Neutral Citation Number: [2021] EWHC 2648 (QB)

Case Nos: QB-2017-005202
QB-2019-000616
QB-2019-002737
QB-2019-002738
QB-2020-002112

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 October 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(6) London Borough of Havering **(26) Nuneaton & Bedworth Borough Council &** **Warwickshire County Council** **(28) Rochdale Metropolitan Borough Council** **(33) Test Valley Borough Council** **(34) Thurrock Council**	**Claimants**
- and -	
(1) Persons Unknown **(2) Other named Defendants**	**Defendants**
- and -	
(1) London Gypsies and Travellers **(2) Friends, Families and Travellers** **(3) Derbyshire Gypsy Liaison Group**	**Interveners**

- -

Caroline Bolton and Natalie Pratt (instructed by **Sharpe Pritchard LLP and LB Barking & Dagenham Legal Services**) for the **Claimants**
The Defendants did not attend and were not represented
The Interveners did not attend and were not represented

Hearing dates: 28-30 July 2021

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Approved Judgment

I direct that 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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THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. On 12 May 2021 ([2021] EWHC 1201 (QB) ("the May Judgment"), I handed down judgment in relation to common issues of principle that had arisen for determination in a cohort of claims in which Traveller Injunctions had been granted (see [4]). I adopt the same definitions in this judgment. The numbers allocated to the Claimants in this judgment reflect the number of the relevant Claimant in the Cohort – see Appendix 1 to the May Judgment. In that judgment, I identified several claims in which interim injunctions had been granted that had not been progressed to a final hearing, arguably amounting to an abuse of process (see [86]-[101]).

2. On 24 May 2021, consequent upon the May Judgment, I directed that, in the claims brought by LB Havering, Nuneaton & Bedworth BC and Warwickshire CC, Rochdale MBC, and Thurrock Council, the Court would hold a hearing to decide whether the interim injunction that each local authority had been granted should be discharged on the grounds that the failure to progress the claims to a final hearing following the grant of an interim injunction was an abuse of process. Each local authority was given an opportunity to file evidence relevant to the abuse of process issue and a hearing was fixed. The claim brought by Test Valley BC was listed to be heard at the same hearing, but this was simply for directions to be given in that claim.

The progress of the respective claims

3. Before turning to the chronology of each action, it is important to note what was happening in the general area of Traveller Injunctions. On 17 May 2019, Leigh-Ann Mulcahy QC, sitting as a Deputy High Court Judge, had given her important judgment refusing to grant a final Traveller Injunction against "Persons Unknown" in the LB Bromley case ([2019] EWHC 1675 (QB)). The Claim brought by LB Bromley had been solely against "Persons Unknown" and not any named defendants.

4. The Deputy Judge granted permission to appeal, and LB Bromley filed an Appellant's Notice on 6 June 2019. Several parties were given permission to intervene in the appeal, including the First Interveners in the Cohort Claims, Liberty, and several local authorities from the Cohort Claims including Thurrock Council. The Court of Appeal heard argument on 3 December 2019 and judgment was handed down on 21 January 2020 ([2020] PTSR 1043).

(1) LB Havering

5. The Part 8 Claim Form was issued on 31 July 2019. It named 105 individual defendants and "Persons Unknown", without any description. Not only did the Claim Form fail properly to describe the "Persons Unknown" it also did not comply with CPR Part 8.2A(1) and the requirements of Practice Direction 8A §§20.4-20.6 as to proper identification of the Persons Unknown Defendants (see May Judgment [49]-[52]). The Claim Form contained the following "details of claim":

> "1. The Claimant seeks an interim and final injunction pursuant to s.222 of the Local Government Act 1972, and/or s.187B of the Town & Country Planning Act 1990, and/or s.1 of the Anti-Social Behaviour, Crime and Policing Act 2014, with a power of arrest attached to the appropriate provisions of the Court order.

2. The Claimant owns a number of public open spaces, car parks and other sites within its Borough and has suffered a number of unauthorised encampments throughout its Borough within the last 3 years as detailed in the witness statement evidence. In addition, a number of privately owned commercial, industrial and other similar sites have also been the subject of unauthorised encampments in breach of planning control. The details of these and the impacts suffered by local businesses are contained in the witness statements filed in support of this claim.

3. The London Borough of Havering is a medium sized London Borough and has experienced significant issues associated with unauthorised encampments, including fly-tipping, anti social behaviour, violence, public order and property damage. The Claimant has experienced environmental and health risks as a result.

4. The encampments are having a detrimental impact on the borough's residents and businesses, as well as the enjoyment of public open spaces and sporting grounds. Existing powers are being undermined and are ineffective. The law is being flouted repeatedly and the Claimant has experienced significant expense both in legal costs and clear up costs. Service of s.77 CJPOA 1994 orders only leads to encampments moving from one site to the next and has not deterred the unauthorised encampments from forming further encampments within the Borough.

5. For the reasons set out in the witness statements, it is necessary and expedient for the promotion and protection of the interests of the inhabitants of Havering and to prevent further apprehended breaches of planning control and to prevent further acts of anti-social behaviour to seek an injunction to prevent repeated establishment of unauthorised encampments.

6. It is necessary to bring these proceedings against persons unknown and to deter any unauthorised encampments on specified sites by such persons. It is not possible to identify all of the individuals who have formed part of these unauthorised encampments, many of whom are not prepared to identify themselves. The draft order attached to this claim form recognises that a more limited order should be sought against persons unknown. Accordingly, the order sought confines the scope of the injunction against persons unknown to specified areas within the Borough."

6. Prior to the issue of the Claim Form, on 31 July 2019, LB Havering was granted, without notice, the following orders relating to service of the Claim Form and other documents ("the Service Order"):

"2. Pursuant to CPR 6.14, 6.15, 6.26 and 6.27 the Claimant has permission to serve the named defendants between 6.30am and 8pm during the week and 7am and 4pm on a Saturday. Copies (as opposed to originals) of the Claim Form and Applications served on a Saturday will be deemed served on the second working day after the date of service and copies (as opposed to originals) of claim forms and applications served after 4pm on a working day shall be deemed to be served on the second working day after the date of service.

3. In the event that the Claimant is unable to personally serve the 1st to 105th Defendants pursuant to CPR 6.14 and 6.15 the Claimant shall be permitted to serve any such Defendants by leaving a copy (as opposed to an original) of the application notice, claim form, draft order and supporting evidence in a clear transparent envelope and affixing the same to a caravan, mobile home or other vehicle, or to the front door of any residential premises which in each case is reasonably believed to be owned or occupied by the said Defendants, or by putting such copy documents thought the letter box of any such residential premises. Any such copy documents served by this method will be deemed served the second working day after service of the application notice and claim form.

4. The Claimant shall be permitted pursuant to CPR 6.27 to serve any evidence in support of the Claim and application for an interim injunction by USB memory stick and/or by providing a digital link to the evidence contained on the Claimants website and shall provide any Defendant that requests copies of the same within 2 working days of receipt of such request, and shall have a copy of all evidence relied upon in these proceedings available for inspection at the Havering Town Hall Main Road, Romford RM1 3BB, between the hours of 10am and 4pm Monday to Friday excluding public holidays.

5. The claim form and application shall be deemed served on persons unknown (106th Defendant) pursuant to CPR 6.14, 6.15. 6.26 and 6.27 by serving a copy (as opposed to an original) of the claim form, application notice and draft order on all sites identified in Schedule 2 and 3 of this order by affixing them in a prominent place on the Land with a notice to persons unknown that a copy of the supporting evidence can be obtained from the Council offices at Havering Town Hall Main Road, Romford RM1 3BB between the hours of 10am and 4pm Monday to Friday, excluding public holidays, and by providing a digital link to a copy of the evidence on the Claimant's website.

6. The Defendants shall acknowledge service of the claim form 21 days after the date of deemed service and file any written evidence in support of the Defence by the same date."

7. As noted in the May Judgment (see [42]) an order for alternative service was granted in similar terms to LB Barking & Dagenham. LB Havering's order is also defective as it too does not state the date on which the Claim Form was deemed to be served on the 106th Defendant "Persons Unknown". LB Havering has not yet taken any steps to attempt to regularise this position.

8. Pursuant to the Service Order, LB Havering sent a letter to each of the named Defendants on 12 August 2019:

> "… Havering Council ('the Claimant') has commenced legal proceedings against 106 named defendants and persons unknown, for an order in the terms enclosed with this paperwork. The Claimant made its application on 31 July 2019 on which date it also applied for an order for alternative service, which is enclosed.
>
> The Claimant also made an application for an on-notice interim injunction, and that application will be heard on 10 September 2019 at 10.30am at the High Court

of Justice, Royal Courts of Justice, Strand, London. The Court will, decide whether to grant an interim injunction on that date, and will also provide a date for the hearing of the substantive claim for a final injunction.

If you wish to partake in these proceedings, you must file and serve an acknowledgement of service and any evidence within 21 days of service of this letter.

Havering Council has identified you as a named defendant within these proceedings based on the enclosed evidence. Please therefore find by way of service upon you, the following:

1. Sealed Service Order/Notice of Hearing … dated 31.7.19

2. Sealed Copy of the Part 8 Claim Form, Particulars of Claim, Draft Order and Schedule.

3. Application for Interim Injunction, Draft Order

4. Application for Alternative Service, Draft Order

5. USB Stick of evidence including:

    a. Witness Statement Bundle

    b. Exhibits Bundle

    c. Police Exhibits Bundle

Copies of the evidence can also be obtained at :

- Havering Town Hall, Main Road, Romford RM1 3BB between the hours of 10am and 4pm Monday to Friday excluding bank holidays; or by visiting

- https://www.havering.gove.uk/encampmentinjunction

If you require a hard copy of any of the above, or if you have any questions regarding these proceedings, please write to us at oneSource Legal Services, 1000 Dockside Road, London E16 2QU or email Legal.Services@oneSource.co.uk."

9. In fact, no Particulars of Claim had been prepared or filed. LB Havering's evidence in support of the Part 8 Claim – provided on the memory stick or via the referenced link to LB Havering's website – when printed out occupies 9 ring binders containing some 3,728 pages. In total, there are 48 witness statements and just short of 3,500 pages of exhibited material. This is a daunting amount of material for anyone to have to consider. I will return to this issue later in the judgment (see [127]-[136] below).

10. LB Havering was granted an interim injunction on 11 September 2019. In the Court's order, the 106th Defendants were described as "*Persons Unknown forming unauthorised encampments within the London Borough of Havering*". No application was (or has been) made to amend the description of the 106th Defendant in the Claim Form. The injunction was expressly granted "*pending the final injunction hearing*". The material terms of the injunction order were as follows:

"The First to Fifth Defendants, the Seventh Defendant, Tenth Defendant, Twelfth Defendant, Fifteenth to the Twenty-Third Defendant, Twenty Fifth to Twenty-Eighth Defendants, Thirty-First to the Thirty-Third Defendants, Thirty-Fifth Defendant, Thirty-Seventh to the Thirty-Eighth Defendants, Forty-First and Forty-Second Defendants, Forty-Fifth Defendant, Forty-Eighth to the Sixtieth Defendants, Sixty-Second Defendant, Sixty-Fourth to Seventy-Third Defendants, Seventy-Sixth Defendant, Seventy-Eighth to Seventy-Ninth Defendants, Eighty-First to the Eighty-Third Defendants, Eighty-Sixth to the Ninety-Seventh Defendants, Ninety-Ninth to the One-Hundred-Fifth Defendants (hereinafter referred to as the 'Named Defendants') are forbidden from:

1. Setting-up an encampment on the Land within the London Borough of Havering unless authorised to do so by the owner of the Land.

2. Setting-up an encampment on the Land within the London Borough of Havering without written permission from the Local Planning Authority, or, planning permission granted by the Secretary of State or in accordance with statutory permitted development rights.

3. Entering and/or occupying any part of the Land for residential purposes (temporary or otherwise) including the occupation of caravans/mobile homes, storage of vehicles, caravans and residential paraphernalia, save for the lawful occupation of a permanent place of residence with planning permission under Use Class C of the Town & Country Planning (Use Classes) Order 1987.

4. Bringing on to the Land or stationing on the Land any caravans/mobile homes other than when driving through the London Borough of Havering or in compliance with the parking orders regulating the use of car parks or with the express permission from the owner of the land.

5. Deposit or cause to be deposited, controlled waste in or on the Land unless a waste management license (sic) or environmental permit is in force and the deposit is in accordance with the license (sic) or permit.

The One-Hundred-Sixth Defendants are forbidden from:

6. Setting-up an encampment on the Land identified on the attached map and list of sites without written permission from the local planning authority, or, planning permission granted by the Secretary of State or in accordance with statutory permitted development rights.

7. From (sic) entering and/or occupying any part of the Land identified on the attached map and list of sites for residential purposes (temporary or otherwise) including the occupation of caravans/mobile homes, storage of vehicles, caravans, and residential paraphernalia.

8. From (sic) bringing onto the Land or stationing on the Land any caravans/mobile homes other than when driving through the London Borough of Havering or in compliance with the parking orders regulating the use of car parks or with express permission from the owners of the land.

