

B E T W E E N:

HEATHROW AIRPORT LIMITED

Claimant

-and-

(1) PERSONS UNKNOWN WHO (IN CONNECTION WITH JUST STOP OIL OR OTHER ENVIRONMENTAL CAMPAIGN) ENTER, OCCUPY OR REMAIN (WITHOUT THE CLAIMANT’S CONSENT) UPON ‘LONDON HEATHROW AIRPORT’ AS IS SHOWN EDGED PURPLE ON THE ATTACHED PLAN A TO THE PARTICULARS OF CLAIM

Defendants

(2) – (27) THE NAMED DEFENDANTS WHOSE NAMES ARE SET OUT IN SUPPLEMENTAL PARTICULARS OF CLAIM IN SCHEDULE 1

Proposed Defendants

CLAIMANT’S SKELETON ARGUMENT

For hearing of its Joinder Application on 11 December 2024 – t/e 2 hours

References to the Electronic / Hard-Copy Bundle in form [Vol/Tab/p.#]. NB – there are two electronic bundles with the shorter (in case more convenient to work from) simply containing the first ‘core’ 140 pages (Vol 1). They are repeated in the full second bundle.

Pre-reading: t/e 1 hour:

The Court is invited to pre-read, in the following order:

- (i) The underlying Injunction dated 9 July 2024 [1/7/68]*
- (ii) The Second Witness Statement of Akhil Markanday (“Markanday 2”) of Heathrow’s solicitors, Bryan Cave Leighton Paisner LLP (“BCLP”) [1/9/81];*
- (iii) The Application Notice dated 16 September 2024[1/14]*
- (iv) The draft Amended Particulars of Claim [1/6/47]*
- (v) The Second Witness Statement of Mr Jonathan Coen (Heathrow’s Customer Director) (“Coen 2”) [1/12/126]*
- (vi) The First WS of Mr Robert Hodgson (“Hodgson 1”) [1/13/132]*
- (vii) The Second WS of Mr Hodgson (“Hodgson 2”) [to be filed separately]*
- (viii) The draft Order [1/2/10]*

Introduction

1. On 9 July 2024, the Claimant (“**Heathrow**”) obtained an injunction (“the **Injunction**”) [1/8/24] against “Persons Unknown” (the Defendants) prohibiting “Persons Unknown” from entering, occupying or remaining on Heathrow Airport (“the **Airport**”) without Heathrow’s consent in connection with the Just Stop Oil (“**JSO**”) campaign (or other environmental campaign). All other major UK airports obtained similar injunctions over the course of the summer, in response to JSO’s publicised intention (to an extent acted upon) to disrupt air travel.
2. At the time the Injunction was obtained, Heathrow did not know the names of the individuals who posed a threat of unlawful conduct. The form of person unknown injunction obtained was therefore a ‘newcomer’ injunction, following the guidance of the Supreme Court in *Wolverhampton CC v London Gypsies & Travellers* [2024] UKSC 47; [2024] AC 983.
3. Since the Injunction was obtained it has, unfortunately, been breached (Heathrow alleges) by at least 26 individuals over the course of four direct action incidents at the Airport between 24 July 2024 and 1 August 2024.
4. Heathrow now knows the names of 26 such individuals. It therefore considers that it is required to seek their joinder as named defendants to these proceedings, and that it is in any case appropriate that they be joined as Proposed Named Defendants (the “**Proposed Named Defendants**”). The main item on the agenda for this hearing is therefore Heathrow’s “**Joinder Application**” dated 16 September 2024.
5. In addition, the Court is invited to make further case-management directions, explained below.
6. This hearing has been listed for two hours. That is anticipated to be a generous listing, which has been suggested in case many (or any) of the Proposed Named Defendants wish to take active part in the hearing. Absent such engagement, the hearing is expected to take less than an hour.
7. The only communications that have been received from any of the Proposed Named Defendants are:

- a. An email from Ms Sally Davidson (proposed D5), who asked for an electronic copy of the original hearing papers [8/18/1907] and was referred to the electronic copies on the Heathrow website [9/18/1908].
- b. An email from Ms Ruth Cook (proposed D15) requesting all future communications by email.
- c. A telephone call to BCLP from solicitors for Mr Joe Magowan (proposed D27), who indicated that a letter would follow setting out his position. None has yet been received. (b. and c. to be covered in an updating WS.)

