Neutral Citation Number: [2025] EWHC 55 (KB)

Cases Nos: QB-2021-003841
QB-2021-004122
KB-2022-003542

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 January 2025

Before :

THE HONOURABLE MR JUSTICE MORRIS

- -

Between :

TRANSPORT FOR LONDON **Claimant**

- and -

(1) PERSONS UNKNOWN
(2) MR ALEXANDER RODGER AND 137 OTHERS **Defendants**

(The "TfL IB Claims")

And between :

TRANSPORT FOR LONDON **Claimant**

- and -

(1) PERSONS UNKNOWN
(2) MS ALYSON LEE AND 167 OTHERS

Defendants

(The "TfL JSO Claim")

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- -

Andrew Fraser-Urquhart KC and Charles Forrest (instructed by **TfL**) for the **Claimant**
Stephen Simblet KC (instructed by **Good Law Practice, Solicitors**) for 37 Named Defendants in the TfL IB Claims and 14 Named Defendants in the TfL JSO Claim

Indigo Rumbelow (Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim) and **Matthew Parry** (Named Defendant 143 in the TfL JSO Claim) attended and made representations

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

Hearing dates: 13 and 20 May 2024
Further written submissions: 21 and 30 May 2024 and 1 June 2024

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Morris :

Introduction

1. In this judgment I consider a number of matters arising from two final injunctions made, on 3 May 2023 and on 8 June 2023 respectively ("the Final Injunctions"), in two sets of proceedings brought by Transport for London ("TfL") against Persons Unknown and certain named defendants. I refer to the two sets of proceedings as the "TfL IB Claims" and the "TfL JSO Claim" (and together as "the Claims").

2. Each of the final injunctions prevents the blocking, for the purpose of protests, principally under the banners "Insulate Britain" ("IB") and "Just Stop Oil" ("JSO"), of certain roads or locations of strategic importance in and around London, forming part of the TfL Strategic Network, (referred to as the GLA Roads) and for which TfL is the highway and traffic authority.

3. In the TfL IB Claims (claim nos QB-2021-003841 and QB-2021-004122), following a trial on 29 to 30 March 2023, I granted the final injunction on 3 May 2023 following my judgment of the same date [2023] EWHC 1038 (KB) ("the IB Judgment"). In the TfL JSO Claim (KB-2022-003542), after a trial on 4 May 2023, the final injunction was made by Eyre J on 8 June 2023 following his judgment of 26 May 2023 at [2023] EWHC 1201 (KB) ("the JSO Judgment").

4. In each case, there was an order for a final injunction ("the Final Injunction Order"). The final injunction was granted against a substantial number of Named Defendants and also against a defined class of persons unknown ("Persons Unknown"); and the final injunction was for a maximum period of 5 years from 3 May 2023. Importantly for present purposes, the Final Injunction Order further provided that there should be, every 12 months and for as long as it was in force, "a hearing to review this Final Injunction Order.". That review hearing took place in May of last year, with further written submissions in June. This is my judgment pursuant to that review hearing and represents the position as at the end of May. There will be a further review in May 2025. The Final Injunction Order also provided for any defendant, or other person affected, with liberty to apply to vary or discharge it.

5. In addition to the Final Injunction Order, in each case there was a separate judgment order ("the IB Judgment Order" and the "JSO Judgment Order"), which formally allowed the TfL claims, made an award of costs against certain of the Defendants (paragraph 5) and granted permission to discontinue against a small number of Named Defendants. The detailed provisions of paragraph 5 of the JSO Judgment Order are considered in paragraph 72 below.

6. Some of the Named Defendants gave undertakings to the Court ("the Undertakings") in lieu, and in terms similar to those, of the injunctions. They were not made subject to the final injunctions nor were costs ordered against them. However these Defendants nevertheless remained listed at defendants to the Claim as a whole, in order to enable enforcement of the Undertakings.

7. In the TfL IB Claims, there are 129 Named Defendants subject to the Final Injunction. Three Named Defendants gave an undertaking in lieu. In the TfL JSO Claims, there

are 9 Named Defendants subject to the Final Injunction and a further 157 Named Defendants gave an undertaking in lieu.

The issues in summary

8. In principle the following matters fall for determination.

9. First, in respect of the TfL IB Claims and the TfL JSO Claim, there is the review of the final injunction; in particular this raises the issue of whether there are any grounds for discharging or varying the terms of the Final Injunctions.

10. Secondly, in the TfL IB Claims, there is an application, made by application notice dated 27 July 2023, by Ms Giovanna Lewis, (Named Defendant 128) on behalf of herself and 113 further Named Defendants that, in their cases, the Court should accept undertakings in place of the final injunction and that they should be discharged as Named Defendants to the proceedings ("the Lewis Application"). (The Lewis Applicants are listed in Annex A hereto). The Lewis Application was supported by a witness statement from Ms Lewis herself ("Ms Lewis's statement"), in which she attached undertakings signed by all of those 114 Named Defendants ("the Lewis Applicants"). In the course of the hearing, this matter became largely resolved.

11. Thirdly, by the Lewis Application, the Lewis Applicants further applied for the order for costs made against them in the TfL IB Claims at paragraph 5 of the IB Judgment Order to be set aside and for there to be no order as to costs. I refer to this as the "Costs Issue".

The parties before me

12. TfL as the highway and traffic authority has a duty as a landowner, and is entitled to take steps, to prevent trespass and nuisance to the use of, and access, to GLA Roads. In both cases, the Claimant, TfL, appeared by Mr Fraser-Urquhart KC and Mr Forrest of counsel.

13. The defendants are those who have engaged in protests under the banner of IB and JSO. TfL gave notices of this review hearing to all current Named Defendants by post and email between 8 and 10 April 2024; and on 3 May 2024 by sending notice to IB and JSO email addresses and placing a notice on the TfL and GLA websites.

14. In the TfL IB Claims, 37 Named Defendants were represented by Mr Stephen Simblet KC instructed by solicitors Good Law Practice. Some of those Named Defendants attended the court hearing. Ms Lewis is one of those 37 Named Defendants, and the remaining 36 Named Defendants are also party to the Lewis Application. The further 77 Lewis Applicants were not represented by Mr Simblet. However, since their application was made on their behalf by Ms Lewis, I proceeded on the assumption that they supported the case advanced by Mr Simblet, on behalf of his clients, in relation to the Lewis Application. Further it was common ground that Mr Simblet properly advanced arguments on behalf of the Persons Unknown who are subject to the Final Injunction.

15. In the TfL JSO Claims, 14 Named Defendants are represented by Mr Simblet. Moreover Mr Matthew Parry, Named Defendant 143 (who gave an undertaking before Eyre J) appeared before me in person and addressed the Court.

16. Since the hearing and in October, Ms Lewis gave notice that the Good Law Practice are no longer acting for her and for the others it had represented and that they were all now acting in person. (Those Named Defendants who were represented by Good Law Practice until October 2024 are listed at Annex B hereto.)

17. Finally, Indigo Rumbelow, Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim, appeared before me in person and addressed the Court in relation to both claims. Following the hearing, she provided further written submissions to support her case, including new material.

18. In addition, a number of the Lewis Applicants actually attended the hearing and were represented by Mr Simblet. No other Named Defendant in either the TfL IB Claims or the TfL JSO Claim appeared or made any further representations.

The factual background and the procedural history

19. The factual background and procedural history to the two sets of proceedings are set out in detail in the IB Judgment and the JSO Judgment. I do not repeat this for present purposes. What follows is a summary of the salient features of the cases.

20. The nature of the Insulate Britain and Just Stop Oil movements (and the overlap between the two) and the protests at roads are explained at paragraphs 2, 19 to 22, 24 to 27 29 and 42 of the IB Judgment and paragraphs 4 and 5 and 58 to 61 of the JSO Judgment. 65 of the Named Defendants in the TfL IB Claims are also Named Defendants in the TfL JSO Claim. In respect of Named Defendants in the JSO Claims who are also subject to the IB Final Injunction, then the JSO Final Injunction only applies to them in respect of 6 additional specific roads and junctions, which are not covered by the IB Final Injunction. (A number of the Lewis Applicants are subject to the JSO Final Injunction and have not, to date, given an undertaking in respect of those 6 additional roads).

