



Neutral Citation Number: [2021] EWHC 1997 (QB)

Case No: QB-2021-002502

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 July 2021

Before:

HUGH SOUTHEY QC, sitting as a Deputy Judge of the High Court

Between:

**GITTO ESTATES LTD T/A HORIZON
PROPERTIES**

Claimant

- and -

PERSONS UNKNOWN

Defendant

Oliver Ingham (instructed by **William Graham Law Ltd**) for the **Claimant**
Paul Clark (instructed by on a direct access basis by **ACORN' (Association of Community Organisations for Reform Now)**) for **Acorn UK Ltd (as an Interested Party)**

Hearing dates: 5 July 2021

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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HUGH SOUTHEY QC

HUGH SOUTHEY QC, sitting as a Deputy High Court Judge:

Introduction

1. This judgment determines an application for an interim injunction dated 28 June 2021. I heard that application on 5 July 2021. On that date I indicated the limited injunction that I was willing to make. However, in light of the fact that this application raises of principle about the application of *DPP v Ziegler* [2021] UKSC 23 to interim applications, I decided to reserve my judgment.
2. I thank counsel and those who instructed them for the assistance I received in determining this application.
3. This judgment will consider:
 - i) The factual background to the application.
 - ii) The terms of the application.
 - iii) The submissions of the parties.
 - iv) The approach to interim injunctions where human rights are in issue.
 - v) My findings.

Background

4. The primary evidence in support of the application is from Victoria Al-Khafaji. She is the owner and a director of Horizon properties. Her evidence is supported by the evidence of other staff members. I have considered all of the evidence. What is set out below is a summary of the key features of the evidence.
5. In general, it is unnecessary for me to make final findings regarding the evidence. As a consequence, my summary of the evidence below should not be read as implying that I accept the truth of any piece of evidence.
6. The background to the application is that the Claimant is the owner of a property that is rented to Ieve Navickaite. There has been a campaign intended to obtain the release of Ms Navickaite from her rental contract. That campaign has apparently been supported by a Facebook page identified as belonging to Acorn Cardiff. Further details of that campaign are set out below. I should make it clear that it is not for me to determine whether Ms Navickaite has been treated fairly by the Claimant. That issue is not relevant to the issues I have to decide and I lack the evidence to determine that issue. However, it is important to note that there is no basis for any suggestion that the campaign is not motivated by genuine concerns about the treatment of Ms Navickaite.
7. Ms Al-Khafaji's evidence describes the campaign in her evidence. This is said to have included:
 - i) Negative comments on the Facebook page.
 - ii) Negative reviews being posted online. It is said that these are fake.

- iii) An online petition that generated automated e-mails when people signed the petition.
- iv) Flyers being posted through the letter box of the Claimant and a number of its tenant.

It appears to me that none of this material is directly relevant to the injunction sought. In part that is because I have no basis for determining whether any of this behaviour was unlawful. Indeed, in fairness to the Claimant, it was not referred to by Mr Oliver Ingham in his oral submissions.

8. More relevantly there have been a number of protests at the Claimant's office. It is these protests that is the focus of this application.
9. The first protest occurred on 30 January 2021. It is alleged on this occasion that protestors obstructed the Claimant's offices. I have been provided with a Facebook post on the Acorn Facebook site that appears to show this protest. However, it does not appear to demonstrate any obstruction (or any other form of illegality). The Facebook post merely says that 25 letters were posted demanding the release of Ms Navickaite and the photographs are consistent with this. I have not been provided with details of how long the protest continued for.
10. A follow up Facebook post on the Acorn Facebook site dated 6 February 2021 stated that Horizon Properties had threatened legal action.
11. A further protest is said to have occurred on 15 February 2021. It is said that 8-12 people attended. It is alleged that protestors shouted aggressively through the windows of the Claimant's office. It is said that the Claimant's staff were intimidated. I have been provided with a 14 second video. It does not show any of the behaviour alleged. Instead it appears to show a peaceful protest. The soundtrack appears to record people within the office being dismissive of the protestors. Photographs also appear to show peaceful protest.
12. It is alleged that on 23 March 2021 the Claimant's offices were graffitied and spat at. It is also alleged that eggs were thrown at the property. A Facebook post dated 22 March appears to show chalk graffiti. Most of this appears to be on the pavement outside of the Claimant's offices. However, there is some limited graffiti on the walls of the Claimant's offices.
13. A protest is said to have taken place on 29 March 2021. According to Ms Al-Khafaji's evidence '[t]his was by far the worst day'. Specific allegations about the behaviour of the protestors that are said to be significant include:
 - i) It is said that nobody could come into the Claimant's office. When someone tried to come through the door, they would be chased away and the protestors would shout saying 'Don't rent with Horizon, they threaten you'. I have no specific evidence of force being used to prevent access to the office. I have no evidence as to how long the protest continued for.
 - ii) It is alleged that protestors 'leaned' on cars belonging to the Claimant's staff. I have been provided with photographs that are said to show that. I have examined

