



Neutral Citation Number: [2020] EWHC 759 QB

Case No: F90BM019/A90BM228

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**BIRMINGHAM DISTRICT REGISTRY**

Birmingham Civil Justice Centre  
The Priory Courts, 33 Bull Street, Birmingham B4 6DS

Date: 30 March 2020

**Before :**

**HHJ WORSTER**

(sitting as a Judge of the High Court)

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**Between :**

- (1) Wolverhampton City Council**
- (2) Dudley Metropolitan Borough Council**
- (3) Sandwell Metropolitan Borough Council**
- (4) Walsall Metropolitan Borough Council**

**Claimants**

**- and -**

**Persons unknown**

**Defendants**

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The parties did not appear  
The Claimants made written representations

Hearing dates: 30 March 2020

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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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HHJ WORSTER

**HHJ WORSTER:**

1. On 1 December 2014 HHJ Robert Owen QC made an order prohibiting car cruising in the areas of the Claimant local authorities. This was defined as the “Black Country area”. The order came into force on 2 February 2015 for a period of 3 years, and was subject to requirements of publicity and review. On 9 January 2018 HHJ McKenna extended that order for a further 3 years or until varied or discharged by the Court. Once again there were provisions requiring publicity and review. Paragraph 6 of HHJ McKenna’s order provided that:

*A review hearing will take place on open court after this extended order has been in force for a further 12 months and no longer than 14 months. The Claimants shall file a succinct report to inform the court of their experience with the publication, operation and enforcement of the extended order, including for example, breaches, warnings or problems, if any arising out of the extended order (including the Power of Arrest).*

2. The Claimants have sought a review, which was listed for hearing today (30 March 2020). As a consequence of the COVID 19 outbreak and the restrictions on movement announced by HM Government, I directed that the Claimant’s attendance be dispensed with. This hearing is technically in open court, but the reality of the restrictions on movement at the moment is such that further steps are desirable to ensure that the public are aware of the court’s continued consideration of this order. This short written judgment can be published on BAILII to satisfy that requirement.
3. In the circumstances, the Claimants proposed that they “consult” through social media. I approved that course, and as a result they issued a press release on the Wolverhampton CC Facebook page inviting responses for and against, and publicised it further in the Express and Star, on Midlands Today and on local radio stations. They received four responses, each of which makes a contribution to the review of this order.
4. The first is from a gentleman who runs a “big car event” in Stoke. He says that he has 500 cars at each event, no anti-social behaviour, good police presence throughout the night with very little complaint. The second is from a resident of the WV14 postcode, who complains that the injunction has been ineffective and that it is still common at the weekend at night to hear cars “rallying and doing stunt drifts on the local car parks and industrial estates”. The third is from a manager at Wolverhampton CC concerned that with improving weather and the strain placed on police forces by the COVID 19 outbreak, drivers will take advantage of the empty roads and use them as racetracks, leading to further deaths. The final contribution is a plea to keep the injunction because the NHS cannot cope with people getting hurt on the roads on top of the coronavirus pandemic.

5. Before I consider those particular representations and those of the Claimants, I should briefly review the propriety of the order itself. There are two matters. Firstly, since the grant of this order Mr Sharif, a Defendant to the car cruising injunction granted on the application of the Birmingham City Council who faced committal proceedings for its breach, has challenged the making of the Birmingham order on the basis that it was wrong in principle. That application was dismissed by HHJ McKenna in a judgment given on 23 May 2019 [2019] EWHC 1268 QB. Mr Sharif has appealed that decision and as I understand it the appeal has yet to be considered.
6. As matters stand applications to commit for breach of that order have been stayed. If the Court of Appeal in the Birmingham case decide that the court should not make orders of this sort, then this order should be immediately referred back to the Court. On the basis of the current position I see no reason to interfere with this order on the grounds put forward by Mr Sharif.
7. Secondly, the Court of Appeal has considered the approach to the grant of injunctions against persons unknown. In *Boyd and anor v Ineos Upstream Ltd & 9 ors* [2019] EWCA Civ 515 Longmore LJ stated the requirements necessary for the grant of an injunction of this nature “tentatively” (at para 34) in the following way:

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

8. More recently, the Court of Appeal has considered the requirements formulated in *Ineos*. In *Cuadrilla v Persons unknown and ors* [2020] EWCA Civ 9. Whilst approving most of what was said in *Ineos*, Leggatt LJ said this at [50]:

“In the light of precedents which were not cited in the *Ineos* case but which have been drawn to our attention on the present appeal, I would enter a caveat in relation to the fourth of these requirements. While it is undoubtedly desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this cannot be regarded as an absolute rule. The decisions of the Court of Appeal in *Hubbard v Pitt* [1976] QB 142 and *Burris v Azadani* [1995] 1 WLR 1372 demonstrate that, although the court must be careful not to impose an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to

afford effective protection to the rights of the claimant in the particular case. In both those cases the injunction was granted against a named person or persons. What, if any, difference it makes in this regard that the injunction is sought against unknown persons is a question which does not need to be decided on the present appeal but which may, as I understand, arise on a pending appeal from the decision of Nicklin J in *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (QB); and in these circumstances I express no opinion on the point.”

