

IN THE HIGH COURT OF JUSTICE

Claim No: KB-2024-002210

KING'S BENCH DIVISION

BETWEEN:

HEATHROW AIRPORT LIMITED

Claimant

And

**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

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

FOR THE HEARING ON 9 JULY 2024

In this Skeleton Argument:

- (i) References to documents in the Hearing Bundle are denoted by **[HB/x]**
- (ii) References to paragraphs in the Witness Statement of Jonathan Coen **[HB/42]** by Coen §x and to his exhibits by **JDC1/x [HB/56]**
- (iii) References to paragraphs in the Witness Statement of Akhil Markanday **[HB/295]** are denoted by Markanday §x and to his exhibits by **AM1/ x [HB/314]**.

I. INTRODUCTION

1. The Claimant is the operator of London Heathrow Airport, Hounslow, Middlesex (“the Airport”) and the owner (either freehold or leasehold) of the various parcels of land contained within its perimeter.
2. The Claim is directed to ‘persons unknown’ associated with Just Stop Oil (“JSO”) or other similar environmental campaigns, in respect of whom there is evidence of planned ‘direct action’ to disrupt airports during the summer of 2024.

3. The Airport is Europe's busiest airport. The average number of daily flights exceeds 1,300, with an average of nearly 227,000 passengers daily. It is a designated Critical National Infrastructure site. It is a clear and obvious target for the planned disruptive action, and, indeed, features in one of the videos on the JSO website promoting the proposed campaign (Markanday §§16-17 [HB/295 at 298-9]).
4. In light of a deadline of 12 July 2024 given in a letter to MPs sent on 13 June 2024 (Coen §24) [HB/42 at 47] there are credible concerns that the campaign of 'direct action' will commence this week.
5. The Claimant therefore seeks an injunction on an urgent 'without notice' basis to restrain the apprehended trespass and other unlawful acts on the Airport, in order to avoid the risks to safety of persons and property and disruption to both the travelling public and safe operations of the Airport.
6. The Defendants are Persons Unknown who are 'newcomers' in respect of whom 'notice' of this application (in the usual sense) is not therefore possible: *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 W.L.R. 45. However, this is also a case where the giving of prior notice to the Defendants risks undermining the very purpose for which the injunction is sought, and potentially triggering the very actions which it is intended to restrain. This is addressed further below, in addition to the steps which the Claimant intends to take to ensure that these proceedings are brought to the attention of the persons who would become Defendants through the carrying out of the prohibited acts prior to them undertaking any such acts.
7. This application follows a similar application made by the owners/operator of London City Airport in respect of which an injunction was granted by Mr Justice Julian Knowles on 20 June 2024. A copy of the Order in respect of London City Airport is provided at AM1/90 [HB/417].

II. THE AIRPORT

8. The land within the Airport perimeter comprises a significant number of land parcels registered at HM Land Registry. A Schedule of Titles is appended to the Particulars of Claim **[HB/15]**. The land which is owned by the Claimant, either freehold or leasehold, is shown on the Plan at **AM1/12 [HB/339]**: this equates to the area shown edged purple on Plan A to the Particulars of Claim **[HB/24]**. Available office copy entries¹ of title are exhibited at **AM1/250-1330 [HB/557 -1657]**.
9. A number of the parcels of land listed in the Schedule of Titles are subject to leases to third parties. Those parts of the Airport which are subject to above-surface leases are shown hatched blue on Plan A **[HB/24]**.
10. There are, in addition, a number of areas, within terminal buildings which are occupied by third parties². These areas are shown shaded orange on Plan A **[HB/24]**.
11. Those parts of the Airport to which the Claimant asserts an immediate entitlement to possession, in its capacity as freehold or leasehold owner under the titles shown in the Schedule of Titles, are therefore those areas shown shaded yellow but excluding those areas hatched blue or shaded orange on Plan A **[HB/24]**.
12. The Claimant is, critically, also the operator of the Airport. In that capacity:
 - 12.1 It holds a certificate for the operation of the Airport issued by the Civil Aviation Authority (“CAA”) in accordance with UK Reg (EU) No 139/2014 (“the Certificate”) **[JDC1/37] [HB/94]**;

¹ As explained at Markanday §10, it has not been possible to exhibit official copy entries for all of the registered land parcels, with some remaining on order from HM Land Registry. The Schedule of Titles appended to the Particulars of Claim has, however, been compiled from the information which is publicly available from HMLR (including the description of the registered land and registered proprietor).