Outline of Proposed Named Defendants' conduct

8. Evidence of the incidents involving each of the 26 Proposed Named Defendants is contained at paras. 17 to 36 of Markanday 2¹. The Court may also be assisted by the shorter summary at Schedule 2 of the proposed Draft Amended Particulars of Claim [1/6/63]. To minimise repetition, no full summary is set out herein. In the shortest possible outline:
 - a. Ds 2-8 were involved in what appears to have been an attempt to breach the perimeter fence of the Airport on 24 July 2024. The attempt was thwarted by the Police.
 - b. D9 staged a demonstration in Terminal 5 on 27 July 2024, which involved her standing with an "Oil Kills" sign in the departures area.
 - c. D10 & D11 attended the Terminal 5 departures hall on 30 July 2024 equipped with JSO-branded fire extinguishers filled with orange paint. They proceeded to spray the paint around the departures hall, including over electronic departure screens.
 - d. The remaining defendants were involved in an event on 1 August 2024, again in Terminal 5:

¹ NB: the numbering of the proposed new defendants has gone awry from D9 onwards in Markanday 2 (as proposed D9, Monday Rosenfeld, is not numbered); but the names are the same. The correct numbering is used in the APoC and draft Order.

- i. Ds 12-20 (referred to in the evidence as Groups 1 and 2) were intercepted by Police in or around the Terminal 5 underground station, equipped with orange t-shirts and banners indicating an intention to stage some form of JSO-connected demonstration (but before such demonstration could commence).
- ii. Ds 21-26 performed a sit-down demonstration, blocking the entrance to the Terminal 5 departure areas through the electronic automatic ticket presentation (ATP) gates; D27 was there with the group as an observer/photographer.

Service

9. The Supreme Court's guidance in *Wolverhampton* was to the effect that an order such as the Injunction is not required formally to be served as such; rather the focus is upon the taking of steps to notify any potential 'newcomer' of the terms of the injunction. To that end, the Injunction formally dispensed with the need for service (para. 7), but contained detailed provisions for the service of the proceedings and the Injunction (paras. 8 & 9). In summary, they required uploading of the documents to Heathrow's website, emailing them to email addresses associated with JSO and affixing notices at various locations at the Airport.
10. Those steps were carried out on 11 July 2024: as confirmed in Coen 2: [1/10/128].
11. More pertinently for immediate purposes, the Injunction also provided (para. 10) that any further application in these proceedings was to be notified by the same steps. The Joinder Application has been so notified by the first two of those steps (i.e. uploading to website, and emails to JSO): Hodgson 1, paras. 25.4 and 25.5 [1/13/138]. In circumstances where, as noted further below: (i) the relief presently being sought affects only the Proposed Named Defendants; and (ii) those Proposed Named Defendants have been individually served, it is submitted that additional notification of this application by physical notices at the Airport would be disproportionate and of no additional utility.
12. Each of the Proposed Named Defendants was arrested by Police as a result of their actions (summarised above) (with the exception of Monday Rosenfeld (proposed D9), who was escorted from the airport by Police – but not, it seems, arrested). Following their arrests

(or other engagement with the Police), their names and addresses were supplied by the Police to Heathrow. Each of those addresses is therefore believed to be their usual or last known addresses for service under CPR r.6.9: Hodgson 1, para. 13.