21. In both sets of proceedings, TfL obtained interim injunctions, initially made urgently without notice, in October and November 2021, and in October 2022 (in terms similar to the Final Injunctions). Thereafter there were numerous on-notice hearings at which the interim injunctions were extended: see, for example, IB Judgment paragraphs 6 and 28 (and *TfL v Lee* [2022] EWHC 3102 (KB) per Freedman J and *TfL v Lee* [2023] EWHC 402 (KB) per Cavanagh J.)

22. As regards IB, whilst protests under its banner continued to October 2022, in January 2023 IB made a public statement that it would continue with its protests. IB had repeatedly made un-retracted statements that its protests would continue: see IB Judgment paragraphs 20, 24 and 25. (Ms Rumbelow's submission that IB had given up, certainly by December 2022 is not borne out by the evidence).

23. JSO protests started in March or April 2022 and continued: IB Judgment paragraph 27. At paragraphs 5, 6, 16 and 53 v) of the JSO Judgment, Eyre J explained the more recently developed practice of "slow marches", the height of activity ending around

December 2022 and that there had been no renunciation of previous forms of disruption. Both Final Injunction Orders expressly exclude such "slow marches" from the prohibited activity. During 2023 slow marching was the principal tactic.

24. As regards service of the proceedings on the Named Defendants in both Claims, I address this in detail under Issue 3 at paragraphs 77 to 83 below. I set out relevant events since the grant of the Final Injunctions in paragraphs 33 to 41 below.

Other proceedings: National Highways Limited ("NHL") and others

25. Since September 2021, the IB, JSO and Extinction Rebellion protests have given rise to a substantial amount of litigation, both in criminal and in civil courts. There have been multiple prosecutions for various criminal offences and at least 15 civil claims for injunctions brought not only by TfL, but also by National Highways Limited ("NHL"), HS2 Limited, the Secretary of State for Transport, energy companies, and local authorities. In particular the NHL claims (relating to the M25) are explained in paragraph 30 of the IB Judgment and in paragraphs 3 and 18(a) of the JSO Judgment. There have been committal proceedings arising out of breach of injunctions and appeals. The TfL claims and the NHL claims are factually and legally closely aligned and include many of the same individuals as named defendants: see paragraphs 4 and 30 of the IB Judgment and the judgment of Cotter J (on first review) dated 5 May 2023 in *NHL v Persons Unknown* [2023] EWHC 1073 at paragraphs 7 to 59. (Solely for ease of reference in this judgment, I refer to this judgment of Cotter J as "the *NHL Judgment*"). Unlike the position of the Final Injunctions, the NHL injunction was for a limited period of one year and has been subsequently renewed, first, by the *NHL Judgment*, and then, more recently, by Collins Rice J on 26 April 2024.

The basis for the making of the Final Injunctions

26. The underlying basis for the making of the Final Injunctions is set out in the IB Judgment and in the JSO Judgment respectively.

The IB Judgment

27. In relation to the IB Final Injunction, as against Named Defendants, the legal principles are set out at paragraphs 32 to 38 of the IB Judgment and their application to the facts of the case at paragraphs 40 to 46. In particular the issue of proportionality arising under Articles 10 and 11 ECHR ("question (5)") is addressed at paragraph 45. At paragraph 45(3) (set out in full in paragraph 60 below) I found that there were "no less restrictive or alternative means to achieve [the] aims" of protecting the rights of others, including lawful highway users and preventing disorder on the IB Roads.

28. As regards Persons Unknown, the legal principles relating to the grant of a final injunction based on the Court of Appeal decision in *Barking and Dagenham LBC v Persons Unknown* [2022] EWCA Civ 12 are set out at paragraphs 48 and 49 (in particular, at paragraph 49(7), the need for a fixed end point for review and for a period review). The guidelines in the earlier case of *Canada Goose* were applied to the facts at paragraph 50, leading to the conclusion that the final injunction against Persons Unknown should be granted (paragraph 51).

29. At paragraph 52, I explained the underlying basis for the 5 year time limit for the Final Injunction and the need for a yearly review, not least because of the potential implications of the then pending Supreme Court judgment in *Barking and Dagenham.* Reference was also made to the liberty to apply for any Defendant to vary or discharge *the injunction* (incorporated at paragraph 12 of the Final Injunction Order). At paragraph 56, in the context of issues as to alternative service, I referred to the observation of Cavanagh J that by that stage (i.e. the date of his order) it was "vanishingly unlikely" that anyone minded to take part in a protest was unaware that injunctions had been granted by the courts.

The JSO Judgment

30. In relation to the JSO Final Injunction, the legal principles were set out at paragraphs 19 to 25 of the JSO Judgment and paragraph 26 addressed the specific position of Persons Unknown. As regards their application to the facts of the case, Eyre J addressed the likelihood of the Named Defendants and Persons Unknown acting in breach of TfL's rights and whether that breach would cause grave and irreparable harm (paragraphs 29 to 41). In particular, as at that time, Eyre J considered that there was a strong probability that, in the absence of an injunction, some at least would resume the blocking of roads. In his view, it was highly likely that there would be resumption of blocking of roads (paragraph 30). There had been no assertion that blocking of roads would not resume and JSO was committed to a campaign of civil disobedience; there was also the increase in slow march protests (paragraph 31). None of those individuals making representations to the Court had disavowed the objectives and tactics of the JSO campaign nor said that the objectives had been achieved such that protest action was no longer needed. (paragraph 32).

31. Eyre J then addressed the position under Articles 10 and 11 ECHR at paragraphs 42 to 52. At paragraph 50, he concluded that there was no less restrictive or intrusive way in which to protect the rights of TfL and others using the roads, expressly citing paragraph 45(3) of the IB Judgment. At paragraphs 52 to 54 he addressed the balance between the Defendants' Convention rights and the rights of others, listing the factors against, and for, the granting of the injunction. At paragraph 53 v) he observed that the injunction does not prohibit all protest - protest at other locations and slow marching even at the specified location are not prohibited. Further, it was just and convenient to grant the final injunction against Persons Unknown (paragraph 56, referring to paragraphs 47 to 51 of the IB Judgment).

32. Finally, as regards undertakings, in the IB Judgment the Court accepted undertakings in lieu of an injunction in the case of three Named Defendants: see paragraph 14. In the JSO Judgment, the vast majority of Named Defendants gave undertakings in lieu. The circumstances in which these came to be offered, and accepted, are set out at paragraphs 10 to 13, 27, 32, 34 and 62 of the JSO Judgment.

Events since the Final Injunctions in May and June 2023

Further protests

33. In his detailed witness statement for the review hearing, Carl Eddleston, director of Network Management and Resilience at TfL, gave evidence relating to matters since the granting of the Final Injunctions. This included both statements by IB and

particularly by JSO and those acting under their banner, indicating an intention to continue taking disruptive protest action of civil resistance and the actual protests that have taken place since then. Since the Final Injunctions in May and June 2023 (and since the coming into force of section 7 Public Order Act 2023 ("the 2023 Act")), there have been a substantial number of JSO protests, largely in the form of slow marches. Two of those protests involved blocking and sitting down in a road. There have also been other types of protest, including spraying orange paint and at high profile sporting events. Mr Eddleston identified over 100 such protests between the beginning of May and December 2023. According to JSO, 670 of its supporters had been arrested for protests since 30 October 2023, mostly under section 7 of the 2023 Act, for slow marching.

Legal developments

The Supreme Court decision in the Wolverhampton case

34. There have been two principal developments in the law. First, and importantly, since the Final Injunctions, on 29 November 2023 the Supreme Court handed down judgment in *Wolverhampton CC v London Gypsies and Travellers & Ors* [2023] UKSC 47; [2024] 2 WLR 45 (on appeal from the *Barking and Dagenham case)* (as referred to at paragraphs 49 and 52 IB Judgment). (Indeed this was one of the reasons for setting the annual review hearing in the TfL IB Claims: see paragraph 52 IB Judgment).

35. In summary, the Supreme Court reviewed the law in relation to injunctions against "newcomer" persons unknown, in the specific context of local authority proceedings concerning unlawful traveller activity. The Supreme Court held that in principle there is no obstacle to granting such injunctions on a without notice basis, regardless of whether in form interim or final, but that they are only likely to be justified if certain conditions are met: see §167. The first of those conditions is that "there is a compelling need for the protection of civil rights. which is not adequately met by any other measures available to the applicant local authorities (including the making of bylaws)": §167(i). Secondly, there is to be 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. That would 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; and for generous provision for liberty to apply to vary or set aside. Thirdly, claimants must be seen and trusted to comply with the most stringent form of disclosure duty on making an application and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief. Fourthly, the injunctions must be constrained by both territorial and temporal limitations. Fifthly on the particular facts it must be just and convenient that such an injunction be granted. Two further particular points emerge from the *Wolverhampton* case at §221 and §225. I address these at paragraphs 52 and 54 below, respectively.