² As explained in Markanday §12, in light of the complexity of seeking to show which parts of different floors of the terminal buildings are subject to leases (etc) to third parties, for the purposes of this claim, the terminal buildings are excluded from those parts of the Airport to which the Claimant asserts an immediate entitlement to possession by virtue of its freehold/leasehold ownership.

12.2 It has the benefit of an Economic Licence granted by the CAA under Part 1 of the Civil Aviation Act 2012 (“the Licence”) [JDC1/104] [HB/161]; and

12.3 It has made the Heathrow Airport – London Byelaws 2014 (“the Byelaws”) pursuant to sections 63 and 64 of the Airports Act 1986 regulating the use and operation of the Airport and the conduct of all persons while within the Airport, which came into force on 13 April 2014 [JDC1/208] [HB/265].

III. THE APPREHENDED ACTIONS

13. Details about the campaign of disruption at airports being organised and/or publicised by the Defendants are set out in Markanday §§14-24 and Coen §§23 - 25. Examples of recent unlawful actions at airports generally (supporting the Claimant’s concerns as to the apprehended actions) and at or directed at the Airport previously are set out in Markanday §§25-28 and Coen §§26-28.

14. By way of summary, in March 2024, the Daily Mail reported that environmental activists associated with the JSO campaign were planning a campaign of disruptive action at airports over the summer of 2024, advocating actions such as:

- (i) Cutting through fences and glueing themselves to runway tarmac;
- (ii) Cycling in circles on runways;
- (iii) Climbing onto planes to prevent them from taking off; and
- (iv) Staging sit-ins at terminals ‘day after day’ to stop passengers getting inside airports.

15. JSO’s own website emphasises that the group plans to target action on airports during the summer, with recent updates on its fundraising pages stating (inter alia) that “*We’re escalating our campaign this summer to take action at airports*” and “*We’re going so big that we can’t even tell you the full plan, but know this – Just Stop Oil will be taking our most radical action yet this summer. We’ll be taking action at sites of key importance to the fossil fuel industry; **super-polluting airports.**”*

16. Airports, including the Airport, have previously been the subject of unlawful trespass or other disruptive actions by environmental activists, including:

- (i) Two JSO supporters breaching the perimeter fence at Stansted Airport on 20 June 2024, and spraying paint over private jets (Markanday §25);
- (ii) Extinction Rebellion activists blocking access to Farnborough Airport on 2 June 2024 (Markanday §26);
- (iii) A group affiliated with JSO, called Last Generation, causing disruption at Munich airport on 18 May 2024, including people gluing themselves to the runway (Markanday §27);
- (iv) On 27 September 2021, climate change protestors defied a court order and blocked part of the M25 at Heathrow (Coen § 28(a));
- (v) In September 2019, the climate change group, Heathrow Pause, attempted to disrupt flights into and out of the Airport by flying drones in the airport's exclusion zone (Coen §27 (a)); and
- (vi) On 13 July 2015, 13 members of the climate change protest group 'Plane Stupid' broke through the perimeter fence and onto the northern runway at the Airport. They chained themselves together in protest, disrupting hundreds of flights (Coen §27(c)).

IV. RISK OF HARM

17. The Airport is a busy, operational site serving passengers and cargo, with two runways and an average of over 1,300 daily flights. As a Code F complaint airport, it can receive the largest aircraft which many other airports cannot, and accordingly has a higher proportion of long-haul aircraft landing than other UK airports (Coen §31). It is a complex operational environment, with serious health and safety considerations which need to be carefully managed (Coen §29).

