**CLAIM NO: KB-2024-002317**

**IN THE HIGH COURT OF JUSTICE**

**KINGS BENCH DIVISION**

**BETWEEN :**

**(1) LEEDS BRADFORD AIRPORT LIMITED**
**[and others more fully described in the Claim Form]**

**Claimants**

and

**PERSONS UNKNOWN**
**[more fully described in the Claim Form]**

**Defendants**

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# CLAIMANTS' SKELETON ARGUMENT

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**For urgent interim injunction hearing 18 July 2024: time estimate 2.5 hours**

## Suggested Pre-Reading (Time Estimate: 2 hours of judicial time)

- Application Notice dated 16 July 2024 [p.62]
- Draft Orders [pp.3-7; 14-18; 25-29]
- Claim Form [pp.36-45]
- Particulars of Claim [pp.46-59]
- Witness Statement of Mr Hodder dated 15 July 2024 [pp.88-113]
- Witness Statement of Mr Martin dated 15 July 2024 [pp.180-189]
- Witness Statement of Mr Jones dated 16 July 2024 [pp.222-232]
- Witness Statement of Mr Wright dated 16 July 2024 [pp.251-278]
- Witness statement of Mr Wright dated 17 July 2024 [pp.711-713]

## Introduction

1. Cs own and operate the airports at Leeds Bradford ("**LBA**"), London Luton ("**Luton Airport**") and Newcastle ("**Newcastle Airport**") (together "**the Airports**"). Just Stop Oil ("**JSO**") has explicitly threatened a campaign of protest at the UK's airports. London

Stansted airport has already been the subject of disruptive protest. Protest at Gatwick has been attempted, but the protesters were intercepted in time. Cs urgently seek the Court's protection.

2. The Court has recently granted comparable injunctions in favour of City Airport, three airports in the Midlands, and Heathrow. The forms of relief are not identical in all cases. In what follows, we will draw attention to such differences as we have recognised as being arguably material, between what Cs seek and what has previously been ordered.

3. The application notice at [p.62] seeks the following relief on a without notice basis:

   (1) an injunction; and

   (2) an order for alternative service of the relevant documents under CPR r.6.15 and r.6.27, r.81.4(2)(c) and (d).

## Background

4. The Airports are used in large numbers by members of the public as well as cargo transportation. Each Airport has the facilities typical of a commercial airport.

5. Civil aviation is heavily regulated at an EU and domestic level. Among other things, the Airports, being or including "aerodromes", have to comply with essential requirements set out in Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018. Cs must further comply with the requirements in Annex III and IV of the Commission Regulation (EU) No 139/2014 of 12 February 2014. Both of these regulations survived Brexit: sections 1A(6), 3(1) and (2) of the European Union (Withdrawal) Act 2018 c.16 and section 39(1) of the European Union (Withdrawal Agreement) Act 2020 c.1. These regulatory requirements are explained in Mr Hodder's witness statement, but, in summary, they make the following three things clear: (1) running a safe airport is of paramount importance; (2) doing so in a manner which ensures that there is no or limited disruption to passengers or freight transportation or injury to persons or valuable assets is a complex undertaking; and (3) the responsibility rests with the airport and its operator to ensure the safe and smooth operation for all persons and activity at the airport.

6. C1, C2, and C3 are airport operators, within the meaning of section 82 of the Airports Act 1986 c.31 ("**the Airports Act**"). The Airports are also "designated" airports for the purposes of section 63(1)(a) of the Airports Act, by article 2 and Schedule 1 to the Airports Byelaws (Designation) Order 1987 (SI 1987/380). As a result, the operators are empowered to make byelaws for regulating the use and operation of the airport and conduct of all persons while within the airport, which then have effect once they are confirmed by the Secretary of State[1]. Section 64(1) and (2) of the Airports Act provide

[1] Section 63(5) of the Airports Act.

that any person contravening any byelaws is liable on summary conviction to a fine not exceeding £2,500.

7. There are byelaws ("**the Byelaws**") in place for each of the Airports:

   (1) The Leeds Bradford Airport Byelaws 2022 ("**the LBA Byelaws**") apply to the land outlined in red to the plan at Schedule 1 to the byelaws. Cs' solicitors have prepared a plan of the site which replicates its extent as best as practicable. This is Plan 1 annexed to the Particulars of Claim. Plan 1 covers a smaller area than the byelaws, because the byelaws include land (shown shaded yellow on Plan 1A) which in fact falls outside the operational limits of the Airport. However, Plan 1 also includes for protection the landing lights, even though (curiously) the eastern landing lights are not within the land outlined in red on the plan to Schedule 1 of the byelaws.

