

Welcome to Landmark Chambers'

'Getting an injunction against unlawful traveller encampments: what the law now requires' webinar

Please note that a recording is not available for this webinar.

Your speakers today are...



David Forsdick QC (Chair)



Jacqueline Lean

Topic:
**What can be
injoined?**
Using an injunction
against anticipated
trespass and breach
of planning control



Nicholas Grant

Topic:
**Procedural
aspects**
Evidence of
threat; drafting
the coercive
provisions



Kimberley Ziya

Topic:
**Unknown
travellers (1)**
Description of
unknown
defendants;
duration of
interim
injunctions; final
orders



Richard Langham

Topic:
**Unknown
travellers (2)**
Service on
unknown
defendants;
status of existing
injunctions

Injunctions against unlawful traveller encampments: What can be injuncted?



Jacqueline Lean

Potential grounds of claim

- Common law trespass (if owner / entitled to possession)
- Actual/apprehended breach of planning control (s.187B TCPA 1990)
- Interference with / obstruction of the highway (Part IX Highways Act 1980)
- Anti-social behaviour

Common law trespass

- *Quia timet* injunction to restrain apprehended trespass
- Need to prove:
 - Ownership / entitlement to possession
 - There must be a sufficiently real and imminent risk of trespass to justify *quia timet* relief;
 - Irreparable harm if injunction not granted
 - That it would be just and proportionate to grant the injunction

Common law trespass - quia timet injunctions against persons unknown

1. There must be a sufficiently real and imminent risk of trespass to justify *quia timet* relief
2. It is impossible to name the persons who are likely to commit the tort unless restrained;
3. It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
4. The terms of the injunction correspond to the threatened tort and must not be so wide that they prohibit lawful conduct;
5. The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and
6. The injunction should have clear geographical and temporal limits.“

***Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 per Longmore LJ at [34], endorsed CA in *Mayor and Burgesses of London Borough of Bromley v Persons Unknown* [2020] EWCA Civ 12 at [29]**

Common law trespass

- Key cases:
 - ***Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780**
 - ***The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown* [2020] EWCA Civ 12**

Breach of planning control

S.187B TCPA 1990

“(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section “*the court*” means the High Court or the county court.”

Breach of planning control

- What is your alleged breach of planning control? (actual / anticipated)
 - If change of use – caution!
 - Sufficient duration to constitute a material change of use (as opposed to merely transient use)?
 - Permitted development?
 - GDPO 2017 Schedule 2 Part 5 read with paras 2 – 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960
 - Deposit of waste
 - Operational development

Breach of planning control

- Irreparable harm if injunction not granted?
- Proportionality
- PSED / ECHR

Breach of planning control

- Key / useful cases
 - ***South Cambridgeshire DC v Persons Unknown* [2004] EWCA CIV 1280**
 - ***South Buckinghamshire DC v Porter (No 1)* [2003] 2 AC 558**
 - ***The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown* [2019] EWHC 1675 (QB)**
 - ***East Hertfordshire DC v Doherty* [2012] EWHC 2292 (QB)**

Obstruction / interference with highway

- **Highways Act 1980 s.130**

“(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

....

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.”

Obstruction / interference with highway

- Useful cases
 - ***Sutton LBC v Persons Unknown* [2018] 11 WLUK 89**
 - ***Wolverhampton CC v Persons Unknown* [2018] EWHC 3777 (QB)**
 - ***City of London Corporation v Samede* [2012] EWHC 34 (QB)**

Anti-social behaviour

- S.1 Anti-social Behaviour, Crime and Policing Act 2014
 - But see: ***Wolverhampton CC v Persons Unknown* [2018] EWHC 1777 (QB)**
- S.222 Local Government Act

Procedural aspects



Nick Grant

Outline

- Establishing the degree of threat for an interim injunction
- Drafting the provisions
 - When can lawful actions be injuncted
 - Terms to avoid
 - References to intention

Cases referred to

- ***Harlow DC v Stokes*** [2015] EWHC 953 (QB)
- ***Tendring DC v PU*** [2016] EWHC 2050 (QB)
- ***Harlow DC v McGinley*** [2017] EWHC 1851 (QB)
- ***Waltham Forest LBC v PU*** [2018] EWHC 240 (QB)
- ***Vastint Leeds BV v PU*** [2018] EWHC 2456 (Ch)
- ***LB Sutton v PU*** (unrep. 7 Nov 2018, [2018] 11 WLUK 819)
- ***Nuneaton and Bedworth BC v Cochrane & Ors*** [2018] EWHC 917 (QB)
- ***South Cambridgeshire DC v Taylor*** [2018] EWHC 4037 (QB)
- ***LB Kingston Upon Thames v PU*** [2019] EWHC 1903 (QB)
- ***LB Havering v Stokes & ors*** [2019] EWHC 3006 (QB).
- ***Boyd v Ineos Upstream Ltd*** [2019] EWCA Civ 515
- ***Chelmsford CC v Crockford*** [2019] EWHC 1814 (QB).
- ***Surrey CC v PU*** [2019] EWHC 3169 (QB)

Cases referred to

- ***Cuadrilla Bowland Ltd v Persons Unknown*** [2020] EWCA Civ 9
- ***Bromley LBC v PU*** [2019] EWHC 1675 (QB), [2020] EWCA Civ 12
- ***Canada Goose UK Retail Ltd v PU*** [2020] EWCA Civ 303
- ***South Bucks DC v Rooney*** [2020] EWHC 494 (QB)

Degree of threat

- ***Ineos*** [34(1)], ***Canada Goose*** [82(3)]:
 - Is there a sufficiently real and imminent risk of a tort being committed to justify a quia timet injunction?