9. Deposit (sic) or cause to be deposited, controlled waste in or on the Land unless a waste management license (sic) or environmental permit is in force and the deposit is in accordance with the license (sic) or permit.

10. There shall be a power of arrest attached to prohibitions 1-9 of this Order.

The Land in this order means:

11. For the Named Defendants, all land within the London Borough of Havering as appears within the blue marked outline on the attached map at Schedule 2 of this Order.

12. For the One-Hundred-Sixth Defendants (Persons Unknown) all the land marked on the map at Schedule 2 of this Order and identified by the key to the map and numbered 1 to 279, further details of which are on the list at Schedule 3 of this Order.

11. The injunction order recorded that the claim was discontinued against the 8th, 9th, 11th, 13th, 14th, 29th, 30th 34th, 36th, 39th, 47th, 61st, 63rd, 74th, 75th, 77th, 80th, 84th, 85th and 98th Defendants, leaving the Claim against 85 named defendants, and "Persons Unknown".

12. The effect of the interim injunction order was to impose the prohibitions in Paragraphs 1 to 5 on the named Defendants in the whole of the London Borough of Havering. For Persons Unknown, the restrictions imposed by Paragraphs 6 to 9 applied to 279 designated sites shown on the map and listed in Schedule 3. The scale of the map meant it was useful only as a rough guide with Schedule 3 providing a list of sites that were covered by the injunction.

13. As regards the "Persons Unknown", whatever the terms of the Claim Form, the interim injunction purported to bind newcomers: i.e. anyone who formed an unauthorised encampment within LB Havering. The injunction order was posted at each of the 279 sites. The interim injunction order also contained a power of arrest directed at both the named Defendants and "Persons Unknown". No application for a power of arrest was included in the Claim Form or the Application Notice (contrary to CPR 65.9 – see [79]-[80] May Judgment) and I can find no reference to the power of arrest in the supporting evidence. I discharged this power of arrest in relation to "Persons Unknown" by an order made on 24 May 2021. LB Havering has taken no steps to attempt to regularise the position as regards the named Defendants.

14. The interim injunction order contained no return day, nor any directions for a further hearing. That was unfortunate. Practice Direction 8A §6.2 envisages that, where a date for the final hearing is not fixed, directions should be given "*for the disposal of the claim as soon as practicable*" after the period for acknowledging service has expired. The effect of the Court not giving (and the Claimant not seeking) any directions was that control of the proceedings was surrendered entirely to relevant the local authority. As a matter of practical reality, having been granted an interim injunction substantially in the terms of the final order it was seeking, there was no impetus or incentive for the local authority to progress the proceedings towards a final hearing.

15. Adam Rulewski is a barrister employed by the London Borough of Barking and Dagenham. He acted for his own local authority but also for LB Redbridge,

LB Havering, and Thurrock Council. He has filed a witness statement, dated 19 July 2021, explaining the steps taken by LB Havering and Thurrock following the grant of an interim injunction to each local authority. On behalf of LB Havering, Mandeep Mehat has also filed a witness statement, dated 19 July 2021. Mr Rulewski had also acted for LB Barking and Dagenham (Cohort Claim 1) and LB Redbridge (Cohort Claim 11) who had obtained Traveller Injunctions, by way of final order, on 30 October 2017 and 12 November 2018 respectively. In both claims an interim injunction had been granted and the time taken to progress the claim to a final hearing was 7 months and 5 months respectively. Across the Cohort of 38 claims, 17 claims were progressed to a final order. The average time taken between interim and final orders was just short of 4 months.

16. Mr Rulewski stated in his witness statement that "*the intention of Thurrock and Havering was to … aim to go from interim to final within anywhere between 7 months and 1 year*". It is not clear to me – and Mr Rulewski does not explain – why such a lengthy period was necessary or thought appropriate. Prior to the interim injunction application, no defendant had filed an acknowledgement of service (or any evidence). Given the requirements to serve and file the evidence in support of the claim at the same time as issuing the Part 8 Claim Form (CPR 8.5(1)-(2)), a failure to progress the claim expeditiously in these circumstances requires some explanation.

17. In his witness statement, Mr Rulewski states that the claims brought by both Thurrock and LB Havering "*were being worked on after the grant of the interim injunction*". He added:

> "Thurrock and Havering also took part in the intervention in ***Bromley***, and took the decision to await the Court's judgment before taking further steps in their litigation. Having intervened in the proceedings, it would have been nonsensical to proceed to final hearing, knowing that the Court of Appeal was going to give guidance on the proper process when seeking one of these injunctions…"

18. LB Havering did not, strictly, intervene in ***LB Bromley***, but Mr Rulewski has fairly pointed out that there was substantial commonality of issues between the cases of LB Havering and Thurrock Council.

19. Ms Mehat states in her witness statement that she and Mr Rulewski became aware of the ***LB Bromley*** case in November 2019. In the period following the grant of the interim injunction to LB Havering, Ms Mehat said that she "*regularly kept in contact [with Mr Rulewski] to progress outstanding matters in respect of the preparation of the case for final hearing*". As an example, she stated that she sought to progress obtaining further evidence from the police in relation to outstanding checks with the police national computer. Ms Mehat exhibited a "billing report" from September 2019 to July 2021 showing the time spent on the case. Whilst this document appears to show that there was activity on the case throughout the life of the claim, apart from the specific matters which I identify, it is impossible to work out what was being done.

20. Ms Mehat has exhibited selected emails and correspondence following the Court of Appeal judgment in ***LB Bromley*** on 21 January 2020. On 4 February 2020, Rob Harper, LB Havering's Interim Enforcement Group Manager, sent an email to Ms Mehat:

> "Can you please provide an update around the full injunction hearing? I am aware the Appeal Court allowed the challenge against LB Bromley – are there any implications for our application from the 'enshrined freedom' of movement aspect and provision of 'adequate safe' sites?...
>
> 9 am tomorrow (5th) CP Review for which I will need an indication on estimated Legal costs for the remainder of this financial year to revise our forecast accordingly."

21. Ms Mehat responded the same day:

> "I have recently received the full judgment for the Bromley case which I have attached for your information. The guidance is at the end and although the judgement is generally positive for the Council, there does appear to be a focus on whether local authorities have made attempts to provide alternative provision/transit sites for travellers before taking injunctive proceedings. I think we have done enough already but I am reviewing whether we need to add in any further evidence of this ahead of the final hearing.
>
> In the meantime Adam has been liaising with Vicki to finalise the police evidence so that this is hopefully ready by the end of this month. Once this is ready we intend to apply for the final hearing to be listed before the East[er] Break.
>
> Apologies for the delay on costs – I am just sorting out the correct costs for the process server as there were some previous issues. I will aim to have the costs estimate ready by this evening so that you have this ready for your meeting tomorrow."

22. No further correspondence between Ms Mehat and Mr Harper has been disclosed by LB Havering.

23. On 9 March 2020, the First Intervener wrote to LB Havering asking it to reconsider the injunction it had obtained and any the continuation of further proceedings in light of the Court of Appeal's decision in ***LB Bromley***. Further follow up emails were sent on 3 April, 15 September and 28 September 2020. LB Havering did not respond to the letter or any of the chasing emails.

24. On 10 March 2020, Ms Mehat emailed Mr Rulewski, in an email titled "*traveller injunction*":

> "Can you let me know which days you will be in … to complete the prep for the above. I am conscious of time and Noreen is also off on leave at the end of this month for about 2 and a half weeks."

25. Mr Rulewski responded that same day:

> "I can come in next Tuesday if that works? I am [working from home] this week as picked up some bug from these kids parties… On the mend now though so will be all good for next week."

26. Ms Mehat replied on 16 March 2020:

> "Tuesday is fine – only come in if you are feeling better. I think we need to plan ahead in case offices/courts need to close given the issue of the Corona Virus. I think we need to check with high court if they are moving listings before easter – can we delay listing to start of June perhaps?
>
> I did receive a letter from the charity/NGO representing the travellers to reconsider applying for final injunction given the Bromley decision… I will dig this out if you are still in tomorrow…"

27. No further emails, correspondence or file notes have been disclosed between March 2020 and a letter, sent to LB Havering on 5 October 2020, from the Community Legal Partnership ("CLP"), representing the First Intervener. CLP referred to LB Havering's failure to respond to the letter of 9 March 2020 from the First Intervener (or to any of the chasing emails). CLP noted the Court of Appeal's decision in ***LB Bromley*** and also drew LB Havering's attention to the decision of the Court of Appeal in ***Canada Goose UK Retail Ltd -v- Persons Unknown*** **[2020] 1 WLR 2802**. CLP asked for confirmation that, in light of those decisions, LB Havering would be withdrawing its claim. CLP also referred to a decision in ***LB Enfield -v- Persons Unknown*** **[2020] EWHC 2717 (QB)**, another of the Cohort Claims, on 2 October 2020.

28. On 16 October 2020, the Order was made in all the Cohort Claims, gathering the Claims together and directing a case management hearing on 17 December 2020.

29. On 19 October 2020, Ms Mehat responded to CLP. She apologised for the failure to respond stating that they had been "*very busy dealing with COVID-19 related matters*". She did not engage with any of the points raised by CLP (or the First Intervener) and stated, simply, that LB Havering would be "*listing this matter for a final hearing to apply for a final Borough Wide Injunction*".

30. On the evidence that has been provided by LB Havering, the position appears to be as follows:

    i) After obtaining the interim injunction on 11 September 2019, LB Havering failed to progress the matter to a final hearing or to seek any directions from the Court to list the claim for a final hearing at any stage before the Court finally made the Order on 16 October 2020, gathering the claim as one of the Cohort Claims.

    ii) LB Havering (and Thurrock Council) unilaterally decided to await the outcome of the ***LB Bromley*** case in the Court of Appeal. Had it been asked, the Court may well have agreed that this was a sensible course, but had the local authorities sought directions postponing the final hearing until determination of the Court of Appeal, the Court would have fixed a timetable to ensure that the case came back before the Court promptly after the Court of Appeal's decision was available.

    iii) Although Ms Mehat appears to have been conscious of the need to press on with the litigation, and in early February 2020 she appeared to be working to a timetable to bring the claim to a final hearing before Easter 2020, still no steps were taken to bring the matter back to Court.

iv) Having (unilaterally) decided to delay progressing their claims to a final hearing to await the Court of Appeal's decision in ***LB Bromley***, as I noted in the May Judgment ([99]), the failure promptly to progress the matter to a final hearing, or to seek any directions from the Court to get the claim to a final hearing, after the ***LB Bromley*** decision was even more serious. When it was handed down on 21 January 2020, the Court of Appeal's decision in ***LB Bromley*** raised (at least) serious questions as to the terms of the interim injunction that LB Havering had been granted. As against the named Defendants, LB Havering had obtained a borough-wide interim injunction. Injunctions of such width had been criticised as "*inherently problematic*" by the Court of Appeal in ***LB Bromley*** ([105]). The later decision of the Court of Appeal in ***Canada Goose*** raised further questions about whether final injunctions against "Persons Unknown" were available and/or effective. On the evidence presented by LB Havering, it appears to have done little, if anything, to progress the matter to a final hearing during 2020. If, as I have been told, work continued to be done on the case, it has produced nothing representing the fruits of its industry and certainly nothing which could justify a delay of some 10 months. It was not until the Court made the directions order of 16 October 2020 that any directions were made in the claim.

v) Separately, but additionally, LB Havering ignored and failed to engage with the First Intervener's correspondence.

31. Mr Rulewski has sought to explain the inactivity by LB Havering (and Thurrock Council) on the grounds that both he and Ms Bolton, Counsel instructed by the local authorities, had been unwell in the early part of 2020. Mr Rulewski has also relied upon the disruption caused by the pandemic and the particular strains that it had placed on local authorities. He suggested that the pandemic caused a "*total cessation*" of court hearings for a period. Criminal prosecutions brought by local authorities, he stated, were not restarted until December 2020. I accept that there were serious issues facing local authorities, but the impact of the pandemic (and periods of illness of personnel) cannot explain the total failure of LB Havering to get the matter back before the Court during 2020.

32. The High Court has continued to function during the pandemic, quickly moving to remote hearings. There has been no "cessation" of hearings in the High Court. Indeed, local authorities in the Cohort Claims, that wanted to obtain orders from the Court, appear to have had no difficulty in progressing their claims and bringing their cases before the Court for hearing during 2020:

i) On 15 April 2020, Rugby BC made an application to renew a power of arrest it had been granted in connection with its Traveller Injunction.

ii) On 8 June 2020, Harlow DC and Essex CC issued an Application Notice seeking to "extend" the injunction it had been granted by final order.

iii) On 18 June 2020, Test Valley BC issued a Claim Form (with substantial supporting evidence), issued an application for an interim injunction, and obtained an order for alternative service of its claim.

iv) On 23 June 2020, Canterbury CC issued an application notice seeking to "extend" the injunction it had been granted by final order.

v) On 10 July 2020, Harlow DC and Essex CC appeared before Tipples J at the hearing of their application to "extend" the final injunction they had been granted. Following the Judge's questions about the jurisdiction to "extend" a final order, the local authorities withdrew their application.

vi) On 20 July 2020, a further review hearing took place in the claim brought by Wolverhampton CC, leading to a continuation of its Traveller Injunction.

vii) On 28 July 2020, after a hearing, Test Valley BC was granted an interim Traveller Injunction.

viii) On 30 July 2020, Canterbury CC attended a hearing at which its injunction was extended pending a determination of its application to extend being heard in the Autumn.

ix) On 22 September 2020, LB Enfield issued an application notice seeking to amend its claim and "extend" its final injunction.