   (2) The London Luton Airport Byelaws 2005 ("**the Luton Airport Byelaws**") apply to the outlined in red on the map attached to the byelaws. Cs' solicitors have prepared a plan of the site which replicates its extent. This is Plan 2 annexed to the Particulars of Claim. As with LBA, the landing lights are not within the land outlined in red on the map to the byelaws, but they are within what Cs seek to protect as shown on Plan 2.

   (3) The Newcastle International Airport Byelaws 2021 ("**the Newcastle Airport Byelaws**") apply to Newcastle International Airport which is shown outlined in red on the plan attached to the byelaws. Cs' solicitors have prepared a plan of the site which replicates its extent. This is Plan 3 annexed to the Particulars of Claim. As before, the landing lights are not within the land outlined in red on the plan to byelaws, but are within what Cs seek to protect as shown on Plan 3.

8. Cs' title to the Airports is set out in the statement of Mr Wright and the Title Schedule to the Particulars of Claim. The land in Plans 1, 2 and 3 is private land to which Cs have freehold or leasehold title, save for the exceptions which are shown in Plans 1A, 2A and 3A to the Particulars of Claim and also exhibited to Mr Wright's statement.

9. The exceptions are as follows:

10. First, there are certain areas within each airport over which third parties have interests which in point of law have the effect that Cs, in relation to those areas, do not have an immediate right to possession or occupation (or none that they seek to assert in these proceedings). These have been identified on Plans 1A, 2A or 3A: "**Third Party Areas**". The Third Party Areas are, generally, only accessible by members of the public if they first use areas to which Cs are entitled to possession, occupation and control by virtue of their unencumbered proprietary interests.

11. Secondly, there are the various landing lights which are used for the purposes of LBA, Luton Airport and Newcastle Airport which are located on land which is registered in the names of third parties, as is shown on Plans 1B, 2B and 3B ("**the Landing Lights**") - although in the cases of LBA and Newcastle Airport, C1 and C3 might be able to assert a proprietary or contractual right to some or all of that land, in view of agreements granted to them to their predecessors in respect of some or all of those Landing Lights.

12. Thirdly, access to and from the Airports obviously includes the use of public roads. Both Cs and Ds have the right to use these, including in principle for protest, because they are public highways. Cs do not seek an injunction in respect of any public highways outside the airport "perimeters". However, the highways marked in pink and purple on Plan 1A, pink on plan 2A, and pink on plan 3A, are within the land covered by the Byelaws. Thus, unlike most highways, the effect of the Byelaws is that the public has no right of protest on this stretch: or, at least, no right to conduct any protect that could be disruptive. Thus, unusually, the proposed orders will not affect Convention rights of potential protesters **even** on the highways to which they relate, to any (or any materially) greater extent than the Byelaws which are already in place.

13. The reason for mentioning these areas specifically, is that they are the areas where Cs cannot (or cannot clearly) rely on the simplest cause of action — trespass — in support of their claim. In relation to these areas, Cs rely on private / public nuisance. Additionally, in relation to the highways, the Court must balance Ds' rights of expression etc under Articles 10 and 11 of the Convention.

## The threat

14. Mr Wright [see ¶¶54-66 at pp.265-269] explains the basis of Cs' view that there is a real and imminent risk of blockading / obstruction / disruption at the Airports. JSO appear to have been planning a campaign since at least early March 2024, the "blueprint" for which was originally: cutting through fences and persons gluing themselves to runways; cycling in circles on runways; climbing onto planes to prevent them from departing; staging sit-ins at terminals to prevent passengers from access to the terminals. JSO's stated intention remains to mobilise people to take part in a coordinated civil resistance movement related to the environment and opposing fossil fuels at airports.

15. This threat has already materialised at Stansted airport and attempted at London Gatwick. It is the campaign advertised by JSO (described below further) together with those events which have alerted Cs to the need to seek the protection of the Court.

### *Protests at airports in June 2024*

16. Mr Hodder [see ¶41 at p.78] and Mr Wright [see ¶¶70-75 at pp.269-270; ¶7 at pp. 712] describe the protests at Farnborough airport, London Stansted and Gatwick.

17. On 2 June 2024, protestors affiliated with Extinction Rebellion ("**XR**") carried out a protest at Farnborough airport, by blocking 3 main gates and a further obstructing another gate with a vehicle.

18. On Thursday 20 June 2024, two protestors used an angle grinder to cut a hole in the perimeter fence at Stansted airport and spray pained 2 aircraft using a fire extinguisher. This resulted in the activity on the runway being suspended and three aircraft departures were delayed.