The decision in the *Canada Goose* case is reported at [2020] EWCA Civ 303. I do not see that it has a direct bearing on the issues I have to consider on this application.

9. In considering whether to grant the order in this and other car cruising cases, the Court has had regard to the concerns which give rise to the *Ineos* requirements. There is plain evidence of the need for a quia timet injunction. The evidence is that such orders have been effective, but as some of the responses to the consultation in this case illustrate, the problem persists. The danger it poses at a time when the NHS and the Police are stretched is all the greater.
10. In *NWBC v Persons unknown* [2018] EWHC 1603 QB I made an order (for practical purposes) in identical terms to the order in this case. In the course of that judgment I reviewed some of the broader concerns raised by the grant of such an order, referring as I did so to the order and judgment of HHJ Owen QC in this case. The following is relevant to requirements (2) (3) and (5):

“12. ... The application is made against “persons unknown”. The courts have recognised that an action may be properly constituted even though the Defendant is not named, and that it may be appropriate to make an order against “persons unknown” in certain circumstances; see *Bloomsbury Publishing Group Ltd and Rowling v News Group Newspapers* [2003] 1 WLR 1633. What is necessary is that the description used must be sufficiently certain so as to identify those who are included and those who are not. One of the problems that local authorities have faced when attempting to use other statutory powers to control street cruising is the difficulty in identifying Defendants. That is not because there are no “Defendants” - the evidence in this and other similar applications establishes without doubt that “persons unknown” regularly engage in causing this public nuisance. It is because at this stage they cannot be identified.

13. In addition to the need for certainty referred to in *Bloomsbury*, care needs to be taken to ensure that the order is no wider than is necessary, and that it is proportionate. All those matters involve attention to the definition of “participating in a street cruise”, for that defines the “persons” who are caught by the terms of the order. The definition adopted by NWBC in this case is the same as the definition used in the October 2016 Birmingham order. That in turn was the definition used by HHJ Owen QC when he granted the Solihull

order. HHJ Owen QC was astute to ensure that the definition was as tight as it could be, and I gratefully adopt his approach to that matter.

14. As in the Solihull and Birmingham cases, the order provides for service by alternative means. These are set out in Schedule 3 to the order, and include (i) placing signs in prominent locations throughout NWBC's area, and in particular in the locations identified as problem areas in the Particulars of Claim, (ii) press releases, and (iii) posting a copy of the order on the Council's website, Facebook page and Twitter account, on selected social media sites, YouTube and on local police Facebook and Twitter accounts. My experience of hearing a number of committal applications in relation to these orders is that the roadside signs are particularly effective."
11. Requirement (6) is met. As to requirement (4), again I am satisfied that it is met. As I noted in the NWBC case at [21]:

“Whilst an order such as this involves a limitation on the freedoms of those who use the roads and attend these “events”, much of the conduct it covers is unlawful of itself, and is tortious. Moreover the injunction is framed so that it only bites when the effect of that conduct crosses a defined threshold. It is plainly a proper use of the statutory powers NWBC have to make the application. The aims of the order are to make the highways safer, to reduce crime and public nuisance, and to protect and promote the interests of its inhabitants. This order is a proportionate interference with the rights of those who engage the various activities which go to make up street cruising, “
12. The suggestion that these “events” are policed is not one which justifies variation or discharge, whether in the current situation or at all. These “events” take place on the highway and private property such as supermarket car park and industrial estates without the permission of the relevant authority or landowner. They have led to accidents and injury and are a nuisance to those who live nearby or want to use the highway for lawful purposes. If they were organised on a private racetrack or some suitably safe environment that would be one thing. But they are not. And as the Claimant submits, “it is an inappropriate unnecessary and wasteful use of Police resources to police such events when resources are stretched thin”. I agree.
13. This order continues to fulfil the purposes for which it was granted, and appears to be operating satisfactorily. Having reviewed the matter, this order is to continue in force. No further order is required.