IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
[2023] EWHC 722 (KB)

Birmingham Civil Justice Centre
The Priory Courts, 33 Bull Street
Birmingham, B4 6DS

Monday, 13 February 2023

Before:

MR JUSTICE FREEDMAN

B E T W E E N : No. KB-2022-BHM-000221

BIRMINGHAM CITY COUNCIL — Claimant

- and -

(1) AHZI NAGMADIN
(2) JESSICA ELLEN ROBERTS
(3) ~~CASE WITHDRAWN~~
(4) RASHANI REID
(5) THOMAS WHITTAKER
(6) ARTHUR ROGERS
(7) ABC
(8) PERSONS UNKNOWN WHO PARTICIPATE, OR INTEND TO PARTICIPATE, IN STREET CRUISES IN BIRMINGHAM, AS CAR DRIVERS, MOTORCYCLE RIDERS, PASSENGERS AND/OR SPECTATORS
(9) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PROMOTE OR PUBLICISE STREET CRUISES IN BIRMINGHAM — Defendants

A N D B E T W E E N : No. KB-2022-BHM-000188

(1) WOLVERHAMPTON CITY COUNCIL
(2) DUDLEY METROPOLITAN BOROUGH COUNCIL
(3) SANDWELL METROPOLITAN BOROUGH COUNCIL
(4) WALSALL METROPOLITAN BOROUGH COUNCIL Claimants

- and -

(1) PERSONS UNKNOWN WHO PARTICIPATE BETWEEN THE HOURS OF 3.00 P.M. AND 7.00 A.M. IN A GATHERING OF TWO OR MORE PERSONS WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) AT WHICH SOME OF THOSE PRESENT ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

(2) PERSONS UNKNOWN WHO PARTICIPATE BETWEEN THE HOURS OF 3.00 P.M. AND 7.00 A.M. IN A GATHERING OF TWO OR MORE PERSONS WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) WITH THE INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

(3) PERSONS UNKNOWN PROMOTING, ORGANISING, PUBLICISING (BY ANY MEANS WHATSOEVER) ANY GATHERING BETWEEN THE HOURS OF 3.00 P.M. AND 7.00 A.M. OF TWO OR MORE PERSONS WITH THE INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) Defendants

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MR J MANNING (instructed by Legal Services, Birmingham City Council) appeared on behalf of Birmingham City Council.

MR M SINGLETON (instructed by Legal Services, Wolverhampton City Council) appeared on behalf of Wolverhampton City Council, Dudley Metropolitan Borough Council, Sandwell Metropolitan Borough Council, and Walsall Metropolitan Borough Council.

THE DEFENDANTS did not appear and were not represented.

J U D G M E N T

MR JUSTICE FREEDMAN:

1 In these two actions, the claimants Birmingham City Council in action BHM-000221, and Wolverhampton City Council together with three borough councils (Dudley, Sandwell, and Walsall) in action BHM-000188, appear on further consideration of injunctions ordered by Hill J against various specified defendants and persons unknown in the Birmingham case, and in the Wolverhampton case against persons unknown.

2 The court has had the assistance of a detailed reasoned judgment of Hill J of the same date. This court is approaching the matter as a fresh hearing. It is not a court of review. It nonetheless substantially follows the judgment of Hill J. It is not necessary to repeat the judgment. There are, however, several themes which I need to consider in connection with whether these orders should be varied or discharged. The orders are to continue but it was provided that there be a hearing at which the orders should be reviewed. I have been assisted by counsel Mr Singleton who appears in what I will call "the Wolverhampton Case" and Mr Manning who appears in what I will call "the Birmingham Case".

THE CASE OF BARKING AND DAGENHAM

3 In the course of her judgment, there is very substantial reliance on the case of *London Borough of Barking and Dagenham & Anor v Persons Unknown & Ors* [2022] EWCA Civ 13, see especially the summary at [17] of the judgment. I shall refer to that case as "*Barking and Dagenham*".

4 As was known to Hill J when she gave her judgment, permission was given by the Supreme Court on 25 October 2022 to appeal against the judgment of the Court of Appeal. The case was heard by the Supreme Court on 8 and 9 February 2023. This court heard argument in this case on Monday 6 February 2023 but it decided that it would not give judgment until today in case anything was said by the Supreme Court which affected the matter. I am told, particularly by counsel representing the claimants in the Wolverhampton Case, that although many arguments were raised by their Lordships at the hearing, there was no indication as to the content of the reserved judgment. The Supreme Court stated that whilst their judgment would, indeed, be reserved and would be given as quickly as they could, bearing in mind the heavy workload, that did not mean that the judgment would be available quickly.