18. The risks of harm posed by the JSO campaign are significant: see Coen §29-33.

19. They include a real risk to life and limb arising from:

- (i) Trespassers being struck by landing, departing or taxi-ing aircraft, or others being struck by aircraft having to take evasive action (Coen §30);
- (ii) Trespassers coming too close to a jet engine (Coen §30(a));
- (iii) Emergency services and the Airport's own rescue and fire-fighting services potentially having to put themselves at risk to remove and/or rescue trespassers (and in the event of an airfield emergency, their response potentially being hampered) (Coen §30(c)).

20. There would also be severe disruption to passengers, and the proper operations of the Airport more generally: Coen §43. The potential economic loss to the Claimant is significant: Coen §37. The disruption would have effects beyond the Airport itself, including, but not limited to, the potential need for other airports to find capacity to accommodate in-bound flights which might have to be diverted from Heathrow (Coen § 34(f)); the need to divert additional Police resources to the Airport (Coen § 34(g)); disruption to the highway network (Coen §34 (d)); and impacts on businesses and wider economy given the contribution which the Airport makes to the wider economy (Coen §12-13, 15 & 34(b)).

V. THE CAUSES OF ACTION

21. The Claimant seeks an injunction to restrain acts constituting trespass and nuisance.

Trespass

22. As set out at 11 above (and in §5 of the Particulars of Claim), the Claimant is entitled to immediate possession of those parts of the Airport shown shaded yellow on Plan A in its capacity as the registered freehold or leasehold proprietor of those parts of the Airport. The availability of injunctive relief to restrain an anticipated trespass of land to which a landowner is entitled to immediate possession is well established: see, for example, *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780.

23. However, it is also well established that an entitlement to exclusive possession, or actual possession itself, is not required where possession, or injunctive relief, is sought against trespassers:

23.1 In Manchester Airport Plc v Dutton & ors [2000] 1 Q.B.133, the Court of Appeal upheld an order for possession granted in favour of Manchester Airport Plc, which held a licence from the National Trust, but did not enjoy any right of exclusive possession - nor had it been in actual possession of the land prior to the trespass. For the majority (Laws L.J. and Kennedy L.J.) the critical consideration appeared to be that a licensee not in occupation could claim possession against a trespasser “*if that is a necessary remedy to vindicate and give effect to such rights of occupation as by contract with the licensor he enjoys*” (Laws L.J. at p.150B, Kennedy L.J. at p.151E) and the fact that the claimant enjoyed a better right to possession than the bare trespasser defendants (Laws L.J. at p.150C, Kennedy L.J. at p.151D). Chadwick L.J, dissenting on the ability to rely on a licence to found an order *in rem*, drew attention at p.144B-C, to Hounslow London Borough Council v Twickenham Garden Developments Ltd [1971] Ch 233 at §§17-18, and the concept of control being sufficient to found a claim: “*The terms of an occupational licence may give the licensee such a degree of control over access as to entitle him to the protection of the law of trespass against intruders*”. That is, in turn, reflected in Laws L.J.’s judgment at p.147C-G.

23.2 In High Speed Two (HS2) Limited v Four Categories of Persons Unknown [2022] EWHC 2360 (KB), in granting injunctive relief to restrain protests over the HS2 route and other land, Mr Justice Julian Knowles stated, at §77, that “*In relation to trespass, all that needs to be demonstrated by the claimant is a better right to possession than the occupiers*”, citing Dutton at p.147;

23.3 In Mayor of London v Hall [2011] 1 WLR 504, the Court of Appeal was satisfied that the Mayor of London, as the person with ‘control’ of Parliament Square Gardens, could properly seek injunctive relief against the defendants founded in trespass, even though title was vested in the Crown (§§22-27).

24. It is submitted that the Claimant clearly comes within the scope of the principles referred to above. As will be apparent from Coen in particular, it is the Claimant who is in paramount control of the Airport as a whole. It is the Claimant who is responsible for the safe and efficient operation of the Airport (the Certificate); who controls access to the Airport and its various parts (the Aerodrome Manual); and who is authorised (and has in fact) made byelaws “*regulating the use and operation of the airport and the conduct of all persons within the airport*” (the Byelaws) under the statutory authority conferred by s.63 of the Airports Act 1986. It is, to all extents and purposes, in the same position as the Mayor of London in Hall.