The Criminal Law

36. Secondly, there have been legislative changes in relation to relevant criminal law.

37. First, as a result of the Police Crime Sentencing and Courts Act 2022 ("the 2022 Act") there were modifications to the law relating to the criminal offences of public nuisance and of wilful obstruction of the highway. In the case of *public nuisance*, the 2022 Act replaced the previous common law offence with a statutory offence; the main effect of that change being that, where tried on indictment, the previous maximum sentence of an unlimited term of imprisonment was reduced to a maximum term of 10 years. That change came into force on 28 June 2022. (Between June 2022 and February 2023, the maximum term of imprisonment, on summary conviction, was 12 months rather than 6 months). In the case of *obstruction of the highway*, a summary only offence, as a result of the 2022 Act the sentencing powers were increased to include, for the first time, a sentence of imprisonment up to 6 months, as well as an unlimited fine (rather than a limited fine). This change came into force on 12 May 2022.

38. Secondly, the Public Order Act 2023 (the 2023 Act) enacted, inter alia, two new offences; section 1 introduced the summary only offence of "locking on", punishable with imprisonment up to 6 months and/or an unlimited fine. Section 7 introduced the offence, triable either way, of interference with use or operation of key national infrastructure, punishable on summary conviction as in the case of section 1, and, on conviction on indictment, with imprisonment up to 12 months and/or an unlimited fine. It is common ground that protests on the GLA roads prohibited by the Final Injunctions would constitute the commission of the section 7 offence. These offences came into force on 3 and 2 May 2023, respectively. Sections 18 and 19 of the 2023 Act (not yet in force) make provision for the Secretary of State to bring civil proceedings, including for an injunction, if he/she reasonably believes that someone is carrying out, or is likely to carry out, activities related to protest, and those activities are causing/likely to cause, inter alia, serious disruption to key national infrastructure or a serious adverse effect on public safety. Moreover, section 18(6) provides that this does not prejudice the right of anyone else (e.g. TfL or NHL) to bring civil proceedings in relation to the same activities, and prior to bringing proceedings the Secretary of State must consult any persons he/she thinks appropriate, having regard to anyone else who could bring proceedings in relation to the same activities. This preserves the ability of TfL and NHL to bring proceedings for injunctions of the kind granted in the present cases. Thus, the 2023 Act itself contemplates that, notwithstanding the existence of the new criminal offences, the Secretary of State and other private parties may still need to seek the assistance of the courts through civil injunctions of the kind in the present case.

Further injunction cases

39. As regards other cases where injunctions have been granted, in May 2023 the High Court extended an interim injunction granted to Shell against JSO protestors. In July 2023, the Court extended an interim injunction granted to North Warwickshire, against, amongst others, JSO protestors. On 31 August 2023 Julian Knowles J granted a final injunction to Esso Petroleum prohibiting unlawful JSO protests intended to impede an oil pipeline construction project. On 26 January 2024, Ritchie J granted an injunction to Valero Energy for five years against named defendants and persons unknown to prevent trespass on oil refinery and terminal sites, in relation to protests by JSO, IB and Extinction Rebellion and others: *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB).

40. Moreover following the hearing in this case, there have been three further relevant judgments. First, on 24 May 2024 Ritchie J handed down judgment in *High Speed Two (HS2) Limited and others v Persons Unknown* [2024] EWHC 1277 (KB) concerning the renewal of the interim injunction, made against both named defendants and persons unknown, previously granted to prohibit unlawful interference with the construction of the HS2 railway. Ritchie J renewed the injunction in respect of part of the route, but did not renew in respect of phase 2 of the route, given that phase 2 had since been cancelled. He considered arguments of change of circumstances and non-disclosure. In doing so, he took into account the new 2023 Act offences. Whilst he appeared at points in this judgment to rely on these new offences as a material change of circumstances (§§39, 44, 55), it is clear that the effective reason for non-renewal in relation to phase 2 only was the fact that phase 2 had been cancelled (whilst phase 1 remained in place): see judgment §§ 39, 44-46, 51 and 55. Further and in any event, in the judgment there was no analysis of how the new offences might deter protests of the kind that were in issue in that case and no reference to the approach to criminal offences in paragraph 45(3) IB Judgment and paragraph 50 JSO Judgment. On analysis and as a matter of logic, the deterrent effect of the existence of new criminal offences cannot have been considered a reason to discharge the injunctions to the extent that he did; first because he renewed the injunction in respect of the phase 1 route (despite the equal application of those offences to future protests on that part of the route) and secondly because the major transport works/key national infrastructure which would notionally be protected by section 7 of the 2023 Act, did not, and would not, exist and had been cancelled. By definition there could be no such protests at such locations.

41. On 25 July 2024 Ritchie J gave judgment in *Drax Power Limited v Persons Unknown* [2024] EWHC 2224 (KB) and on 6 September 2024 HH Judge Emma Kelly (sitting as a High Court Judge) gave judgment in *North Warwickshire Borough Council v Barber and others* [2024] EWHC (KB) for a final injunction in respect of disruption by JSO protesters at an oil terminal. In both cases the court addressed the recent amendments to the law including those to the 2022 Act and the 2023 Act. In the *Drax* case, Ritchie J considered (at §28) that section 7 of the 2023 Act does not provide the prospective protection that the injunctions had provided. In the *North Warwickshire* case HH Judge Kelly considered (at §§86 to 88), in the context of "less restrictive means" the increase in range and seriousness of criminal offences since May 2022. She concluded that the existence of relevant criminal offences does not of itself mean it is inappropriate to grant an injunction. The criminal justice system did not achieve the claimant's aims in as comprehensive a manner as injunctive relief could. At §88 she gave four detailed reasons for that conclusion. First, the new criminal offences and increased sentencing powers did not have the same deterrent effect. Secondly, the mechanism by which a protest is brought before civil courts following arrest is expeditious and therefore provides a significant deterrent. Thirdly, an injunction hands control of the pursuit of contempt proceedings against protesters to the claimant authority (rather than to the discretion of a criminal prosecution authority), Fourthly, an injunction is designed to be preventative in nature as opposed to the criminal law which reacts to events that have already occurred.

The issues in summary

42. As indicated above, there were initially three issues as follows:

(1) Review of injunctions

On review of the Final Injunctions, should the Court maintain the Final Injunctions in their present form, or should the Court discharge them or vary their terms?

(2) Undertakings in lieu

Should the Court accept from a number of Named Defendants in the TfL IB Claims an undertaking and if so, on what terms, and thereby release them from the Final Injunction?

(3) Costs

If and in so far as the Court accepts an undertaking from a Named Defendant in the TfL IB Claims, should the order for costs made against that Defendant by paragraph 5 of the IB Judgment Order be discharged/set aside?

As regards issue (2), the undertakings offered by the Lewis Applicants are acceptable to TfL and to the Court. Accordingly, in the case of these Named Defendants those undertakings are given to the Court and the Final Injunction as against them will be discharged. However, contrary to their application, and as in the case of others who earlier gave undertakings, these Named Defendants will remain as defendants to the IB Claim: see IB Judgment, paragraph 14. This is appropriate in the event that TfL considers it necessary to seek to enforce the undertakings.

Issue (1): The review of the Final Injunctions

The Parties' submissions

TFL's submissions

43. TFL submitted that, on review, the question is whether there is any good reason to go back on the carefully considered judgments of the court that five years was an appropriate period for the specific type of protest on specific roads. The question is not whether the Final Injunctions were rightly made at the time that they were made. This is not an appeal and the Final Injunctions were made on the basis that they are justified for 5 years. The answer to that question is No. There is no reason why the Final Injunctions should not be maintained in the same terms. Rather, the case for the injunctions is even stronger.

44. The test on review is to be found in the *Wolverhampton* case at §225. There were three reasons why the Final Injunctions should be maintained. First, they had been effective in deterring this particular type of protest on these particular strategic roads. Secondly, there had been no material changes in the circumstances in fact or in law since the final injunctions. Thirdly, if the Final Injunctions were removed there was a very real risk that the protesters would continue, by way of sitting down on roads.