5 The judgment in the Supreme Court has potential consequences which may go beyond injunctions in that case which were against members of the travelling community and may affect cases more generally, applications for injunctions against persons unknown. The consequences include the following. First, this court is bound by the law as it stands before the Supreme Court has given its judgment. Second, the judgment of the Supreme Court may change the relevant law. So any interim injunction should be restored for reconsideration as soon as the Supreme Court has given judgment.

6 A particular challenge in *Barking and Dagenham* is whether a newcomer can be bound by a final injunction. That is to say whether a person not identified at the time of the final injunction can become bound because of acts done subsequent to the final injunction. As noted at [30] and [82] of *Barking and Dagenham* in the Court of Appeal, a newcomer who breaches the provisions of an interim or final injunction knowing of them becomes a party to the proceedings at that stage and can apply for the injunction to be discharged: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658.

7 Likewise, in *Ineos Upstream Ltd v Persons Unknown and others* [2019] EWCA Civ 515 ("*Ineos*"), the Court of Appeal held that there was no conceptual or legal prohibition on

suing persons unknown who are not currently in existence but would come into existence when they committed the prohibited tort: see [94] of *Ineos*.

8 At first instance in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2021] EWHC 1201 (QB), Nicklin J held that, generally, it was not possible for a newcomer to be bound by a final injunction in circumstances where they had not been identified prior to final judgment. The reason was because the case was over and it was too late at that stage for that person to be allowed to participate or discharge or vary the injunction whether by a liberty to apply or otherwise. A part of the appellant's case in the appeal to the Supreme Court was that the decision of Nicklin J should, in that regard, be restored.

9 In coming to the foregoing conclusion, Nicklin J had adopted what was said in *Canada Goose UK Retail Limited & Anor v Persons Unknown* [2020] EWCA Civ 303, especially at [89] and [92] which upheld Nicklin J's first instance decision in that case. At [89], the Court of Appeal said the following:

> "A final injunction cannot be granted in a protestor 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. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd (No 3)* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471, para 17 that 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."

10 The issue in *Barking and Dagenham* in the Court of Appeal was how, as a matter of precedent, could a Court of Appeal not follow a prior decision of the Court of Appeal. It confronted that problem holding that two of the three exceptions set out in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 to the rule that the Court of Appeal was bound by its previous decisions applied, namely:

(1) The Court of Appeal can decide which of two conflicting decisions it will follow. In this case, *Gammell* an unauthorised encampment case, and *Ineos* a protester case, had decided that injunctions, interim or final, could be granted validly against newcomers; and

(2) The Court of Appeal was not bound to follow a decision of its own if given without proper regard to previous binding authority, in this case, *Gammell* and *Ineos*.

11 In the Supreme Court case in *Barking and Dagenham*, there is no problem about precedent to the extent that prior Court of Appeal cases can be overruled and so the Supreme Court is free to choose which of the cases it prefers, or, indeed, what other reasoning is appropriate in order to resolve the issues. That is subject to it agreeing that the reasoning of the Court of

Appeal in *Barking and Dagenham* that the prior Supreme Court case of *Cameron v Liverpool Victoria Insurance Co Ltd (Rev 1)* [2019] UKSC 6 was not in point.

12 It is important to have in mind that at this stage in the instant case, unless the court proceeds to a final injunction, the concern here is about interim injunctions and not final injunctions. It is possible that the Supreme Court in *Barking and Dagenham* will have something to say about interim inductions. For the moment, pending a decision of the Supreme Court, the position is that there is no contradiction between the two Court of Appeal cases in *Barking and Dagenham* and *Canada Goose* as regards interim injunctions. In *Canada Goose*, the position was set out at [92] as follows:

> "In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against persons unknown, it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also persons unknown who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that."

13 The reference to Lord Sumption's "Category 1" in that passage is not necessarily in point in that it is a reference to [13] of *Cameron* to:

> "Anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location although they cannot be named."

14 It is not a reference in that case to a person who is not identifiable at the inception of the proceedings but who subsequently breaches an interim injunction: see *Ineos* at [29] *per* Longmore LJ. However, it is apparent from the above passage at [92] of *Canada Goose* that the Court of Appeal found that there could be an injunction against a person unknown who had breached an interim injunction prior to a final injunction and therefore prior to the litigation being at an end. It therefore follows that whilst the Supreme Court may have something to say regarding interim injunctions, the conflict of authority, in so far as there is one, between *Barking and Dagenham* in the Court of Appeal and *Canada Goose* in the Court of Appeal concerned centrally final injunctions and not interim injunctions.

