

INJUNCTIONS AGAINST PROTESTORS: Part 2, Getting to court

Yaaser Vanderman

Main issues

- Without notice?
- Persons Unknown
- Service
- Draft order

Without notice?

- *Birmingham CC v Afsar* [2019] EWHC 1560 (Warby J)
 - Protests at Anderton Park School re sex education etc.
 - “Exceptional”, particularly where Art 10 ECHR involved: para 20
 - Is there a risk that Respondents would take steps to “*defeat the purpose of the application*”? para 54
 - Mere escalation insufficient: para 54

Without notice?

- Para 19:
 - Evidence must state why no notice
 - Duty of full and frank disclosure (para 21): s12(2)-(3) HRA 1998
 - Duty to make note of hearing and serve on Respondent without delay

Persons Unknown - authorities

- *Ineos Upstream Ltd v Boyd* [2019] 4 WLR 100 (CA)
- *Cuadrilla Bowland v Lawrie* [2020] EWCA Civ 9
- *Canada Goose v Persons Unknown* [2020] EWCA Civ 303 (5 March 2020)
- *Birmingham City Council v Afsar* [2020] EWHC 864 (QB) (8 April 2020)

Persons Unknown - general

- No conceptual or legal prohibition on seeking an injunction against Persons Unknown
- BUT, only where: (1) it is impossible to name the persons who are likely to commit the tort unless restrained; and, (2) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order.
- Includes (1) anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown; and (2) newcomers: people who in the future will join the protest and fall within the description of the “persons unknown”.

Persons Unknown - definition

- How to describe Persons Unknown in the claim form?
 - “Persons Unknown” **insufficient**: *Birmingham CC v Afsar*
 - “*Persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at Canada Goose, 244 Regent Street, London W1B 3BR*” – **impermissibly wide**: *Canada Goose*, para 85
 - “*blocking any part of the bell-mouth at the Site Entrance...with a view to slowing down or stopping the traffic...with the intention of causing inconvenience or delay to the claimants*”: *Cuadrilla*, paras 61-65

Persons Unknown - definition

- Essentially, want to use the same wording as in the draft injunction order
- Will deal with this later

Persons Unknown – final orders

- *Canada Goose*
 - Final orders?
 - “89. A final injunction cannot be granted in a protester case against “persons unknown” who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the “persons unknown” and who have not been served with the claim form.”

 - “91. That does not mean to say that there is no scope for making “persons unknown” subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption’s Category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date.”

Persons Unknown – final orders

- *Afsar* (8 April 2020) (Warby J), para 22:

Unknown person in protest can only be subject to Final Injunction if:

1. Claim form describes “Persons Unknown” sufficiently;
2. Person fell within that description or came within it later (but before Final Injunction);
3. Person served with proceedings; AND,
4. Impossible or impracticable to identify the person and join as named defendant

- (1) At time of issuing claim, apply for order for service by an alternative method for claim form and all accompanying documents – CPR r.6.15 (claim form) and 6.27 (other documents – e.g. Response Pack, Interim Injunction application, Witness Statements, etc.). Usually attach it to prominent place.
 - (2) Usually before a High Court Master
 - (3) Then serve in line with above Order
- Looks straightforward but was fatal in *Canada Goose*

Draft order

- *Canada Goose*, para 82
 - Refer to acts which correspond to the tort. May include lawful conduct of only no other proportionate means of protecting C's rights
 - Sufficiently clear and precise:
 - Do not use legal terms – e.g. trespass, harassment or nuisance;
 - Better to formulate without reference to intention
 - May be defined by reference to intention if necessary and non-technical language used and capable of proof without undue complexity;
 - Clear geographical limits
 - Clear temporal limits

Draft order - examples

– *Cuadrilla*

“4.1 blocking any part of the bell-mouth at the Site Entrance with persons or things when done with a view to slowing down or stopping the traffic;

“4.2 blocking or obstructing the highway by slow walking in front of vehicles with the object of slowing them down;

“4.3 climbing onto any part of any vehicle or attaching themselves or anything or any object to any vehicle at any part of the Site Entrance; in each case with the intention of causing inconvenience or delay to the claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees.”

- Acceptable;
- Heavily-context dependent. Similar wording unacceptable in *Ineos* because no history of such conduct at that site.

Draft order - examples

– *Canada Goose*

“(2) behaving in a threatening and/or intimidating and/or abusive and/or insulting manner directly at any individual or group of individuals within the definition of ‘protected persons’

(3) intentionally photographing or filming the protected persons with the purpose of identifying them and/or targeting them in connection with protests against the manufacture and/or sale or supply of animal products;

(4) making in any way whatsoever any abusive or threatening electronic communication to the protected persons”,

...

(9) projecting images on the outside of the Store,”

- Unacceptable;
 - the specific prohibited acts were not confined, or inevitably confined, to unlawful acts