Mr Simblet's submissions

45. Mr Simblet made two overriding submissions, which he said informed both Issue (1) and Issue (3).

46. First, he submitted that TfL's real aim in bringing these proceedings was to obtain an injunction against Persons Unknown (i.e "contra mundum"). Persons Unknown are identified as the first defendant. The inclusion of Named Defendants was thought, at the time, to be necessary because of the then state of the case law and in fact added nothing to the proceedings or their effectiveness. TfL sought an injunction not just against Named Defendants but also obtained a final injunction against Persons Unknown. The presence or absence of the Named Defendants made, and makes, no difference to the TfL's desire to litigate these proceedings and obtain the order they obtained. There had been no need for an injunction against them. Costs would still have been incurred in the proceedings brought against Persons Unknown and the presence of Named Defendants did not add to the costs. In that context the fact that those he represented did not acknowledge service or file defence had in fact made little or no difference to TfL's desire to pursue these proceedings through the courts and obtain the order which it had obtained.

47. Secondly, objection was taken to the way in which the Named Defendants were selected. Many of them had not been to London to protest (nor, in some cases, ever set foot in London). A substantial number of the Named Defendants had not obstructed any London road but were names which had been passed to TfL from other injunction proceedings (mainly NHL proceedings). There is no evidence that these Named Defendants had protested at London roads or, in some cases, on any roads. Ms Lewis in her witness statement made the same point. Many of the Named Defendants had been included merely because their names had been provided to TfL by NHL.

48. As regards Issue (1) specifically, Mr Simblet submitted that the question, on review, is whether the Final Injunction is still and/or remains necessary and that, in the light of current circumstances, there was no longer any need for the Final Injunctions (and those who have given or offered undertakings should be released). First, there had been a material non-disclosure at the time of the Final Injunctions, in that the Courts were not aware of the increase in the penalty for the criminal offence of wilfully obstructing the highway brought about by the 2022 Act and believed that committing that offence was likely to result only in a small fine. Secondly, there had been a material change in the law since May 2023, namely the enactment of offences under sections 1 and 7 of the 2023 Act, pursuant to which the conduct prohibited by the Final Injunctions now amounts to criminal offences and those offences were a sufficient deterrent to road blocking protests. They are a much speedier and immediate method of enforcement than committal proceedings for breach of a civil injunction. These offences are alternative means as contemplated by the Supreme Court in §167(i) of the *Wolverhampton* case. There was no longer a compelling need for the protection of civil rights. He referred to two recent cases of protestors who had engaged in slow marches being prosecuted under section 7. Section 18 of the 2023 Act had not been brought into force and, in any event, did not answer the question whether a civil injunction was necessary.

Mr Parry's submissions

49. Mr Parry supported Mr Simblet's submission as to how the Named Defendants came to be selected. He submitted that by a defendant's name featuring in one set of proceedings that defendant becomes a target for other proceedings. It was unreasonable for TfL and the Court to assume that if you protest at one road junction, that you will protest at another. He further submitted that the Final Injunction in the TfL JSO Claim should be discharged and that, as result, he (and others) should be released from the undertaking which each gave. The injunctions had been successful and the cumulative effect of injunctions in many cases and general threat of injunctions in many cases was stifling the wider right to protest. The injunction encouraged business as usual and there was no time to lose in the fight against climate change.

Ms Rumbelow's submissions

50. Ms Rumbelow submitted, first, that IB had stated back in December 2022 that they would no longer carry on with their protests. Secondly, given the existence of criminal offences, injunctions are an unjust double punishment. Injunctions are anti-democratic. The courts should rely on the criminal law. She suggested that in 2021 the Secretary of State had said, in a Government website, that measures under the 2023 Act would be a better solution than an NHL injunction over the entire strategic road network. Since May 2022 the penalty for obstructing the highway had been increased to include the possibility of a prison sentence and increased fine. She referred to section 7 of the 2023 Act and the fact that certain protestors engaging in slow marches had been prosecuted under this section. The situation had now changed immeasurably. There was no longer any need to rely on a civil injunction. The Court should be slow to rely on the continued occurrence of slow marches as evidence of the lack of deterrence provided by section 7. The police were initially using section 12 of the 2023 Act and this was not a deterrent. The maximum penalty under section 7 is 6 months' imprisonment. They started using section 7 offence only later. In any event, in the light of the recent decision in *R (NCCL) v Secretary of State for the Home Department* [2024] EWHC 1181 (Admin), the legality of the law banning slow marching (section 7) is now open to question.

Discussion

51. In the following paragraphs, I address these various points.

(1) The "contra mundum" argument

52. I do not accept Mr Simblet's submission that there was no need for TfL to sue the Named Defendants or any of them and that the only purpose of the proceedings was to obtain an injunction against Persons Unknown. Suing the Named Defendants was not a matter of choice, as is clear from §221 of *Wolverhampton*, where the Supreme Court emphasised the obligation to identify, by name, persons to whom the order is directed.

> "The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and

> who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in Cameron [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible." (emphasis added)

The addition of Persons Unknown to the order required, and requires, additional justification – as §221 states: see the IB Judgment, paragraphs 58 and 59; JSO Judgment, paragraph 56; and *Wolverhampton* §167.

(2) Why each Named Defendant is a party

53. In so far as it was contended that there was, and is, no adequate justification for including a particular Named Defendant in the proceedings and in the Final Injunctions, at the time of the making of the Final Injunctions, the Court was satisfied that they were properly made in respect of those Named Defendants and there was no evidence of any change of circumstances since the Final Injunctions were made. In the course of the hearing, Mr Fraser-Urquhart explained, in respect of each of the Claims, how the Named Defendants came to be joined as a party. In summary, each Named Defendant in the TfL IB Claims was so named *only* where there was evidence that that Named Defendant had not only previously participated in a road or similar protest, but where he or she had also previously been arrested by the police on a previous protest. In the TfL JSO Claim, there were three stages of identifying the Named Defendants. First, there were those individuals who were a Named Defendant in the TfL IB Claims and had also self-identified on the JSO website as having been protesting. Secondly, there were those who were a Named Defendant in the TfL IB Claims and who had been named in relation to an injunction in respect of earlier JSO protests at Thurrock oil terminal; and thirdly, there were those individuals whom the Metropolitan Police had disclosed as having been arrested at JSO protests and who were subsequently added as a Named Defendant. It was on this basis that the Court accepted that the necessary degree of risk of the Named Defendants taking part in IB and JSO protests on GLA roads was established. The fact that someone had been previously arrested was evidence that that person was to be considered a person who may present a real risk of engaging in road block protests. It is not the case that a Named Defendant had been included simply because he or she had been named in previous unrelated protest proceedings. In my judgment, the complaints now made about not taking part in road protest, or not living, in London do not provide any reason for the Final Injunctions not to continue in their present form. Whilst it may well be that merely being subject to prior injunctions relating to a different location is

not enough to establish a risk of unlawful protest at the location in question, the added factor of having been previous arrested for protest at sites covered by those injunctions makes it prima facie appear that there is a sufficient risk of engaging in unlawful protest at the present location (see JSO Judgment paragraph 37).

(3) Review

54. At §225 of the *Wolverhampton* case, the Supreme Court stated the approach on review, namely that such review:

> "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."

The obligation to make full disclosure applies to all parties. In the present case, whilst I have heard oral submissions, no Named Defendant has put forward any evidence to support their case (other than Ms Lewis's statement). I must consider whether any reasons or grounds for discharge of the Final Injunctions emerged and whether there was a proper justification for the continuance of the Final Injunctions.

55. In the present cases, TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue. (For example, as in the *HS2* case where Phase 2 of the HS project had subsequently been abandoned: see paragraph 40 above).

56. I accept Mr Fraser-Urquhart's submissions (at paragraph 44 above). The Final Injunctions have been effective in deterring the particular type of protest. They do not, and are not intended to, prevent all protest. They remain the only lawful way of preventing the detrimental effects of such conduct, for the reasons given in the IB Judgment at paragraphs 26, 43, 45(1) and (3) and the JSO Judgment at paragraphs 40 to 41, 50, 52 iv) and 53**.** A number of protestors have accepted that similar injunctions have changed their behaviour: see, e.g, the *NHL Judgment* §§70, 89 to 95, 101. Secondly, the JSO continued to express its desire and willingness to continue to protest by whatever means (lawful or unlawful). Further neither the *Wolverhampton* case nor the 2023 Act constituted a relevant change in circumstances (see further paragraphs 59 to 67 below). Each of the requirements in respect of an injunction against Persons Unknown now set out at *Wolverhampton* §167 are met.