25. Specifically:

25.1 In relation to the Certificate:

25.1.1 This entitles the Claimant to operate the Airport and requires compliance with various safety and operational standards.

25.1.2 The certification includes the aerodrome manual for the Airport (UK Reg (EU) 139/2014, Annex II subpart C ADR.AR.C.035 paragraph (d)). A copy of the aerodrome manual is at **[JDC1/38] [HB/95]**. The purpose and contents of the document are summarised in Part A **[HB/101]**:

“The Aerodrome Manual forms an important part of the certification process as required by the Civil Aviation Authority (CAA) with respect to operation of the aerodrome. This document complies with all applicable requirements as detailed in UK Reg (EU) No 139/2014 (the UK Aerodromes Regulations) ADR.OR.E.005 and is in accordance with the terms of the aerodrome certificate.

[...]

The Manual and its associated documents contain information relevant to the safe operation of Heathrow’s aerodrome. It describes the aerodrome services and facilities, the airfield management structure and responsibilities, the aerodrome safety management system, and provides references to pertinent operational procedures and standards.

All users of the aerodrome are expected to follow the standards and operational procedures referred to in this document, in order to meet or exceed the minimum standards required by the terms

of the certificate. Full operational safety instructions are available online at Heathrow.com/airside. [...]”

25.1.3 Part of the Aerodrome Manual sets out particulars of the operating procedures of the aerodrome, its equipment and safety measures. E.2 sets out procedures for accessing the aerodrome movement area, including, at 2.2, measures for preventing unauthorised entry into the movement area [HB/136], and, at E.5, procedures for aerodrome works [HB/142].

25.2 In relation to the Licence:

25.2.1 This enables the Claimant to charge for use of and access to the airport land and infrastructure and sets out certain price control conditions (Coen §18). Paragraph A.3 defines the areas to which it applies (essentially, the whole of the Airport with the exception of fuel infrastructure/facilities).

25.2.2 A licence under Part 1 of the Civil Aviation Act 2012 is granted to “the operator of the airport area” to which it relates, that term being defined in s.9 of the Act as the person who “has overall responsibility for the management of all of the area”. The formula for fixing airport charges (set out in Part C of the Licence) includes (inter alia) a ‘Terminal drop-off charge’ (defined as meaning “*the per vehicle charge for accessing the drop off area for departures from any terminal at the Airport, as set from the Licensee from time to time*” [HB/185]). The Claimant is also entitled to levy charges for ‘Specified Facilities’ (set out in C2) which include (inter alia) airside licences, staff car parking, and taxi feeder park [HB/185-188].

25.3 In relation to the Byelaws:

25.3.1 The Byelaws were made by the Claimant pursuant to s.63 of the Airports Act 1986, s.63(1) permitting an airport operator to make byelaws for “*regulating the use and operation of the airport and the conduct of all*

persons within the airport". The Byelaws made by the Claimant [HB/1265] include:

25.3.1.1 Prohibited acts (section 3), including:

- Byelaw 3.19: "*no person shall organise or take part in any demonstration, procession or public assembly likely to obstruct or interfere with the proper use of the Airport or obstruct or interfere with the safety of passengers or persons using the Airport*";
- Byelaw 3.21: "*no person shall intentionally obstruct or interfere with the proper use of the Airport or with any person acting in the execution of his duty in relation to the operation of the Airport*";

25.3.2.1 Acts for which permission is required (section 4) including:

- Byelaw 4.7: unless the permission of the Claimant has first been obtained, "*no person shall climb any wall, fence, barrier, railing or post*";
- Byelaw 4.8: unless the permission of the Claimant has first been obtained, "*no person shall sing, dance, shout, play a musical instrument, operate a Portable Music Machine or otherwise behave in such a way as to give reasonable cause for annoyance to any other person.*"

25.3.2.2 Prohibited acts on parts of the airport to which the road traffic enactments do not apply (section 5); and

25.3.2.3 Acts for which permission is required on parts of the airport to which the road traffic enactments do not apply (section 6).

