

**Welcome to Landmark Chambers' online book launch
and webinar on 'Protest Injunctions'**

The recording can be accessed [here](#).

Your speakers today are...



Katharine Holland KC (Chair)



Myriam Stacey KC

Topic:
Persons Unknown
and making parties
to claims – some
practical pointers



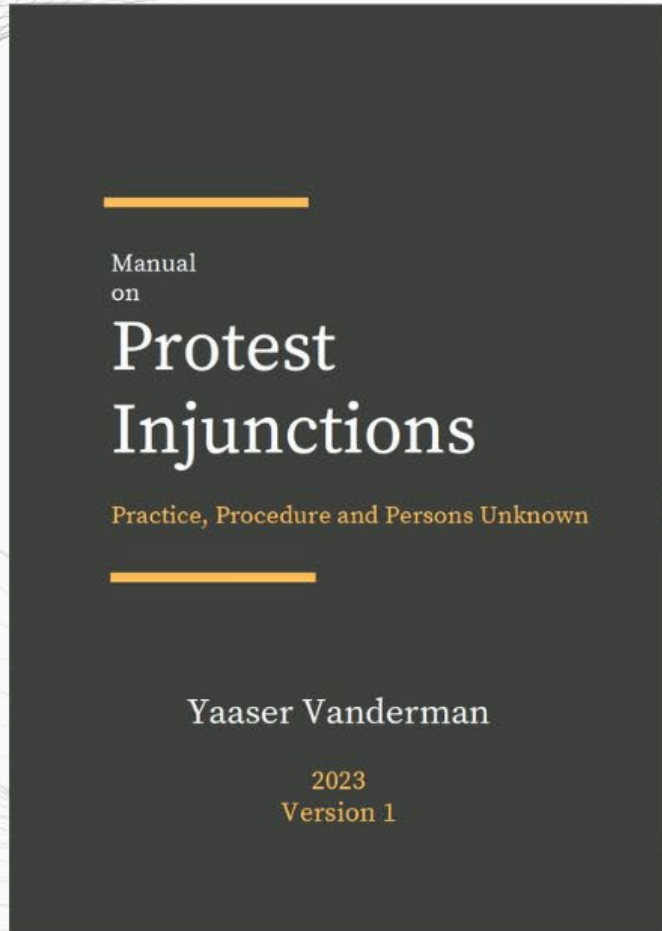
Yaaser Vanderman

Topic:
Human Rights
Issues in Protest
Injunctions

Programme

1. Introduction – Katharine Holland KC
2. Launch of *Manual on Protest Injunctions*
3. Making Defendants parties to proceedings – Myriam Stacey KC
4. Human rights issues in protest injunctions – Yaaser Vanderman
5. Q&A

LAUNCH OF 'MANUAL ON PROTEST INJUNCTIONS'



Katharine Holland KC



Yaaser Vanderman
(Author)

To access the most updated version of the manual, please visit Yaaser Vanderman's website profile [here](#)

Persons Unknown and making parties to claims – some practical pointers



Myriam Stacey KC

Canada Goose (CA)

*“As Nicklin J correctly identified, 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 protestors**. It wishes to use remedies in private litigation to prevent what it sees as public disorder. **Private law remedies are not well suited to such a task...**”*

Persons Unknown – the ‘Canada Goose’ Guidelines

- "Persons Unknown" are, by definition, people who have not been identified at commencement of the proceedings.
- If they are known and have been identified, they must be joined and named.
- They must be people who have not been identified but are capable of being identified and served with the proceedings.
- They must be accurately defined in the originating process by reference to their conduct which is alleged to be unlawful.

(1) The requirement to name

- Must be “***impossible***” to name (*South Cambridgeshire District Council v Gammell* at [33]; also *Ineos* [34(2)], per Longmore LJ)
- For both **joinder** of identifiable persons as per judicial guidance and **enforcement**
- **Third Party Disclosure Orders** against police - **CPR r. 31.17(3)**. But said to be “*the exception not the rule*”.
- Protestors A8 rights? *ZXC v. Bloomberg* [2022] (SC) a person not yet been charged has a reasonable expectation of privacy.
- Pending HC hearing - to clarify extent of jurisdiction.

