

Claim No. KB-2022-BHM-000188
IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

B E T W E E N:-

1. WOLVERHAMPTON CITY COUNCIL
2. DUDLEY METROPOLITAN BOROUGH
COUNCIL
3. SANDWELL METROPOLITAN BOROUGH
COUNCIL
4. WALSALL METROPOLITAN BOROUGH
COUNCIL

Claimants

-and-

PERSONS UNKNOWN
& NAMED DEFENDANTS

Defendant

SKELETON ARGUMENT ON
BEHALF OF THE CLAIMANTS

Wolverhampton City Council,
Legal Services,
Civic Centre,
St Peter's Square,
Wolverhampton

Ref: LIJ017753P/01201576

Solicitor for the Claimants

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Claim No. KB-2022-BHM-000188

For Hearing 27 February 2024 at 10.30am

In the matter of an application for an injunction under s.222 Local
Government Act 1972 and s.130 of the Highways Act 1980

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Preliminary

1 The following matters are before the court:

- (1) The Claimants' application for a final injunction (with ancillary Power of Arrest); and

- (2) The Claimants' application to join a defendant, following the conclusion of contempt proceedings.
- 2 It should be noted that the final injunction sought is in broader terms than the current interim injunction.

Housekeeping

- 3 The Claimants have filed 5 bundles of evidence:
 - (1) Volume 1: material specifically filed for this hearing and the application to join a further defendant.
 - (2) Volume 2: material before the court when the application was first considered by Hill J on 22 December 2002 and on review by Freedman J on 6 & 13 February 2023.
 - (3) Volume 3: material before the court for a review hearing, held on 15 May 2023, before Ritchie J.
 - (4) Volume 4: material before the court for a review hearing held on 4 October 2023, before HHJ Kelly.
 - (5) Volume 5: material before the court for a further review hearing held on 20 December 2023, before HHJ Kelly.
- 4 For ease of reference the following convention has been applied.
Pages with a bundle are identified by volume number, then page

number and, if appropriate paragraph number e.g. [v1/B2/1] refers to volume 1, page B2 para 1.

History & Background

- 5 On 1 December 2014 HHJ Owen QC granted an injunction to restrain car cruising *Wolverhampton & Others v Persons Unknown* [2014] (Claim No A90BM228). [v2/H409] That injunction ('the Original Injunction') was subsequently renewed by HHJ McKenna on 9 January 2018 [v2/H414].
- 6 The Original injunction was in effect from 2 February 2015 until 1 February 2021.
- 7 Although application was made to further extend the order such application was adjourned following the first instance decision of Nicklin J in *Barking & Dagenham v Persons Unknown* [2021] EWHC 1201 (QB).
- 8 Following the decision of the Court of Appeal in *Barking & Dagenham*, reversing Nicklin J, it was apparent that the legal landscape has altered considerably since 2014 and a fresh application would be more appropriate (and likely to accord with the current

guidance) rather than attempting to amend and extend the Original Injunction.

- 9 The Claimants aver that the Original Injunction caused or contributed to a substantial reduction in car cruising in the Black Country and the committal proceedings brought for breach of the Original Injunction served as a deterrent to persons contemplating car cruising.
- 10 The Original Injunction did not eliminate car cruising but did cause a decrease in such activity. Since the order lapsed there has been a marked increase.

The impact of the Original Injunction

The position after 2014

- 11 The injunction which Judge Owen QC granted was successful in that it led to a significant reduction in car cruising, albeit such behaviour was not eliminated. See in particular:

(1) First witness statement of Pardip Nagra [v2/B12/32-B14/42]

- (2) First witness statement of PC Campbell [v2/B201/71]
- (3) First witness statement of Pardip Sandhu [v2/C7/6]
- (4) First witness statement of Steve Gittins [v2/C39/3]
- (5) First witness statement of PS Lee Plant [v2/C55-C73]
- (6) First witness statement of Jennifer Bateman [v2/D10/8-D11/14].