- 26 The Defendants have no interest, estate or other right to possession of the Airport. As in *HS2* and *Dutton*, there can be no dispute that the Claimant enjoys a better right to possession of the Airport than the Defendants.
- 27 Further, the Defendants are, by definition, trespassers on the Airport, being persons entering on, occupying or remaining on the Airport without the Claimant's consent. As set out in Coen §20, whilst it is the case that large parts of the Airport are broadly open to the public, that is with the Claimant's permission and consent "*for legitimate short-term purposes connected with Heathrow's status as an airport – for example, to travel themselves or to drop-off/collect other travellers*". That general consent is subject to compliance with the Byelaws, which prohibit (inter alia) organising or taking part in any demonstration or public assembly likely to obstruct or interfere with the proper use of the Airport (Byelaw 3.19) or intentionally obstructing or interfering with the proper use of the Airport (Byelaw 3.21).
- 28 The Claimant is therefore entitled to, and seeks, injunctive relief to restrain trespass over the whole of the Airport, as shown edged purple on Plan A, being the land over which it has control even if not, by reason of title, an immediate right to possession in its capacity as landowner.

Nuisance

Private Nuisance

- 29 The essence of a claim for private nuisance is that the acts of the defendant have wrongfully interfered with the claimant's use and/or enjoyment of its property. In the present case, the acts complained of would fall into the category of nuisance by interference with enjoyment discussed in *Clerk & Lindsell on Torts* (24th Edn) at 19-08.

Public Nuisance

- 30 A public nuisance is one which “*inflicts damage, injury or inconvenience on all the King’s subjects or on all members of a class who come within the sphere of a neighbourhood of its operation*” (HS2 at §84). A public nuisance is actionable in private law if the claimant can establish that he has sustained a particular damage or injury other than and beyond the general injury to the public, and that such damage is direct and substantial: *Benjamin v Storr* (1873-74) L.R. 9 C.P. 400.
- 31 The actions apprehended by the Claimant would substantially affect members of the public, including, but not limited to persons wishing to use the Airport for the purpose of air travel - as well as the Claimant. As such, the nuisance would materially affect the reasonable comfort and convenience of a class of the King’s subjects. By reason of its status as the operator of the Airport (and person responsible for the safe and efficient operation of the Airport) and by reference to the matters set out in Coen §§29, 36 and 37 in particular, the Claimant would experience a particular damage or injury over and above that of disruption to the general public, which damage would be loss and substantial.

VI. INTERIM RELIEF: PRINCIPLES & SUBMISSIONS

- 32 The tests which fall to be considered where an injunction is sought on an interim basis against “persons unknown” were helpfully summarised by Johnson J in *Shell Oil UK Products Limited v Persons Unknown* [2022] EWHC 1215 (QB) at §23, save that the principles with regards to identification / notification of the defendants now needs to be considered in light of the Supreme Court’s subsequent judgment in *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 W.L.R. 45 (and see also *Valero Energy Ltd & ors v Persons Unknown* [2024] EWHC 134 (KB) at §§56-58). In terms of the relevant principles here, what must be demonstrated is that:

- (i) There is a serious question to be tried;
- (ii) Damages would not be an adequate remedy for the claimant, but a cross-undertaking in damages would adequately protect the defendant; or
- (iii) The balance of convenience otherwise lies in favour of the grant of the order;
- (iv) There is a sufficiently real and imminent risk of damage so as to justify the grant of what is a precautionary injunction;
- (v) The prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting the claimant's right;
- (vi) The terms of the injunction are clear and precise;
- (vii) The injunction has clear geographical and temporal limits;
- (viii) The defendants are identified in the claim form, and injunction, by reference to their conduct;
- (ix) Any interference with rights of free assembly and expression are necessary for and proportionate to the need to protect the claimant's rights.

33 Whilst the decision in Wolverhampton was specifically concerned with injunctions against travellers and gypsies (§235) the Supreme Court did give some general guidance with regards to injunctions sought in what might be regarded as 'protest cases' at §236:

“Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.”