(2) The requirement to serve

- “A person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard”: *Cameron*, SC [2019]
- “Persons Unknown must be capable of being served ... if necessary by alternative service, the method of which must be set out in the order”: *Canada Goose* [82]
- **Persons Unknown** – alternative service: CPR r.6.15 (claim) and r.6.27 (other docs).
- Note restrictive approach in *National Highways Ltd v Persons Unknown* [2022] (no “practical and effective method” of alternative service).
- **Named Defendants** - personal service. Unwieldy and expensive.

(3) The requirement to progress claims – final injunctions?

- Duty to progress claims.
- 2 conflicting CA authorities:
 - (1) **Canada Goose**, CA [2020] – no final injunction against ‘newcomers’. Final orders can only be obtained against persons unknown who have breached and are identifiable even if anonymous.
 - (2) **LB Barking & Dagenham**, CA [2022] - final injunctions can be granted against ‘newcomers’ who automatically become a party when they knowingly violate an injunction (per *Gammell* [2005]).
- *LB Barking* is being appealed to SC in **February 2023**

Human Rights Issues in Protest Injunctions



Yaaser Vanderman

Human Rights Issues in Protest Injunctions



Yaaser Vanderman

Issues

- Notice – s.12(2) Human Rights Act 1998
- Test for interim relief – s.12(3) Human Rights Act 1998
- Proportionality analysis

Notice – s.12(2) Human Rights Act 1998

Section 12(2) Human Rights Act 1998

“(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

(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.”

- Urgent cases
- Using s.12(2)(a) and (b) as alternatives? Conflicting decisions

Test for interim relief – s.12(3) Human Rights Act 1998

Test for interim relief

- *American Cyanamid*
 - Serious issue to be tried

- Section 12(3) HRA 1998
 - “(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.”

- Cases seem to take different views

- Depends on facts but most recent cases say s.12(3) does not apply to ordinary protest case.
 - *Shell v Persons Unknown* [2022] EWHC 1215, paras 66-76 (Johnson J).
 - *Esso Petroleum v Breen* [2022] EWHC 2664, paras 28-40 (HHJ Lickley KC).

- But does it make any difference?

Proportionality analysis

Proportionality analysis

- Contrast private land
- Protest vs Direct Action
 - Persuade vs compel
 - Core vs not at core
 - Within Article 10/11 ECHR at all? *Heathrow Airport v Garman* [2007] EWHC 1957, paras 108-109, and *Sheffield CC v Fairhall* [2017] EWHC 2121, para 78
 - Compare *violent* protests: *AG's Ref (No 1 of 2022)* [2022] EWCA Crim 1259, paras 84-87, 90, 102 and 110.

Proportionality analysis

Ziegler v DPP [2021] UKSC 23

1. Is the aim sufficiently important to justify interference with a fundamental right?
 2. Is there a rational connection between the means chosen and the aim in view?
 3. Are there less restrictive alternative means available to achieve that aim?
 4. Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?
- Moving away from *Ziegler v DPP*? See *Reference by AGNO – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32

Fair balance – Proportionality test

- Whether views giving rise to protests relate to v important issues of considerable breadth, depth and relevance: *Shell v PU* [2022] EWHC 1215 (Johnson J).
- Importance of precise location: contrast *National Highways v PU* [2021] EWHC 3081 (Lavender J) with *Westminster CC v Haw* [2002] EWHC 2073 (Gray J).
- Duration of the protest: *Sheffield CC v Fairhall* [2017] EWHC 2121 (Males J):
“88...a protest which starts as a legitimate exercise of article 10 or 11 rights may become unlawful if it continues for a more extended period. The more serious the tortious or criminal conduct in question and the greater the impact on the rights of others, the shorter the period is likely to be before the initially legitimate protest becomes unlawful.”

Fair balance – Proportionality test

- Extent of interference with rights of others
- Been through the democratic process
 - E.g. HS2, cancer centres, tree-felling programmes, etc.

Thank you for listening

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