15 The claimants are agreed in this case that the court should proceed to an interim injunction to which I shall refer. It follows that the applications before the court at this stage are not for final injunctions.

EXTENT OF THE INJUNCTIONS

16 The claimants seek to extend the ambit of the injunctions. Before Hill J, the orders were limited to participating in a street cruise referring to being a person who is a driver, rider, or passenger in or on a motor-vehicle performing particular activities so as to cause particular effects. Particular activities in the particular effects are contained within the orders. Hill J did not grant at that stage an injunction against spectators who attended at such events or against those who organised the events in question. At [77] of the judgment, she said that it was appropriate at the interim stage to limit both the injunctions to those who were drivers, riders, or passengers.

17 The question which now arises is whether the interim injunctions should be extended to restrain spectators from watching car cruising events. The arguments in favour of such an extension include the following:

(1) The spectators encourage the events in the sense that their involvement gives "oxygen" to the drivers and if they do not attend, the events would either not take place or they would be more limited; and

(2) There are dangers to spectators. The evidence is that many have been injured at such events and an injunction would protect members of the public from exposing themselves to such dangers. That is a part of the protection which the authorities seek to give.

18 In my judgment, at this interim stage there should not be an injunction in respect of spectators for the following reasons:

(1) The primary unlawful activities and/or dangerous activities are those of the drivers and riders, and the primary encouragement is by those who are passengers rather than those who observe;

(2) In respect of spectators, there would be a difficulty of definition between those who actively encourage and those who are merely present, and even with careful drafting, it might be difficult to delineate between the two;

(3) There are significant questions whether it is disproportionate to expose somebody due to mere presence at such an event to the penalty of contempt; and

(4) Whilst recognising the dangers to spectators who attend, the way to protect them in the first place is to have and enforce orders against those who drive and are passagengers in the vehicles. The purpose of the orders is to have the effect of keeping the public, including the spectators, safe.

19 This is not to exclude the possibility of the extension of the orders to spectators at a later stage but at this interim stage, it suffices, in my judgment, as Hill J held at the earliest stage, to have an order limited to those who are involved in the driving, riding, and being passengers in the vehicles.

20 In the order made by Hill J, she confined the order to the following:

> "It is forbidden for any defendant being a driver, rider, or passenger in or on a motor vehicle to participate between the hours of 3.00 p.m. and 7.00 a.m. in a gathering of two or more persons within the Black Country area shown on plan A attached at which some of those present engage in motor racing or motor stunts, or other dangerous or obstructive driving."

21 That was the order which she made in the Wolverhampton Case. That has virtue of clarity which is compromised when the injunction sought is wider so as to extend to other forms of participation such as spectating.

22 The order sought in respect of the Wolverhampton Case provides as follows:

> "(1) It is forbidden for the defendants to participate between the hours of 3.00 p.m. and 7.00 a.m. in a gathering of two or more persons within the Black Country area shown on plan a (attached) at which some of those present engage in motor racing or motor stunts, or other dangerous or obstructive driving.
>
> (2) It is also forbidden for the defendants to participate between the hours of 3.00 p.m. and 7.00 a.m. in a gathering of two or more persons within the Black Country area shown on plan a (attached) with the intention or expectation that some of those present will engage in motor racing or motor stunts, or other dangerous or obstructive driving."

23 The different wording raises numerous questions as to what participation outside a motor vehicle will suffice. What if someone is passing by and gets swept up with the event? What if someone is a journalist? What if someone is selling street food? The same potential objections apply, including a lack of certainty, a disproportionate response, and one which potentially affects innocent third parties in their normal activities.

24 A suggestion was made that the power of arrest should be limited to drivers and the like whereas the net could be cast wider for the scope of the injunction. The recognition that the immediate source of the danger is from the people in the cars is a recognition that the spectators are in a different position from the driver or from the people in the cars. If a power of arrest is only appropriate for someone in the car then there is a real question of proportionality as to why an injunction is appropriate for a spectator. This is not to exclude the possibility at a later hearing that the reasoning at this stage is that it is an order which should not be made without more cogent reasons and at a later stage in the action. I have quoted from the injunctions in respect of the Wolverhampton Case but the same reasoning could be applied in respect of that which is sought in the Birmingham Case.

25 That then leaves for consideration those who were not involved in organising the events. At the moment, the order provides:

> "A person participates in a street cruise if he is the driver or rider of, or passenger in or on, a motor vehicle, and if he is present and performs or encourages any other person to perform any activity to which paras.1-2 above apply, and the term 'participating in a street cruise' shall be interpreted accordingly."