19. A video filmed by protesters shows how fortuitous it was that yet more harm was not done: the sight of two unauthorised persons equipped with power tools could easily have been interpreted by the airport's security services to be, or could in fact have been, a terrorist risk. Further, the equipment brought onto the site had the potential to cause severe damage to highly valuable aircraft. Then, there is the fact that they appear to have been running around the taxiway. The mere presence of untrained persons on or nearby the runway created increased risks for:

    (1) aircraft pilots;

    (2) the police and other emergency services;

    (3) ground crew;

    (4) members of the public in the vicinity; and

    (5) the protesters themselves.

20. It is a matter of good luck that the protest did not occur when an aircraft or vehicle was landing, departing or moving.

21. On Wednesday 26 June 2024 four individuals were apprehended at London Gatwick with bandages in their bags. The presumed intention was to cause aircraft to ingest them thereby grounding them, or, in fact, merely to pose the risk of this occurring, which could have been enough to cause the airport to close the runaways and prevent any flights from departing or landing.

22. Such a protest, if it had occurred, would likely have caused severe disruption and financial loss. As Mr Hodder explains [see ¶61 at p.83], even a small disruption to a flight schedule has a ripple effect, often meaning significant delays for passengers at the airport affected. This would likely have been felt by other airports in view of aircraft likely having to make landings (potentially on an emergency basis) elsewhere. That in turn would have had a knock-on effect on flight arrival and departures as well as ground transportation services carrying passengers from the location, dealing with the increased demand. Aircraft can then be in the wrong place for the purposes of restaffing and refuelling. Consequent on that is the ability (or inability) of aircraft operators to staff

their services in view of the maximum hours crew can work. There is also the additional cost and diversion of resources which goes into: (a) ensuring the runways and taxiways are free from debris; (b) assessing their condition; and (c) dealing with the consequences of the delays to the flight schedule. Last, there is the damage that any such material can cause to the aircraft or any other equipment or fuel that is on the site and/or the potential risk of injury to passengers and crew if such material is ingested by an aircraft while it is in motion or flight.

***Likely future incidents***

23. The JSO website states that:

> "This summer, Just Stop Oil will be taking action at airports.
>
> As the grass becomes scorched, hosepipe bans kick in and the heat of the climate crisis enters peoples' minds, our resistance will put the spotlight on the heaviest users of fossil fuels and call everyone into action with us.
>
> We'll work in teams of between 10-14 people willing to risk arrest from all over the UK. We need to be a minimum of 200 people to make this happen, but we'll be prepared to scale in size as our numbers increase. Exact dates and more details are coming.
>
> Our plan can send shockwaves around the world and finish oil and gas. But we need each other to make it happen. Are you ready to join the team? [emphasis added]"

24. As at 11 July 2024, JSO had raised funding for the planned campaign direct action at airports, by donations, of £24,275.

25. Cs are not aware of what specific locations or dates of further protests are planned. However, JSO appear undeterred by the arrests which occurred on 20 June 2024 or 27 June 2024 [¶¶24 and 64 of Mr Wright's first statement, pp.261 and 268], in view of correspondence sent to the subscription list on 29 June 2024 [¶66 of Mr Wright's first statement, pp. 268-269] in which it was stated that:

> "…The incoherent pattern of arrests we have seen over the last 24 hours suggests a rattled system. They know that as climate breakdown intensifies, civil unrest will increase and one day there will not be enough police to cope with the millions stepping into action, as the full betrayal of the political establishment becomes clearer.
>
> We will not be intimidated by the death throes of a broken system. Nothing the state can throw at us is worse than the realities that will be imposed on all of us if the breakdown of our climate carries on unabated. We WILL be stepping into action in the summer because when the lives of your family are at risk, there is no other choice than to protect them… [emphasis added]"

26. The arrests appear potentially to have increased JSO's commitment to the planned protest activity.

27. That would be consistent with what has happened before. Widespread protests occurred

across England in 2022, targeting oil and gas infrastructure, soon after the announcement of a campaign by JSO, Extinction Rebellion and Youth Climate Swarm. These resulted in injunctions being obtained in relation to various sites and highways in the vicinity of the relevant oil and gas terminals. The protests involved protesters climbing onto tankers, blocking motorways by gluing themselves to the road surface, physically attaching themselves to equipment and similar activities with the aim to induce the government to take certain specific kinds of action to address the climate emergency and fuel poverty. These past activities demonstrate that the people involved are committed to their causes and that their activities can be well coordinated and organised.

***Potential Disruption***

28. If protests occur at the Airports, Cs would expect to see disruption, as demonstrated by the experience at Stansted airport. It takes little imagination to recognise that, depending on the nature and/or number of the protests, the implications could easily be yet more significant.