those photographs carefully. It appears to me that they do not show what is alleged and instead show peaceful protest.

- iii) It is alleged that protestors banged on the windows of the Claimant's offices and spat on those windows as well as cars. I have no videos of this. I have no evidence explaining the absence of videos or photographs.
 - iv) There is a specific allegation that a man identified as wearing a high-visibility vest ran into the office and asked 2 staff members whether they wanted a fight. This same man is alleged to have used racist language at a customer. I have no videos of this. One odd feature of the evidence is that one member of staff who is alleged to have been asked for a fight is Callum Pratt. Mr Pratt does not confirm that in his evidence. I have a photograph in my papers that is said to show the man in the high-visibility vest.
14. The man in a high-visibility vest who is alleged to have run into the office on 29 March 2021 is alleged to have run into the Claimant's office for a second time on 30 March 2021. He is said to have kicked a display and again asked 2 staff members whether they wanted a fight.
 15. Ms Al-Khafaji says that the 'behaviour in question has continued' so that she felt compelled to take legal action. She identifies 2 matters as having prompted the legal action.
 16. Firstly, Ms Al-Khafaji states that the Claimant's office was graffitied on 23 June 2021. In fact, it is now accepted that the graffiti was on the public pavement. It is also clear that the graffiti was slogans written in chalk. There is no evidence from the council or any other public body with responsibility for the pavement about their attitude to the graffiti. As a consequence, the evidence does not suggest that a tort was committed against the Claimant.
 17. Secondly, Ms Al-Khafaji states that on 26 May 2021 loud hailers were used 'to scream and shout into the [Claimant's] Property'. In support of this claim I have a picture showing 7 protestors including one holding a small loud hailer. There is no other evidence regarding this incident.
 18. It is of note that Ms Al-Khafaji's evidence states that the Claimant's busiest period starts on 1 July 2021. She also states that her business has suffered financial loss as a consequence of the protests.
 19. Evidence from the Claimant's staff sets out the distress they say they have suffered. They describe feeling bullied and intimidated.

The terms of the application

20. The application seeks an interim injunction against persons unknown who are defined in the application as being those:

Responsible for the operation of and/or members and users of the "ACORN Cardiff" Facebook at the domain name (<https://www.facebook.com/pages/category/Labor-Union/ACORN-Cardiff-ACORN-Caerdydd-111371353910853>) and/or those

responsible for protesting upon and/or loitering from time to time at the premises at 22 Senghennydd Rd, Cardiff, CF24 4BE since 30 January 2021.

21. The proposed injunction would prohibit the following matters:
1. *Obstructing the front area of the Claimant's premises within the Injunction Area,*
 2. *Touch or otherwise interact with vehicles parked within the Injunction Area,*
 3. *Touch or otherwise interact with the Claimant's premises itself including writing graffiti on the wall and/or pavement within the Injunction Area,*
 4. *Harass or molest any person leaving or entering the Injunction Area,*
 5. *Entering through the front door of the premises to shout at any person inside the buildings within the Injunction Area,*
 6. *Loitering or standing within the Injunction Area,*
 7. *Using a loud hailer or other means of voice projection within the Injunction Area,*
 8. *Spitting anywhere within the Injunction Area,*
 9. *Throwing any projectile within the Injunction Area, or at any person entering or leaving the Injunction Area (whether such person is within the Injunction Area or not at the time the projectile is thrown).*

The injunction area is defined in a map. The injunction area covers both the premises of the Claimant and the pavement outside.