26 This appears to require that the person must be a driver and the like and, further, that the person must be present and performs or encourages others to carry out the activity. It may be that attention can be given to the syntax in relation to the order and to the comma which appears after "a motor vehicle" with a view to making it entirely clear that the injunction is directed towards the people in the vehicle. There is not a separate order for organising an event. In my judgment, at the moment it suffices to have an order in the form of the original

order of Hill J. Those who organise the event would appear to be covered as parties who cause, or procure, or assist the breach of the injunctions who are generally liable as accessories if the necessary actions and mental element can be proven. That was canvassed with counsel and counsel agreed to that proposition

27 I adopt the summary in the judgment of [20]-[28] of the facts and of the references to the evidence to which Hill J has drawn attention. I have taken into account and adopt the *B&Q* and *Bovis* criteria referred to at [48]-[56] of the judgment. In these paragraphs, Hill J referred to s.37 of the Senior Courts Act 1981, to *Stoke-On-Trent City Council v B and Q (Retail) Ltd* [1984] 1 Ch 1 at [23B], to *City of London Corp v Bovis Construction Ltd* [1992] 3 All ER 697 at [714], the Local Government Act 1976 (s.222), and to the Highways Act 1982 (s.130).

28 At [54] of her judgment, Hill J said the following:

> "Based on the evidence provided by the claimants, I am satisfied not only that those who engage in car cruising deliberately and flagrantly flout the law but that they will continue to do so unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them. Noting that the injunction jurisdiction is to be involved and exercised exceptionally and with great caution, I am satisfied that those elements of the *Bovis* test are met."

29 As I have indicated, it is not necessary for me to rehearse the judgment and the summaries of the underlying evidence that led to Hill J coming to that conclusion. There is one matter where I prefer not to make a finding. In [60] of the judgment, Hill J referred to a case called *Birmingham City Council v Shafi* [2008] EWCA 1186; [2009] 1 WLR 1961. In that regard, she referred to the subsequent case in the Court of Appeal of *Sharif v Birmingham City Council* [2020] EWCA Civ 1488 to which I shall make reference later in this judgment.

30 At the end of [60], Hill J said that she accepted a submission to the effect that in the light of *Sharif* and due to reasons advanced by Mr Manning on behalf of Birmingham, she found that *Shafi* was no longer good law and was distinguishable, and she agreed with and adopted those submissions. I simply adopt the formulation that *Shafi* has been held to be distinguishable in *Sharif* and, in my judgment, it is distinguishable in the instant case. It is not necessary for me and I prefer not to find that *Shafi* has been held not to be good law. It is unnecessary for me to make any finding about that for the purpose of this judgment. It is also not necessary for me to repeat the various reasons why *Shafi* was distinguishable but simply to refer to [60] of the judgment of Hill J in that regard.

LENGTH OF INJUNCTION

31 In a Part 8 claim, the court might come to a final stage after a short time relative to a Part 7 claim. The expectation might then be in a case such as the instant one where nobody has come forward wishing to be a defendant or to seek to discharge or vary the order that a swift disposal to the proceedings should occur. There is also a concern which has been expressed particularly by Nicklin J at first instance in the *Barking and Dagenham* case that there is a tendency for interim orders to be continued for years without steps being taken to progress the action instead of driving the case to an end.

32 Despite the above, it is not appropriate to drive the case to an end at this stage. The Supreme Court case as discussed above is such that the court ought not to bring this case to

an end until the Supreme Court has given its judgment subject, of course, to how long that process may last. It is possible that the Supreme Court will rule for certain procedures to be observed in such cases and to give guidance relevant to the making of a final order capable of catching newcomers. Alternatively, it is possible that the decision will be against such orders at least as regards newcomers which is another reason to move with caution before making a final order.

33 Another aspect is that contempt proceedings have started against the person alleged to have been in breach of the injunctions made by the Hill J. There is an application which has been made by Birmingham for that person to be a defendant in the proceedings. There are steps being taken so that that person receives the papers in action, including a transcript of the hearing of 6 February 2023 and of this hearing. He, like others affected by this judgment and the orders made pursuant thereto (and repeating in that regard a part of the order made by Hill J), will be able to apply to have discharged or varied this order as well as the order of Hill J. This might then lead to contested issues to be taken into account in the future disposal of the action as a whole. These are relatively early times and it is possible that other persons may wish to take a part in the final proceedings. Any adjournment should be for a defined period of time. The precise period will be fixed at the time of moving on to finalising an order arising out of this judgment.

***QUIA TIMET* (PRECAUTIONARY) INJUNCTION**

34 This kind of injunction, referred to as *quia timet* injunction or a precautionary injunction, involves more stringent considerations than where a defendant has already caused harm to a claimant. The conduct is in respect of apprehended future actions.