57. Thirdly, there remained a real risk that, absent the Final Injunctions, protest in the form of blocking the roads would promptly resume (in place of, or alongside, the permitted "slow marches"). The fact that the JSO protests since May 2023 had taken the form of slow marching did not obviate the risk of road blocking protests resuming, if the Final Injunctions were to be discharged. As at 26 May 2023, Eyre J was satisfied that there was a real and imminent risk that, in the absence of an injunction, there would be protest taking the form of blocking roads at the identified locations (for reasons set out at paragraphs 30 to 32 the JSO Judgment). In my judgment, the

position remained the same as at the end of May last year. Since the Final Injunctions, slow march protests, which are not caught by their terms, continued and increased. By contrast, there were no instances of road blocking. There had been no committals arising from the Final Injunctions, because, by and large, there had been no protests of this sort. The clear inference is that this was because the Final Injunctions have been effective. It appears that the primary focus of the protesters still remained "obstruction of roads", which was at that time effected by slow marching. The fact that sitting down is prohibited led to the adoption of the slow marching technique as the primary means of protest. In these circumstances, there was a real risk that, if the Final Injunctions were discharged, sitting down protests on the roads would resume.

(4) The position under the criminal law and material non-disclosure

58. The factual position relating to relevant offences under the 2022 Act and the 2023 Act is set out in paragraphs 37 and 38 above.

59. First, Mr Simblet had submitted that, at the time of the grant of the Final Injunctions, there had been a material non-disclosure of the changes to the law relating to the offence of obstructing the highway brought about by the 2022 Act. The basis of this submission was as follows.

60. At paragraph 45(3) of the IB Judgment I said:

> "There are no less restrictive or alternative means to achieve these aims than a final injunction in the form sought. Damages would not prevent any further protests, for the reasons given in paragraph 43 above. Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force **in May and June 2022**, have not changed the approach of protesters." (**emphasis** added)

(This analysis was adopted by Mr Justice Eyre at paragraph 50 of the JSO Judgment.)

61. It is common ground that the last sentence of paragraph 45(3) in turn was based on TfL's skeleton argument for the final hearing in the IB Claim. Mr Simblet submitted that, in the light, in particular, of observations made during the hearing before me, that the "recent changes in the law" brought about by the 2022 Act referred to in TfL's skeleton argument and, thus in paragraph 45(3) of the IB Judgment, can only have been a reference to the change to the law relating to *public nuisance*, and therefore, the increase in the sentences for offence of *obstruction of the highway* (in force from May 2022) had not been disclosed to the Court at the final hearing. This, he

submitted, was a material non-disclosure, which justified the discharge of the Final Injunctions.

62. However, paragraph 45(3) of the IB Judgment refers to changes in the law which came into force in *May 2022 and* in June 2022. Upon being pointed to this, Mr Simblet conceded that, given the differing dates of coming into force of the changes in respect of the two offences, it must have been the case that the Court *had been* referred to the change in the law relating to obstruction of the highway, as well as to that relating to public nuisance. On this basis, I am satisfied that there was no relevant non-disclosure at the time that the Final Injunctions were made, and the changes brought about by the 2022 Act do not amount to a material change of circumstances, for the purposes of this review.

63. As regards the 2023 Act, the two offences introduced by sections 1 and 7 respectively are new since the Final Injunctions were made. However in my judgment they do not represent a material change of circumstances which rendered the continuation of the Final Injunctions as no longer necessary.

64. First, the existence of criminal offences is a matter quite separate from a private law party, such as TfL, seeking to vindicate its civil rights. (For example, the fact that assault is a criminal offence does not mean that a victim does not have the civil law right to sue in tort). The rights and duties in civil law protect a different interest. There are no alternative remedies "available to the applicant" (i.e. in the present case, TfL): see *Wolverhampton* §167(i). Recourse to the *criminal* law is not available to TfL or, to any applicant in civil proceedings. TfL is seeking by these proceedings to enforce its civil rights in civil proceedings; criminal measures are not available to it.

65. Secondly, there is no reason to believe that section 7 of itself will stop or deter protests blocking roads. Strong evidence to support this was provided by the position in relation to slow marches. Both slow marches and road blocking protests are caught by the section 7 offence; but the former are not, and the latter are, covered by the Final Injunctions. Since the Final Injunctions, road blocking protests had ceased, but slow marches had continued and indeed increased, after section 7 came into force. Thus, it appears that section 7 had not deterred protest by slow marches. Slow marches are covered only by the criminal law and were happening. Road blocking protests are covered by the criminal law and by the Final Injunctions and were not happening.

66. In *Valero* (at §§51 and 66), Ritchie J was aware of the 2023 Act and the new offences, but did not conclude that there was no need for an injunction on the grounds that the new criminal law powers were sufficient. This conclusion is supported by *Drax Power* and, in particular, by the careful and detailed analysis of HH Judge Kelly in the *North Warwickshire* case at §§86 to 88. See paragraphs 39 and 41 above. Moreover the existence of sections 18 and 19 suggests that if Parliament thought that the new criminal offences were sufficient, it would not have provided for the express reservation of the civil rights of others to apply for an injunction.

67. Finally, in response to Ms Rumbelow's suggestion in her post-hearing submissions, the lawfulness of section 7 of the 2023 Act is not called into question by the recent decision in *R (NCCL) v SSHD*. That case dealt with different offences under different legislation (Public Order Act 1986) and the court's decision was based on lack of

consultation on the facts, and questions and principles of statutory construction arising from delegated legislation. That has no application to section 7.

Conclusion on Issue (1)

68. For these reasons I am satisfied that, on review and in principle, the Final Injunctions had been effective, that there had been no material change of circumstances and no other grounds for their discharge and there remained proper justification for them to continue.

Issues (2) and (3) IB case: the Lewis Application: substitution of undertakings and costs

Issue (2): substitution of undertakings

69. As explained in paragraph 42 above, Issue (2) was resolved in the course of the hearing. Issue (3) was disputed. Nevertheless, by way of background to Issue (3), I set out first the basis of the Lewis Application.

70. *Ms Lewis* in her witness statement dated 27 July 2023, made on behalf of all the Lewis Applicants, stated that they had not engaged in the case before 29 March 2023 because challenging an order would be very costly and almost certainly unsuccessful and they had been led to believe that if they did nothing to break the injunction there would be no repercussions. She stated that they had only recently learned, and too late for the March hearing, that an unrepresented person could attend the court hearing and speak for themselves. She further asserted that it is customary for a claimant to offer to a defendant the possibility of an undertaking not to breach the terms of the injunction. She complained that in the present case TfL had not offered such a course. Had they been so offered and been aware of the mounting potential costs claims against them, they would have considered giving such an undertaking. On 15 May 2023 when the IB Final Injunction Order was put on the TfL website, they noted that three defendants had given undertakings and no order for costs had been made against them. Moreover at the 4/5 May 2023 hearing in the TfL JSO Claim, TfL agreed to extend the offer of undertakings to all Named Defendants in that case. On that basis she asked that all the Named Defendants in the TfL IB Claims should be given the same opportunity to give an undertaking and "to be removed from the injunction and all its associated costs". She pointed out that the Named Defendants had already incurred significant penalties through the criminal courts, including fines, orders for costs and custodial sentences.

71. In response, *TfL* took a neutral position as to whether the Court should accept undertakings. Nevertheless the lack of opportunity to give an undertaking earlier was due to the historic lack of engagement with the Court processes on the part of the Named Defendants. Moreover, undertakings were not in the gift of TfL, and if it had made an offer, it would likely have been mistrusted or ignored by Named Defendants. TfL accepted that the undertakings now offered by each of the Lewis Applicants were satisfactory and all had been signed.

Issue (3): IB case: the Lewis Application: discharge of costs order

72. This concerns specifically the Lewis Application to discharge or set aside the order for costs made in paragraph 5 of the IB Judgment Order. Paragraph 5 provided that

"the Defendants" must pay the Claimant's costs, to be subject to detailed assessment "with the total amount to be divided equally amongst those Defendants to whom this paragraph applies". As a result of the definitions in the IB Judgment Order, "the Defendants" comprised the Named Defendants (with certain exclusions) *and* Persons Unknown. The Named Defendants excluded from the order for costs were the three who had given undertakings and those against whom proceedings had been discontinued (see IB Judgment, paragraphs 14 and 16). By contrast, in the JSO Judgment Order those excluded from the order for costs were Named Defendants who had given undertakings, Named Defendants against whom proceedings were discontinued *and* Persons Unknown. However in the IB Judgment Order, for whatever reason, Persons Unknown were not excluded and, in terms, were made subject to the order for costs.