Submissions of the parties

22. On behalf of the Claimant, Mr Ingham submitted, among other matters, that:
- i) The evidence demonstrated that there was a sufficiently meritorious case to require an interim injunction. Damages were not an adequate remedy as the conduct alleged had caused significant distress to the Claimant's employees. As a consequence, an interim injunction should be issued.
 - ii) It was accepted that the terms of the proposed order as initially drafted were excessively broad. However, this could be addressed by modest amendments.
 - iii) The description of the unknown defendants in the application needed to be revised as it was excessively broad. He suggested that a sufficiently precise definition could be achieved by identifying those who are both members of the Facebook group and protesting as defendants. Defendants could also be protected against the harm from being included in the order by narrowing the category of unlawful behaviour.
23. Mr Clark, appeared on behalf of Acorn UK, a national campaigning organisation that had been served with the proceedings. He submitted, among other matters, that:

- i) The evidence suggested that the protests were lawful. There was insufficient evidence of illegality.
- ii) The order sought was too broad. The order sought would also be a disproportionate interference with the right to protest.
- iii) There is no need for an injunction as damages would be an adequate remedy for the Claimant.

The approach to interim injunctions where human rights are in issue

24. The approach to interim injunctions is well known and was set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. The judgment in *American Cyanamid* makes it clear that:
 - i) The first issue for the Court is whether a claimant has any real prospect of succeeding in his claim for a permanent injunction at the trial. If she has, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought (p408C).
 - ii) The primary issue when the considering balance of convenience is whether damages would be an adequate remedy for the claimant and when whether the defendant can be adequately compensated for the losses caused by the injunction (p408C).
 - iii) ... *It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.* (p408F)
25. The first complicating factor in the context of an application such as this which seeks to restrict protest is that the right to protest is protected by articles 10 and 11 of the European Convention on Human Rights ('articles 10 and 11'). Even where protest takes the form of intentional disruption of the lawful activities of others, as it did here, such protest still falls within the scope of articles 10 and 11 (*Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 at [100]).
26. The approach to restrictions that interfere with articles 10 and 11 was recently reviewed by the Supreme Court in *Ziegler*. A majority (consisting of Lord Hamblen and Lord Stephens endorsed by Lady Arden at [99(2)]) gave clear guidance on the approach to proportionality where articles 10 and 11 are in issue. This judgment establishes the following principles among others:
 - i) A demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic. It is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 is not to be deprived of its substance [68]

- ii) Factors that are relevant to proportionality include the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public. [72]
 - iii) The location of a protest may be important [76].
 - iv) The organisers of a protest have autonomy to determine the manner in which they conduct a protest [77].
27. In light of the approach in *Ziegler* and the obligations imposed by articles 10 and 11, it appears to me that where those articles are in issue that has several consequences when applying *American Cyanamid*:
- i) Damages are highly unlikely to be an adequate remedy where a defendant is at risk of suffering a breach of articles 10 and 11. Firstly, as *Ziegler* makes clear, the right to protest must include a right to determine when to protest. The Supreme Court was clear that the organisers of a protest have autonomy to determine the manner in which they conduct a protest. For an example, the time at which a protest takes place can be important. An injunction may delay protest. Secondly, the Court is generally subject to a duty to avoid breaches of articles 10 and 11. Its duty is not merely to award damages for a breach (e.g. *Anufrijeva v Southwark London Borough Council* [2004] QB 1124 at [52] – [53]). That suggests that a wide-ranging approach to balance of convenience is required (assuming that damages are not adequate remedy for the Claimant).
 - ii) Consistent with the need for a wide-ranging approach to balance of convenience, the ultimate issue is whether it has been established that the interference with article 10 and 11 rights resulting from an interim injunction is proportionate. The burden will be on the person seeking to justify the interference with article 10 and 11 rights to demonstrate proportionality (e.g. *R (Quila) v Secretary of State* [2012] 1 AC 621 at [44]). That means that the person seeking the interim injunction will need to demonstrate proportionality.
 - iii) It appears to me that at an interim stage the strength of the case that defendants have behaved unlawfully must be relevant. Although the Court will need to be aware of the fact that will not have heard the full evidence when it determines whether to make an interim injunction, the stronger the case that there has been unlawful conduct the stronger the justification for an injunction (see, by analogy, *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 at [22]). As a consequence, the fact that a claimant has any real prospect of succeeding in his claim for a permanent injunction at the trial is not an end of the matter.
28. The second complicating factor is the fact that the Defendants in these proceedings are unknown. It is well established that there is no objection in principle to an interim injunction being issued against unknown persons. However, the recent judgment of the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 makes 2 points of principle that are highly relevant.