35 It is important to note that this kind of injunction is a peculiar kind of precautionary injunction. The defendants in the Wolverhampton Case and (with some named exceptions) the defendants in the Birmingham Case are all persons unknown. There are certain defendants in the Birmingham Case who are named. This means that the persons unknown are not identified as persons who, at this stage, have committed a wrong. There is a wrong which is apprehended and the object of the injunction is to dissuade anyone thinking of committing it but also to cause persons who act contrary to the injunction to be liable to be joined as defendant.

36 In the case of *London Borough of Islington v Elliott & Anor* [2012] EWCA Civ 56; [2012] 7 EG 90, the Court of Appeal summarised the principles that apply in relation to *quia timet* (precautionary) injunctions. There is, in particular, a two-stage test that is as follows:

> "First, is there a strong probability that unless restrained by injunction, the defendant will act in breach of the claimant's rights? Second, if the defendant did an act in contravention of the claimant's rights, would the harm result and be so grave and irreparable that notwithstanding the grant of an immediate interlocutory injunction at the time of actual infringement that the claimant's rights to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate."

37 There is an adaptation in this case because of the nature of an injunction as described under s.222 of the Local Government Act 1972. The first stage might be understood as a right to protect the interests of the inhabitants. Reference is made to the cases cited at [51] and [52] of the judgment to which I have made reference, namely the *B&Q* case and the *Bovis Construction* case. The first essential foundation is the strong probability that unless

restrained by injunction, the unlawful activities will continue and that nothing short of an injunction will effectively restrain them. The second foundation is that the harm resulting would be so grave and irreparable that the claimant cannot wait until after the wrong and that damages would not be an adequate remedy.

38 In a persons unknown injunction, the first part of this is to be adjusted to a strong possibility that the acts feared, in this case car cruising as defined in the order, will take place. That is demonstrated by the findings contained in the judgment of Hill J at [12]-[16] and [21]-[26]. The probability is apparent from the number of incidents of it taking place, in particular, how the expiry of an injunction on 1 September 2022 led to an increase in the incidence of car cruising (see the evidence of PC Campbell referred to at [15]-[16] of the judgment). There was a fatal collision in the Wolverhampton claimant's local authority area, namely in Oldbury, on 20 November 2022 involving two deaths. PC Campbell's statement dated 9 December 2022 linked this unequivocally to illegal street racing and the deceased were spectators at the event.

39 There had been other incidents causing risk of harm to local residents and shop workers other than road users, members of the public, and participants themselves. There were incidents in Stevenage in July 2019, in Warrington in April 2022, and in Scunthorpe in September 2022 which provide graphic illustrations of this real danger involving, as they did, various fatalities and life changing injuries. Prior to the injunction of Hill J, there had been promoted a Boxing Day car cruising event in Birmingham although this was cancelled following the injunctions. At [46] of the judgment, reference was made to a statement of PC Campbell that on Boxing Day in December 2021, the event had attracted two-hundred vehicles with cars racing on the A38 and the A47 with anti-social behaviour and a substantial risk of death or serious injury.

40 The second element about car cruising being liable to cause grave and irreparable harm was demonstrated most proximately by the fatalities in Oldbury but, as noted, there was a catalogue of prior very serious incidents. This is in addition to the harm to the neighbourhoods and to the impact on local residents living in and carrying out business in the authorities. There was, therefore, proven to a high standard the pre-requisites of a *quia timet* (precautionary) injunction. This requires a higher threshold than the *American Cyanamid* arguable, that is not frivolous, case.

41 It was also proven that the other powers which the police had sought to use had proven ineffective. The result of this information was that car cruising was a public nuisance carrying with it considerable danger of serious injury and worse to drivers, spectators, and other participants. At [4] and [60] of the judgment, Hill J referred to the case of *Sharif v Birmingham City Council* (above) in which Bean LJ affirmed injunctions to prevent car cruising or street cruising within the city of Birmingham. He referred to that as:

> "...a form of anti-social behaviour which has apparently become a widespread problem in the West Midlands."

42 At [42] of his judgment, Bean LJ said that the judges had been entitled to conclude that:

> "...car cruising in the Birmingham area would continue unless and until effectively restrained by the law, and that nothing short of an injunction would be effective to restrain them. I regard this is a classic case for the granting of an injunction."

43 In that case, the Court of Appeal considered an argument that a s.222 injunction was not appropriate because of the availability of other remedies, an alternative remedy available to the Birmingham City Council making a public spaces protection order ("PSPO") under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.