The parties' submissions

73. *Mr Simblet submitted* as follows:

(1) As a matter of justice, the costs order made against the Named Defendants who had now given undertakings in lieu should be set aside. The Named Defendants were not made sufficiently aware of their potential liability to costs. There was no letter before action, no justification for obtaining the initial interim injunction on a without notice basis, and no sufficient notice was given (in the pleadings) of the fact that TfL were seeking final costs orders. Each Named Defendant might have been led to believe that they did not need to do anything further, once the "prospective only" interim injunctions had been obtained on the assumption that they had decided not, thereafter, to do any of the things prohibited. Further, as part of its duty to assist the Court, TfL should have offered the Named Defendants, unrepresented as they were, the option of giving an undertaking in lieu of an injunction; and there was no reason to think that the Named Defendants would not give such an undertaking; and finally there was no justification for the Court making the final costs order and no reasons were given for that order. Moreover, the Named Defendants did not "cause" TfL's costs, since the main purpose of the proceedings was to obtain a final injunction against Persons Unknown (see paragraph 46 above). No Named Defendant chose to oppose the claim and the Court should not have made a costs order against unrepresented defendants who did nothing.

(2) As a matter of jurisdiction, the Court can now set aside the order for costs. The liberty to apply in paragraph 12 of the IB Final Injunction Order is to be read as applying also to the IB Judgment Order. There was no reason for two separate orders. It does not appear that TfL provided the draft orders to the Named Defendants in advance of the hearing in May 2023. Alternatively the Final Injunction Order should be amended under the slip rule in CPR Part 40.12.

(3) Even if the Court cannot now set aside the order for costs, TfL should exercise its discretion not to enforce the order and the Court can direct that the order for costs should not be enforced. TfL has taken no steps at all to enforce the order; it has not applied for detailed assessment of its costs, in breach of the time limit prescribed by CPR Part 47.7. Its reasons for not having done so do

not bear scrutiny. It was not right that an order for costs should just "hang around" without being pursued. Moreover the costs order is unenforceable because it is made against "the Defendants" which term includes not only the Named Defendants, but also Persons Unknown. For this further reason, the Court had power to, and should, direct that TfL is not permitted to bring such enforcement proceedings against any of the Named Defendants.

74. *Ms Rumbelow submitted* that the process was opaque and that Named Defendants were not aware of the risks of not engaging with the process. It was not true that she had not engaged. She had tried to raise funds. She felt that she had no route to justice. She asserted that legal aid had been refused. She had received papers, but they were too difficult to understand, even though she has a degree. Members of the public could not understand the details of where they can, and cannot, protest. The warnings on the interim injunctions related to the consequences of breach and carried the inference that if a Named Defendant obeyed the interim injunctions then they would avoid having to pay costs.

75. *TfL submitted* as follows:

(1) The matter of costs was settled and determined by the Court in the two Judgment Orders. The costs order in paragraph 5 of the IB Judgment Order is a final order. The Court had no jurisdiction to set aside it aside or vary it. The liberty to apply in the Final Injunction Order did not apply to the Judgment Order nor to the costs order within it. The costs order was only capable of change by way of appeal to the Court of Appeal. The review related to the Final Injunctions and not to the costs orders in the Judgment Orders.

(2) Even if the Court had power to vary or set aside paragraph 5, there was no reason to do so. It was reasonable for costs to be awarded against those Named Defendants. First, costs follow the event. The costs award was the result of the conscious non-engagement with the proceedings on the part of the Named Defendants and as a result TfL had not offered the option of an undertaking. (Had they engaged, then there would have been the opportunity to give undertakings in lieu at the time and to be excepted from the order for costs). All Named Defendants had had sufficient notice at all stages, both of the proceedings as a whole and of TfL's intention to seek an order for costs against them. Throughout the proceedings, TfL had gone to extraordinary and extreme efforts to ensure that all Named Defendants had been served with all relevant court documents; there was no evidence from any Named Defendant (either generally or before the Court) that he or she had not received or understood the material. Despite these extraordinary lengths, there had been no acknowledgements of service (which included the option of accepting the claim) and no defences. TfL relied on the analysis of Cotter J in the *NHL Judgment*. As regards the initial "without notice" injunctions, this was an appropriate course of action at the time. Protests were happening on a daily basis. The judges at the time were satisfied that proceeding without notice was appropriate; and there was thereafter opportunity to set aside the interim injunctions or at least to engage with the process.

(3) It was accepted that, on the strict construction of the wording of the Judgment Order, not only are Named Defendants liable to pay costs, but so are "Persons

> Unknown". However the intention was always to divide the total assessed costs between the Named Defendants only, with each being liable for an equal share of the total. In his witness statement of 15 May 2024, Mr Ameen explained that TfL had not as at that time proceeded to the detailed assessment of the costs and that the reason for that was that it was awaiting the resolution of the Lewis Application in relation to undertakings and in particular the costs aspects thereof. Nevertheless, Mr Fraser-Urquhart accepted in argument that TfL did not need to know how many Named Defendants would be liable for costs before proceeding to a detailed assessment of TfL's total costs.

Discussion and Analysis on Issue 3

76. Before addressing these submissions, I set out the position in relation to service of documents, the history relating to the giving of undertakings by certain defendants and the decision of Cotter J in the *NHL Judgment*.

The facts relating to service of court documents

77. In advance of the trial hearings in March and May 2023 Mr Ameen provided witness statements explaining all steps taken to serve the Named Defendants with all relevant court documentation and to notify them of hearings, including the trial hearings. At paragraph 12 of the IB Judgment I referred to this evidence, recording in particular that the evidence, draft final orders and skeleton argument had been sent to the Named Defendants between 28 February 2023 and 16 March 2023. At paragraph 13 I recorded that no defendant had acknowledged service or filed a defence, and that apart from four particular Named Defendants, no one had attended any hearing, or served any evidence or skeleton argument for the trial. At paragraph 17 I concluded that it was appropriate to hear the trial in the absence of the remaining 131 Named Defendants.

78. At paragraph 14 of the JSO Judgment, in respect of those Named Defendants who had not appeared or made representations, Eyre J reached the same conclusion. He was satisfied that TfL had complied with directions for service made earlier. At paragraphs 27 and 34, Eyre J commented on the significance of deliberate non-participation of those Named Defendants who had not chosen to engage with the Court or with TfL, which was to be taken as a choice not to challenge the case made against them.

79. In addition to the evidence referred to in paragraph 12 of the IB Judgment, in the course of this review hearing, Mr Ameen provided his further witness statement dated 15 May 2024 in which he explained and summarised what was served, on whom, when and by what means in the course of both Claims. In particular he addressed the issue of the extent to which the Named Defendants were notified of TfL's intention to seek an order for the costs of the Claims against each Defendant. The position is as follows.

80. Throughout the course, and at all the various stages of, both Claims, starting in October 2021 (following the first interim injunction of May J in the TfL IB Claims) and up to the period immediately leading up to the hearing before Eyre J in the TfL JSO Claim on 4 May 2023, relevant court documents were served on each Named Defendant by process servers physically handing over the documents or posting them

through the letterbox or affixing a package to the front door. Documents were also served to the email addresses of IB and JSO. In some cases, where a Named Defendant had positively indicated that he or she would accept electronic service, documents were emailed to that Defendant. In the TfL IB Claims, there were thirteen "rounds" of service. In the TfL JSO Claim, there were eight "rounds" of service. Amongst the documents so served on each Named Defendant were the claim form, response pack, particulars of claim, relevant application notices, witness statements, draft orders sought and court orders made from time to time. Details of service had already been provided in the earlier witness statements from Mr Ameen.

81. Amongst the documents served in each of the Claims, the following documents referred expressly to TfL's intention to seek an order for costs: first, the particulars of claim, and secondly, the draft judgment order and the TfL skeleton argument, for the final trial. (It is the case that the claim form itself did not quantify a claim for costs; at the end of the standard form claim form, the box for an amount for "legal representative's costs" was left blank.)