The position after expiry of the Original Injunction

12 Please see:

- (1) First witness statement of Pardip Nagra [v2/B15/43-B18/55; B19/59; &B21/70;]
- (2) First witness statement of PC Campbell [v2/B201/72-73]
- (3) First witness statement of Pardip Sandhu [v2/C8/13]
- (4) First witness statement of Jennifer Bateman at paras 8-11 [v2/D10/8-D11/11]
- (5) First witness statement Steve Gittins [v2/C40/6-C41/10]
- (6) First witness statement of Margaret Clemson [v2/D3].
- (7) First witness statement of Teja Sikhu [v2/D7]
- (8) First witness statement of Richard Hubbard Harris [v2/E16/4-E17/8]

- (9) Second witness statement of Richard Hubbard Harris [v2/E28/5-E32/12]
- (10) First witness statement of John Slater-Kiernan [v2/E53/3-E54/7]

The position since the grant of the interim injunction by Hill J

13 Please see:

- (1) Seventh witness statement of Pardip Nagra [v1/B2/3-B3/8]
- (2) Fifth witness statement of Pardip Sandhu [v1/B18/3-B19/10]
- (3) Fourth witness statement of Mark Wilson [v1/B79/5]
- (4) Second witness statement of Steve Gittins [v1/B84/5-B85/8]
- (5) Second witness statement of PC Campbell [v3/B23/4-B24/5]
- (6) Fourth Witness statement of Pardip Nagra [v4/B2/3-B3/8]
- (7) Second witness statement of Steve Gittins [v4/B-22/5-B22/7]
- (8) Third witness statement of PC Campbell [v4/ B28/11-B28/12]

14 Since the grant of the interim injunction the Claimants have brought 5 sets of committal proceedings. These are set in tabular form at [v1/B92-B93] and fuller details are at [v1/section F].

15 In summary while the making and enforcement of an Injunction is not quite a 'silver bullet' it has had the effect of reducing car cruising and deterring participation.

The Law

16 In *Wolverhampton CC ats ors v London Gypsies and Travellers ats ors* [2023] UKSC 47 the Supreme Court considered the appeal from the Court of Appeal in *Barking & Dagenham v Persons Unknown*.

17 In a unanimous judgment the court determined that the 'newcomer' injunction did not fit within existing categories of injunctive relief but nonetheless the courts had jurisdiction to make such orders binding persons who were not party to the proceedings.

18 At para 238 Lord Reed giving the Court's judgment summarised their conclusions.

(1) A court may grant an injunction against newcomers i.e. "persons unknown".

(2) Such orders will bind anyone who has notice of them.

(3) In deciding whether to grant an order the court will consider:

(a) If existing remedies are inadequate;

- (b) Substance rather than form;
- (c) Remedies should be flexible;
- (d) New circumstances will require new remedies not necessarily constrained by rules or procedure.

(4) Specific considerations will apply to orders against Travellers.

19 Since the decision of the Supreme Court a number of cases have come before the High Court where applications for injunctive relief have been made against persons unknown.

20 In *Multiplex Construction Europe v Persons Unknown* [2024] EWHC 239 (KB) Ritchie J identified (at para 10 et seq) 13 factors that needed to be addressed, albeit in the context of an interim application. Those factors are considered below

Analysis & Application

1 – Substantive requirements

21 There must be a civil cause of action identified in the claim form and particulars of claim.

22 In this case the conduct complained of is identified in Particulars of Claim [v5/A52/25-A54/25G] namely: the commission of criminal offences; public nuisance; and interference with Convention Rights.

23 It is worth noting the observation of Lawton LJ Court of Appeal in *Stoke-on-Trent Council v B&Q Ltd* [1984] 1 Ch 1 at 23H that it is

in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local authority to decide.

2 – Sufficient evidence to prove the claim

24 It is respectfully submitted that there is ample evidence to prove the claim. The proved contempts alone would be more than sufficient. However, the evidence set out above makes clear the nature and extent of the problem.

