 2022.
22. In consequence NHL on 5 November 2022 made the urgent application for precautionary injunctions which resulted in the Order of Chamberlain J. The distinctive feature of this application, and in consequence today's return date application, is that the underlying cause of action is framed in trespass alone and to the Structures in particular.
23. As noted above, the Order was served by the permitted means of alternative service.

24. On the evening of 6 November 2022 JSO sent an email from one of the two identified email addresses to NHL stating that from 7.30 a.m. on 7 November 2022 its supporters would be taking action on the M25 and asking NHL to implement a 30 mph speed limit on the whole of that motorway. Similar emails were sent to NHL on the evenings of 7, 8 and 9 November.
25. On 7 November JSO protesters disrupted the M25 at 12 different locations by climbing onto the overhead gantries during Monday morning rush hour. This resulted in full and partial closures in each direction and 16 arrests. A statement on the JSO website that evening said that the campaign of civil resistance on the M25 would continue in the coming days and asked everyone who was planning to use it from 7 am the following morning to be prepared for closures and severe delay to their journeys or to make alternative plans.
26. On 8 November JSO protesters disrupted the M25 at 11 locations by climbing onto the overhead gantries during rush hour, again causing full and partial closures in each direction. Both tunnels of the Dartford Crossing had to be closed. The police made 14 arrests.
27. On 9 November protesters returned to the M25 for a third day, again disrupting traffic in multiple locations by climbing the overhead gantries. Eleven arrests were made. On this occasion they were joined by supporters of a group known as Animal Rebellion who had issued a statement that they were standing in solidarity with JSO in joining in the disruption of traffic on the M25. On the same day (9 November) DLA sent the Order of Chamberlain J by email to all the 11 addresses publicised on Animal Rebellion's website.
28. On 10 November Animal Rebellion issued a statement that it was committed to supporting JSO in its actions. On the same day protesters linked with both JSO and Animal Rebellion again climbed gantries on the M25 with familiar consequences. 11 arrests were made.
29. On 11 November JSO released a statement that: "From today, Just Stop Oil will halt its campaign of civil resistance on the M25. We are giving time to those in Government who are in touch with reality to consider their responsibilities to this country at this time" and "Under British law, people in this country have a right to cause disruption to prevent greater harm – we will not stand by."
30. Both in light of the terms of that statement and other evidence set out in Mr. Martell's witness statement, NHL believe that there is a very real and significant risk that supporters of JSO and Animal Rebellion and other individuals will recommence similar actions on the M25. Mr. Martell's witness statement sets out examples of the effect of the disruption on members of the public in their daily lives, the dangers to health and safety of motorists and police - and indeed the protesters - and the increasing concern that members of the public may, despite police warnings not to do so, take the law into their own hands.
31. The law of both interim and final injunctions against 'persons unknown' (and in particular protesters) has been much debated in a range of recent authorities now too well known to require yet another recitation. I adopt with gratitude the compendious survey of the relevant principles in the recent judgment (20 September 2022) of Julian

Knowles J in *High Speed Two (HS2) Limited and the Secretary of State for Transport v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB).

32. For the moment I leave aside the important issues of procedure which arise and focus on the substantive merits of the application for the injunctive relief which is sought. I conclude:
- i) NHL is the owner and entitled to possession of the identified Structures. The cause of action is framed in trespass alone. Those protesters who climb onto the gantries or any other such structures do so without the consent of NHL and are trespassers.
 - ii) A protester's rights under Articles 10 (freedom of expression) and 11 (freedom of assembly), even if engaged, will not justify continued trespass on private land or public land to which the public generally does not have a right of access: *HS2* at [81] citing the relevant authorities and their references to the landowner's rights both at common law and under Article 1 of the First Protocol (A1P1).
 - iii) In consequence, NHL satisfy both the *American Cyanimid* first requirement of a serious issue to be tried and the higher threshold provision of s.12(3) Human Rights Act 1998 (HRA) which requires, in respect of Article 10, that "No such 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." It is evidently more likely than not that NHL would obtain an injunction preventing trespass at trial.
 - iv) I am also satisfied that s.12(2) HRA is met in that NHL has taken all reasonable steps to notify the Defendants of this application for injunctive relief, namely by the various forms of alternative service of the Order of Chamberlain J and the further notification of today's hearing.
 - v) Damages will plainly not be an adequate remedy in the circumstances which the evidence describes.
 - vi) The balance of convenience undoubtedly lies in favour of the grant of injunctive relief to prevent further such trespass. At the stage of the application on 5 November, NHL was seeking a precautionary injunction and thus had to establish there was an imminent and real risk of harm: *HS2* at [99]-[101]. Given the immediately preceding statement made on behalf of JSO (in addition to the earlier activity) there was ample evidence to that effect. At the present stage, the reason for injunction is only fortified by the trespasses on Structures which occurred on 7-10 November. As to the 11 November statement of a 'pause', its very language only confirms the prospect that such activities, including trespass on the Structures, are likely to resume.
33. In all, and leaving aside any procedural issues, in my judgment the case for interim injunctive relief is overwhelming.
34. As to the terms of the injunction, I turn to the relevant *Canada Goose* guidelines: see *HS2* at [104]. For this purpose, I need only deal with guidelines 2, 5, 6 and 7. As to

guideline 2, I am satisfied that the Persons Unknown are sufficiently defined by reference to their unlawful conduct, i.e. trespass on the Structures, in the Claim Form and existing and proposed Orders. As to guideline 5, the prohibited acts correspond to the threatened tort.