13. Each of the Proposed Named Defendants has been served documents including the underlying proceedings, the Injunction, the Joinder Application, the draft Amended Particulars of Claim and the Hearing Notice for this hearing by first class post to that address (sent 4 November 2024): Hodgson 1, paras. 21, 22 and 25.1. A covering letter from BCLP explaining the background to these proceedings, the nature of this hearing and how to confirm the precise time, was supplied in each case. The covering letter recommended that legal advice be taken, and informed the recipient of the right against self-incrimination in circumstances where (as returned to below) contempt of court for breach of the Injunction is in issue: see Hodgson 1, para. 23 [1/13/137]. An example of the letter is at [8/18/1812].
14. Further, Heathrow was alive to the fact that certain of the Proposed Named Defendants may be in prison (on remand or otherwise) following their arrests for their conduct at Heathrow or other offences. BCLP has therefore used the Government's 'Prisoner Location Service' in order to identify which of the Proposed Named Defendants that might be true of. Five of the Proposed Named Defendants were in prison as at 24 October 2024: Rory Wilson (proposed D2); Adam Beard (D3); Luke Elson (D7); Luke Watson (D8) and Phoebe Plummer (D10): Hodgson 1, paras. 16-20. Accordingly, further copies of the documents were served upon them by sending those documents addressed to them to the relevant prisons: Hodgson 1, paras. 25.2 [1/13/135-137].
15. It is therefore submitted that the Joinder Application has properly been served on each of the Proposed Named Defendants.
16. So as to ensure that the Proposed Named Defendants had every proper opportunity to prepare for this hearing should they wish actively to engage:
 - a. Hodgson 1 and Coen 2 were also served by the same means on 2 December 2024; and
 - b. a copy of the hearing bundle was uploaded to the relevant page of the Heathrow website and emailed to the JSO email addresses;

- c. Hodgson 1 indicated that the above steps were going to be carried out. Hodgson 2 will confirm that has been done; and
 - d. the 5 November 2024 letters of service had indicated that a hearing bundle would be made available electronically on request.
17. For completeness, it should be noted that the copies of the documents made publicly available (i.e. to the JSO email addresses and on the Heathrow website) have redacted the home addresses of the Proposed Named Defendants: Hodgson 1 at para. 36 [1/13/140].

Joinder

18. The authorities indicate that an applicant for or with the benefit of a ‘newcomer’ injunction should seek the joinder of persons who become known to them (whether by acting in breach of the order, or otherwise). For example:
- a. A ‘newcomer’ injunction was recognised in *Wolverhampton* as a new category of injunction, made against persons who are truly unknowable (e.g. [143]) – i.e. including persons who may not even at the date of injunction have any intention to commit the prohibited conduct. They are therefore, analytically, perhaps inapt to apply to a particular individual who has shown themselves willing (via prior conduct) to act in the unlawful manner feared, and (it might be inferred) are likely to do so again unless otherwise restrained.
 - b. *Wolverhampton* makes clear (at [221]) that “*The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way*”.
 - c. Whilst aspects of the reasoning in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 were departed from in *Wolverhampton*, that quotation in *Wolverhampton* is consistent with the criticism of *Canada Goose* by Nicklin J

(at first instance), as referred to by the Court of Appeal on appeal, that “*The claimants have been able to identify 37 of those [individuals served with the order in the connection with protests] by name, although Canada Goose believes that a number of the names are pseudonyms. None of those who can be individually identified or named have been joined to the action (whether by serving them with the claim form or otherwise) even though there was no obstacle to serving them with the claim form at the same time as the order*”.

d. The Court of Appeal went on to note in *Canada Goose* (at [82(1)]): “*The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings.*”

19. Heathrow therefore considers that it is, acting properly, *required* now to seek the joinder of the Proposed Named Defendants. It is on any view reasonable and appropriate that they should be so joined.
20. The Court is therefore asked, in the first instance, to join the Proposed Named Defendants.

Contempt Proceedings

21. As will be apparent from the brief description of the events giving rise to the joinder of the Proposed Named Defendants, there is (at least) a real prospect that each of the Proposed Named Defendants has acted in contempt of Court for breach of the Injunction. Heathrow has been alive to the prospect of such proceedings throughout its dealings with the Proposed Named Defendants, and has been careful to inform the Proposed Named Defendants of (for example) their right against self-incrimination (foreshadowing the requirements for a contempt application under CPR r.81.4).
22. The Court is not being asked to express any view, let alone make any findings, about any such contempt at this hearing. As potentially relevant for the purposes of future case-management, however:

- a. At the time of making the Joinder Application, and as explained in Markanday 2 at para. 11 [1/11/116], Heathrow was minded to bring committal proceedings against at least some Proposed Named Defendants – but was reviewing the evidence before reaching a final decision.
- b. Hodgson 1, by way of update, now explains (at paras. 29-30) [1/13/138] that the result of Heathrow’s deliberations (in respect of which no privilege is waived) is that it is minded to bring, and is preparing, committal proceedings only against:
 - i. D10 (Phoebe Plummer) and D11 (Jane Touil) in respect of the 30 July 2024 spray painting incident; and
 - ii. Ds 21-26 (Melanie Griffith, Virginia Barrett, Pauline Hazel Smith, Rosemary Robinson, Irfan Mamum and Callum Cronin) in respect of the sit-down action in front of the electronic ATP gates on 1 August 2024.
- c. Permission to commence such application is not required (under CPR r.81.3), but Nicklin J held in MBR Acres Ltd v McGivern [2022] EWHC 2071 (QB) that the Court has power to impose such a requirement (see White Book Commentary at [81.3.11]). The Court is not being asked to impose such requirement, but equally Heathrow will of course respect any views of guidance that the Court saw fit to give on this proposed course.
- d. The Court should also, in this context, be aware of the comments made by Richie J on 31 July 2024 in his *ex tempore* judgment in Tendring District Council v Persons Unknown [2024] EWHC 2237 (KB). That was a case where two councils apparently sought (for the seventh year in a row) an injunction preventing parking or camping around the site of an airshow. The learned Judge expressed concern that “*these councils have never sought to enforce the injunctions they have been granted before*” [22]. At [23] a “warning” was given:

“...next year, if a further injunction is applied for and the evidence that is put before this Court, on full and frank disclosure, shows that (say) 10 caravans turned up and trespassed and no contempt proceedings were brought, it is likely that I at least would not grant a further injunction. These civil PU injunctions, the nuclear weapons of civil law, are not handed out willy nilly to be ignored; they are to be obtained

seriously and enforced properly. If they are granted and then not enforced, whether because the council does not consider a breach is serious enough to enforce or because of costs constraints, then they should not be granted in the first place and criminal law protection is the right protection.”

- e. The pursuit, or otherwise, of contempt proceedings may therefore have a bearing on the question of whether the Injunction is renewed when it is reviewed (on the one-year anniversary).
 - f. Of at least potential relevance to the timing, case-management or proportionate sanction as might be imposed if contempt was found is the prospect of these Proposed Named Defendants also being subject to criminal proceedings in respect of the same conduct. The current state of any such criminal proceedings is unclear; and it is therefore suggested that any detailed consideration of such issues be addressed at a directions hearing in the committal applications once issued.
23. If committal proceedings against D10 (Phoebe Plummer) are to continue, then there are likely to be practical or timing challenges caused by the fact that she is separately serving a prison sentence following her conviction for criminal damage after throwing soup over a Van Gough painting at the National Gallery in October 2022: Markanday 2 at paras. 31 [1/11/121]. The publicly available sentencing remarks indicate that she was on 27 September 2024 given a sentence of 27 months imprisonment for that offence, and an offence of interfering with key national infrastructure (relating to a separate “slow walking” incident; not connected with Heathrow).
24. The suggested immediate impact of these factors on future case management is addressed under the next heading.

Further Case Management

25. The Court is invited to consider this part of these submissions alongside the draft Order [1/2/10].
26. Paragraph 1 of the draft Order simply records the joinder of Ds 2-27, which has already been addressed.

27. Paragraph 2 provides, for the avoidance of any doubt, confirmation that the Injunction continues to apply to the Proposed Named Defendants, now that they are no longer “persons unknown”. This simply confirms what would in any case be the position in law: e.g. in *Cuciurean v Secretary of State for Transport, HS2 Limited* [2022] EWCA Civ 1519, a committal order was upheld against Elliot Cuciurean for breach of a “persons unknown” injunction, even though he was a named defendant in the claim form (and otherwise known to the applicant in that case) at the date of breach. However, it is plainly desirable that the matter be put beyond any doubt or confusion. In circumstances where there is clear evidence of each of the Proposed Named Defendants carrying out conduct of the type intended to be restrained by the Injunction, it is appropriate that the risk of them repeating such conduct in future is specifically restrained.
28. Paragraph 3 simply provides for the Claim Form to be amended to include the Proposed Named Defendants. The original Claim Form by which these proceedings were commenced (dated 7 July 2024) is at [1/4/25].
29. Paragraph 4 has been superseded by events. Heathrow had originally proposed *not* amending the Particulars of Claim [1/5/47], but instead setting out the facts alleged against the Proposed Named Defendants in a separate document (styled a Supplemental Points of Claim). On reflection, amendments to the Particulars of Claim have been proposed [1/5/47] – but which set out the detail of the particular events involving the Proposed Named Defendants in a separate Schedule 2 so as to do ‘least violence’ to the body of the Particulars of Claim which was (and remains) primarily directed at the risk of *future* conduct. Heathrow now seeks permission to amend its Particulars of Claim in the form of the draft Amended Particulars of Claim (and subsequent references to “Supplemental Points of Claim” should therefore be read as being to the Amended Particulars of Claim).
30. Paragraph 5 seeks dispensation with the need to re-serve the Amended Claim Form and Amended Particulars of Claim on *Persons Unknown*. In circumstances where no further or additional relief is being sought against them by these proceedings and the Proposed Named Defendants will be served separately, it is submitted that there is no practical utility in the sealed Amended Claim Form and Amended Particulars of Claim being served in hard copy at the Airport. It is, however, provided (paras. 7.3-4) that service will