- ***Vastint*** [31(3)]: A two stage test for quia timet relief:
 - Is there a strong probability that, unless restrained by injunction, a defendant will breach the claimant’s rights?
 - Would the harm be “so grave and irreparable” that, notwithstanding an immediate grant of an injunction to restrain further acts “a remedy of damages would be inadequate?”

- ***Bromley*** CA [35]: confirms “irreparable harm”

Degree of threat

- Showing a “strong probability” (limb 1)
 - Other measures taken and how effective are they? (***Vastint*** [31(4)] ***Kingston*** [7])
 - Attitude of the Defendant? (***Harlow*** (2017) [27], ***Vastint*** [31(4)])
 - Actual past acts or attempts at that site? Actual past criminal conduct? (***Vastint*** [33], ***Bromley*** CA [107], ***Waltham Forest*** [6], ***Havering*** [21])
 - Recent increase in raw numbers or frequencies? (***Bromley*** HC [51], ***Kingston*** [4])
 - Actual past acts at similar sites in the area? (***Vastint*** [34])
- But note that pure speculation or “it goes on elsewhere” won’t do (***Vastint*** [35]).

Degree of threat

- Showing a “grave and irreparable harm” (limb 2):
 - Risks to health and safety: of trespassers (*Vastint* [36]), of others (*Harlow* [10], *Waltham Forest* [4], *Bromley* CA [107], *Nuneaton* [14], *Kingston* [4], *Havering* [9]).
 - Environmental concerns? *Havering* [9], *Surrey CC* [12]-[15].
 - Waste crime? (*Havering* [9])
 - Closure of adjacent schools? (*Harlow* [10(6)], *Nuneaton*)
 - Loss of development opportunity? (*Harlow* (2017))
 - Antisocial behaviour and threats of violence (*Harlow* [11], *Nuneaton* [14], *Kingston* [6], *Havering* [6])

Degree of threat

- Showing a “grave and irreparable harm” (limb 2):
 - Costs of removal and remediation, incl. likelihood of recovery (*Harlow* [10(2)], *Vastint* [37], *Waltham Forest* [5], *Havering* [9])
 - Loss of public recreational land (*Harlow* [7], *Waltham Forest* [4], *Sutton* [36], *Bromley* [25], *Kingston* [4], *Surrey* [14]-[15])
 - Damage to community relations (*Harlow* [9], *Bromley* [56], *Kingston* [6])

Drafting the provisions: generally

- **Canada Goose [82]:**

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.

Drafting the provisions: injuncting lawful actions?

- **Canada Goose** [82]:

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

- But held interim injunction too broad as “not inevitably confined to unlawful acts”:

behaving in a threatening and/or intimidating and/or abusive and/or insulting manner at any of the protected persons, intentionally photographing or filming the protected persons, making in any way whatsoever any abusive or threatening electronic communication to the protected persons, projecting images on the outside of the store, demonstrating in the Inner Zone or the Outer Zone, using a loud-hailer anywhere within the vicinity of the store otherwise than for the amplification of voice.

- GPDO rights? **Bromley** CA at [90]ff

Drafting the provisions: terms to avoid

- Avoid describing acts in terms of legal causes of action: ***Hampshire Waste Services Ltd*** [2003] EWHC 1738 (ch). ***Canada Goose*** [82]:

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. [...]
- What to avoid?
 - “without lawful authority or excuse” (***Ineos*** [40])
 - Planning terms? Used in ***South Cambridgeshire*** and ***Chelmsford***.
 - “lawful development”
 - “express grant of planning permission”
 - “caravan”

Drafting the provisions: intention?

- **Ineos** [40] – exclude subjective intention
- **Canada Goose** at [82]:

(6) [...] They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.
- E.g. not “with the intention of slowing traffic” but “which causes or has the effect of slowing traffic”

Unknown travellers (1)



Kimberley Ziya

Contents

- Description of unknown defendants
- Duration of injunctions against unknown defendants
- Interim and final orders

How should unknown travellers be described?

Vastint Leeds BV v Persons Unknown [2018] EWHC 2456

- Former Tetley brewery in Leeds
- Risks pleaded: (1) caravans; (2) illegal raves; (3) fly-tipping
- Three ways of identifying a D other than by name:
 - Specific D but name unknown → use alias/photo/other descriptor
 - Specific group/class of D → define by ref. to association w/ group/class
 - **D cannot be ID-ed at time of claim → Define by ref. to future act**
- Guidance in Hampshire Waste [2003] EWHC 1738

How should unknown travellers be described?