44 At [41] of his judgment, Bean LJ said the following:

> "...Even assuming (without deciding) that a CBO [criminal behaviour order] is an appropriate order to be made on conviction for a motoring offence such as dangerous driving or racing on the highway, it could only be made against an individual who had been prosecuted and convicted of an offence, a process which might well take several months. The purpose of the injunction was to prevent future nuisances, not to impose penalties for past ones."

45 In the instant case, the evidence was to the effect that lesser orders directed to individuals who had committed offences was inadequate to prevent car cruising whereas injunctions against persons unknown had worked in the past and were required for the future. In my judgment, the reasoning in *Sharif* is applicable to the instant case.

COUNTY OR BOROUGH INJUNCTIONS

46 This was discussed by Hill J at [56]-[57]. She found that it was appropriate in the circumstances of this case where criminal and dangerous behaviour had been committed and there was the precaution required against such future behaviour in circumstances were the rights of a specific community were not engaged in a similar way to the traveller cases.

47 At [58], the judge referred to the fact that it was relevant that the injunction sought was not for a private business but for elected local authorities seeking to discharge their statutory duties. That is a relevant factor. The judge went on to say that such orders were against the whole world as in *Venables & Thompson v News Group Newspapers Ltd* [2001] Fam 430. As regards that particular point as to the injunction being against the whole world (*contra mundum*) I prefer not to rest my judgment on that point and leave that for discussion in another case.

48 If it were the case that the injunctions could be limited to certain sites where there was particular risk of the activities being carried on, that would be desirable. However, this was evidently not possible in that the activities take place in all sorts of places, including on the public highways and in private car parks. If it is restricted in this manner, the danger is that the persons involved in such activities would simply move on. In the case of *Sharif*, the restriction was throughout the area of the Birmingham authority. It is appropriate in this case to make the prohibition for the areas of the authorities concerned which can be delineated on maps. That is because that is a proportionate order in the circumstances of this case and the reasoning is not based on it being an order against the world.

SERVICE OF THE INJUNCTION

49 It is of the essence of this kind of injunction that notice of the injunction will be communicated to persons who might otherwise commit the prohibited conduct and/or to those who do commit it. Without this, the order against persons unknown can have no effect. At the time when the matter was considered by Hill J, she did not have the information which the court now has regarding the alternative service. She referred to the *Canada Goose* requirements which she set out at [61] of the judgment. She applied them to

the facts of the instant case at [62]-[81]. I adopt her reasoning and do not need to repeat the same. The form of order provided by the Wolverhampton parties was based on an order made by Julian Knowles J in the HS2 litigation which was referred to in a footnote to Mr Singleton's skeleton argument.

50 This is a case not of an anonymous defendant in the sense that someone who has committed a wrong but who cannot be identified by name as discussed by Lord Sumption in *Cameron* at [13]. It is a case of a person who, with knowledge of the injunction, commits the prohibited act and therefore renders themselves liable to be a defendant to the injunction and to a process of committal. It is not necessary for them to exist at all when at least an interim order is made, because a person who has not been served becomes a party when they knowingly breach the injunction. Their right to protect it occurs when in the knowledge of the order, they come before the court whether on enforcement proceedings or on their own application to discharge or vary the injunction, and are able to argue that the court should not have made the order at all, or at least against them.

51 The relevant rules are as follows:

(1) CPR 6.15(1) and (2):

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."

(2) CPR 6.16:

> "(1) The court may dispense with service of a claim form in exceptional circumstances.
>
> (2) An application for an order to dispense with service may be made at any time and –
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice."

(3) CPR 6.27 applies the provisions of CPR 6.15 to documents other than a claim form.

52 Hill J has set out the procedural history at [29]-[42] of the judgment which I adopt. Hill J required information in the nature of data analytics evidence (see [87]-[88] of the judgment). In the Birmingham and in the Wolverhampton orders made by Hill J, various methods of service were required. In the case of the Birmingham orders, this comprised the following:

(1) Signs in prominent locations, particularly in locations referred to at Schedule 4 of the order informing people of the order and power of arrest, the area, and how to find more information to be done by the end of 10 January 2023;

(2) A media release about the injunction and power of arrest with various specified information and identifying particular media outlets;

(3) Social media of Birmingham, including Twitter, Facebook, and Instagram links regarding the order and the power of arrest by the end of 23 December 2023;

(4) Updating Birmingham's website;

(5) Uploading a post to social media pages;

(6) Ensuring that copies of the order and power of arrest were available at the front desks of Birmingham's main office;

(7) Requesting that the West Midlands Police post the same on their website and social media accounts;

(8) Posting a link to its dedicated web page and to send a private message by Instagram to eight specific named accounts.