34 In applying those principles to the present case:

- (i) The causes of action on which the Claimant relies are detailed at §§21-31 above. Having regard to the evidence of Markanday and Coen, there is

clearly a realistic prospect of success at trial. Consequently, there is a serious issue to be tried.³;

- (ii) Damages would not be an adequate remedy for the Claimant. The potential economic losses could be significant (Coen § 36-7). There is no credible reason to believe that any of the Defendants could or would meet any such award (Coen §39(d)). That is quite apart from the other, serious, harms which could arise from the apprehended actions which are not readily quantifiable in damages (Coen §39(d));
- (iii) The balance of convenience lies in favour of the Order. The Claimant seeks to restrain actions which could seriously disrupt the operation of the Airport, the travelling public, and others who utilise or depend upon the proper functioning of the Airport (Coen §§29-27, 39). In contrast, there is no obvious way that the Defendants will suffer any actionable loss (Coen §39(e));
- (iv) There is a sufficiently real and imminent risk of damage so as to justify the grant of a precautionary injunction which has been substantiated by the Claimant's evidence: Coen §§23-25, 38, Markanday §§14-28. The Claimants would note that the imminence of the risk arising from the JSO campaign and/or other environmental campaigns has recently been recognised by this Honourable Court in respect of London City Airport and, on 5 July 2024, Manchester, Stansted and East Midlands Airports;
- (v) There is thus a compelling need for the Order;
- (vi) The acts prohibited are to restrain the Defendants from entering on, occupying or remaining on the Airport. They are directly related to the causes of action set out above;
- (vii) The terms of the injunction are clear and precise: see the draft Order at **[HB/30-41 at 31]**

³ In a protest case such as this, section 12(3) of the Human Rights Act 1998 – which requires the Claimant to show relief is “likely” to be granted at trial – does not apply as there is no “relevant publication”: Shell UK Oil Products Limited v Persons Unknown [2022] EWHC 1215 (QB) at §§66-76 and Esso Petroleum v Breen [2022] EWHC 2664 (KB) §40. Even if the elevated test did apply, it would be satisfied on the facts of this case.

- (viii) The injunction has clear geographical limits (the Airport – see Plan A) and temporal limits (an initial period of 12 months – see §3 of the draft Order [HB/31]);
- (ix) The Defendants are sufficiently identified in the Claim Form and injunction by reference to their conduct.

35 With regards to rights protected under the ECHR, it is not considered that reliance by the Defendants on rights of freedom of expression and/or assembly within Articles 10 and/or 11 would provide a realistic defence in the particular circumstances of this claim. The Claimant relies, in that regard, on:

- (i) *DPP v Cuciurean* [2022] 3 W.L.R. 446 at §§40-50, in particular §43 where the Divisional Court “conclude[d] that there is no basis in the Strasbourg jurisprudence to support the defendant's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded”;
- (ii) *Ineos Upstream v Persons Unknown* [2019] 4 W.L.R. 100 in which Longmore L.J. stated, at §36, that “The right to freedom of peaceful assembly is guaranteed by both the common law and article 11 of the ECHR. It is against that background that the injunctions have to be assessed. But this right, important as it is, does not include any right to trespass on private property”; and
- (iii) *HS2* at §§79-47 which considered the previous authorities on the point, with Mr Justice Julian Knowles stating at §§80-81:

“80. In relation to defences to trespass, genuine and bona fide concerns on the part of the protestors about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede*, [63].

81. A protestor's rights under Articles 10 and 11 of the ECHR, even if engaged in a case like this, will not justify continued trespass onto private land or public land to which the public generally does not have a right of access: see the passage from Warby LJ's judgment in *Cuciurean I* quoted earlier, *Harvil Road*, [136]; and *DPP v Cuciurean* at [45]-[49] and [73]-

[77]. *There is no right to undertake direct action protest on private land: Crackley and Cubbington*, [35], [42]”.