3 – Whether there is a realistic defence

25 As set out in the Particulars of Claim there can be no lawful justification for behaviour of the kind sought to be restrained. It is criminal, tortious and dangerous.

4 – The balance of convenience and compelling justification

“It is necessary for the Court to find, in relation to a final injunction, something higher than the balance of convenience, but because I am not dealing with the final injunction, I am dealing with an interlocutory injunction against PUs, the normal test applies. Even if a higher test applied at this interlocutory stage, I would have found that there is

compelling justification for granting the *ex parte* interlocutory injunction, because of the substantial risk of grave injury or death caused not only to the perpetrators of high climbing on cranes and other high buildings on the Site, but also to the workers, security staff and emergency services who have to deal with people who do that and to the public if explorers fall off the high buildings or cranes.” Ritchie J at para 15

26 In the instant case there is not only a risk of grave injury or death, it has actually occurred:

- (1) PC Campbell [v1/C3/10] provides details of five fatalities in the West Midlands. The events in November 2022 occurred in Sandwell (the Third Claimant)
- (2) The interim order has reduced car cruising and disrupted such activities [v1/C5/17]

5 – Whether damages are an adequate remedy

27 It is submitted that this is not the case, as the Claimants are local authorities acting for the benefit of residents, no claim for damages is brought and is difficult to see how the local authorities could formulate such a claim.

6 – The procedural requirements

28 The PUs must be clearly identified and plainly identified by reference to:

- (1) the tortious conduct to be prohibited and that conduct must mirror the torts claimed in the claim form; and
- (2) clearly defined geographical boundaries if that is possible.

29 These requirements have been satisfied. While the geographical area concerned is substantial (all four local authority areas) it is submitted that this is necessary given that by its very nature street racing is a mobile activity that has occurred at multiple locations and can relocate easily.

7 – The terms of the injunction

30 The prohibitions have been set out in clear words.

31 The additional prohibitions that go beyond the interim order namely those apply to spectators and organisers are clear and the need for such prohibitions is considered below.

8 – Prohibitions must match the pleaded claim

32 In this case they do.

9 – The geographical boundaries

33 Plan A [v1/A40] appended to the orders and Statement of Case is very clear.

10 – Temporal limits - duration

34 As the evidence demonstrates once an injunction is no longer in force the behaviour complained of reoccurs in short order. It is submitted that a renewable three-year term (with annual reviews) provides appropriate balance to allow the injunction to work without the risk that it becomes permanent.

11 – Service

35 The requirements for and evidence as to the service of this application and proposed service of the Final injunction are set out in:

- (1) the Combined Directions Order made by HHJ Kelly on 20 December 2023 [v1/E7/7-E9/8];
- (2) the 18th witness statement of Paul Brown [v1/D1-D28]; and
- (3) draft Final Order read with the filed directions order.

12 – The right to set aside or vary

36 This is explicitly provided for in the draft Final order and has always been a feature of the interim order

13 – Review

37 This is explicitly provided for in the draft Final order.

Further Considerations

38 These matters did not arise before Ritchie J in *Multiplex* but require consideration in light of the Supreme Court's judgment.

Traveller Cases

39 The Supreme Court recognised that travellers are a vulnerable group to whom particular duties are owed (see para 190-203).

40 This is not the situation in the instant case. No duties are owed to facilitate street racing nor are there competing convention rights.

41 Further, in protester cases there will be a need to take account of Convention rights. This is not a protester case.

Adequacy of Existing Remedies

42 It has been suggested that there are a number of possible existing remedies.

- (1) The Criminal Law
- (2) Public Spaces Protection Orders
- (3) Byelaws

Criminal Law

- 43 The criminal law is reactive. The Claimants seek a remedy that is proactive. Such action is endorsed by the police [v1/C11/39]. Penalties for breaking the criminal law are varied and sometimes provide only limited deterrence e.g. speeding fine and penalty points.
- 44 The shortcomings of a purely crime-based approach are described by PC Campbell [v1/C17/59-C18/65].
- 45 *Stoke-on-Trent Council v B&Q Ltd* [1984] 1 Ch 1 (noted above) was a case where the criminal law (the Shops Act 1950) had proved ineffective at deterring Sunday trading where the defendants were likely to continue deliberately and flagrantly ignoring the law.