53 There were like provisions in respect of the Wolverhampton Case. It is not necessary to set out those provisions because they follow substantially the same form but adapted to the authorities in the Wolverhampton authorities.

54 Birmingham City Council was late in its compliance with updating the physical signs contained on metal street furniture because the contractor engaged to provide the adhesive update information could not meet the deadline of 10 January 2023, which the authority had proposed and the court accepted at the hearing on 20 December 2022. The signs were updated on 27 January 2023. The authority was also able to use electronic road signs to publicise the existence of the current interim injunction which is a method of service additional to those required by the order of Hill J (see the sixth statement of Michelle Lowbridge at [18]-[21]). Birmingham was required to serve further letters to respondents against whom enforcement proceedings had been served in the past and these were sent on 26 January 2023 (see the sixth statement of Lowbridge at [24]).

55 There were provisions in both orders requiring provision of data analytic evidence to be served. Further, whereas it was ordered that evidence be served about compliance with service on the respondents in previous proceedings not later than seven days before the hearing, which would have been by 30 January 2023, the evidence of Wolverhampton was served late by Paul Brown in his sixth statement on 3 February 2023. Wolverhampton's lateness in complying with the orders of the Court was admitted and was the subject of a witness statement of Mr Shein.

56 The information shows that the orders and related matters have had a considerable amount of circulation

57 For example, in the Wolverhampton Case, the councils largely shared the Wolverhampton site and the evidence in that regard contained a statement of Mr Paul Brown of 3 February 2023 in the following terms:

> "7. I can report that the social media messaging around the application for and subsequent granting of the interim injunction shared by the City of Wolverhampton Council between 15 and 23 December 2020 reached a total of 322,631 people and received 15,893 engagements. The breakdown between platforms is as follows - Facebook, 288,214 reach, 50,517 engagements; Twitter, 45,287 reach, 387 engagements; Instagram 7,631 reach, 102 engagements.

8. Social media messaging around the introduction of the interim injunction and subsequent application for a full injunction in February 2023 from 24 December 2022 to the present day has reached a total of 276,284 people and received 10,315 engagements. The breakdown between platforms is as follows - Facebook, 240,464 each, 9,858 engagements; Twitter, 27,527 reach, 287 engagements; Instagram, 8,293 reach, 170 engagements."

58 There is similar detailed information in the sixth witness statement of Michelle Lowbridge in the Birmingham action. This all demonstrates very wide circulation of the orders and this only represents the social media aspect in addition to the other forms of publicity referred to in the order of Hill J. There is also to be provided information with regard to the notification in previous injunction proceedings. A witness statement has now been prepared showing that that has been done. Accordingly, the evidence is that subject to lateness referred to above, for which there have been apologies and, as far as possible, explanations, the alternative service has taken place. Without these provisions for alternative service, the injunctions would be much less effective. That is why a considerable amount of attention was given by Hill J to the alternative service.

59 Further, it is the reason why there has been considerable concentration in the evidence on the alternative service. Without the alternative service, the danger would be that those who participated in the prescribed activities might find themselves liable to a power of arrest and to an injunction in circumstances where they have no knowledge of the injunctions. That is a risk that has to be taken into account. That is why it is necessary to have such detailed attention, both to the form of the order and to the extent of the traction that the order has had.

60 I am satisfied that sufficient attention has been given to making the applications capable of being effective. I am satisfied that the means of alternative service are sensible, proportionate, and upon the basis of the information that has been provided to the court at this stage, adequate for the purpose. They have been accepted by this court as sufficient in previous proceedings. They have been effective in giving a wide circulation to the order in this case. To the extent that there has been non-compliance in the requirements as to alternative service, it has been adequately addressed, and, in the circumstances, it does not appear to me that that gives rise to a need to discharge the injunction. It will be necessary to give consideration to the precise form of the injunctions following this judgment.

61 In connection with service, Mr Manning's skeleton argument at paras.35-40 addresses the court at length in respect of how final injunctions can now be issued in a case such as the instant one. That is the result of the case of *Barking and Dagenham* in the Court of Appeal. Since the court is not imposing a final injunction for the reasons previously discussed, it is not necessary to apply that reasoning at this stage

HUMAN RIGHTS/EQUALITIES

62 It is accepted that the people affected by the proposed order may have relevant Convention rights and/or protected characteristics. The rights under Art.8, Art.10, and Art.11, which are those that could conceivably be engaged, are, in any event, all qualified rights which may be interfered with for reasons relating, *inter alia*, to protecting public safety and/or public health preventing crime or disorder, and protecting the rights and freedoms of others. The Convention does not protect dangerous and unlawful conduct of the client in issue in the

present case. This case has therefore been distinguished by counsel appearing for the respective claimants from the case of injunctions against the traveller community and for injunctions against protesters. The claimants' primary intention is to protect the members of the local community from the severe disruption that they have experienced from the activities of these defendants.