29. To spell it out: protest at the Airports, or on a flight departing therefrom, has obvious potential for detrimental effects. The potential for harm includes:

    (1) Cs' ability to ensure: the safe operation of aircraft at the Airports; the safe movement of vehicles and persons on the runways / taxiways and other operational areas, to avoid collisions and damage to aircraft; and that the firefighting and rescue services are able to respond to incidents or accidents with the necessary urgency;

    (2) In view of the particular vulnerabilities of aircraft and airports and Cs' responsibility to ensure that the safety of aircraft and persons is not endangered, any unexpected, and potentially dangerous, protest activity at the Airports or on an aeroplane would, almost inevitably, result in delays or cancellations to schedule flight arrivals and departures. Anything which disrupts flight schedules clearly constitutes a potential threat to the interests of the public;

    (3) Cs' and public resources, which would be diverted as a matter of urgency into responding to any emergency caused by the protesters' activity;

    (4) Safeguarding persons – including the protesters themselves given the previous behaviour of protesters at Stansted Airport and at other airports [¶68 of Mr Wright's first statement, p.269 and ¶57.7 of Mr Hodder's statement, p.82] – and aircraft.

    (5) Counter-terrorism operations at the Airports and police.

30. These matters clearly have significant economic implications for Cs and others operating at the Airports, in addition to the harm (whether or not it is called "economic") to the

travelling public and other individuals lawfully present at airports affected by disruption.

## The law: injunctions against "persons unknown"

31. The jurisdiction to grant "newcomer"[2] injunctions, of the sort that Cs seek, has been clarified by the Supreme Court in *Wolverhampton CC and others v. London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45 at [144], which makes clear that injunctions against newcomers are a wholly new type of injunction with no very closely related ancestor which are likely only to be justified as a novel exercise of an equitable discretionary power.

32. Further, the Supreme Court also made clear that: there is no difference in point of substance between interim and final orders, largely because whether expressed as an interim order or as a final order, they are always *ex parte* in relation to newcomers, with the result that it is never too late (before breach) for a newcomer to apply to vary or set aside the injunction in reliance on "any reasons which could have been advanced in opposition to the grant of the injunction when it was first made"; this principle, combined with express provision for anyone to apply to vary/ set aside the injunction, fully meets the requirements of procedural fairness: eg [139], [143], [144], [177], [178], [232].

33. Also clear from the Supreme Court's judgment, is recognition that this is an emerging jurisdiction still in its early stages, in which the Courts must play a vital and dynamic role in working out the law on a case-by-case basis as experience accumulate: [185].

34. It would therefore be wrong to treat the authorities as if they were prescriptive: we are still at the stage of working out how this jurisdiction works.

35. Subject to that important qualification, the principles (or perhaps it would be better say "guidance") which emerges from *Wolverhampton* and the Court of Appeal's decision in *Canada Goose UK Retail Ltd v. Persons Unknown* [2020] 1 WLR 2802, at [78]-[82] were (or was) helpfully drawn together by Ritchie J in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 1277 (KB) at [57] – [58], as follows:

    (1) Compelling need, shown by sufficient evidence: Any injunction against newcomers can only be justified if there is detailed evidence to justify the Court finding there is a compelling need for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon): see *Wolverhampton* at [167(i)] and [188]. There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. The threat must be real and imminent: *Canada Goose* at [82(4)]; *Wolverhampton* at [218].

[2] i.e., binding persons who are not identifiable as parties to the proceedings at the time when the injunction is granted.

(2) Full and frank disclosure by the claimant: The applicant must make full disclosure to the Court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the Court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This obligation is a continuing one: see *Wolverhampton* at [167(ii)] and [219].

(3) Reasonable alternatives: The compelling need must be responsive to something in the locality which is not adequately met by any other measures available to the applicant. The Court must consider whether an applicant applying for a newcomer injunction has exhausted all reasonable alternatives to the grant of an injunction and whether the authority has taken appropriate steps to control or prohibit the unauthorised activity by using other measures or powers at its disposal, in particular "careful consideration" of the use of byelaws: *Wolverhampton* at [167(i)], [180], [205] – [207], [209] – [217].

(4) Balancing exercise between rights: The Court must take into account that which is set out by the Supreme Court in *DPP v. Ziegler* [2021] 3 WLR 179 if the Persons Unknown's rights under the Convention are engaged and restricted by the proposed injunction: *Wolverhampton* at [167(ii)].

(5) Just and convenient: It is, on the particular facts, just and convenient that such an injunction be granted: see *Wolverhampton* at [167(v)].

