

Procedural aspects

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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”

Questions?

Thank you for listening

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