82. The particulars of claim in the TFL IB Claims were served in this way on all Named Defendants on dates between 25 October and 22 December 2021 (depending on when each Named Defendant became party to the claims). The particulars of claim in the TfL JSO Claim were served on all Named Defendants between 8 and 13 November 2022.

83. In the TfL IB Claims, the draft judgment order and the TfL skeleton for the final trial due to commence on 28 March 2023, were served on the Named Defendants either by 1st class post or by email on 15 and 16 March 2023. In the TfL JSO Claim, the TfL skeleton for the final trial due to commence on 4 May 2023, was served on the Named Defendants by email on 20 April 2023 and by 1st class post on 21 April 2023, together with a covering letter explaining how the Defendant could access an electronic version of the trial bundle. The draft judgment order was contained within that trial bundle. In the TfL JSO Claim at the trial written or oral submissions were made by or on behalf of about 57 Named Defendants: see JSO Judgment paragraph 10 to 13.

Undertakings

84. In his further witness statement, Mr Ameen also explained how it came about that undertakings were given and accepted in the case of certain Named Defendants. It appears that the possibility of giving an undertaking in lieu of a court injunction was first raised by three of the Named Defendants in the TfL IB Claims in the lead up to the trial on 29 March 2023. This led to these three individuals giving undertakings acceptable to TfL and the Court at or shortly following that trial. At no point prior to that had TfL itself raised the issue of undertakings with any Named Defendant. Following the giving of these three undertakings in the TfL IB Claims, the majority of the Named Defendants in the TfL JSO Claims ultimately offered undertakings which were acceptable to the Court; and so final injunctions were not made in their cases: see JSO Judgment paragraphs 10 to 13.

The NHL Judgment

85. On 24 April 2023 Cotter J heard the application of NHL to extend the final injunction relating to JSO protests on the M25, which had been granted, limited to a period of one year, on 9 May 2022. Ms Lewis and 6 others who are also Lewis Applicants, made written and/or oral submissions prior to, and at, that hearing. In advance of that hearing, on 15 March 2023 the claimant, NHL, had made an offer to the named defendants to accept an undertaking in lieu of an injunction. On 1 May 2023, following the hearing, Ms Lewis on behalf of herself and a further 104 Named Defendants (of whom 83 are Lewis Applicants) offered undertakings subject to being released from previous costs liabilities At §114 of his judgment, Cotter J observed that if the Court were to accept an undertaking, "that would not affect the existing rights/liabilities of the parties given the history to date e.g any liability for costs". Cotter J was prepared to accept the undertakings and that costs liability "going forward" would cease. At §119 he addressed the complaint by several defendants that they had not been offered the opportunity to give an undertaking at an earlier stage and, by most defendants, that a costs order would be unjust. He continued:

> "These matters highlight the importance in a case such as this of engagement/communication with the Claimant and the Court which may enable an understanding of a person's view about the order which is being sought against them (including whether they would agree not to repeat any relevant conduct)"

After setting out the Court's duties concerning the overriding objective in CPR 1, he continued:

> "<u>However it is very difficult to do any of these things if one party will not engage at all.</u> A Judge will take into account that a person does have legal representation and will explain matters accordingly (although no Judge can give legal advice to any party). In nearly 40 years of working in the civil courts I cannot remember an example of a party's position being improved by ignoring proceedings and/or not engaging with the Court. This case is a paradigm. <u>The failure to respond to the Claimant when served with proceedings, or at subsequent stages, or to file any documents with the court (such as a defence or evidence), or to appear at Court hearings has clearly not benefitted any of the Defendants at all. Many could have been spared stress and expense by engaging with the process, daunting though it may seem</u>. As I shall set out Mr Justice Bennathan stated (in the context of the Claimant's application for costs) if a defendant chooses not to provide any submissions to the court they cannot [not] properly complain at a later stage that their voices were not heard. (<u>emphasis</u> added – [ ] error in original)"

In the event, such undertakings were given by a number of named defendants.

86. At §§141 to 152, Cotter J went on to deal with costs substantively. Whilst the position there was complicated by the fact that the Court of Appeal had varied the original substantive decision of Bennathan J, in essence Cotter J refused to vary the

original costs order made by Bennathan J against certain defendants. He was not an appeal court and thus had no jurisdiction to vary the earlier determination, and commented that it was regrettable that defendants did not engage with the claimant or the Court (§150). For similar reasons he made an order in respect of past costs against the remaining defendants (§152). The fact that he had now accepted undertakings from these defendants was not a reason not to confirm (or make) orders for costs in respect of the past.

Analysis

87. First, regardless of whether TfL should have offered undertakings, I conclude that in any event on this review of the Final Injunctions, the Court had no jurisdiction to vary or discharge the costs order. The order for costs in the IB Judgment Order was a final order. The usual position in relation to the final order of a court is that the matter is res judicata and can only be revisited on appeal. That is the position in relation to the order for costs. By contrast, the position relating to the final injunction of the kind made in the present case is, rather unusually, somewhat different. It is not a final order in the traditional sense. Rather in the present case, the final injunction is an exceptional form of order, in proceedings which are not at an end until the injunction is discharged. It provides, and is required to provide, unusually, for a process of review - so it is hybrid. In substance it is neither an interim nor a final order, and to that end, consistently, each Final Injunction Order provides for liberty to apply. See *Wolverhampton* at §§137, 139, 142, 151, 167, 178, 232 and 234. However, the costs order is final and the remedy in relation to it was for the Named Defendants to appeal.

88. Secondly, even if the court had jurisdiction and/or the liberty to apply could be said to apply, additionally, to the Judgment Order, it was open to the Named Defendants to raise the issue of undertakings as an option. Many of the Named Defendants in the IB Claim had also been defendants in the NHL proceedings and as a result had been on notice about the possibility of undertakings, (as were the three Named Defendants who did give undertakings as explained in paragraph 14 of the IB Judgment). (At least two of them had been made subject to injunction in NHL proceedings). In fact of the 114 Lewis Applicants, it appears that 83 (including Ms Lewis herself) were also named defendants in the NHL proceedings, who, in those proceedings, were offered the opportunity to give an undertaking by letter dated 15 March 2023: see *NHL Judgment* §115.) I do not accept (as suggested by Ms Lewis in her witness statement) that it was not until shortly before 27 July 2023, or even not until 15 May 2023, that the Lewis Applicants were aware of the possibility of giving an undertaking in lieu. They, or many of them, will have received the offer of such an undertaking made by NHL on 15 March 2023, two weeks before the hearing of the IB Claim on 29 March 2023. They, or many of them, were certainly aware of the option of an undertaking by the date of the hearing before Cotter J on 24 April 2023 (i.e. after the 29 March 2023 hearing of the IB claim, but before the IB Judgment was handed down on 3 May 2023.)

89. Thirdly, none of the Lewis Applicants had engaged with the process of the litigation over several years. Despite assertions made by Mr Simblet on their behalf and by Ms Rumbelow, there was no witness statement evidence to suggest that any one or more Named Defendant did not know what was happening in the proceedings or did not understand the nature of the documents that they had received or had not received any or all of the relevant court documents. Ms Rumbelow said that "the legal papers may

as well have been in Greek and Latin", but she had had the opportunity to seek advice. There is no reason why the points now put forward in her submissions at, and following, the review hearing could not have been put forward at an earlier stage in the litigation. As explained in the *Wolverhampton* case at §221, at a review hearing, the duty to disclose by way of appropriate evidence applies to all parties, including the Named Defendants. I make full allowance for the fact that the Named Defendants are individuals who may not have an immediate understanding of the legal process nor ready access to legal advice. Nevertheless, a substantial number of the Named Defendants had, from 9 May 2024 at the latest, the benefit of legal representation by Good Law Practice and Mr Simblet. In such circumstances the absence of any such evidence is, in my judgment, significant.

90. On the other hand, there is the very substantial and detailed evidence from TfL witnesses as to the steps that they have taken throughout the proceedings to ensure that all Named Defendants have been served with all relevant documents.

91. In my judgment, the inability of the Named Defendants to offer undertakings at an earlier stage and thereby avoid an order for costs was brought about by their own conduct in not engaging. Had they engaged in advance of the hearing on 29 March 2023, there is every prospect that, like the others, the issue of an undertaking would have arisen and they would have had the opportunity to avoid an order for costs. Even if TfL could and should have done more early on, generally or in relation to the possibility of undertakings, by the time of the hearing on 29 March 2023, the Named Defendants had had plenty of notice of the proceedings, the trial date, and their potential liability to costs and thus could have found out about the option of giving an undertaking.