36. In relation to procedure:

(1) Identifying the defendants:

(a) "Persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings: *Canada Goose* at [82(1)].

(b) The class of "persons unknown" must be framed as precisely as possible, in non-technical language by reference to the torts to be prohibited which is capable of being understood by those who could potentially be subject to it. The language should not refer to the subjective intentions of the relevant party unless "strictly necessary to correspond to the threatened tort", and only where the relevant intention will be "capable of proof without undue complexity": see *Wolverhampton* at [221]. However, there is nothing wrong in principle with the use of this technique: see also

*Cuadrilla Bowland Ltd v. PU* [2020] 4 WLR 29 at ¶¶57–74 *per* Leggatt LJ (as he then was) — especially at ¶¶64, 65, 71–73.

(2) Terms of the injunction:

(a) The prohibited acts must correspond to the actual threatened conduct and be expressed in everyday terms: *Canada Goose* at [82(5)-(6)]; *Wolverhampton* at [222].

(b) Even lawful conduct may be restrained where it is necessary to afford adequate protection to the rights of the claimant because there is no other proportionate way of doing so: *Wolverhampton* at [222]; *Cuadrilla* at [50].

(3) Geographic boundaries: The prohibitions must be defined by clear geographic boundaries, if that is possible: *Canada Goose* at [82(7); *Wolverhampton* at [225]. The injunction should be constrained by both territorial (and temporal) limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon: [167(iv)].

(4) Temporal limits: The duration of the order should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in light of the evidence of past tortious activity and future feared activity.

(5) Advertisement of the application: An applicant of this kind should take reasonable steps to draw the application to the attention of persons likely to be affected in sufficient time prior to the hearing. The steps taken and the responses received should be explained to the Court: *Wolverhampton* at [226].

(6) Service: The applicant must, under section 12 of the Human Rights Act 1998, show that it has taken all practicable steps to notify the respondents: *Wolverhampton* at [167(ii)] and [230].

(7) The right to set aside or vary: The "Persons Unknown" must be given the right to set aside or vary the injunction on generous terms: *Wolverhampton* at [232].

(8) Review: Provision must be made for reviewing the injunction in the future, the regularity of which depends on the circumstances: *Wolverhampton* at [225].

(9) Cross-undertaking: There may be occasions on which it is considered appropriate, for the reasons given in *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB) and it must be considered on a case-by-case basis. The applicant must equip the court asked to make or continue the order with the most up-to-date guidance and assistance: *Wolverhampton* at [234].

## Submissions: introduction

37. The remainder of this skeleton will take LBA (Plans 1 and 1A) as the exemplar. The points apply equally to Luton Airport and Newcastle Airport, given Mr Martin's and Mr Jones' evidence mirrors that of Mr Hodder.

38. Accordingly, the remainder of the skeleton argument will be structured as follows:

    (1) The compelling need for relief in respect of the land outlined in red on Plan 1 excluding the Third Party Areas, the Landing Lights and the highways;

    (2) The compelling need for relief in respect of the Third Party Areas and Landing Lights;

    (3) The compelling need for relief in respect of the highways;

    (4) The procedural requirements.

    (5) The draft Orders.

## (1) Compelling need: trespass: the Airports apart from the Third Party Areas, the Landing Lights and highways.

### *Strong probability of harm*

39. The injunctions sought would restrain trespass occurring on C1's land. Clearly damages cannot be an adequate final remedy in the present case. Further, a person whose proprietary interests in land are being unlawfully interfered with is *prima facie* entitled to an injunction to restrain that continuing interference. C1 has, in the past, permitted protestors the use of a specified area for the conduct of pre-arranged protest activity. But the present circumstances have created a new level or risk, including the risk of the unexpected/ spontaneous/ concentrated protest, including protest which relies on the element of surprise in order to achieve its disruptive effect, and for which C1 has given no consent. In view of Mr Hodder's evidence, there is clearly a strong probability of the tortious conduct which will cause real harm.

### *Real and imminent risk*

40. The explicit announcement of a campaign targeting airports, combined with the Stansted protest, the attempt at London Gatwick and the repeated statements of intent from JSO, put beyond doubt the existence of a real and imminent risk to Airports.

41. In addition, there is a specific risk to LBA in view of it having previously been the subject of protests carried out by XR due to its planned expansion. Construction works for the expansion of the airport commenced in September 2023 [see ¶¶12 and 37 of Mr Hodder's statement, pp.69 and 76-77]. [This point applies equally to Luton Airport, which too has been the subject of various protests between 2020 and 2024 – see Mr Martin's statement

at ¶44, p.187 – but no such expansion is planned at Newcastle Airport].