33. Against that activity, I reject the suggestion that the pandemic caused such paralysis of local authorities and the Courts that it was impossible to expect any of the Cohort Claims in which interim injunctions had been granted to be progressed towards a final hearing. The reality is that those local authorities in the Cohort Claims, who wanted the assistance of the Court, were ready, willing and able to obtain it. The local authorities with which I am dealing, who had been granted interim injunctions, simply decided that they did not need to prioritise the prosecution of these claims. They were able to do so because: (a) no directions had been made by the Court; (b) no directions were sought by the local authorities; and (c) there were no active defendants to complain about this inactivity.

(2) Nuneaton and Bedworth BC & Warwickshire CC

34. The Part 8 Claim Form was issued on 22 February 2019. It named 53 individual defendants and "Persons Unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth". As against the "Persons Unknown" defendants, the Claim Form failed to comply with CPR Part 8.2A(1) and the requirements of Practice Direction 8A §§20.4-20.6 (see May Judgment [49]-[52])). The "details of claim" given in the Claim Form were substantially in the same terms as that in the claim by LB Havering (see [5] above). The material differences were that Nuneaton and Bedworth BC & Warwickshire CC did not base any part of their claim on s.1 Anti-Social Behaviour, Crime and Policing Act 2014 and did not seek to restrain alleged anti-social behaviour.

35. On 22 February 2019, Nuneaton and Bedworth BC & Warwickshire CC were also granted, without notice, orders relating to service of the Claim Form and other documents substantially in the same terms as that granted to LB Havering (see [6] above) ("the Service Order"). The same defect regarding lack of deemed date of service of the Claim Form on "Persons Unknown" also applies. Nuneaton and Bedworth BC & Warwickshire CC have not yet taken any steps to attempt to regularise this position.

36. I assume, but have not been provided with copies of any letters, that Nuneaton and Bedworth BC & Warwickshire CC duly thereafter served the Claim Form on the named Defendants and Persons Unknown pursuant to the Service Order. Nuneaton and Bedworth BC & Warwickshire CC's evidence in support of the Part 8 Claim, if printed out, occupies 6 ring binders containing some 1,908 pages. The electronic file is 1.25 gigabytes. In total, there are 8 witness statements and around 1,500 pages of exhibited material. I will return to this issue later in the judgment (see [127]-[136] below).

37. Nuneaton and Bedworth BC & Warwickshire CC were granted an interim injunction on 19 March 2019. The injunction was expressly granted "*pending the final injunction hearing*" and the material terms of the injunction order were substantially in the same terms as that granted to LB Havering (see [10] above, even with the same typographical/spelling errors).

38. The injunction order recorded that the claim was stayed against the 14th, 28th, 36th and 37th named Defendants, with the interim injunction therefore being granted against 49 named defendants, and "Persons Unknown".

39. The effect of the interim injunction order was similar to that granted to LB Havering. The named Defendants (with some exceptions) were subjected to a Borough-wide prohibition on encampments and fly-tipping. For Persons Unknown, the prohibitions applied to 141 designated sites shown on the map and listed in a schedule and purported to bind newcomers: i.e. anyone who formed an unauthorised encampment on the restricted sites. The interim injunction order also contained a power of arrest directed at both the named Defendants and "Persons Unknown" expressed to have been made both under s.27 Police and Justice Act 2006 and s.4 Anti-Social Behaviour Crime and Policing Act 2004. No application for a power of arrest was included in the Claim Form or the Application Notice (contrary to CPR 65.9 – see [79]-[80] May Judgment) and I can find no reference to the power of arrest in the supporting evidence. Nuneaton and Bedworth BC & Warwickshire CC have taken no steps to attempt to regularise this position. I discharged this power of arrest in relation to "Persons Unknown" by an order made on 24 May 2021.

40. The interim injunction order contained no return day, nor any directions for a further hearing. The effect and consequences were the same as they were in the claim brought by LB Havering (see [14] above).

41. Philip Richardson is the Director of Democracy, Planning and Public Protection at Nuneaton and Bedworth BC. He has filed a witness statement, dated 19 July 2021, on behalf of both Nuneaton and Bedworth BC and Warwickshire CC, explaining the steps taken following the grant of the interim injunction. Although the statement is made on behalf of both Claimants, the evidence provided by Mr Richardson appears to involve only steps taken by Nuneaton and Bedworth BC. I do not appear to have any evidence of what steps Warwickshire CC took or what role they played in relation to the injunction.

42. Mr Richardson states that his Council had been "*very aware of the need to progress the claim to a final hearing*" and had intended to do so in October 2020. He suggests that the failure to progress the claim to a conclusion was as a result of the Court assembling the claim as part of the Cohort. After the interim injunction had been granted Mr Richardson stated that "*it was agreed*" that it was necessary for a period to be

allowed for representations to come forward form the traveller community either formally in the proceedings or raised directly with the Council.

43. Mr Richardson provided a copy of an email of 25 April 2019 to him from Wendy Davies-White, the Council's solicitor:

> "I have spoken with William (who has also checked with Caroline) to confirm the next stages –
>
> Their view is that we now monitor the situation throughout the summer and update them both in September with a view to applying for the final order in November/December.
>
> If we've had no breaches or only minor breaches it should be a pretty straightforward application. If we have serious breaches we should alert Caroline and William sooner and make sure that we gather good evidence to put back before the Court."

The reference to "William" is to William Rose, the Council's external solicitor at Sharpe Pritchard and the reference to "Caroline" is to Ms Bolton, Counsel.

44. Mr Richardson states that his local authority also considered it "*prudent*" to await the outcome of the appeal in the ***LB Bromley*** case. He added:

> "During this period we continued to liaise with Dawn Dawson, Director of Housing, Communities and Economic Development and Rob Watson the then Private Sector Housing Manager with regards to collating the further evidence for the final order application and the resources and finances that would be required to obtain, serve and implement the final order."

45. He provided various emails demonstrating this activity.

i) On 21 January 2020, Ms Dawson emailed Mr Richardson with the subject "*Final Injunction*":

> "Rob has mentioned that we are looking to go for the final traveller injunction in March this year.
>
> Do you know if the cost is being covered and where from? Also, can you give me any indication of what resources you'll need from Rob Watson's team? I need to know as Rob will be leaving at the beginning of April and he has a project to complete before he goes."

ii) Mr Richardson replied on 22 January 2020:

> "Possibly!
>
> We are awaiting the decision of the Court of Appeal on Bromley LBC's appeal against a refusal to grant a similar injunction. That may determine whether we proceed to a final application or not (at this stage). The hearing was before Christmas, but the decision was reserved and hasn't yet been published.

> I did meet with William Rose in December and he mentioned that Caroline was keen to get an application in. We agreed, however, that it would be sensible to wait the CA's decision.
>
> In terms of costs, we would have similar costs to last time, especially in terms of service. That means an application to issue and seek substituted service; use of process servers to serve the papers and then service of the proceedings followed by (if successful) service of the final order. All very messy, complicated and expensive. However, the longer we leave it, the harder it will become to justify the final order."

46. On 26 February 2020, Mr Rose forwarded to Ms Bolton an email he had received from Mr Richardson following receipt of a letter dated 17 February 2020 from the Third Intervener ("NFGLG"). I have not been provided with a copy of that letter, but it is a safe inference that it was in similar terms to letters sent by the Interveners following the Court of Appeal decision in ***LB Bromley*** asking local authorities who had been granted a Traveller Injunction to confirm that they would not be proceeding with their claim. Mr Rose asked Ms Bolton to provide: (1) confirmation that the interim injunction is "*still in good order*" and that the Council should "*resist any suggestion that it should be set aside/withdrawn/discharged*"; (2) a letter to be sent in reply to the NFGLG; and (3) confirmation that the appropriate course of action was for the Council to seek a final injunction and, if so, whether it was "*simply a matter of issuing an Application Notice for a final Order returnable in say May?*".

47. On 4 March 2020, Ms Bolton responded to Mr Rose's email. Ms Bolton had acted for the Fourth Interveners in the ***LB Bromley*** case in the Court of Appeal: Harlow DC, LB Barking & Dagenham, LB Redbridge, and Thurrock Council. The local authorities were permitted to make written submissions.

> "As you know I was involved in the Bromley case for the Fourth Intervenor. The following needs to be appreciated:
>
> 1. Marc Willers QC for the London Gypsies and Travellers made it clear to the Court of Appeal at the beginning of the hearing that they were not taking issue with the approach taken by the Fourth Intervener to these injunctions. In particular the Fourth Intervener's approach was naming those that a borough-wide order was sought against and justifying each identified site as being either a targeted site or a site of similar nature to those targeted. Further, the Fourth Intervener had a robust EQIA's in place, and the injunction was targeted at behaviour not simply entry on to land. All of my clients injunctions follow this approach, so the Nuneaton injunction does not need to be set-aside or varied and will be fine. This can be covered in a letter to Dr Spencer. It should be noted that this type of letter has been sent to all Councils with an injunction.
>
> 2. The Court of Appeal made clear that in the Harlow type cases an injunction was justified. This was because these injunctions targeted behaviour not simply the fact that travellers were stopping up. I have ensured all my clients injunctions follow the approach we took in Harlow.
>
> 3. We have been making some changes to the injunctions since the First Bromley hearing, just as a precaution, which given the Court of Appeal's

comments in the Bromley case, I suggest Nuneaton should also adopt (this does not require a variation simply a tweak to the draft order at the final hearing and some additional evidence): (I) We have been updating the EQIA between the interim and final hearing and ensuring the EQIA is as robust as possible for the final hearing; (ii) We have been introducing a negotiated stopping policy/tolerance policy to show how we will deal with genuine travellers. This can be a policy that simply allows for stopping on the existing site the travellers pull up on (subject to entering an agreement to abide by certain conditions and behaviour and to limit numbers), or a site that you ask the travellers to move to (with the same agreement in place). This is important as the courts were concerned about the lack of transit sites. This gives a complete answer to that concern, but the policy is at the discretion of the Council who will operate it where the travellers are not causing issues and only where the site is appropriate for stopping or another appropriate site can be identified. I would caution against proceeding to final hearing without this. The Court of Appeal has made it clear that it wants some provision in place to ensure we are facilitating the travellers way of life. The current lack of a negotiated stopping policy does not cause the interim order any issues, but it may cause a final order issues if it's not in place, given the new guidance and the fact that the Court has a broad discretion and is a matter for the judge at the final hearing. I am happy to assist with this policy if required.

4. We will also need an updated statement explaining what has happened since the injunction was granted. We will also need up-to-date details on our general need figures for permanent sites and how we are doing with meeting that need. If I can have these details I will review ASAP. I would also want a clear table explaining justification for each site covered by the order against Persons Unknown. As explained above this can be justified on the basis that it has been targeted or is vulnerable to being targeted, but the basis for inclusion should be clear.

5. Finally, we will need to make an exception in the injunction order for where the travellers have permitted development rights. This does not harm the injunction as permitted development rights can only be exercised with the consent of the landowner, so in reality it makes no difference to the injunction. Further, it only applies in relation to travellers encampments in very limited circumstances on certain land types (it would not have applied to any of the encampments that Nuneaton have experienced to date).

Please let me know if you wish me to prepare the letter to [NFGLG], ideally it would be better to write to her once we have a tolerance/negotiated stopping policy in place (even if it's only informal at present-it will need to be in writing before the final hearing, as the court will be considering matters afresh, but for now an informal approach will be fine)."

48. Ms Bolton had not actually answered the third point which Mr Rose had asked her to address: the timing of the application for a final order. Mr Richardson forwarded Ms Bolton's email internally within the Council shortly after receiving it:

"Caroline's response to the letter from the NFGLG.

> Do we have a policy on temporary stopping places? Can we adopt [Warwickshire CC's] for the sake of expediency?
>
> Rob, can Carol look at preparing an update statement as to what has happened since the making of the Order? I am aware of some incursions, but that the police dealt with them under the order and secured the removal of unauthorised encampments within 24 hours. [Warwickshire CC] have had problems…
>
> The last piece in this is the Local Plan provision. We need to ensure that we can demonstrate a positive direction of travel vis a vis meeting our need, plus the 5 transit pitches currently allowed for in the Local Plan. Katherine is on the case, but we may want to beef this up as an issue with the Local Plan Committee before out application (if we determine to make it) is heard."