92. Moreover, the slip rule has no application. The order for costs was not made as a result of an accidental slip, omission or mistake. Despite Mr Simblet's complaints as to the process, the costs order in the IB Judgment Order was properly made; first, on the basis that the usual rule of costs following the event applies; and, secondly, in view of the lack of engagement by any of the Named Defendants, and in particular the Lewis Applicants, over a substantial period of time.

93. Fourthly, as regards enforcement of the costs order, TfL's initial explanation for not having proceeded to detailed assessment of those costs was, as accepted by Mr Fraser-Urquhart, not a satisfactory reason. It appears that TfL could have progressed matters. Nevertheless whether that delay should lead to non-enforcement is not a matter to be dealt with in this judgment. It might be relevant to the assessment process and thereafter enforcement. CPR 47.7 (and the sanction for delay in CPR 47.8) are not matters for this judgment.

94. Finally, as regards the fact that the order for costs is made against Persons Unknown as well as the Named Defendants, Mr Fraser-Urquhart accepted that this is the effect of the terms of the order as it is made. (There has been no application under the slip rule). This may prove to be a practical and technical difficulty, if and when TfL comes to seek to enforce any order for costs, following assessment. Whether it might impact upon TfL's decisions on enforcement is a matter for TfL. However, I did not hear full argument about the consequences of an order in this form. If and when there is a detailed assessment of the costs, TfL should, in the first place, explain to all

Named Defendants its position on the effect of the order having been made also against Persons Unknown.

95. For these reasons, in so far as it sought the discharge of paragraph 5 of the IB Judgment Order, the Lewis Application is dismissed.__

Costs of this hearing and the Lewis Application

96. Finally, TfL sought an order for costs of the review hearing as against those Named Defendants who attended the review hearing and who either (1) sought to set aside the costs liability under the IB Judgment Order or (2) refused to offer an undertaking or offered one for the first time at or after the review hearing. I decline to make such an order. TfL was required, by the Final Injunction Orders, to attend the Court for a review hearing, and to that end, update the Court with all relevant developments since the Orders were made and to satisfy the Court that those Orders should continue. Further it is right that the Named Defendants should have been heard on such a review hearing. Many more defendants have now, albeit belatedly, engaged and it is only right that their position should have been heard by the Court. Whilst TfL relied on the fact that in the *NHL Judgment* (§§156 to 158) Cotter J made an order in favour of the claimant, in that case, Cotter J did not make an order for costs against those named defendants who had offered an undertaking even where they had opposed liability for past costs. For these reasons, there will no order for the costs of the review hearing, nor of the Lewis Application.

Conclusions

97. In the light of my conclusions at paragraphs 42, 68, 95 and 96 above, the position in summary is as follows. First, in respect of those Named Defendants who have not offered an undertaking and in respect of Persons Unknown, the Final Injunctions as made will continue in force for the remainder of the 5 year period, subject to yearly review. The next review will come up for consideration in May 2025. Secondly, in respect of those Named Defendants who have offered an undertaking in the terms agreed and accepted by TfL, the IB Final Injunction Order will be discharged. Those Named Defendants will remain parties to the TfL IB Claims. The fact and terms of the undertaking will be recorded in the orders of the Court to be made. Thirdly, the Lewis Application will be dismissed to the extent that it sought paragraph 5 of the IB Judgment Order to be set aside. Fourthly, there will be no order as to costs in respect of the review hearing and the Lewis Application.

98. Finally, I will hear from TfL and any Named Defendant as to the final form of the relevant orders, namely the orders in respect of the review hearing and revised forms of the IB Final Injunction Order.

Annex A
"The Lewis Applicants"
Named Defendants party to the application by Giovanna Lewis by application notice dated 27 July 2023 in the TfL IB Claims

Defendant No	Name
1	Alexander Rodger
2	Alyson Lee
3	Amy Pritchard
4	Ana Heyatawin
5	Andrew Worsley
6	Anne Taylor
7	Anthony Whitehouse
10	Ben Taylor
11	Benjamin Buse
12	Biff Whipster
13	Cameron Ford
14	Catherine Rennie-Nash
15	Catherine Eastburn
16	Christian Murray-Leslie
17	Christian Rowe
18	Cordelia Rowlatt
19	Daniel Sargison
20	Daniel Shaw
21	David Crawford
22	David Jones
23	David Nixon
24	David Squire
25	Diana Bligh
26	Diana Hekt
27	Diana Lewen Warner
28	Donald Bell
29	Edward Herbert
30	Elizabeth Rosser
31	Emily Brocklebank
32	Emma Joanne Smart
35	Gwen Harrison
36	Harry Barlow
37	Ian Bates
38	Iain Duncan Webb
39	James Bradbury
40	James Sarginson
41	James Thomas
42	Janet Brown
43	Janine Eagling
44	Jerrard Mark Latimer
45	Jessica Causby
46	Jonathan Coleman
47	Joseph Shepherd
48	Joshua Smith
49	Judith Bruce

50	Julia Mercer
52	Karen Matthews
57	Lucy Crawford
58	Mair Bain
59	Margaret Malowska
60	Marguerite Doubleday
61	Maria Lee
62	Martin Newell
63	Mary Adams
64	Matthew Lunnon
66	Meredith Williams
67	Michael Brown
68	Michael Wiley
69	Michelle Charlsworth
70	Natalie Morley
71	Nathaniel Squire
72	Nicholas Cooper
73	Nicholas Onley
74	Nicholas Till
76	Paul Cooper
78	Peter Blencowe
79	Peter Morgan
80	Phillipa Clarke
81	Priyadaka Conway
82	Richard Ramsden
83	Rob Stuart
84	Robin Collett
85	Roman Paluch-Machnik
86	Rosemary Webster
87	Rowan Tilly
88	Ruth Cook
89	Ruth Jarman
90	Sarah Hirons
93	Stefania Morosi
96	Stephen Pritchard
97	Sue Chambers
98	Sue Parfitt
99	Sue Spencer-Longhurst
100	Susan Hagley
101	Suzie Webb
105	Tim Speers
106	Tim William Hewes
109	Valerie Saunders
110	Venetia Carter
111	Victoria Anne Lindsell
113	Bethany Mogie
115	Adrian Temple-Brown
116	Ben Newman
117	Christopher Parish
118	Elizabeth Smail
119	Julian Maynard Smith
120	Rebecca Lockyer
121	Simon Milner-Edwards

122	Stephen Brett
123	Virginia Morris
124	Jan Goodey
125	Alex Gough
126	Gareth Richard Harper
127	Samuel Johnson
128	Giovanna Lewis
129	Susan Lyle
130	Darcy Mitchell
131	Morien Morgan
132	Lucia Whittaker De Abreu
133	Pam Williams
134	Molly Berry
136	Ellie Litten
137	George Burrow
138	Jonathan Herbert

Annex B
Named Defendants represented by Good Law Practice

(1) The TfL IB Claims

Named Defendant No	Name
2	Alyson Lee
7	Anthony Whitehouse
20	Daniel Shaw
21	David Crawford
22	David Jones
24	David Squire
26	Diana Hekt
27	Diana Warner
28	Donald Bell
39	James Bradbury
43	Janine Eagling
47	Joseph Shepherd
49	Judith Bruce
50	Julia Mercer
58	Mair Bain
61	Maria Lee
62	Martin Newell
64	Matthew Lunnon
66	Meredith Williams
69	Michelle Charlesworth
82	Richard Ramsden
86	Rosemary Webster
72	Nicholas Cooper
76	Paul Cooper
78	Peter Blencowe
99	Sue Spencer-Longhurst
100	Susan Hagley
113	Bethany Mogie
115	Adrian Temple-Brown
117	Christopher Parish
120	Rebecca Lockyer
121	Simon Milner-Edwards
123	Virginia Morris
125	Alex Gough
128	Giovanna Lewis
129	Susan Lyle
134	Molly Berry

(2) The TfL JSO Claim

Defendant No	Name
2	Alyson Lee
4	Anthony Whitehouse
14	Daniel Shaw
15	David Crawford

17	David Squire
18	Diana Hekt
23	Janine Eagling
27	Julia Mercer
33	Meredith Williams
34	Michelle Charlesworth
50	Bethany Mogie
53	Rebecca Lockyer
54	Simon Milner-Edwards
62	Molly Berry