Vastint (continued)

- Appropriate to grant final quia timet injunction re 2/3 risks
- Order sought:

“Those defendants who are not already in occupation of [the Site] must not enter or remain on the Site without the written consent of [Vastint]”

- HC held → not *“workable, satisfactory, or appropriate”*
- **Practice point:** order must *“be tailored to the threat that is feared and should not be wider than is strictly necessary to deal with this threat”*

How should unknown travellers be described?

Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6

- The case of the unidentified Nissan Micra driver
- Lord Sumption's two categories:
 1. Anonymous Ds who are ID-able but names are unknown (e.g. squatters)
 2. Anonymous Ds who cannot be ID-ed (e.g. most hit-and-run drivers)
- 2nd category → service impossible → cannot be sued (unless service properly dispensed with)
- What does this mean for quia timet injunctions?

How should unknown travellers be described?

Boyd v Ineos Upstream Ltd [2019] EWCA Civ 515

- Ds included 5 groups of “Persons unknown”
- 4 potentially unlawful activities: (1) trespass; (2) private nuisance; (3) public nuisance; and (4) conspiracy to injure by unlawful means
- Lord Sumption’s 2 categories in Cameron not exclusive → was not considering persons not ID-able when claim form is issued
- **BUT:** “court should be inherently cautious”
- Longmore LJ’s “tentative” requirements; 2nd = *“it is impossible to name the persons who are likely to commit the tort unless restrained”*

How should unknown travellers be described?

Kingston-Upon-Thames v Persons Unknown [2019] EWHC 1903

- Return hearing of an interim injunction relating to 153 sites
- **Practice point:** C “sensibly” divided Ds into 2 categories:
 1. Persons Unknown Occupying Land
 2. Persons Unknown Depositing Waste and Fly-Tipping on Land
- Cf: Bromley [2020] EWCA Civ 12 at [50]
- Court applied Ineos principles → injunction continued

How should unknown travellers be described?

Canada Goose v Persons Unknown [2020] EWHC 2459

- Can have interim injunction against “Newcomers”
- PUs must be defined in claim by ref. to alleged unlawful conduct
- “...*protesters 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*” = **too wide**
- Final order only binding on:
 - parties at the date of the final order; and
 - who are w/in Lord Sumption’s 1st category; and
 - have been served prior to that date

Time limit for injunctions against unknown travellers

- QT injunctions must have “clear geographical and temporal limits”
- Particularly important for interim injunctions
- Ineos: no temporal limit = unsatisfactory → remitted to 1st instance judge
- Canada Goose
 - continue in force unless varied or discharged by further order of the court
= defective
 - unless CG made an app. for a CMC or for SJ by specified date, claim dismissed and injunct. discharged w/o further order **= time limited**
- Practice point: consider time clauses carefully in drafting application

Time limit for injunctions against unknown travellers

- What about final orders?
- Wolverhampton [2018] EWHC 3777: 3 years w/ review after 1 year = **ok**
- Kingston: 3 years “regularly endorsed in this court as a proportionate period”
- Bromley = don’t push your luck:
 - *“I consider that it is-without more-potentially fatal to any application for a local authority to seek a combination of a boroughwide injunction and a duration of a period as long as five years.”*
- Judge not required to consider shorter period where not suggested by C

Are final orders much less useful than interim ones?

- Canada Goose at [92]: final order = more limited in scope than interim
- Well drafted and served interim order should → ID-able wrongdoers
- Word of warning at [93]:

*“...Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. ...**The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.**”*

Service on unknown defendants and the status of existing injunctions



Richard Langham

Service on unknown defendants

Cameron v Liverpool Victoria Insurance Co Ltd

Who can be sued depends on who can be served with proceedings, ie with the claim form.

The whole point of normal service is that it is likely to bring the claim form to the attention of the defendant.

Service by alternative means should only be permitted where the alternative means are likely to have the same effect.

Service on unknown defendants

Persons unknown

Category 1 - The squatter who won't give his name: he can be identified.

Category 2 - The hit and run driver who has vanished and will never be identified.

Category 3 - 'Newcomers' – persons unknown who do the specified act before trial – eg stationing caravans on a particular site.

Service on unknown defendants

What happens with the claim form?

A Newcomer person unknown who does the specified act becomes a defendant and must be served with the claim form.

If the claimant cannot carry out normal service, it has to get and comply with an order for service by alternative means.

Service on unknown defendants

Canada Goose applied to traveller injunctions

Is it necessary to ensure that the claim form remains on the stake for the entire period before the trial?

The authority must presumably deliver the claim form to any caravan which turns up. Is this normal service?

Service on unknown defendants

Service of the injunction

CPR81 requires court orders to be served and it is expected that injunctions will be served personally; any alternative means of service must be sanctioned.

Actual knowledge of the injunction is required for enforcement.

The only form of service which will establish actual knowledge is personal service.

Existing injunctions

Problems – no time limit; made against ‘persons unknown’ without more; inadequate provision for service of the claim form.

The basic position is that, just because an injunction should not have been granted does not mean that it does not have to be obeyed.

Most defective injunctions could be varied. But can an injunction against ‘persons unknown’ without more be breached?

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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