42. Last, the peculiar features of LBA identified by Mr Hodder at ¶¶55 and 56 [p.81] make it a particularly vulnerable airport for protest activity, particularly those whose protests are focused on "private jet" operations, such as was the case at the protests which occurred at Stansted airport and Munich airport.

***Alternative remedies***

43. Byelaws, the Criminal Justice and Public Order Act 1994 and the Public Order Act 2023: *Wovlerhampton* envisages that the Court will consider these specifically, with a view to examining whether they are an adequate alternative remedy [172, 216]. Mr Wright's evidence [see ¶¶87–87.4, at pp.274-276] explains that criminal sanctions are ineffective and indeed breach of the general law leading to arrest seems to be one of the objectives of some protesters. The evidence also shows that the JSO's campaign has been commenced in contemplation of a large number of arrests and that when such arrests occur – as they did on 20 and 27 June 2024 – the campaign continues undeterred: the arrests are perhaps seen as symbolic victories, looking at JSO's most recent statement on the matter.

44. C1 has attempted to regulate the safe operation of LBA Airport by means of the LBA Byelaws, in discharge of the duties imposed by other regulations and implicit also in the very nature of the power for airport operators to make byelaws. C1 has also taken steps to prepare its staff and by liaising with police to ensure that personnel are prepared if a protest occurs at the airport.

45. But campaigners have avowed the intention to disregard the general criminal law. The specific offences created by infringements of the Byelaws do not serve to protect further C1's rights — they were ignored at other airports — and, most critically, these do not protect the rights and safety of others using and occupying the Airports. The possible enforcement of the Byelaws and the readiness of airport staff and police to apprehend protestors and put in place contingency plans can only serve as: (1) relatively trivial, punishment after the conduct has occurred rather than prevention of, possibly very considerable, harm, and (2) mitigation of some of that harm, albeit that Mr Hodder[3] is clear that little can truly be done by way of mitigation if persons, vehicles and aircraft are obstructed from moving freely around the airport.

46. By contrast, the efficacy of the Court's intervention has been admitted by JSO: injunctions make it "impossible" to conduct protest at protected sites: see Mr Wright's first statement at paragraph 52 [pp.264-265].

47. Damages: The adequacy of damages is not discussed in *Wolverhampton*. But one way of

[3] ¶53 [p.80]

analysing its continued relevance to the *sui generis* injunctions against newcomers is by reference to whether there is a compelling need for the relief. In these cases, damages could not be an adequate remedy for any injury suffered by Cs where there is no injunction. Cs have no reason for confidence that any individual who commits any tort would have the means to provide any financial remedy. But that consideration, though sufficient by itself, is of course dwarfed by the larger points about the particular threats in the present case: not only the threat of disruption which might be literally incalculable in its effects but also the safety implications of protests in airports.

***Balance of rights & proportionality***

48. The Court must consider, "in the round" whether appropriate weight has been given to Ds' qualified rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the Convention. In protest cases, Articles 10 and 11 are linked. The right to freedom of assembly is recognised as a core tenet of a democracy. There exist *Strasbourg* decisions where protest which disrupted the activity of another party has been held to fall within Articles 10 and 11.

49. But *"deliberately obstructing traffic or seriously disrupting the activities of others is not at the core of these Convention Rights": DPP v. Cuciurean* [2022] EWHC 736 per Lord Burnet of Maldon, CJ at [36].

50. Further, Articles 10 and 11 do not bestow any *"freedom of forum",* and do not include any ancillary right to trespass on private property: *Ineos Upstream v Persons Unknown* [2019] EWCA Civ 515; [2019] 4 WLR 100 per Longmore LJ at [36]. It is possible to imagine at least in theory a scenario in which barring access to particular property had the effect of preventing <u>any</u> effective exercise of an individual's freedoms of expression or assembly. In such a case, barring entry to that property could be said to have the effect of *"destroying the essence of those [Article 10 and 11] rights"*. If that were the case, then the State might well be obliged (in the form of the Court) to regulate (i.e., interfere with/ sanction interference with) another party's property rights, in order to vindicate effective exercise of the rights under Articles 10 and 11: see *Cuciurean* at [45]. But that would be an extreme situation. And this is plainly not such a case. As Lord Burnett held in *Cuciurean* at [46]:

> "[i]t would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms."

51. Put simply, would-be protesters have plenty of space away from the airports, where they can carry out their protests.