VII. PERSONS UNKNOWN AND SERVICE/NOTIFICATION OF PROCEEDINGS

- 36 Following the Supreme Court decision in *Wolverhampton* the position in relation to proceedings against ‘Persons Unknown’ who would be ‘newcomers’ (i.e. not persons carrying out the conduct by reference to which the identity of the Defendants was drafted at the date the Order was sought) has changed. They are a form of ‘without notice’ injunction, but essentially, a new type of injunction, which do not readily ‘fit’ into existing established categories (§§142-144).
- 37 In the context of such injunctions, it remains the case that (i) the actual or intended respondents must be defined as precisely as possible (§221) (ii) the injunction must clearly spell out the prohibited acts in ‘every day terms’ (§222); and (iii) there must be strict geographical and temporal limits (§225). However, with regards to notification of the application/order, the obligation is to “*take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it*” (§§167(ii), 226, 230-1). Any injunction made should also include “generous liberty” to a person affected by it to apply for its variation or discharge (§232).
- 38 In the present case, the Claimant does not know the precise identity of any of the individuals who might fall within the description of the Defendants and/or be intending to undertake the acts which the injunction would restrain (Markanday §§51-53). Accordingly, there is no identifiable person on whom the proceedings could be served (Markanday §55, cf *Wolverhampton* §221).
- 39 Therefore, and in accordance with the approach set out in *Wolverhampton* (which distinguishes between ‘notification’ of the application/order to ‘Persons Unknown’ and ‘service’ on identifiable persons’: §§221, 226, 230-231) the Claimant seeks an order dispensing with service of the claim form, application notice, supporting documents and any Order made by this Court. The Claimant has set out in the draft Order and in

Markanday §56-57 the steps it intends to take to notify persons potentially affected by the proceedings of the application / injunction (if made). This follows the approach approved in respect of the London City Airport application ([AM1/90 [HB/417]). Markanday §§58-29 sets out why these are considered to be reasonable steps to take in the circumstances of this case to draw the application / Order to the attention of persons likely to be affected thereby.

40 The Claimant submits that this would, in any event, be an appropriate case for the application to be made ‘without notice’ to the Defendants. As recognised in *Wolverhampton* at §174, there are some cases where even the most informal notice of an application would be self-defeating, such as in the case of a freezing injunction “where the notice may provoke the respondent into doing exactly that which the injunction is designed to prohibit”. That concern applies equally here: see Markanday §54 and the evidence of Coen and Markanday more generally.

41 In relation to the requirement of s.12(2) of the Human Rights Act 1998,⁴ there is clearly a compelling reason why the Defendant should not be notified of the present application prior to its consideration by this Court, for the reasons set out above (and see also *Wolverhampton* at §167).

VIII. CROSS-UNDERTAKING IN DAMAGES

42 The Claimant is willing and able to provide the necessary cross-undertaking in damages if so required: Coen §§40-41.

⁴ "(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or
(b) that there are compelling reasons why the respondent should not be notified.”

IX. FULL AND FRANK DISCLOSURE

- 43 In order to support compliance with its duty of full and frank disclosure, the Claimant addresses three arguments which might be advanced against its application for the interim injunction.
- 44 The first, is that it could be argued that there is no justification for the application having been made without notice. The Claimant accepts that this is a high threshold, but has set out above why it considers it to be justified in the present case.
- 45 The second, is that there has been no direct threat against the Airport (or recent events concerning the Airport), as opposed to airports more generally. The reasons why the Airport is considered to be a particular target is addressed in the Claimant's evidence, most specifically at Coen §§26-28 & 39(a) and Markanday §§14-17. Further, the Courts have previously granted injunctions in respect of land or sites not previously subject to the actions sought to be restrained: see, for example, *HS2* at §§111-113 and *Transport for London v Lee* [2023] EWHC 1201 at §20.
- 46 The third, is that the Defendants are seeking to exercise rights protected under Articles 10 and/or 11 ECHR. This is addressed at §35 above.

X. CONCLUSION

- 47 The Court is respectfully invited to make the Orders sought.

KATHARINE HOLLAND KC

JACQUELINE LEAN

8 July 2024

Landmark Chambers