63 Birmingham has conducted assessments under the Human Rights Act 1998 and s.149 of the Equality Act 2010 and has concluded that these proceedings are necessary and proportionate. As noted by Hill J at [28] of the judgment, no such assessment had been carried out by Wolverhampton and the authorities in the Wolverhampton Case but I accept the submission that there were no protected characteristics obviously engaged nor is there a human right to drive in the manner contemplated by the order sought.

64 I accept the submission that the order sought is proportionate and necessary and that there is no other means of protecting effectively the local people referred to above or the authorities' land in the interests of the people of the authorities before this court. I conclude that any interference with the rights of the defendants was justified and proportionate (see [59] of the judgment). In addition, none of the human rights potentially in play are absolute and all may be interfered with in pursuance of a lawful aim where such interference is necessary in a democratic society. The protection of health, the prevention of crime and disorder, and the protection of the rights and freedoms of others are legitimate bases for seeking and granting the orders sought.

POWER OF ARREST

65 A power of arrest is also sought against those who participate in cruises as drivers, or riders, or passengers. This was dealt with in the judgment of Hill J at [82]-[85]. I adopt her reasoning. At [83], she set out ss.(3) of the Police and Justice Act 2006, s.27. Since this judgment is to be read alongside the judgment of Hill J, it may assist for the purposes of clarity of exposition for this judgment to include not only that subsection but ss.(1) and (2) that read as follows:

> "27 **Injunctions in local authority proceedings: power of arrest and remand**
>
> (1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).
>
> (2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.
>
> (3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—
>
> (a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection."

66 I adopt the reasoning of Hill J that the power of arrest is needed to provide an effective means of enforcement for injunctions, if granted, as the paper committal procedure would not enable the police to deal with problems by arresting participants at the scene. Without being able to identify the names of the participants and locate them, paper applications for committal are likely to be impossible to prosecute. I should add in addition to the foregoing that it is necessary to stop the conduct at the earliest opportunity and the danger is that if not apprehended, the parties might continue the conduct elsewhere. The relevant power is under s.27 of the 2006 Act. The power is triggered by the fact that the application has been made under s.222 of the Local Government Act 1972. The activities not only cause a nuisance or annoyance to members of the general public but also pose a significant risk of harm to them for the purposes of s.27(3)(b).

67 In expansion of the foregoing, helpful submissions were made to the court by counsel as regards the power of arrest. First, Mr Manning drew attention to the difference between the *Canada Goose* type protester and the *Barking and Dagenham* traveller encampment type case and the instant case. There was nothing *per se* in the protesting or in the encampment that was dangerous behaviour that was likely to give rise to a serious risk of harm. In the instant case, the evidence is that the activities in question are inherently dangerous and have, from time to time, caused injuries and even fatalities. It is entirely unpredictable when cars might collide or go into spectators. It is in the nature of doing something so dangerous that the harm might arise. The fact that the claimant cannot identify who might cause the injury does not mean that the injunction is not necessary because it is necessary because of the inherently dangerous nature of the activity. It is to be noted that the injunctions and the power of arrest are limited to those in the vehicle themselves. Mr Manning emphasised that the arguments before Hill J was that it was important for the police to be able to take action in order to bring to an end the unlawful activities at the earliest opportunity rather than to have to wait for some subsequent application. He also referred to the care with which the alternative service has been addressed such as the court can be satisfied, as far as possible, that those who would participate in such activities would have prior notice of the court injunctions. Mr Singleton added to this by saying that under s.27(3)(b) concentrated on a significant risk of harm to the person mentioned in the subsection. He submitted that there was a significant risk that had been proven.

68 Further, it is to be noted that the harm has to be a harm of nuisance or annoyance to persons who are mentioned in ss.(2). In other words, it has to be shown that the conduct which is prohibited is conduct which is capable of causing nuisance or annoyance to a person. Those persons are not simply those people who have called the local authority because they are upset about the noise or the damage to their business. It includes those whose life may be endangered or interfered with as a result of the dangerous acts which are prohibited by the terms of the injunction and which comprise a nuisance, particularly a public nuisance as understood by the law.

69 In those circumstances, I am satisfied that the power of arrest is correctly attached to this order and it is to be noted that a power of arrest was attached to the order in the *Sharif* case which was approved by the Court of Appeal. For all these reasons, I am satisfied that the order of Hill J should continue. The period for which it will continue and any other terms in relation to it shall be considered when the draft is put before the court.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.