***Full and frank disclosure***

52. It is appropriate to draw the following points to the Court's attention, being points

occurring to Cs which might be raised by Ds against the grant of the application:

53. Firstly, those taking part in the protests perceive there to be serious environmental and economic disadvantages to the usage of (and demand for) fossil fuels in the UK and are committed to ameliorating climate change and changing government policy. The sincerity of the protesters' views, and the fact that many agree with their aims (if not necessary their means) were recognised in both *Zeigler* and *City of London Corpn v. Samede* [2012] PTSR 1624[4] as a potentially relevant factors in the assessment of the proportionality of the interference with their Article 10 and 11 rights. But this does not arise as a weighty factor in the case of trespass now being considered.

54. Secondly, there are other methods available to protect the Airports apart from the grant of an injunction, and the police themselves are intervening. The main available measures have been mentioned in the Particulars of Claim (Byelaws, aggravated trespass, interference with key national infrastructure). However: events at London Stansted and Gatwick and the campaigners' own pronouncements have demonstrated that the general law is ineffective.

***Just and convenient***

55. In the round, therefore, it is a case where it would be just and convenient to grant an injunction in respect of this element of the application.

**(2) Compelling need: necessary restriction on otherwise lawful activity and/or nuisance: Third Party Areas and the Landing Lights**

56. The same submissions apply in relation to the Third Party Areas, except that C1 does not rely directly on trespass as a different cause of action in relation to these areas

57. Although C1 does not seek to rely directly on trespass in respect of the Third Party Areas, nevertheless in order for relief over C1's retained land (ie, the land over which they can maintain an action in trespass) to be fully effective, it is necessary and proportionate to injunct entry by protesters onto the Third Party Areas, too — <u>even if</u> this would otherwise be lawful as between Cs and Ds (*Wolverhampton* [222] and *Cuadrilla Bowland Ltd v. Persons Unknown* [2020] 4 WLR 29 at [50]):

    (1) A person who has obtained access to any of the Third Party Areas could easily move between that area and an area over which Cs <u>do</u> have an immediate right of possession or control. So, protest in a Third Party Area could easily 'spill over' into C1's land.

    (2) Additionally, although there are some exceptions (being those identified in the Particulars of Claim and by Mr Wright at ¶25, pp.256-257), for the most part, C1

[4] This case is not within Cs' bundle of authorities. Cs rely on the summary and explanation of it by Lavender J in *National Highways v. PU* [2021] EWHC 3081.

controls the perimeter of the Airports and the access routes to the Third Party Areas.

58. Further or alternatively, any protest occurring on the Third Party Areas (or any part of them) threatens to constitute private nuisance, being activity which would interfere substantially with C1's ordinary use and enjoyment of their land: *Clerk & Lindsell on Torts,* 24th edn at 19-08-10 and 19-16.

59. The question of who is entitled to possession or control of the land on which the Landing Lights are situate is not something the Court needs to grapple with, because either they are on land to which C1 can maintain a claim in trespass or they constitute a specific example of Third Party Areas. To expand on that further, one of these analyses is right, and either is sufficient:

    (1) The Landing Lights are situate on land in respect of which C1 has an interest by virtue of the agreement dated 10 December 1982[5]. It might also be that that agreement gave rise to a licence such that C1 is not entitled to any rights thereunder; but then query whether C1's occupation of that land is pursuant to an implied licence or gives C1 title to the land by adverse possession thereof. The precise nature of C1's interest is immaterial, however, because it is sufficient for C1's claim in trespass that C1 has a better right than Ds, who would be mere trespassers: *Manchester Airport plc v. Dutton* [2000] Q.B. 133 at 150; or

    (2) The Landing Lights are situate on land in respect of which C1 has no interest or right (e.g., if the agreement granted a personal contractual right to a predecessor in title such that C1 has no rights thereunder). In those circumstances, the points above in paragraphs 57 and 58, in relation to the Third Party Areas, apply equally. The Landing Lights are adjacent to the main operational area at the airport and/or integral to the operation of the flight schedule, such that there is a compelling need for an injunction in respect of the Landing Lights for C1's relief to be fully effective and/or to vindicate its cause of action in private nuisance.

60. So, again, there is clearly a strong probability on the detailed evidence of the tortious conduct which will cause real harm. Once again, there is no question of the Court needing to carry out an assessment of the proportionality of the relief sought because C1 seek to restrain activity which would occur on private land.

### (3) Compelling need: nuisance: highways

#### *Strong probability of harm*

61. In relation to the highways, the threatened conduct would likely constitute:

[5] This point applies equally to Newcastle Airport, but there is no such agreement granting C2 any right or interests in respect of the land on which the Luton Landing Lights are located.