49. On 5 March 2020, Mr Watson raised a question about the timescale for the application. Mr Richardson replied:

> "… Timescales are asap, as Caroline would like this in place so that it can be referred to in the reply.
>
> We raised the issue at Informal cabinet yesterday and have the green light to work up a report for submission to Cabinet seeking authority to proceed with the application (this will be on pink). We indicated that we are looking for an order in the next 3 to 6 months. We obviously need to get our ducks in a row, especially the bits raised by Caroline. It might make sense for the report to Cabinet to include approval of the policy at the same time (for completeness). Craig is looking at the funding issue (I said we spent about £100K last time and we should assume the same again given the costs of service and fees)…"

50. Mr Richardson exhibited his report to the "Informal Cabinet" dated 4 March 2020, titled "*Traveller Injunction Update*". It included the following:

> "1. Introduction
>
> > It is now about a year since the Council obtained an interim injunction related to the traveller incursions experienced by the Council between 2016 and 2018. The order granted by the High Court was interim, pending an application for a final order, but it remains in effect until an application is made to have it removed.
>
> 2. Issues
>
> > Officers have been keeping the operation of the injunction under review and the general effect has been positive insofar as the police have demonstrated a willingness to enforce the injunction where applicable. This has reduced the number of incursions throughout 2019 (although not entirely).
> >
> > Because of a legal case that was being considered by the Court of Appeal, no action has been taken to proceed with a final application. This case, involving the London Borough of Bromley, was heard in later December and judgment was issued in January of this year.

> The Court laid down some particular requirements when seeking a Borough-wide injunction, part of which was aimed at ensuring that areas have appropriate provision for travellers. In such circumstances, the chances of a successful application are greater than areas where there is a traveller site provision shortfall. Interestingly, the Court endorsed the making of an order in the case of Harlow, in view of the extreme circumstances being encountered there. By analogy, the same endorsement would apply to this Council's injunction, given the comments by HHJ Straker when making the order that the circumstances were very similar.
>
> Despite this, the Council has now received a letter (see Appendix A) from the National Federation of Gypsy Liaison Groups seeking withdrawal of the Injunction and confirmation that the Council will not seek its renewal (which may refer to an application for Final Order).

3. Proposals

> The cost of obtaining the Interim injunction was in the region of £100,000 and it is anticipated that similar costs will need to be incurred in the application for a Final order. Much of the cost related to the cost of service of documents which, with a mobile community, is always problematic.
>
> Officers have sought advice from Caroline Bolton on the merits of an application for a Final order, anticipating that the Federation may well instruct Counsel to oppose it.
>
> The advice has been requested before this meeting and will be reported orally. However, the initial view is that, having followed the correct procedure (unlike Bromley), the Council should be in a position to pursue the application. If Counsel agrees, she has been asked to settle the letter of reply to the NFGLG and advise on the next steps. Counsel is aware that Cabinet is being asked to consider whether to pursue the final order.

4. Conclusion

> This will be subject to the advice of Counsel

5. Recommendation

> (a) Subject to the advice of Counsel, a response be sent to the NFGLG advising them that the Council intends to pursue an application for a Final order; and
>
> (b) Preparations be made for the application."

51. Mr Richardson states that the conference with Ms Bolton could not be arranged until 23 April 2020 but that, when they met, she gave "*guidance as to what more [the Council] needed to produce ahead of the final hearing*". The Council was satisfied that the injunction it had obtained "*was in line with the Court of Appeal guidance*". Mr Richardson considered that it "*seemed likely*" that the final hearing would be in the Autumn term "*due to a mixture of more being required from the local authority ahead of the final hearing, Counsel still needing to recover, and the fact that the Government had asked us not to evict unauthorised encampments during lockdown*". However,

Mr Richardson stated that "*as a result of the current pandemic… it was not possible to proceed with finishing off the evidence*".

52. In October 2020, Mr Richardson contacted Mr Rose to set up a further conference with Counsel to progress the application. A date was fixed for 24 October 2020. However, prior to that the Council received the Order of 16 October 2020.

53. Nuneaton & Bedworth BC and Warwickshire CC have also provided a copy of a draft witness statement of Carol Ingleston, which was apparently prepared in preparation for the final hearing of the claim. Ms Ingleston is employed by Nuneaton & Bedworth BC as a Technical Officer in the Private Sector Housing Section. Her draft witness statement deals with the history of enforcement of the interim injunction against encampments. In summary, Ms Ingleston explained that the local authority had been able "*to effectively manage unauthorised encampments with the assistance of Warwickshire Police by explaining the implications of remaining on the land in breach of the injunction order*" (i.e. arrest under the power of arrest attached to the injunction order). Ms Ingleston reported that, perhaps unsurprisingly, the threat of arrest had led to a large decrease in both the number and duration of unauthorised encampments. From details given in her draft statement, it appears that persons forming unauthorised encampments were threatened with arrest by the police on 3 May 2019 (5 caravans on Stanley Road), 9 May 2019 (2 caravans at Dunns Close), 6 July 2019 (2 caravans at The Dingle), 23 September 2019 (1 caravan at Beverley Avenue), and 20 December 2019 (1 caravan at Dunns Close). On none of these occasions was any damage caused or any clean-up costs incurred by the local authority. There is no mention in Ms Ingleston's draft statement of any consideration of government guidance on use of enforcement powers by local authorities (see [16] in the May Judgment) or of "negotiated stopping". This may reflect the reality that, when a local authority holds an interim injunction with a power of arrest prohibiting unauthorised encampment on land, the bargaining position in any "negotiation" might be regarded as somewhat one-sided.

54. On the evidence that has been provided by Nuneaton & Bedworth BC and Warwickshire CC, the position appears to be as follows:

    i) After obtaining the interim injunction on 19 March 2019, Nuneaton & Bedworth BC and Warwickshire CC failed to progress the matter to a final hearing or to seek any directions from the Court to list the claim for a final hearing at any stage before the Court finally made the Order on 16 October 2020, gathering the claim as one of the Cohort Claims.

    ii) A significant part of the failure to progress the claim to a final hearing was Nuneaton & Bedworth BC and Warwickshire CC's decision unilaterally to await the outcome of the ***LB Bromley*** case in the Court of Appeal. Had it been asked, the Court may well have agreed that this was a sensible course, but had the local authorities sought directions postponing the final hearing until determination of the Court of Appeal, the Court would have fixed a timetable to ensure that the case came back before the Court promptly after the Court of Appeal's decision was available.

    iii) The delay, however, is not solely explicable by the decision to await the decision in ***LB Bromley***. Nuneaton & Bedworth BC and Warwickshire CC had obtained their interim injunction on 19 March 2019. The first instance decision in

LB Bromley was given on 17 May 2019 and the appeal was heard in December 2019. It appears, however, that Nuneaton & Bedworth BC and Warwickshire CC only took the decision to await the decision of the Court of Appeal before progressing the claim to a final hearing in December 2019 (see 22 January 2020 email – [45(ii)] above).

iv) If Nuneaton & Bedworth BC and Warwickshire CC had progressed their claim properly, then, based on the average in the Cohort, the final hearing would have been heard by July 2019. Without having obtained any directions from the Court, it appears, from the email of 25 April 2019 (see [43] above), that Nuneaton & Bedworth BC and Warwickshire CC adopted a more leisurely timeframe to progress their claim, aiming for a final hearing in November/December 2019. Given the need to serve evidence in support of a Part 8 Claim at the time of issue, there is scant evidence of what they were doing during this period beyond "*monitoring the situation*". This appears to betray a fundamental misconception about what an interim injunction is for (see [46] below).

v) The emails exchanged between Mr Richardson and Ms Dawson on 21/22 January 2020 suggest that resource implications were being considered, but it was at least recognised between them that there was some urgency to get the matter to a final hearing, albeit this was not reflected in the actions ultimately taken. It is, of course, quite legitimate for a local authority to consider carefully whether it should continue to commit resources to the pursuit of litigation. But it is not open to a local authority, that has commenced proceedings and obtained an interim injunction, to delay the proper prosecution of a claim whilst it considers its position. Mr Richardson's report to the "Informal Cabinet", on 4 March 2020, failed to identify that, having commenced proceedings, and obtained an interim injunction, it was the Council's obligation to press the claim towards to a final hearing without delay.

vi) The exchanges in early March demonstrate that insufficient urgency was being adopted by the Council. The statement in Mr Richardson's email of 5 March 2020 was that authority had been given to "*work up a report*" for submission to the full Cabinet seeking "*authority to proceed with the application*" with a timeframe of "*3 to 6 months*". Thereafter, following the conference with Counsel in late April, no steps appear to have been taken either to advance the claim to a final hearing or even to seek the Court's directions. Mr Richardson's evidence as to what Nuneaton & Bedworth BC and Warwickshire CC were doing in the six months following the conference is vague and, beyond Ms Ingleston's draft witness statement, the local authorities have identified in their evidence nothing of substance that was achieved in this period.

vii) Even when it was finally arranged, the further conference with Counsel, fixed for 24 October 2020, was with a view to progressing the claim.

viii) Having (unilaterally) decided to delay progressing their claims to a final hearing to await the Court of Appeal's decision in ***LB Bromley***, Nuneaton & Bedworth BC and Warwickshire CC are open to the same criticism as LB Havering (see [30(iv)] above) for having failed properly to prosecute the claim thereafter. Given Mr Richardson's statement that Nuneaton and Bedworth BC were

> "*very aware*" of the need to progress the claim to a final hearing, it is striking how little was done to do so in the 18 months since the interim injunction was granted to his local authority. I reject Mr Richardson's somewhat opportunistic suggestion that it was the Order of 16 October 2020 gathering the Cohort Claims that has delayed the progress of the claim.

(3) Rochdale MBC

55. The Part 8 Claim Form was issued on 21 December 2017 (and later amended to add a further named defendant on 13 February 2018). Following amendment, it named 90 individual defendants and "Persons Unknown (being members of the travelling community who have unlawfully encamped within the Borough of Rochdale". As against the "Persons Unknown" defendants, the Claim Form failed to comply with CPR Part 8.2A(1) and the requirements of Practice Direction 8A §§20.4-20.6 (see May Judgment [49]-[52]). The "details of claim" given in the Claim Form were substantially in the same terms as that in the claim by LB Havering (see [5] above), although like Nuneaton and Bedworth BC & Warwickshire CC, Rochdale MBC did not base any part of their claim on s.1 Anti-Social Behaviour, Crime and Policing Act 2014.

56. One point of significance in the Rochdale MBC claim is that the definition of "Persons Unknown" is based solely on past conduct of the identified members of the travelling community. As Ms Bolton, on behalf of Rochdale MBC, accepted at the hearing, this definition does not embrace "newcomers" as they have become known in the lexicon of Traveller Injunctions.

57. On 22 December 2017, Rochdale MBC was granted, without notice, orders relating to service of the Claim Form and other documents substantially in the same terms as that granted to LB Havering (see [6] above) ("the Service Order"). The same defect regarding lack of deemed date of service of the Claim Form on "Persons Unknown" also applies. Rochdale MBC has not yet taken any steps to attempt to regularise this position.

58. I assume, but have not been provided with copies of any letters, that Rochdale MBC duly thereafter served the Claim Form on the named defendants and Persons Unknown pursuant to the Service Order.

59. Rochdale MBC's evidence in support of the Part 8 Claim, when printed out, occupies 9 ring binders containing over 3,000 pages. In total, there are 10 witness statements and around 2,900 pages of exhibited material. I will return to this issue later in the judgment (see [127]-[136] below). I have been provided with a letter dated 29 January 2018 from Rochdale MBC which was apparently sent to each of the named Defendants. It informed the recipients of the hearing on 19 February 2018 and advised how printed copies of the local authority's evidence could be requested.

60. Although Rochdale MBC was granted an interim injunction against two named Defendants, without notice, on 9 February 2018, the main interim injunction was granted against 81 named Defendants and "Persons Unknown" on 19 February 2018. A comparison of the list of named Defendants attached to the injunction order and the list of named Defendants in the Claim Form suggests that the some of the named Defendants were removed (and the names of two Defendants are struck out in the list of named Defendants attached to the injunction order). The status of the claim against

these removed named Defendants is unclear. The injunction was expressly granted "*until further order*" and the material terms of the injunction order were substantially in the same terms as that granted to LB Havering (see [10] above, again with the same typographical/spelling errors). All sites and Defendants were served with the interim injunction by 25 March 2018.

61. The effect of the interim injunction order was similar to that granted to the previous two local authorities. The named Defendants were subjected to a Borough-wide prohibition on encampments and fly-tipping. For Persons Unknown, the prohibitions applied to 325 designated sites shown on the map and listed in a schedule. The interim injunction contained a power of arrest as against the named Defendants, but not as against "Persons Unknown". No application for a power of arrest was included in the Claim Form or the Application Notice (contrary to CPR 65.9 – see [79]-[80] May Judgment) and the jurisdiction under which this power of arrest was attached was not stated in the Order, the Application Notice, the Claim Form or, it appears, in any of the evidence in support. Rochdale MBC has taken no steps to attempt to regularise this position.

62. The interim injunction order contained no return day, nor any directions for a further hearing. The effect and consequences were the same as they were in the claim brought by LB Havering (see [14] above).

63. Adrian Graham is the Legal Officer at Rochdale MBC. He has filed a witness statement, dated 19 July 2021, on behalf of Rochdale MBC, explaining the steps taken following the grant of the interim injunction. Mr Graham states that Rochdale MBC "*has been very aware of the need to progress the claim to a final hearing*" and that "*this matter would have been listed for final hearing much earlier but for the Bromley case and the current cases before the court*". Like Mr Richardson for Nuneaton and Bedworth BC & Warwickshire CC, Mr Graham seeks to suggest that one of the reasons that the claim has not progressed to a final hearing is the gathering of the Cohort Claims.