35. As to guideline 6, I am satisfied that the terms of the injunction are sufficiently clear and precise as to enable persons potentially affected to know what they must do. I raised a particular query with Mr. Fry as to the definition of ‘Structure’ in the existing and proposed Order. Following discussion, I am satisfied that sufficient clarity is achieved in particular by the closing words in the definition, namely “and to which the general public has no right of access”. This is consistent with the whole purpose of the Claimant’s application that it should be framed in trespass and focused on those parts which are open only to NHL and those who come there with their consent.
36. As to guideline 7, I am satisfied that the geographical and temporal limits are both clear and reasonable in all the circumstances. As to the latter, I consider that the period of one year is reasonable.
37. I turn to the procedural issues. The first concerns the issue and service of a Claim Form. Service of the Claim Form is the act by which a defendant is subjected to the court’s jurisdiction in civil proceedings in England and Wales. Whilst the court may grant interim relief against a defendant before the Claim Form has been served (and in cases of particular urgency as here, even before the Claim Form has been issued) that is an emergency jurisdiction which is “both provisional and strictly conditional”: *LB Barking and Dagenham v Persons Unknown* [2021] EWHC 1201 (QB) per Nicklin J at [31] citing *Barton v Wright Hassall LLP* [2018] 1 WLR 1119 and *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471.
38. This statement of general principle is not disturbed by the subsequent decision of the Court of Appeal in *LB Barking and Dagenham* which allowed an appeal on other issues. The underlying reason for the principle is that a person cannot be made subject to the jurisdiction of the court without having notice of the proceedings: *HS2* at [143] citing *Cameron*. In the context of ‘newcomers’ to claims against Persons Unknown, there is an allied principle derived from *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 at [32].
39. In the case of a fluctuating group of protesters, including newcomers who enter after the date of issue of proceedings, there is obvious difficulty in effecting service of the Claim Form by the primary method sanctioned by the rules, namely personal service in accordance with CPR 6.5. If so, it becomes necessary to consider the alternative service provisions in CPR 6.15. In the urgent circumstances of the without notice hearing on 5 November, the relevant undertaking was limited to issue of a Claim Form. The draft order for today’s hearing contained no provision for the service of the Claim Form.
40. As to the content of the Claim Form which has been issued, this correctly uses the form for a Part 7 claim but its contents are expressed in the language of a claim for possession of the whole M25 motorway under CPR 55; see also the supporting witness statement of Petra Billing, a solicitor at DLA, dated 9 November 2022. The problems in a claim for possession of the whole of the M35 are obvious, not least in the event of enforcement proceedings: see *Secretary of State for Environment, Food*

and Rural Affairs v Meier [2009] UKSC 11. As Mr. Fry accepted in argument, and consistently with the injunctive relief which is sought, the Claim Form needs amendment in order to advance the true claim, which is for injunctive relief in the tort of trespass. The existing Claim Form does refer to the tort of trespass.

41. A further question arises as to the legal status of JSO; and also of Animal Rebellion, which NHL seeks to add as a Defendant to the claim. On the available information, I am not satisfied that JSO can properly remain a Defendant nor that Animal Rebellion could be joined. In each case it would be necessary to demonstrate that in each case those names reflected either a corporate personality or an unincorporated association. As Mr. Fry realistically accepted, the evidence does not satisfy either at this stage.
42. As to alternative service of the Claim Form on Persons Unknown, NHL has to satisfy the requirements of CPR 6.15. This provides:
 - “(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
 - (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
 - (3) An application for an order under this rule –
 - (a) must be supported by evidence; and
 - (b) may be made without notice.
 - (4) An order under this rule must specify –
 - (a) the method or place of service;
 - (b) the date on which the claim form is deemed served; and
 - (c) the period for –
 - (i) filing an acknowledgment of service;
 - (ii) filing an admission; or
 - (iii) filing a defence.”
 43. I am satisfied that there is good reason to permit alternative service of the Claim Form on the identified category of Persons Unknown by the means identified in the Order of Chamberlain J, but also supplemented by the proposed alternative service through Animal Rebellion. By reference to the like provisions of CPR 6.27 I reach the same conclusion in respect of service of the proposed further Order.