be effected electronically by email to the JSO email addresses and uploading to the Heathrow website.

31. Paragraph 6 simply seeks the Court's confirmation of the adequacy of service of the materials which have already been served on the Proposed Named Defendants (as outlined at paras. 8 to 15 above).
32. Paragraph 7 seeks directions for future service of documents upon the Proposed Named Defendants (by post to their home or prison (if appropriate), by email to the JSO email addresses and by uploading them to the website). Paragraph 8 provides for the publicly disseminated documents to redact the Proposed Named Defendants' addresses (which – the Court will recognise - is offered by Heathrow for the benefit of the defendants' privacy, rather than it being of any benefit to Heathrow).
33. Paragraph 9 provides for certificates of service or witness statements to be filed verifying service.
34. Paragraph 10 simply provides that the foregoing provisions as to service for any Proposed Named Defendant will be superseded in the event a Proposed Named Defendant provides a postal or email address for service.
35. Paragraph 11 seeks dispensation of the requirement for personal service of the intended contempt applications. Such dispensation may be appropriate where *inter alia* the Court is satisfied that the respondent has knowledge of the proceedings (White Book Commentary at [81.5.1]). Particularly if the potential respondents are not present or represented at this hearing, it is recognised that the time to address potential dispensation may be *after* committal proceedings have been issued and service has been attempted. Ms Plummer stands in a different position, as there are obvious difficulties in serving her personally in prison.
36. Paragraph 12 provides, generally, for questions of service on the Proposed Named Defendants to be revisited as necessary at a future directions hearing. By this, Heathrow intends that it will explain to the Court at that juncture precisely what has been done by way of service, so that the Court can be satisfied that proceeding in the absence of any Proposed Named Defendant (if that be the case) is appropriate – or that so orders for alternative service can be sought (retrospectively if necessary) as required.

37. Paragraph 13 requires Proposed Named Defendants who wish to oppose their joinder (to the extent they do not do by this hearing) or defend the claim against them in the Amended Particulars of Claim to file an Acknowledgment of Service or Defence. If they do so, then there may be a need separately to progress the claims against them to trial. If they do not, then the effect would be that they continue to be bound by the Injunction (as with everyone else who might otherwise act contrary to it) until the one-year review date in paragraph 3 of the Injunction.
38. Paragraph 14 seeks to minimise any arguable prejudice as might be caused to the Proposed Named Defendants or any other person by giving liberty to apply on 72 hours' notice to vary or discharge the order. Paragraph 15 makes it a condition of seeking such relief that a name and address for service is required.
39. Paragraph 16 raises the prospect of the Court seeing fit to direct a particular deadline (or, at least, 'reasonable endeavours' target) for the service of any contempt application. The question of whether this should be directed, and if so the appropriate timeframe, will be addressed in oral submissions.
40. Paragraph 17 suggests that a further directions hearing be listed at this juncture, at which the Court will consider: (i) future case management of the committal applications, once brought; and (ii) any necessary further case management of the substantive proceedings in the event that any Proposed Named Defendant seeks actively to defend them.
41. An alternative approach, subject to the Court's preference and the desirability of active cases management, may be for *no* such hearing to be provided for at this juncture; but rather for such direction hearing or hearing(s) as prove necessary or desirable to be sought at that point: e.g. *if* Proposed Named Defendants seek actively to defend the substantive claim, or once contempt proceedings have been issued and served.

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6 December 2024

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