64. Mr Graham states that, following the grant of the interim injunction, "*a period of time*" was given "*to allow for representations to come forward from the traveller community*" whether formally through the Court proceedings or directly to the Council. Mr Graham states that "*the target*" was to bring the case back within a year. Without explaining the basis, he states that this was his "*understanding*" of the approach adopted by "*most*" local authorities that had been granted Traveller Injunctions. In that respect, Mr Graham's "*understanding*" was mistaken. The average time between interim and final injunction in the Cohort Claims was just under 4 months. The longest period was 9 months in the claim brought by Harlow DC and Essex CC, which was the prototype of the Traveller Injunction.

65. Mr Graham states that "*in late 2018*" Rochdale MBC learned of "*a relevant intervention*" in the case of ***LB Bromley***. He has provided no documents or further detail about this "*relevant intervention*". The chronology of the LB Bromley case is set out in paragraph [2] of the Deputy Judge's judgment ([2019] EWHC 1675 (QB)). LB Bromley had been granted an interim injunction on 15 August 2018. A return date of 26 November 2018 had been fixed. On 14 November 2018, London Gypsies and Travellers were granted permission to intervene and the final hearing of the claim was adjourned and finally came back before the Court on 15 May 2019.

66. Mr Graham states that "*this would be the first fully contested claim of this nature and accordingly we decided to await the outcome to see if it altered what the Council needed to put before the Court*". I am rather sceptical of this explanation for the delay in progressing the claim throughout 2018. By the end of 2018, all that had happened was that permission to intervene had been granted in a claim that Mr Graham, in his witness statement, insisted was very different from the claim brought by Rochdale MBC.

67. After the Deputy Judge had given her judgment in ***LB Bromley***, on 17 May 2019, Mr Graham states that Rochdale MBC then decided it would await the outcome of the appeal before progressing its claim to a final hearing as "*proceeding to a final hearing… seemed inappropriate*". At no stage did Mr Graham or Rochdale MBC consider that the Court ought to be given an opportunity to consider whether the final hearing of a claim in which it had been granted an extensive interim injunction should be stayed pending the result in ***LB Bromley***.

68. In his witness statement, Mr Graham explained what Rochdale MBC did, once the Court of Appeal had handed down judgment in ***LB Bromley***:

> "… we arranged a conference with our Counsel and our Counsel came up from London and attended our offices and spent the day reviewing the evidence for the final injunction, discussing the Bromley criteria and what else we needed to do before fixing a hearing date for the final injunction hearing. At that conference, we decided that the Council ought to proceed and that there was no need to discontinue our Claim, as on reviewing the Decision in *Bromley* we concluded that we were in line with the Court of Appeal guidance… We agreed to provide our Counsel with certain additional evidence to review. Whilst reviewing the new evidence, in mid-February 2020 our Counsel became ill… which meant that she was unable to assist us further until late March."

69. Mr Graham then states that, by the end of March 2020, "*the Country was in lockdown and it was not possible to proceed with finishing off the evidence*". He added that it would also have been "*entirely inappropriate to proceed during lockdown, following Government Guidance on allowing members of the traveller community to stop-up during period of lockdown*". In relation to the first point, Rochdale MBC has been represented by external solicitors, Sharpe Pritchard, in their claim. Whilst I can understand that the pandemic put local authorities under some considerable strain, I cannot accept that this prevented Rochdale MBC (or any other local authority) from properly prosecuting legal claims in which it was involved, particularly where it had an external firm of solicitors acting for it. Mr Graham's witness statement is silent on why Sharpe Pritchard were unable to make progress with the claim. As to Mr Graham's second point, whatever forbearance the pandemic required in terms of enforcement of powers by local authorities against unlawful encampments, that did not affect the obligation to ensure that a legal claim in which a local authority had been granted an interim injunction was properly progressed to a final hearing. If there were issues to be resolved as to the timetable of those proceedings, in view of the challenges faced during lockdown, it was for the Court to make those decisions and not Mr Graham.

70. In fact, the second anniversary of the grant of the interim injunction came and went without any progress being made or even any attempt to fix a timetable towards a hearing. It was not until October 2020, when the Court issued the order gathering the action as one of the Cohort Claims that any directions were made. By this stage,

Rochdale MBC had allowed over 2½ years to pass since it had been granted an extensive Borough-wide interim injunction (with a power of arrest) against over 80 named Defendants. The only mitigating factor in Rochdale's case is that the terms of the interim injunction directed at Persons Unknown it had been granted, on proper construction, did not apply to newcomers (although I am sceptical whether this point would have been fully appreciated).

71. Unlike the other local authorities before the Court, Rochdale MBC has not provided in its evidence any contemporaneous documents demonstrating what it was doing in relation to the claim for 2½ years that could possibly have justified a delay of this order. It appears, from Mr Graham's evidence, that, once it had been granted an interim injunction, Rochdale MBC decided, unilaterally, to await the first instance decision in ***LB Bromley***, then to await the outcome of the appeal to the Court of Appeal and then not to progress the case at all during lockdown despite having the services of external solicitors. Even after the lockdown restrictions had been substantially relaxed in the summer of 2020, still Rochdale MBC did nothing to progress the claim. At no stage in over 30 months did Rochdale MBC seek directions from the Court for a timetable towards a final hearing.

(4) Thurrock Council

72. The Part 8 Claim Form in Thurrock Council's claim was also issued on 31 July 2019, the same date as the Claim Form was issued in LB Havering's claim. It named 107 individual defendants and "Persons Unknown", without any description. Not only did the Claim Form fail properly to describe the "Persons Unknown" it also did not comply with CPR Part 8.2A(1) and the requirements of Practice Direction 8A §§20.4-20.6 as to proper identification of the Persons Unknown Defendants (see May Judgment [49]-[52]). The "details of claim" given in the Claim Form were identical to those given in the claim by LB Havering (see [5] above).

73. On the same day that the Claim Form was issued, Thurrock Council was granted, without notice, orders relating to service of the Claim Form and other documents substantially in the same terms as that granted to LB Havering (see [6] above) ("the Service Order"). The same defect regarding lack of deemed date of service of the Claim Form on "Persons Unknown" also applies. Thurrock Council has not yet taken any steps to attempt to regularise this position.

74. Pursuant to the Service Order, Thurrock Council sent a letter to each named Defendant dated 9 August 2019. Its terms were similar to the letter sent by LB Havering (see [8] above). Thurrock Council's evidence in support of the Part 8 Claim, when printed out, occupies 6 ring binders containing some 2,164 pages. In total, there are 24 witness statements and around 1,900 pages of exhibited material. I will return to this issue later in the judgment (see [127]-[136] below).

75. On 30 August 2020, Ilinca Dionescu, the Policy Officer for the First Intervener, emailed Mr Rulewski to ask that the hearing on 3 September 2019 should be adjourned to await the outcome of the appeal in ***LB Bromley*** which had been listed for 3 December 2019. Mr Rulewski responded the same day:

> "… I would be grateful if you could confirm whether you have been instructed by any of the named defendants, or whether you have sought to intervene, for

> example, having become aware of the proceedings or by other means and, if so, confirmation of that.
>
> At this stage, we intend to proceed. We have read and are fully aware of the decision in the Bromley proceedings. As this application concerns named, as well as unnamed individuals, we are distinguished from the Bromley decision which concerned only persons unknown, and will be addressing the Court on this and other points on Tuesday."

76. The proceedings were not adjourned, and Thurrock Council was granted an interim injunction on 3 September 2019. There were 96 named Defendants identified in a schedule attached to the injunction order, compared with the 107 named Defendants attached to the Claim Form. In addition, the injunction order was granted only against 89 of the 96 defendants named in the injunction order. The status of the claim against the named Defendants against whom an interim injunction was not granted is unclear. The injunction was expressly granted "*pending the final injunction hearing*" and the material terms of the injunction order were substantially in the same terms as that granted to LB Havering (see [10] above, again with the same typographical/spelling errors).

77. The effect of the interim injunction order was similar to that granted to the previous three local authorities. The named Defendants were subjected to a Borough-wide prohibition on encampments and fly-tipping. For Persons Unknown, the prohibitions applied to 163 designated sites shown on the map and listed in a schedule. The injunction order incorrectly stated that the injunction order applied to 279 sites. This error appears to have been as a result of copying and pasting the text from the LB Havering Injunction and not properly checking it. The interim injunction order also contained a power of arrest directed at both the named Defendants and "Persons Unknown". No application for a power of arrest was included in the Claim Form or the Application Notice (contrary to CPR 65.9 – see [79]-[80] May Judgment) and I can find no reference to the power of arrest in the supporting evidence. I discharged this power of arrest in relation to "Persons Unknown" by an order made on 24 May 2021.

78. The interim injunction order contained no return day, nor any directions for a further hearing. The effect and consequences were the same as they were in the claim brought by LB Havering (see [14] above).

79. Mr Rulewski also acted for Thurrock Council and his witness statement dated 19 July 2021 has also been filed on behalf of Thurrock Council (see [15]-[17] above). No other officer of Thurrock Council has filed any evidence relating to the issue of whether the failure by Thurrock Council to progress the claim to a final hearing having been granted an interim injunction was an abuse of process. Mr Rulewski also exhibited a time recording sheet showing his work on the claim brought by Thurrock Council. The record is not complete (as it starts some months into the life of the case), and does not provide details of the work done, but in the period from 30 September 2019 to 21 September 2020, Mr Rulewski spent a total of 47.7 hours on the case. Of that at least 10.9 hours was spent in relation to the Court of Appeal hearing on 3 December 2019 in ***LB Bromley*** (and a further 4 hours spent attending the hearing in the LB Harlow claim on 10 July 2020). Overall, therefore, on average Mr Rulewski spent less than 1 hour a week on the case after the interim injunction was granted before the Court intervened by sending the Order dated 16 October 2020. Excluding the attendance at the

LB Harlow hearing, in July and August 2020, Mr Rulewski spent only 1 hour on the case.

80. Also exhibited to Mr Rulewski's witness statement are some emails, including some between him and members of Thurrock Council.

i) On 24 February 2020, Victoria Gilmore, the Policy and Projects Officer of the Second Intervener emailed Thurrock Council. The email was sent after the Court of Appeal decision in ***LB Bromley*** and raised various points. The email concluded:

> "In light of this judgment we would ask you to confirm that you will urgently reconsider the interim injunction you have in place. Indeed, we feel that this interim injunction should now be withdrawn. Please also confirm that you will not be seeking a permanent injunction."

ii) Mr Rulewski responded to Ms Gilmore on 3 March 2021. He stated that Thurrock Council's injunction was "*markedly different from Bromley*" and that "*the concerns raised by the Court of Appeal are not a feature in our injunction*". He confirmed that Thurrock would not be withdrawing its interim injunction and "*we will seek a permanent injunction, and details of the date of this hearing will be published on the Council's website*".

iii) On 12 March 2020, Donna Burnett, Thurrock Council's Anti-Social Behaviour Officer, emailed Mr Rulewski to request a date in the following week for a meeting to discuss and review the evidence for the claim. The evidence does not indicate whether any meeting took place and whether progress was made with the evidence for the claim. No meeting is recorded in Mr Rulewski's time recording until the first week of May 2020.

iv) On 29 April 2020, following the coronavirus pandemic, Ms Gilmore sent a further email to Mr Rulewski. She referred to guidance issued to local authorities by central government and advice issued by the College of Policing both of which had a direct bearing on the appropriateness of using enforcement powers against Gypsies and Travellers during the pandemic. Ms Gilmore sought confirmation of the status of the interim injunction and whether it was still being enforced by Thurrock Council. Mr Rulewski did not respond to that email, but he did forward it internally in Thurrock Council, asking "*are we able to confirm if there are any pre-existing but currently empty holiday/caravan parks in the borough which would be available*?". Phil Carver, Strategic Lead of Enforcement, Environment, Highways and Counter Fraud, responded the same day to Mr Rulewski's email: "*There are no pre-existing, currently empty holiday/caravan parks in the borough*". Ms Burnett, identified one possible site, in Curzon Drive, but stated: "*all other Travellers site across Thurrock are fully occupied and if we did house additional Travellers on the site, this may cause community tension*". Mr Rulewski did not apparently pass on this information to Ms Gilmore.

v) On 28 May 2020, Ms Burnett emailed Mr Rulewski:

> "I have been asked to try and establish a date we can work towards to apply for the full order. I have said that this very much depends upon everything reopening, a second spike and Caroline's health. But they would like a steer from yourself."