29. Firstly, it is of particular importance to note that the Court of Appeal held in *Canada Goose* that:

The 'persons unknown' must be defined in the originating process by reference to their conduct which is alleged to be unlawful. [82(2)]

... the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as 'persons unknown', must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order. [82(3)]

30. It appears to me that the matters set out in the paragraph above are important for 2 reasons:

- i) Interim injunctions potentially cause persons to be imprisoned for conduct that would not normally result in imprisonment. As a consequence, it is important that people have behaved in a manner that justifies them being subject to the injunction.
- ii) People need to be made aware of the fact that they are subject to an injunction if it is to be effective. The most important reason for service is to alert relevant people to court documents (*Abela v Baadarani* [2013] 1 WLR 2043 at [37]).

31. Secondly, in *Canada Goose* the Court of Appeal also held that:

The terms of the injunction must be sufficiently clear and precise as to enable persons potentially expected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so. [82(6)]

32. The requirement that an injunction must be sufficiently clear and precise reflects the fact that any interference with articles 10 and 11 must be in accordance with the law. As is well known:

*... a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. (*Sunday Times v United Kingdom* (1979-80) 2 EHRR 245 at [49]).*

33. The case law set out above suggests that the approach that the Court should adopt is:

- i) The Court should determine whether there are serious issues to be tried. If there are not, that is an end of the matter. Because there will not be serious issues to be tried if there is no prospect of illegality being established, it is necessary to

consider at this stage whether articles 10 and 11 are engaged and whether they provide a clear defence.

- ii) Assuming that there are serious issues to be tried, the Court must then determine the extent to which damages are an adequate remedy. In determining that issue, it will take account of the fact that damages are unlikely to be an adequate remedy for an interference with article 10 and 11 rights (see above).
- iii) Assuming that damages are not an adequate remedy, the Court must determine the balance of convenience. Again articles 10 and 11 will need to be considered as it will be unlawful to make an order in terms that amount to a disproportionate interference with those articles. In considering that issue it will be necessary for the Court to consider the strength of the Claimant's case.
- iv) Assuming that it is proportionate to make some order, the Court will need to ensure that it is sufficient precise to comply with the requirements set out in *Canada Goose* and *Sunday Times*.
- v) The Court will also need to identify the defendants in terms that comply with the requirements set out in *Canada Goose*.
- vi) Finally, the Court will need to consider issues of service in light of the terms of the order.

Findings

34. It appears to me to be clear that there are serious issues to be tried. Although there are undoubtedly points that can be made about the evidence of the Claimant, I cannot see any sensible basis upon which it can be said that a court will be bound to reject the Claimant's evidence. A court at trial will have the advantage of seeing the Claimant's evidence tested. If the Claimant's evidence were to be accepted, it appears to me that it follows that the Court would be highly likely to find that there has been some unlawful conduct. I highlight the following behaviour as being behaviour for which no lawful justification is likely to exist:
- i) Entering private property and threatening to fight those who are lawfully working on that property.
 - ii) Graffitiing private property. The fact that the graffiti could apparently be easily removed as it appears to have been created using chalk does not undermine the basic point that there was no legal authority for the graffiti.
 - iii) Spitting and throwing eggs at private property.
35. It appears to me to be clear that articles 10 and 11 are engaged by much or all of the conduct alleged. It is clear that the behaviour alleged forms part of a protest about the treatment of Ms Navickaite by the Claimant. However, it appears to me that none of the conduct describe in the paragraph above is protected by articles 10 and 11. Assuming (without deciding) that those articles are engaged by restrictions imposed on the conduct in issue, it appears to me that it is plainly proportionate to prevent that behaviour:

- i) The conduct alleged amounts to a substantial interference with the Claimant's property rights.
 - ii) The conduct is likely to cause very significant distress. For example, spitting is likely to cause particularly high levels of distress in the context of the COVID-19 pandemic.
 - iii) Prohibiting the conduct alleged is unlikely to have a significant impact on the ability of protestors to get their message across to the public in general and the clients of the Claimant in particular.
36. It appears to me that damages are unlikely to be an adequate remedy for either party, I have reached this conclusion for the following reasons:
 - i) Although I have concerns that the true motive for these proceedings may be the impact on the Claimant's business, I cannot completely disregard the evidence of the impact of the protests on the Claimant's staff. Although I have some doubts about the extent to which distress is the real motive for this application (see below), the evidence of the Claimant's staff cannot be discounted at this stage. I accept that any distress they suffer will be difficult to compensate.
 - ii) For the reasons set out above, it appears to me that any interference with articles 10 and 11 cannot be adequately compensated. I would emphasise 2 matters. Firstly, the protests relate to an ongoing state of affairs. That implies that delaying the protests is a significant interference with articles 10 and 11. Secondly, the location of the protest is obviously likely to be important to the protestors. Protest outside the Claimant's offices is likely to be regarded as an effective way of conveying the protestors' message.
37. In light of the matters above, it is necessary to consider the balance of convenience as well as the proportionality of any interference with articles 10 and 11.
38. In the judgment above, I have identified alleged behaviour that is clearly unlawful. It appears to me that it is unlikely that all or much of the other conduct alleged is unlawful. That is because there is insufficient material to demonstrate that it is not protected by articles 10 and 11 (even assuming that the Claimant's evidence is accepted as credible). I have reached this conclusion for the following reasons:
 - i) There is a clear body of evidence that suggests that protests have been conducted in a lawful manner. For example, the video and the pictures that I have seen show apparently responsible and lawful protests. I am sure that the Claimant found that the protests to be disruptive but, as *Ziegler* makes clear, that does not mean that they are not protected.
 - ii) The particulars of the conduct provided by the Claimant is limited and does not contain the detail required by *Ziegler*. I accept that this is an application for interim relief. However, it is difficult to see how proportionality can be assessed when I have not been provided with information about matters such as the duration of the protests and the precise behaviour alleged. For example, it is alleged that on 29 March 2021 protestors would chase away people while shouting 'Don't rent with Horizon, they threaten you'. However, I have no

details of what is meant by chasing people away. Was violence threatened? What happened if someone insisted on entering? Merely shouting slogans may well be lawful.

- iii) It is significant that there is some evidence relied upon by the Claimant does not demonstrate the behaviour that it is alleged to demonstrate. For example, it is alleged that protestors 'leaned' on cars belonging to the Claimant's staff. However, the photographs that are said to show that do not in fact show it. Consistent with that, there is no evidence that the Claimant's property was graffitied on 23 June 2021.
 - iv) It is also significant that there is no evidence to explain why there are no photographs or videos of the most serious behaviour alleged. The Claimant's staff have demonstrated a willingness to take photographs and video. However, there are no photographs or video of people being chased away, or of people spitting at the property and throwing eggs at it. I do not accept the submission of Mr Ingham that things happened too quickly to enable the taking of pictures. There is no evidence of that. There is no reason why video could not have been taken of protestors chasing visitors if this was repeated conduct and there is no reason why photographs could not be taken of eggs thrown at the offices.
39. The matters above are not the only matters relevant to proportionality. It also appears to me that the following matters are also of some relevance:
- i) There has been significant delay in applying for interim relief. The most serious incident is said to have been on 29 March 2021. In addition, the Acorn Facebook post dated 6 February 2021 suggests that legal action was being threatened as early as then. However, no action was taken until very recently. I am told the Claimant was awaiting police action. There is, however, in the evidence very little detail of the steps taken by the police. Obviously complaint is made about more recent events but these seem to be far less serious and unlikely to unlawful. I have already addressed the graffiti on 23 June 2021. In relation to the use of a loud hailer on 26 May 2021, it is difficult to see how that could be demonstrated to be unlawful without additional evidence. The impression I am left with is that this application was prompted by commercial concerns resulting from the fact that the Claimant is approaching its most busy time of the year. That suggests that the harm that will be caused to the Claimant by waiting for the matter to proceed to trial is not that great. In reaching that conclusion I have noted the evidence of distress suffered by the Claimant's staff. However, this carries little weight when it is not backed by any medical evidence showing psychological harm and did not prompt a rapid application following the incident on 29 March 2021.
 - ii) It appears to me that it will be very difficult if not impossible to formulate an order that prohibits behaviour other than that already identified as being unlawful without the term of the order being excessively broad. *Canada Goose* and *Sunday Times* make it clear that an order must be sufficiently precise to enable a person subject to it to understand what is prohibited. If it is not, there is a risk that people will believe that the order prohibits conduct protected by articles 10 and 11. However, it is very difficult in practice in this case to further define the limits of unlawful protest. For example, complaint is made about the

