

Persons Unknown and Human Rights after *Ineos*: *Quia timet* injunctions and beyond

Yaaser Vanderman

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Persons Unknown and Human Rights after *Ineos*

(1) General issues – width and clarity

- Trespass on private land;
- Interfering with access on private access roads;
- Interfering with access on public rights of way; and,
- Conspiring to injure by unlawful means.

(2) Section 12(3) Human Rights Act 1998

Trespass on private land

- As you were.
- Longmore LJ in *Ineos*:

“36 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....

37...There is no difficulty about defining the tort of trespass and an injunction not to trespass can be framed in clear and precise terms, as indeed Morgan J has done. I would, therefore, uphold the injunction against trespass given against the first defendants...”

Interfering with access on private access roads

- Longmore LJ in *Ineos*:
“37...I would likewise uphold the injunction against the second defendants described as interfering with private rights of way shaded orange on the plans of the relevant sites...”

Interfering with access on public rights of way

- Terms of challenged Order – Longmore LJ:

“41...The defendants are restrained from (a) blocking the highway when done with a view to slowing down or stopping traffic; (b) slow walking; and (c) unreasonably; and/or without lawful authority or excuse preventing the claimants from access to or egress from any of the Sites.”

- Slow walking
- “Unreasonably” obstructing the highway
- “Without lawful authority or excuse”

Interfering with access on public rights of way

- Critical paragraph – Longmore LJ:

“42. Mr Alan Maclean QC for the claimants submitted that the court should grant advance relief of this kind in appropriate cases in order to save time and much energy later devoted to legal proceedings after the events have happened. But it is only when events have happened which can in retrospect be seen to have been illegal that, in my view, wide-ranging injunctions of the kind granted against the third and fifth defendants should be granted. The citizen’s right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example.”

Interfering with access on public rights of way

Lessons for injunctors?

Interfering with access on public rights of way

- *Sheffield City Council v Fairhall (No 2) [2018] EWHC 1793 (QB)*

“The Defendants must not...

e. Prevent, delay or slow down (for more than 20 minutes in any 24 hours (whether individually or as part of any group)) any contractors (engaged in accessing, egressing or creating any safety zone) in their use of any public highway which is the subject of a road closure in connection with tree works within the administrative area of the City of Sheffield;

For the avoidance of any doubt, (i) no Defendant shall slow down vehicles within a single road closure in the administrative area of Sheffield City Council on more than one occasion in any 24-hour period and (ii) in relation to the actions of the Defendants (including Persons Unknown) as a whole or any combination thereof, there shall be no slowing down of any of the said contractors in a single road closure for more than 20 minutes in any 24-hour period

Interfering with access on public rights of way

Lessons for protestors?

Conspiracy to injure by unlawful means

- Why rely on this cause of action?
- Morgan J in *Ineos* (High Court):

“The Claimants rely on the tort of conspiracy to deal with the problem, as they perceive it, that the unlawful acts intended to be committed by the protestors will have a direct impact upon the supply chain of goods and services to Ineos but where the real target of the acts will be Ineos itself. The tort of conspiracy allows a victim of a conspiracy to sue where the acts are aimed at that victim even where the unlawful behaviour has its most direct impact on a third party. The other value of the tort of conspiracy from the Claimants’ point of view is that it enables them to claim a remedy in a civil court for breach of a criminal statute where the conduct in question does not, absent a conspiracy, lead to civil liability.”

Conspiracy to injure by unlawful means

Difficulties in relying on this tort in future cases:

- (1) “with the intention to injure...”
- (2) “causing loss and damage...”

Conspiracy to injure by unlawful means

Lessons for injunctors?

Conspiracy to injure by unlawful means

Lessons for protestors?

Human Rights Act 1998, s12(3)

“12(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

...

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.”

Human Rights Act 1998, s12(3)

- Longmore LJ in *Ineos*:

“48...It is not just the trespass that has to be shown to be likely to be established; by way of example, it is also the nature of the threat. For the purposes of interim relief, the judge has held that the threat of trespass is imminent and real but he has given little or no consideration (at any rate expressly) to the question whether that is likely to be established at trial. This is particularly striking in relation to Site 7 where it is said that planning permission for fracking has twice been refused and Sites 3 and 4 where planning permission has not yet been sought.”

Human Rights Act 1998, s12(3)

Effect?

END

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