I have not been provided with any response to that email and, in his witness statement, Mr Rulewski does not confirm what he did to progress the matter towards a final hearing. Mr Rulewski's time record shows 12 minutes on 28 May 2020, which I presume relates to Ms Burnett's email. A total of one hour's work was done on the claim by Mr Rulewski in June 2020.

vi) On 1 July 2020, Ms Gilmore sent a further email to Mr Rulewski asking whether a date had been set for the final hearing of Thurrock Council's claim. Mr Rulewski did not respond. There is no entry in Mr Rulewski's time record until 30 minutes work on 28 July 2020.

vii) On 14 July 2020, Ms Burnett sent an email to Mr Rulewski asking whether he had heard from Caroline Bolton and "*is there any timeline of when we will be able to apply for the full injunction*". Mr Rulewski replied, the same day (not recorded in his time sheet):

> "No worries – I'm trying to get a meeting pinned down this week if I can. Have the maps been updated following our emails last month do you know? Can I get copies of the updated maps? Could you also send me the final version of the work you did on the defendant names."

viii) On 20 August 2020, Ms Burnett sent an email to Mr Rulewski asking whether he could let her know "*how the injunction is progressing*" as she was "*keen to set up a meeting … to look at matters we need to focus on in order to obtain the full order*". I have not been provided with any response to that email. Mr Rulewski's time record shows that the only work he did in the whole of August was a 30-minute meeting on 24 August 2020.

ix) On 2 September 2020, Ms Gilmore sent a further email asking whether a date for the final hearing had been fixed. Mr Rulewski did not respond to that email, but he forwarded Ms Gilmore' email to Mr Carver and Ms Burnett and added:

> "… I have been contacted by the Gypsy Traveller association. We discussed getting some names together for a proposed meeting to discuss negotiated stopping etc…
>
> Could you let me know who should be involved so I can email and start making arrangements for the discussions, so we can then be ready for the final injunction."

x) Mr Carver responded, on 3 September 2020, identifying three individuals who should be invited to the meeting Mr Rulewski had proposed. No further emails have been provided in relation to this proposed meeting and Mr Rulewski does not indicate in his witness statement whether any such meeting actually took place. No meeting is recorded in Mr Rulewski's time record.

81. Having exhibited the documents and correspondence I have identified, in his witness statement, Mr Rulewski stated:

> "Therefore, as of September 2020 we were clearly making the arrangements before seeking a final injunction, and had every intention to seek that order."

He suggests that it was the intervention of the Court, in October 2020 to assemble the Cohort Claims, that led to the final hearing being delayed.

Abuse of Process: the law

82. Ms Bolton accepted that was an abuse of process to commence and continue litigation which the claimant had no intention of bringing to a conclusion: ***Grovit -v- Doctor* [1997] 1 WLR 640, 647** *per* Lord Woolf. Other examples of abusive conduct in this category included 'warehousing' claims: ***Arbuthnot Latham Bank -v- Trafalgar Holdings* [1988] 1 WLR 1426, 1437** *per* Lord Woolf. In ***Asturion Foundation -v- Alibrahim* [2020] 1 WLR 1627** the Court of Appeal reviewed the relevant authorities (including ***Grovit***, ***Arbuthnot***, ***Realkredit Danmark A/S -v- York Montague Ltd* [1999] CPLR 272** and ***Braunstein -v- Mostazafan & Janbazan Foundation*** (unreported CA, 12 April 2000). From these Arnold LJ stated the principle as follows ([61]):

> "In my judgment [these] decisions … show that a unilateral decision by a claimant not to pursue its claim for a substantial period of time, while maintaining an intention to pursue it at a later juncture, may well constitute an abuse of process, but does not necessarily do so. It depends on the reason why the claimant decided to put the proceedings on hold, and on the strength of that reason, objectively considered, having regard to the length of the period in question. A claimant who wishes to obtain a stay of proceedings for a period of time should seek the defendant's consent or, failing that, apply to the court; but it is not the law that a failure to obtain the consent of the other party or the approval of the court to putting the claim on hold automatically renders the claimant's conduct abusive no matter how good its reason may be or the length of the delay."

83. Ms Bolton argued – based on the authority of ***A/S D/S Svendborg -v- Awada* [1999] 2 Lloyd's Rep 244, 247-248** – that deciding to await the outcome of an appeal in a related case was not abusive.

84. As Arnold LJ noted in ***Asturion Foundation***, "*abuse of process can take many forms*" ([44]). ***Grovit*** is an example of one type of abuse. It is not the only form. Following the advent of the CPR, the ability of a claimant to delay prosecuting a claim was much reduced. Modern case management means that the Court should set a case management timetable towards an ultimate trial. In multi-track cases, any significant departure from that timetable (and always in respect of any adjustment that might jeopardise key dates) must be sanctioned by the Court: CPR 29.5. It should therefore not now be possible for a claimant to 'warehouse' a civil claim. In addition, in normal *inter partes* litigation, if a claimant delays prosecuting the claim, the defendant can obtain orders from the Court to ensure that the claim is properly progressed.

85. Difficulties can arise, however, in certain types of case. For example, where the defendant takes no active part in the proceedings, where the defendants are (or include) "persons unknown", and where a court has granted an injunction that affects third parties. Part 8 Claims are particularly at risk of stalling if there is no active defendant

and the Court does not provide a case management timetable when the claim is first heard. This is what has happened in each of the four cases with which I am concerned (and there are further examples of lack of progress in other Cohort Claims).

86. What is particularly concerning, however, is when an action stalls or becomes dormant after an interim injunction has been granted. An interim injunction is not an order *nisi*, or some sort of a 'test run' for a final injunction. It is an order that the Court is satisfied is necessary to preserve the position pending the Court's final determination (see May Judgment [162(1)]); and it will only be granted where there is a "*sufficiently real and imminent risk of a tort being committed to justify quia timet relief*" and "*must be time limited because it is an interim and not a final injunction*": ***Canada Goose*** [82(3) and (7)]. An interim injunction is granted based on the evidence as it stood at the time the order was made.

87. As I noted in the May Judgment (see [87]-[90]), there have been examples in other areas of law where claimants have failed to progress their claim to a final hearing after having been granted an interim injunction. Where that interim injunction is capable of binding third parties, the Courts have recognised that a failure properly to progress the claim to a final hearing may amount to an abuse of process which undermines confidence in the administration of justice. In the case of ***Giggs -v- News Group Newspapers Ltd*** **[2013] EMLR 5**, the Court considered the conduct of proceedings by the claimant, who had been granted an interim non-disclosure injunction on 14 April 2011. Eady J had made case management directions on 20 April 2011 which, had they been followed, would have seen the action come to trial between 3 October and 25 November 2011. However, on 12 May 2011, the claimant agreed with News Group Newspapers a general stay regarding service of its Defence but did not communicate this to the Court. As Tugendhat J noted ([25]), that agreement (and the failure to notify the Court) was a breach of CPR 15.5. Without progress to a final hearing, the interim non-disclosure order continued to bind third parties with notice of the terms of the order under the *Spycatcher* principle (see May Judgment [184]-[185]). Tugendhat J identified the mischief of this situation:

> [78] Non-disclosure orders affect the Art 10 right of freedom of expression not only of the defendant, but also of others who may wish to publish or receive information. This is referred to as the 'Spycatcher principle' (see ***Attorney-General -v- Newspaper Publishing plc*** **[1988] Ch 333, 375** and **380**). That they have that effect on third parties is one of the main reasons that claimants apply for non-disclosure or privacy injunctions. But the court is required by HRA s.6 not to act in a manner incompatible with the Convention rights. It follows that in cases in which relief granted may affect the exercise of the Convention right of freedom of expression, the court cannot give the same consideration to the autonomy of the parties to the action as it commonly gives to the autonomy of the parties to litigation which does not have the same effect on the Convention rights of third parties.
>
> [79] The Practice Guidance on Interim Non-Disclosure Orders issued by the Master of the Rolls [**[2012] 1 WLR 1003**] addressed this point specifically:
>
> > "Active Case Management
> >
> > 37. Interim non-disclosure orders, as they restrict the exercise of the Article 10 Convention right and, whether or not they

> contain any derogation from the principle of open justice, require the court to take particular care to provide active case management. …
>
> 41. Where an interim non-disclosure order, whether or not it contains derogations from open justice, is made, and return dates are adjourned for valid reasons on one or more occasions, or it is apparent, for whatever reason, that a trial is unlikely to take place between the parties to proceedings, the court should either dismiss the substantive action, proceed to summary judgment, enter judgment by consent,…"

[80] The directions given by Eady J on 20 April… preceded this Guidance, but his order is fully in accordance with it. The effect of privacy injunctions on the Art 10 rights of third parties was well recognised before the Practice Guidance. The directions of Eady J were designed to achieve as quick a trial of this matter as practicable…

88. Tugendhat J held that the way the case had been conducted by the parties had "*done much to undermine confidence in the administration of justice*": [91]. One of the reasons why this was so was the claimant's failure properly to prosecute the claim to a final hearing after the grant of the interim injunction and the effective deactivation of the Court's case management directions. Tugendhat J noted that there existed an incentive to claimants to abuse the process by delaying:

> [103] The effect of s.12 [Human Rights Act 1998] (and the ***Cyanamid*** rules on interim injunctions) being so favourable to claimants is that defendants generally offer undertakings, or do not oppose the grant of an interim injunction, as happened in this case on 20 April. But because the law is favourable to claimants in this way, there is an incentive upon claimants to abuse the process of the court, so as to avoid the need to prove their cases at trial. Having obtained an interim non-disclosure order, it may appear to be in a claimant's interest to hold on to it as long as possible, and proceed to trial as slowly as possible, if at all.
>
> [104] HRA s.12 and the other rules on interim injunctions assume that there will be a trial. Moreover, the anticipated delay between the hearing of the application for an interim injunction and the expected date of the trial is relevant to the further questions which a court has to consider if and when the court is satisfied that the claimant is likely to establish that publication should not be allowed. The court must then go on to consider (as it has to in any application for an interim injunction): (2) would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction? (3) If not, where does the 'balance of convenience' lie?
>
> [105] In particular, the shorter the anticipated delay, the more likely it is that the balance of convenience (or balance of justice as it is better referred to) favours the preservation of the *status quo* (i.e. non-disclosure). An interim injunction must be no more than is necessary and proportionate to achieve the legitimate aim of protecting the rights of the claimant (including Art 8 rights). So the shorter the period likely to elapse between the making of the interim order and the trial, the more ready the court will be to find that the

interference with the Art 10 rights of the claimant and third parties is proportionate. And, of course, vice versa.

[106] It was for this reason that Eady J, in his order of 20 April, laid down a timetable for the matter to proceed to trial. And it is for this reason that the agreement between the parties on 12 May to depart from that timetable was so serious. It was not just a breach of CPR Part 15.5. It was an abuse of the process of the court to interfere with the Art 10 rights of third parties, which had not been approved by any judge.

Abuse of Process: decision

89. LB Havering, Nuneaton and Bedworth BC and Warwickshire CC, Rochdale MBC and Thurrock Council have each been guilty of serious failures properly to progress their respective claims to a final hearing. The explanations given for the delays are not adequate. The worst conduct is that of Rochdale MBC which allowed its claim to become dormant for over 2 years following the grant of an interim injunction. The delays in prosecuting their claim were substantial and have not been adequately explained or excused. Each local authority demonstrated a complacency, even insouciance, towards the need to progress the claim. They arrogated solely to themselves the decision as to when the claim should be progressed to a final hearing and whether any periods of delay were justified, whilst all the while holding and enforcing an interim injunction of significant width. At no stage before the Court's intervention in October 2020 had any of these Claimants sought directions from the Court. As each Claimant had been granted an interim injunction substantially in the terms of the final order it sought, there was no effective incentive to progress the claim expeditiously. As no defendant has engaged with the proceedings, there was no opposition to this prolonged inactivity. There were cost implications of progressing the claims, a factor that was clearly influencing the decisions taken by, at least, Nuneaton and Bedworth BC and Warwickshire CC.

90. Although I am very far from satisfied with the explanations that have been given for the periods of inaction in the relevant claims, I am nevertheless satisfied, on the evidence, that LB Havering, Nuneaton and Bedworth BC and Warwickshire CC, Rochdale MBC and Thurrock Council did always intend to bring their claims to a final hearing, albeit on their own timetable. The various periods of delay in prosecuting their individual claims do not, on their own, amount to abuse of process. In making this decision, I accept that the Court must shoulder at least some of the responsibility for failing to make case management directions which would have prevented the claims stalling and for effectively placing the case management of the claims solely in the hands of the relevant Claimant(s). The Claimants in the four claims are not guilty of the type of abuse of process under the principles identified in ***Grovit*** and ***Asturion Foundation***.

91. Nevertheless, matters do not rest there. The Court's processes can be abused in many ways. In my judgment, there are clear parallels between interim Traveller Injunctions granted against "Persons Unknown" (at least where they bind 'newcomers') and interim non-disclosure orders which bind non-parties by virtue of the *Spycatcher* principle. In both cases (and unusually in civil litigation), the Court's coercive powers of injunction (granted only on an interim basis pending trial) reached beyond the immediate parties to the litigation and had an impact on third parties. Where the interim injunction

interferes with fundamental rights of those third parties (Article 8 rights of Gypsies and Travellers in Traveller Injunctions and Article 8/10 rights in interim non-disclosure orders), then a failure properly to progress the claim to a final hearing following the grant of an interim injunction may well be found to be an abuse of process for the reasons explained in ***Giggs***.

92. In my judgment, the failure by LB Havering, Nuneaton and Bedworth BC and Warwickshire CC and Thurrock Council properly to prosecute their claims to a final hearing having obtained, and continued to enforce, an interim injunction which bound 'newcomers' as "Persons Unknown", judged objectively, was an abuse of process. Having obtained an interim injunction that affected third parties, each Claimant was under a duty to progress the claim expeditiously to a final hearing and to ensure that case management directions were made that would achieve that. Each of these Claimants failed to do so and the consequent failure to advance the claims to a final hearing was an abuse of process.