use of a loud hailer. The draft order suggested that the Court should prohibit use of ‘a loud hailer or other means of voice projection within the Injunction Area’. However, obviously noise can be an important part of protest. Shouted slogans can be necessary so that reasons for the protest are understood. As *Ziegler* makes clear protest can involve disruption. All of these matters mean that the use of a loud hailer will be protected by articles 10 and 11 in some circumstances. That does not mean that there are not limits on what is permissible. The problem is defining what is permissible when the evidence about what has occurred is limited and when argument has been limited.

40. Taking account of the matters above, it appears to me that I should issue an injunction preventing the following behaviours that I have already found to be clearly unlawful (assuming that an order can be drafted that complies with the requirements of *Canada Goose*):
- i) Entry on to the Claimant’s property and threatening to fight those who are lawfully working on that property.
 - ii) Graffitiing the Claimant’s property. For the avoidance of doubt, this does not extend to graffitiing the pavement. The Claimant is not the owner of the pavement and so I do not accept that a tort has been committed against the Claimant by chalk slogans being written on the pavement. Mr Ingham argued that the process of graffitiing has disrupted access to its property. However, there is no evidence to support this claim.
 - iii) Spitting and throwing eggs or other projectiles at the Claimant’s property.

However, it appears to me that it would be disproportionate to make an order prohibiting behaviour other than the behaviours described above in light of the matters set out above.

41. It appears to me that the behaviour described in sub-paragraphs a – c in the paragraph above can be identified in an order that is sufficiently clear to comply with the requirements of *Canada Goose* and *Sunday Times*. The behaviour described is clearly particularised and will be readily understood by protestors.
42. The issue that caused me greater concern was the identification of the defendants. Mr Ingham argued that the defendants could be identified as being people who are both members of the Acorn Facebook group and protesting. However, it appears to me that that definition plainly fails to comply with the requirements of *Canada Goose*. There is no reason to believe that all people who were both members of the Acorn Facebook group and protesting have necessarily broken the law. As noted above, much of the evidence of protests that I have seen suggests that they were generally lawful.
43. It appears to me that there is one defendant who can be clearly identified. The man in a high-visibility vest who is alleged to have ran into the Claimant’s office and threatened a fight is identified in a photograph. There is no reason why that photograph cannot be used to identify him in the order.
44. In relation to other defendants, it appears to me that the only way of identifying them is to adopt the approach in *Canada Goose* and identify the defendants by the conduct

alleged. During the course of the hearing, I did ask Mr Ingham whether such an approach would make the order unenforceable. I was concerned that it might be difficult to prove who had behaved unlawfully in the past. However, Mr Ingham argued that that was no reason to decline to make an order. I agree. It might be possible to prove past misconduct. An order that is difficult to enforce is better than no order.

45. Mr Ingham sought a further restriction upon the definition of defendant so that defendants are only those who have behaved unlawfully who are also members of the Acorn Cardiff Facebook group. It appears to me that the restriction sought may reduce the utility of any order for the Claimant as it will make it harder to prove a person is a defendant. However, it appears to me that there is no basis for the Court issuing an order that is wider than sought by the Claimant.
46. Service of the application notice and/or giving notice of the hearing involved the following steps being taken:
 - i) Sending an e-mail addressed to cardiff@acorntheunion.org.uk. This was on the basis that the Claimant had contact with an individual purporting to represent the Cardiff Acorn group using this e-mail address.
 - ii) By providing the Cardiff Acorn Facebook page with details of how to access the application notice and the hearing.
 - iii) By placing the documents in a clear folder on the external window of the Claimant's premises.

It appears to me that this is satisfactory service. I am told that the Claimant has no social media presence. In those circumstances I cannot identify other steps that should have been taken and that would have been likely to have created greater awareness of the proceedings.

47. Since the service of the application notice, the Claimant has identified a further person to whom the interim injunction might apply and/or who might have contact with people to whom the interim injunction applies. That person should be served as well.
48. Following the hearing, Mr Ingham and Mr Clark have agreed an order that I have approved as I believe it is consistent with this judgment.