44. As to the requirements of CPR 6.15, as Mr. Fry again accepted in argument, the proposed order would need revision so as to ensure that it complies with 6.15(4)(a), (b) and (c)(i). The underlying point is that an injunction is not a free-floating matter independent of the underlying claim. The underlying claim has to proceed in the usual way.
45. I now turn to the question of the informal application to add Defendants to the existing Claim Form and in the proposed order. Pursuant to para.8 of the Order of Chamberlain J, NHL has effected personal service thereof on 51 named individuals. These are 51 of the 62 people who have been arrested in the course of the protest activities commencing 7 November 2022. Most have been served at police stations whilst in custody. In some instances this has been achieved at their homes where they had been released on bail. It has not been possible to serve the others because of a number of factors, namely (i) some of the Defendants were released on bail before NHL's agents were able to attend the police station and either they were unable to provide an address to the police on their arrest because they are of no fixed abode or had given an address at which they no longer reside; (ii) some of the Defendants appeared in court and were remanded to custody and service is dependent upon NHL's agents being able to ascertain which prisons they have been sent to; and (iii) on occasions, the Courts were unwilling to allow the agents access to the Defendants.
46. In addition NHL wishes to add a further 4 named individuals who have protested on M25 structures in and since July 2022. All these names are set out in a schedule. The addresses have been provided to the Court but would not, as under the existing Order, appear in any order.
47. NHL seeks permission for alternative service of any order on these named individuals. There is no formal application to do so. In any event, there is a primary question of joinder of additional defendants to the Claim Form. As to that, the Claim Form has not yet been served on anyone. Accordingly, as Mr. Fry acknowledged in argument, NHL does not need permission to do so: see CPR 19.4(1)). However, on the available information and for the reasons already given, that does not allow NHL to join JSO or Animal Rebellion as Defendants.
48. Mr. Martell's second witness statement sets out NHL's reasons for the grant of permission for alternative service of what would be an amended Claim Form and the proposed order. These are:
 - i) The time and cost which personal service involves NHL;
 - ii) its experience that individual protesters generally do not engage with the proceedings and either ignore or refuse to accept service of documents;
 - iii) given the wide publicity, people (especially protesters) being aware of the 'Structures' injunction of Chamberlain J;
 - iv) in other proceedings, numerous complaints have been made by defendants about the volume of papers served on them;
 - v) the likelihood that these protesters, as climate activists, would prefer not to receive hard copy documents;

- vi) the protesters being said to be ‘technologically savvy’ and operating modern smartphones;
 - vii) the evidence from the videos that activists do not stay at their home addresses before carrying out direct action but relocate to safe houses for preparation and training.
49. I am not persuaded by these arguments; and particularly in the context of (a) orders which can give rise to application for committal for contempt and (b) where the starting point in such applications is that the injunction must have been served personally: *MBR Acres Ltd v Maher* [2022] EWHC 1123 (QB) per Nicklin J.
50. In my judgment points (i), (iii), (iv), (v) and (vi) provide no sufficient reason, individually or collectively, for departure from the primary method of service. As to (ii), and as Mr. Fry realistically accepted in argument and depending on the particular facts and circumstances, conduct of ignoring or refusing to accept service of documents may still permit a conclusion that there has been personal service: see e.g. the cases considered in the White Book at para.6.5.1.
51. As to point (vii), if any difficulties arise they can be dealt individually with applications for alternative service. Putting the matter more broadly, I am not persuaded that the size of the pool of identified defendants in itself justifies a general departure from the primary method of service. This would of course fall to be reconsidered if the evidence in a particular case demonstrated an attempt to avoid service.
52. The final matter which I have to deal with is third party disclosure under CPR 31.17. I have already referred to the order that was made by Chamberlain J. That was supported by an email of consent dated 4 November 2022 from the National Police Coordination Centre (NPoCC). In the course of the discussion before Chamberlain J, the judge referred to the possibility that individual Chief Constables might take a different view in particular circumstances. His Order accordingly makes the usual provision for any party affected by the order to apply to set aside or vary it. For the purpose of today’s hearing, there is an email of consent in similar terms from the NPoCC dated 16 November 2022.
53. Having considered the background to this matter and the questions that it raises, the terms of CPR 31.17 and the emails of consent from the NPoCC, I am content to make that order once more. Once again, there will be the ability for any party affected to apply to set aside or vary it.
54. It follows from all this, as Mr. Fry inevitably accepted, that NHL will need to amend the existing Claim Form and to revise its draft proposed order. In this judgment, I have set out the principles upon which that will be based. It follows that I will not make any further order today but will ask Counsel to forward the proposed revisions to my clerk for my consideration. In the event that I am satisfied with the final terms, the matter can be concluded without a further hearing. If I consider that a further hearing is necessary, that will have to be listed and then duly notified to the Defendants.
55. As to costs, I agree with the proposal in the draft order that these should be reserved.