93. If a claimant considers that there is good reason why a claim should be delayed – for example to await a decision in another case – then the Court's sanction for the delay must be obtained. The complete deactivation of all case management which occurred in these claims must not be allowed to happen, particularly in cases where an interim injunction affecting third parties has been granted. Although, in the first instance, this is the Court's responsibility, the parties also have an obligation to ensure that case management directions are made by the Court.

94. The interim injunction obtained by Rochdale MBC did not bind 'newcomers' in the same way. Although they are equally culpable for the failure properly to prosecute their claim, as the injunction did not bind 'newcomers', it was not an abuse of process in the way I have found.

95. Although I have found that the failure by LB Havering, Nuneaton and Bedworth BC and Warwickshire CC and Thurrock Council to prosecute their claims was an abuse of process, I nevertheless have to consider whether discharging the injunction they obtained is the right or proportionate response. Although there are powerful arguments that the Court should mark a finding of abuse of the process with an appropriate sanction, narrowly, and in the particular circumstances of these cases, I have reached the conclusion that it would not be right or proportionate to discharge the interim injunctions that were previously granted to the three local authorities. I have reached this conclusion for three principal reasons.

    i) First, I am satisfied that none of the local authorities intended to abuse the Court's process (or were even aware that the failure to progress the claim could be regarded as an abuse). Subjectively, they all had reasons why they had failed to progress the claims and ultimately each did intend to bring its claim to a final hearing. As the Court had made no further directions in the claims, none of the Claimants was in breach of any order.

    ii) Second, although analogies were available to be drawn with the Court's approach in interim non-disclosure cases, there was not a clear authority, warning parties in the position of the claimants, that a failure properly to prosecute claims could be regarded as an abuse of process.

iii) Finally, the better and more proportionate response, in my judgment, is now to ensure that each of the claims is managed as expeditiously as possible to a final hearing. I am satisfied that the finding of abuse of process against a local authority is a sufficient sanction.

96. Finally, it is to be hoped that what has happened in these claims will not be repeated in future claims. The guidance given in the May Judgment ([248]) should, if followed, prevent actions being allowed to stall following the grant of an interim injunction. In the future, however, parties in similar litigation should be well aware of their obligations properly to prosecute their claims and the view that the Court may take of a failure to do so.

Test Valley BC

97. Test Valley BC was not one of the local authorities required to answer whether their failure to progress the claim following the grant of an interim injunction was an abuse of process. Nevertheless, Test Valley BC's claim has certain features in common with the other four local authorities with which I am currently concerned.

98. The Part 8 Claim Form in Test Valley BC's claim was issued on 18 June 2020. The claim was brought against 89 named Defendants and "Persons Unknown forming unauthorised encampments within the borough of Test Valley". As against the "Persons Unknown" defendants, the Claim Form failed to comply with CPR Part 8.2A(1) and the requirements of Practice Direction 8A §§20.4-20.6 (see May Judgment [49]-[52]). The "details of claim" given in the Claim Form were in similar terms to those given in LB Havering's claim (see [5] above).

99. Following the practice adopted in the other clams, Test Valley BC made an application without notice and was granted orders relating to service of the Claim Form and other documents substantially in the terms of the order granted to LB Havering ("the Service Order") (see [6] above). There were changes to the service regime in Test Valley BC's Service Order. One significant change was that Test Valley BC was no longer required to provide a memory stick containing the evidence relied upon. The Service Order provided that it was sufficient for a digital link to the evidence to be provided and that Test Valley BC was required to provide copies of the evidence only upon request.

100. Test Valley BC's Part 8 Claim was supported by 17 witness statements and some 1,260 pages of exhibited material. In total, when printed out, the evidence occupies 6 ring binders.

Case Management

Sampling: getting an impression of the evidence against each named Defendant

101. At the hearing, I asked Ms Bolton to take me through the evidence relating to 8 randomly selected named defendants in the claim brought by Thurrock Council (representing roughly 10% of the named defendants). The purpose of doing so was to enable me to form an impression of the evidence relied upon in respect of each named defendants. Given that the approach to the evidence adopted by the five local authorities is similar, I am satisfied that this exercise is likely to give a fair impression of the claims

that are being brought by each of them against named defendants and the evidence relied upon against them.

Generic Evidence

102. Before taking me to the evidence against the sample defendants, Ms Bolton referred to parts of what might be called "generic evidence"; evidence of alleged wrongdoing by people who have formed unauthorised encampments on land that is not alleged to have been committed by any of the named Defendants or necessarily at the sites in respect of which Thurrock Council presently seeks an injunction. Some of the evidence which she selected for consideration included the following:

i) Paul Ballard is the Community Policing Inspector for Essex Police in Thurrock. He has provided a witness statement in support of Thurrock Council's claim dated 18 July 2019. In his witness statement, he sets out various incidents, including unauthorised encampments. He exhibits contemporaneous police records (referred to as "STORM reports") that contain details of various incidents to which Mr Ballard refers. Ms Bolton referred to the following incidents that are detailed in Mr Ballard's statement:

23 September 2016: Moto, Thurrock Services

ii) On 23 September 2016 there was an unauthorised encampment at the Moto at Thurrock Motorway Services. From the STORM report it appears that 6 vehicles were present with one trailer. There had apparently been no report from anyone at Moto. Two of the vehicles had Irish number plates. Beyond details of the registered keepers of the vehicles (and any additional drivers insured to drive the vehicles) there is no evidence identifying any of the people that were present. Indeed, the police report does not identify how many people were present. In respect of only one of the vehicles was an individual registered keeper identified. She is the eighth named defendant to the claim. Some of the other vehicles were registered to companies or did not identify any keeper. On 24 September 2016, the STORM report records that the incident could be closed and that there were "*no aggravating factors*". Moto, Thurrock Motorway Services was not included in the interim injunction order.

1 June 2018: Aldi Stores car park

iii) On 1 June 2018, the police received a report that "*travellers had set up camp*" in the car park at Aldi Food Stores, London Road, Grays. The police identified four vehicles and two individuals who were present, who appear to be the 32nd and 51st named defendants. The STORM report records that there were three large caravans and some vans. The police served notices, under s.61 Criminal Justice and Public Order Act 1994, and the vehicles left. There is no record of any aggravating factors such as damage caused or fly-tipping. The Aldi Stores at London Road was not included in the interim injunction.

26 June 2018: Sandy Lane Farm

iv) On 26 June 2018, the police received a report that there were vehicles and caravans on a field at Sandy Lane Farm, South Ockendon. The occupation had

caused damage to a crop that was growing there. The estimated cost of the damage was £50,000. Access had been gained to the land by smashing a gate and padlock. The STORM report records that there were 6 or 7 vehicles/caravans. A threat was recorded as having been made to the owner that they would burn her farm down. The police issued s.61 notices on 27 June 2018 and there is a record that the site was vacated by 15.30 on 27 June 2018. No individuals were identified by the police and the site was not included in the interim injunction.

South Ockendon Health Centre

v) Ms Bolton showed me the witness statement of the Practice Manager of the South Ockendon Health Centre, dated 25 July 2019. She stated that in the previous 2 years they had suffered 3 unauthorised encampments in the car park of the Health Centre on 18 September 2017, 26 February 2018 and 6 September 2018. The Practice Manager reported that there were up to 7 or 8 caravans present. She complained that when there was an encampment, the trespassers used the wheely bins of the Medical Centre, which needed to be emptied more regularly. Children would drive quad bikes around the car park and on the grassy areas outside the surgery. She reported one incident, in around February 2018, when a boy came and asked to use the toilet in the Health Centre. He was allowed to do so. The Practice Manager reported that she had checked the toilet and found it blocked with the tap running, which caused flooding. She added:

> "Weeks later, the female toilets were repeatedly becoming blocked, we had to keep calling the plumber out to unblock the toilets and we couldn't find the cause of the blockage. Eventually the blockage was found and it was in the waste pipe, where one of the connectors had been taken off and a pair of denim jeans had been stuffed into the waste pipe and the connector secured back on. I can only attribute this to the man that had flooded the toilets originally".

vi) Whether or not the Practice Manager's conclusion is correct, so far as concerns these proceedings, none of the individuals who formed the encampment in the grounds of the Medical Centre has been identified (or is likely to be identified), and the site was not included in the interim injunction obtained by Thurrock Council. It is therefore not presently clear to me the relevance of this evidence to the claim.

Public House in Aveley

vii) Mr Burnett has provided a witness statement dated 25 July 2019. Ms Bolton took me to the following paragraph:

> "[KF], who is the licensee of the [name of public house in Aveley given], speaks about the travellers behaviour in attempting entry to the pub and how his regulars react.
>
> > 'The travellers often refuse to leave the premises and become argumentative accusing me of being racist. Another thing they do is to buy a round of drinks and refuse to pay for them.'"

> It is difficult to see what a named defendant to the claim is expected to do when confronted with this evidence, beyond perhaps denying that s/he had behaved as the licensee alleged. I asked Ms Bolton what was the relevance of this evidence to the claim and which part of the injunction sought by Thurrock Council would have an impact on this alleged behaviour. Ms Bolton responded that the restriction on encampments in the injunction was directed at this behaviour. Ultimately, this will be a matter to be assessed at the final trial.

The sample defendants

103. Ms Bolton then turned to show me the evidence against the 8 randomly selected named defendants in the Thurrock Council claim. It is not necessary for me to name the defendants, I shall simply refer to them as D1 to D8.

D1

104. The claim against D1 is that he was one of a group of people that had formed an unauthorised encampment in the car park of the Matalan Store, Weston Avenue in West Thurrock on 22 June 2016. The police evidence recorded three vehicles being present. In respect of one of those vehicles, D1 was one of 2 named drivers in addition to the registered keeper. The STORM report contains the details of the vehicles and the information that the police obtained as to registered keepers and authorised drivers. No action was taken by the police, as there was no report of any damage or other harm being caused. Ultimately, the police incident was closed on 10 July 2016 after an officer was sent to see whether the encampment was still on the site. It was not.

105. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D1. The evidence is contained in one paragraph of Mr Ballard's witness statement and 5 pages of a police report. The Matalan car park was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

106. I asked Ms Bolton the basis on which, assuming that the evidence was sufficient to demonstrate that D1 had actually been part of this encampment, the Claimant could ask the Court to impose an injunction against D1 to restrain him from fly-tipping. Ms Bolton responded that D1 was a member of a particular family that the Claimant alleged was linked to fly-tipping and that it would be for D1 to demonstrate that he does not engage in fly-tipping. Ultimately, this will be a matter to be assessed at the final trial.

D2

107. The claim against D2 is that she was one of a group of people that had formed an unauthorised encampment at the Moto, Thurrock Motorway Services on 25 February 2018. The police evidence recorded eight vehicles being present. In respect of one of those vehicles, a Ford Focus, D2 was the registered keeper. The STORM report contains the details of the vehicles and the information that the police obtained as to registered keepers and authorised drivers. No action was taken by the police, who recorded:

> "Unauthorised encampment set up in the corner of the large public car park, no damage caused as all vehicles and caravans just able to drive in. As such a large

> car park there are still plenty of spaces for other members of the public to use so no impact on the economy, no fly-tipping present and at this stage no reports of any public order incidents towards the land owner. At this time section 61 powers not authorised although to be reviewed on a regular basis… Management from MOTO's to start their own proceedings to remove the travellers."

108. The police recorded that the land had been vacated by all persons, vehicles and caravans on 26 February 2018.

109. The general manager of the Moto Services has provided a witness statement for Thurrock Council's claim dated 22 July 2019. He states that since the beginning of 2019, there had been seven encampments in the Thurrock Services area, one of which was on 25 February 2018. He states that, in relation to this incident, the bailiffs instructed by Moto to assist with removal of the encampment had to hire a tow truck to remove a caravan that had become stuck in some mud.

110. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D2. The evidence is contained in one paragraph of Mr Ballard's witness statement, two paragraphs in the general manager's statement, 9 pages of police reports and a one-page invoice from the bailiffs instructed by Moto. The Moto Thurrock Motorway Services was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

111. Ultimately, at the trial of the action, the Court will consider this evidence and what it demonstrates against D2. In addition, the Claimant will need to address what cause of action is relied upon by the Claimant local authority against D2 and the terms of any final injunction that it contends should be granted against her.

D3

112. The claim against D3 is that she was one of a group of people that had formed an unauthorised encampment on private land next to a school in South Ockendon on 19 February 2018. The police evidence recorded eight vehicles and nine caravans being present. In respect of one of those vehicles, a Renault Master, D3 was the registered keeper at an address in Ireland. The STORM report contains the details of the vehicles and the information that the police obtained as to registered keepers and authorised drivers. Access to the site had been alleged to have been obtained by cutting open the gates, which had then been locked behind them. The report records that a fire had been lit and that "*Council have witnessed fly-tipping taking place*". There is no separate statement or other evidence from Thurrock Council relating to any alleged fly-tipping. The police served s.61 notices and the report records that the travellers had left by the early evening of 20 February 2018.

113. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D3. The evidence is contained in one paragraph of Mr Ballard's witness statement and 22 pages of police reports. The site of the encampment was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

D4

114. The claim against D4 is that he was one of a group of people that had formed an unauthorised encampment on a service road behind Frankie & Benny's in Thurrock Lakeside on 23 June 2016. Mr Ballard's evidence is that there were 20-30 vehicles present and up to 40 caravans. In respect of one of those vehicles, a Ford Transit, D4 was the registered keeper at an address in Ireland. The site was vacated, on 27 June 2016, following action by bailiffs. The police assessment was that it was not possible to determine whether there had been any fly-tipping on the site. From there, some of the travellers, including D4, then relocated to the Moto Thurrock Motorway Services, arriving there on 27 June 2016. The STORM report records some 12 caravans having been stationed at the site, but the occupants had stated that they only intended to stay for a few hours. An officer recorded that s/he had spoken to the night manager at Moto and there were no concerns at that time, and the land owner had not made a formal request that they leave the site. The site was vacated later that evening. The police report included the following:

> "The site is not established at this time, with the exception of two caravans the remainder are all hitched up and parked as opposed to camped… There is no evidence of an intention to reside at this time therefore and including no formal request to leave has been given by the land owner, police powers are not appropriate at this time… The travellers acknowledged they had just left the Frankie & Benny's site following a civil eviction. They had no stated intention, but indicated that it was not their intention to remain at Motos'. It is likely under cover of darkness they will move off and enter a previously identified site and set up camp…"

115. There is no evidence of fly-tipping at the Moto Services on this occasion. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D4. The evidence is contained in four paragraphs of Mr Ballard's witness statement and 28 pages of police reports. Neither the Frankie & Benny's service road nor the Moto Thurrock Motorway Services is included in the sites in respect of which Thurrock Council presently seeks an injunction.

D5

116. The claim against D5 is that she was one of a group of people that had formed an unauthorised encampment at a pumping station in East Tilbury Road, Stanford-le-Hope on 18 October 2017. Entry to the land was alleged to have been gained by forcing the gates. The police evidence identified four people who were present and one vehicle and one caravan. All four named individuals apparently provided fixed addresses in Tilbury. The police report records the following:

> "The main occupant [named, but not one of the individuals identified by Mr Ballard] is not an Irish traveller but a local resident of Tilbury. He appears to have decided to adopt the traveller way of life and take his caravan from place to place locally. There is no known history of other trespasses involving [him] and his girlfriend or associates."

117. The police served s.61 notices and the occupants of the site left the same day. There is no evidence of any fly-tipping or other damage beyond that caused to gain entry.

118. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D5. The evidence is contained in one paragraph of Mr Ballard's witness statement and 9 pages of police reports. The pumping station site was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

D6

119. The claim against D6 is that he was one of a large group of people that had formed an unauthorised encampment at the playing fields by the Yacht Club, Argent Street in Grays on 4 August 2016. The police records suggest that a post had been removed to gain entry to the land. When the police arrived, entry to the land had allegedly been blocked. 20 caravans were recorded as being present. The police evidence recorded a large number of vehicles and caravans. In respect of one of those vehicles, a Renault Laguna, D6 was the registered keeper at an address in Southampton. The police served s.61 notices requiring the occupants of the site to leave by 10am on 5 August 2016 and the STORM report appears to confirm that the site was vacated on 5 August 2016. There is no evidence of any fly-tipping or other damage beyond that caused to gain entry.

120. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D6. The evidence is contained in one paragraph of Mr Ballard's witness statement and 29 pages of police reports. The site was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

D7

121. The claim against D7 is that he was one of a group of people that had formed an unauthorised encampment at Moto Thurrock Motorway Services late on 9 February 2018. The police evidence recorded some 20-30 caravans and vehicles had stopped up. In respect of one of the 15 vehicles the police identified, D7 was identified as the registered keeper of a Ford Transit at an address in Carshalton. The STORM report records that the police thought that the group were the same travellers who had been evicted from Thorndon County Park the previous day. Inquiries by the police suggested that the group intended to break up with some remaining locally and others heading to Northamptonshire. The police did not serve s.61 notices, but Moto took action to evict them and the site was vacated by 11 February 2018.

122. The police reports contain no evidence that there was any fly-tipping. However, Ms Bolton indicated that Thurrock Council intends to rely upon the witness statement of the general manager of Moto. In that statement, the general manager states, simply, "*when the incursion leaves, we find that when (sic) the caravans were situated behind them are fly tips which consisting (sic) of used tyres, asbestos, general trade waste and used caravan furniture*". The general manager states: "*when this occurs the company hire a skip which is additional cost and the staff fill the skip which takes them away from the work that they are paid to do*". This evidence is very general and vague. If it is the only evidence relied upon to establish fly-tipping on a particular occasion, Thurrock Council may find that the Court concludes that it is insufficient to discharge the burden of proof in relation to an allegation of fly-tipping against an individual named defendant. Ultimately, assessment of the value of this evidence will be a matter for trial.

123. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D7. The evidence is contained in one paragraph of Mr Ballard's witness statement, one paragraph in the general manager's statement, and 12 pages of police reports. As noted already, the Moto Thurrock Motorway Services was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

D8

124. D8 was another individual whom Thurrock Council alleges was part of the group – together with D1 – that formed an unlawful encampment in the Matalan car park on 22 June 2016 (see [104]-[105] above). The STORM report records that D8 was the registered keeper of the vehicle in respect of which D1 was a named driver. It is unclear what Thurrock Council's case is regarding its claim for an injunction to restrain D8 from fly-tipping.

125. That is the full extent of the evidence upon which Thurrock Council relies in respect of its claim against D8. The evidence is contained in one paragraph of Mr Ballard's witness statement and 5 pages of a police report. As noted already, the Matalan car park was not included in the sites in respect of which Thurrock Council presently seeks an injunction.

126. The review of the evidence against these 8 named defendants is necessarily at this stage provisional. Thurrock Council may seek to rely on further or different evidence and ultimately, assessment of the value of this evidence, what it establishes by way of unlawful activity and any remedies to be granted will be a matter for trial.

Issues of fairness

127. The exercise of looking at the claims against individual named defendants has, however, identified a concern about the fairness of the process. The claims brought by the five local authorities involve claims against a large number of individual named Defendants, as well as against "Persons Unknown". The claims have been brought under Part 8. This means that there are no Particulars of Claim (or any other document) identifying what is alleged against each named defendant. The documentary material relied upon by each local authority is very substantial. The STORM reports are internal police records that would not be easy for a lay-person to understand. The evidential importance and relevance of some of the documents is only apparent when compared with other documents.

128. I have set out above what, in real terms, the evidence amounts to in each claim for the sample defendants (see [9], [36], [59] and [74] above). The effect of bringing one Part 8 claim against up to (and sometimes over) 100 named defendants is that any individual named defendant is confronted with a formidable task even to understand what s/he is alleged to have done. The relevant Service Orders granted to the local authorities allowed them to serve their evidence either on a USB stick or by providing an electronic link to a website where the evidence could be found. Ms Bolton submitted that serving 6 ring binders of documents on an individual defendant would have been "*inappropriate*", but the thrust of her submission is that it is nevertheless reasonable to expect the same defendant to access this evidence on a USB stick or via a link to a website.

129. I have identified the evidence that actually relates to the 8 individual sample defendants in the Thurrock case (see [105], [110], [113], [115], [118], [120], [123] and [126] above). As against each individual defendant, this represents a tiny fraction of the total evidence relied upon by the Claimant. This is simply not fair. It is not reasonable to expect any individual litigant to read, in Thurrock's case, over 2,000 pages of documentation to identify what amounts, in some instances, to no more than 10 pages that contained the evidence against him/her personally. I asked Ms Bolton, when we were looking at the evidence in relation to D2, whether she submitted that it was fair to expect D2, from the documents which had been served on her, to understand the case that was being made against her in the claim. Ms Bolton answered that whether D2 had read the documents was a matter for her and not something that should affect the Claimant's "*entitlement to an injunction*". Ms Bolton submitted that D2 had been served with the Claim Form and the evidence and it was irrelevant whether she had read and understood it. That is an alarming and unfortunate approach for a public authority to adopt towards litigation.

130. No named Defendant has filed an acknowledgement of service or any evidence in response to the Claim. Ms Bolton relies upon this as demonstrating a lack of engagement by the named defendants and, she argues, a basis on which the Court can infer that the named defendants accept the allegations made against them. Views may differ as to whether this lack of engagement is because the relevant named defendant thinks that it is a "fair cop" or whether it is because s/he has simply failed to grasp the nature of the claim that is being made against him/her personally. The Claim Form presents the claim as a general claim for an injunction to prevent encampments and/or fly-tipping rather than a claim made against individuals.

131. In the Cohort Claims, the Court has been provided with evidence that suggests that members of the Gypsy and Traveller Communities would find the task of accessing and considering this material more challenging than the average person.

132. The First Intervener filed a witness statement from Ilinca Diaconescu, dated 30 September 2020. Ms Diaconescu has worked with Gypsy and Traveller communities in London for over 30 years. She referred to research published in 2018 by the Second Intervener. The research was based on interviews by 50 people from the Gypsy and Traveller communities across the UK. The key findings were:

    i) One in five Gypsy and Traveller participants had never used the internet, compared to one in ten members of the general population.

    ii) Over half of Gypsy and Traveller participants said that they did not feel confident using digital technology by themselves.

    iii) Only two in five Gypsies and Travellers surveyed said that they use the internet daily, compared to four out of five of the general population.

    iv) Only 38% of Gypsies and Travellers (33% if housed) had a household internet connection, compared to 86% of the general population.

133. In addition to issues in relation to poor literacy and lack of skills and confidence, further barriers to online access were identified as:

i) Data running out: Of those surveyed, roughly one fifth of participants said that running out of data and not being able to afford any more was one of their biggest barriers to accessing the internet.

ii) Cost: Several people who did not have a household internet connection said that cost was a prohibitive factor in this.

iii) Signal: Several respondents said that poor signal was a barrier to them accessing the internet. According to figures released as part of the Race Disparity Audit in August 2018, Gypsies and Travellers are the ethnic groups most likely to be living in rural locations with 24.7% of Gypsies and Travellers living rurally, compared to 18.5% of the general population. This suggests that Gypsies and Travellers may be disproportionately affected by challenges in ensuring high speed internet connections in rural areas.

134. The Second Intervener filed a witness statement from Abbie Kirkby, dated 15 January 2021, on behalf of all the Interveners. Ms Kirkby is the Advice and Policy Manager at Friends, Families and Travellers, a national charity working to support the Gypsy, Traveller and Roma communities. Included within Ms Kirkby's statement was a section dealing with educational inequalities experienced by Gypsy, Roma and Traveller communities. The Government's Race Disparity Audit, published in April 2020, identified that 35% of Irish Traveller and 30% of Gypsy or Roma pupils met the expected standard for reading at ages 6-7 compared with the combined national average of pupils at 75%. 5.3% of Gypsy or Roma pupils and 9.9% of Irish Traveller pupils achieved English and Maths GCSE at grade C or above compared with the combined national average of 43.3%. Data from the 2011 Census, suggested that only 40% of Gypsies and Irish Travellers over the age of 16 hold any qualifications, compared to 78% of people in England & Wales as a whole.

135. Ms Bolton was dismissive of the survey evidence provided by Ms Diaconescu which she contended was "*highly unacceptable*". She suggested that a survey limited to 50 people was insufficient and that there was also no evidence about the questions that had been asked. Ms Bolton also submitted that photographic evidence, obtained by the Claimants, showed that the named defendants were sophisticated people with businesses, who were using sites for commercial enterprises, and who owned "*brand new Range Rovers*" and "*incredibly expensive caravans*". I cannot assess this submission, as I have not been shown the evidence to which Ms Bolton alluded, but I note that none of the individual defendants, D1-D8, was the registered keeper of a Range Rover (or similar vehicle). Further, whatever criticism might be made of the survey based upon sample size or survey model, none of the local authorities presently before the Court appears to have carried out any research of its own nor have any of them provided any further or alternative evidence as to the levels of literacy and digital exclusion in the Gypsy and Traveller communities.

136. Practice Direction 8A §9.2 mandates that claims for an injunction under s.187B Town & County Planning Act 1990 must be made by Part 8. I am concerned that the experience in these Cohort claims suggests that, at least where the claim is brought against multiple parties, use of the Part 8 procedure risks causing unfairness to the individual defendants and prevents a proper identification of what is alleged against each defendant. Proper and early identification of the allegations made against individual defendants may require that Particulars of Claim be provided and, even, that

the claim be transferred to Part 7 if it appears that it there is likely to be a substantial dispute of fact.

137. Ultimately, it is for the Court to ensure that its processes are fair. I reached the very clear view that the process of bringing a Part 8 Claim against multiple named defendants in these claims has led to a situation that risks causing real unfairness to the named defendants. This is because individual defendants may find it very difficult, practically, to identify what it is that they, personally, are alleged to have done. As Ms Bolton accepted, it is a fundamental requirement in civil litigation that a defendant understands the case that is being made against him/her. I have therefore made orders requiring each local authority to send a letter to each named defendant identifying the allegation(s) that the Claimant is making against each named defendant and the evidence relied upon in support of the allegation(s).