Public Spaces Protection Orders

- 46 This is already the subject of authority. In *Sharif v Birmingham CC* [2020] EWCA Civ 1488 (a car cruising case) Bean LJ rejected the suggestion that because a PSPO was available an injunction could not be granted commenting at para 39:

a PSPO might well be ineffective. Breach of a PSPO is a non-arrestable offence carrying only a financial sanction (whether by prosecution or by service of a fixed penalty notice). As one item of evidence (among many) mentioned by

Mr Bird records, "a caller complains that the vehicles go when police arrive and simply return when the police have moved on". There may also be potential difficulties about what does or does not constitute a "public space"; how large that public space can be; and whether a PSPO can properly cover the activities of those who organise or advertise street cruises.

47 See also witness statement of Pardip Nagra [v1/B8/31-B9/35] & appended Briefing Note [v1/B106-B116]

48 Further a PSPO is likely to be impracticable [v1/C19/66]

Byelaws

49 In light of concerns expressed by the Supreme Court (see paras 209-216) the Claimants have examined the availability and utility of byelaws in car cruising cases. See witness statement of Pardip Nagra [v1/B9/35- B10/39] and appended Briefing Note [v1/B106-B116]

Prohibitions Sought

50 The Claimants have always sought an injunction that would cover the activities of those who attend and spectate at car meets. The

evidence of PC Campbell [v1/C6/22-C10/33 & C14/45-C16/55] and the video evidence in particular show the effects of large crowds on the driving of 'active participants'.

51 Concern has been expressed that innocent bystanders might be 'caught up' by the injunction. Respectfully it is submitted that such concerns can be alleviated by the following protections:

(1) The burden and standard of proof. The Claimants would need to prove 'participation' rather than mere presence to the criminal standard. The dog-walker crossing a car-park or pedestrian waiting to cross the road would not be at risk.

Of course if they were seen at events on multiple occasions such an explanation might lack credibility.

(2) Similar Considerations apply to planners. There would have to be credible evidence of their involvement in the planning and organisation of events before committal could be initiated.

The sophisticated nature of the organising of street cruises is set out within the witness statement of PC Campbell [v1/C13/44-C16/54].

(3) No Power of Arrest is sought to be attached to these prohibitions so there is no danger of an arrest and overnight detention.

Power of Arrest

52 A Power of Arrest may be attached to an injunction, under s.27 Police and Justice Act 2006 if :

- (1) a local authority is a party by virtue of s.222 Local Government Act 1972;
- (2) the prohibited conduct is capable of causing nuisance or annoyance to a person; and
- (3) 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 a person.

53 It is submitted that the criteria are fulfilled and the availability of the Power of Arrest is essential to the efficacy of the prohibition ('active participants') to which it has been and will be attached.

Rebecca Richold

54 This is a discrete application and relevant material is set out at section G of volume 1.

55 The issue can be stated shortly. Following a committal hearing on 9 January 2024 [v1/G32] where the Respondent admitted that she had breached the Interim Injunction the court imposed a suspended custodial sentence and costs .

56 However, the Respondent was not added as a party to the claim. Indeed no application to do so appears to have been made. The upshot is that the Respondent has a 'get out of jail free card'. She is no longer an unknown person nor is she named as a defendant.

57 The application is made to correct the unsatisfactory situation. The Respondent has been informed of this hearing [v1/G25 & G27]

Conclusions

58 The claimants submit that in light of the evidence there is good reason to:

- (1) grant an injunction in the terms sought;
- (2) attach a Power of Arrest to the fourth prohibition; and
- (3) join Rebecca Richold as a party.

MICHAEL SINGLETON

(Counsel for the Claimants)

21 February 2024