(1) public nuisance, in the form of obstruction of the highways at LBA occasioning particular damage to C1: *Ineos Upstream v. Persons Unknown* [2017] EWHC 2945 (Ch), per Morgan J at [44]-[46];

(2) private nuisance, in the form of unlawful interference with the right of access to C1's land (by them or the licensees) via the highways: *Cuadrilla* at [13];

(3) private nuisance by activity on the tunnelled highway which would substantially inference with C1's ordinary use and enjoyment of its land[6].

62. In those circumstances, there is a strong probability of the tortious conduct which would cause harm.

### *Balance of rights & proportionality*

63. Cs accept that not all protest on the public highway is unlawful, or constitutes either a trespass (actionable by the highway owner) or a nuisance, even if it results in some disruption. However, in the present case, such conduct would in fact be unlawful, in view of the LBA Byelaws, byelaws 3.24, 3.26, 3.30 and 3.31[7].

64. In those circumstances, it is not necessary for the Court to consider the questions in *DPP v. Ziegler*[8]: unusually, despite the fact that the public has rights over the highway, the right of disruptive protest has already been removed. Consequently, to the degree to which the injunctions sought might, in any other case, interfere at all with any individual's Article 10 & 11 rights, any such interference does not arise in the instant case, and does not require the Court to modify its approach to the threatened interference with C1's rights.

65. However, applying the *Ziegler* guidance, it is clear where the balance would fall to be struck, even apart from the Byelaws having already made disruptive protest unlawful on the highways.

## (4) Procedure

### *Injunctive Relief Against Persons Unknown and the prohibited acts*

66. Addressing the requirements identified in *Canada Goose*:

(1) Cs are currently unable to name any individual, save for those involved with the Stansted airport protest. As they are in the hands of the criminal courts, Cs take the view that, absent evidence that they are a fresh cause for concern, it would be oppressive to join them and seek relief against them.

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[6] This only applies vis-à-vis LBA. At all the other airports, there are no tunnelled highways.

[7] In the case of the Luton Airport Byelaws, they are byelaws 2.13, 2.16, 2.21; in the case of the Newcastle Airport Byelaws, they are byelaws 4.12, 4.18, 4.20, 4.26.

[8] This case is not within C's bundle of authorities. C relies upon the summary and explanation of it by Lavender J in *National Highways v. PU* [2021] EWHC 3081 insofar as the Court requires it to be addressed on the question of the Convention and the balance of rights.

(2) It is possible to give effective notice to the category of persons unknown (this is addressed further below).

(3) What might be said against Cs is that the identification of Ds is in part by reference to the *purpose* of their presence at the airport, rather than their conduct upon it. Unusually, such an approach is justified:

(a) The approach proposed by Cs finds support in the Newcastle Airport Byelaws which, by byelaw 4.12, prohibit entry to the airport save for *a bona fide purpose* and prohibit persons from remaining once that purpose has been discharged. Accordingly, the civil injunction proposed would mirror the criminal law.

(b) While that provision is not found in the LBA Byelaws and the Luton Airport Byelaws, they both contain requirements for persons to state (among other things) *the purpose* for which they are on the airport, if requested to do so by a constable or an airport official: LBA Byelaws, byelaw 9.1 and Luton Airport Byelaws, byelaw 1.3. Further, the approach taken in describing the Defendants should be uniform across the piece.

(c) As is explained by Mr Hodder, Mr Martin and Mr Jones, the public has consent to enter the Airports for the purpose of travel or related purposes. Cs wish to capture those people who come to the Airports otherwise that for those purposes, rather than the public at large (for example, the innocent person who seeks to travel wearing a JSO tee shirt, whose "purpose" at the airport would not be, or include, "protest").

(d) Cs are also concerned not to draw the lines too narrowly. Cs note the difference in approach that was taken to describing the defendants in *Heathrow Airport Limited v Persons Unknown,* unreported but a copy of the order and note of hearing before Knowles J on 9 July 2024 are at [pp.690-710]. Cs appreciate that the drafting of Knowles J's order of 9 July 2024 overcomes the problem in some of the older orders (which limit the description of the "Persons Unknown" by reference to named campaigns). But Cs have the following concerns about that basic method of naming the "Persons Unknown":

(i) the wording is conventional, having been lifted in large part from injunctions ordered historically to deal with completely different factual situations and, sometimes, un-reflectingly applied to new ones. That is not what the Supreme Court expects at this stage in the jurisprudence;

(ii) the drafting limits the relief to "environmental campaigns" -

query whether that would capture a number of the activists or activist groups, like Medact Leeds or Stay Grounded, who have already protested against the expansion projects at LBA[9] and Luton Airport[10];

(iii) it would not capture the lone protestor or group of protestors who disavow a "campaign"; and/or

(iv) it might not capture persons might enter onto the site in order to board a flight and thereafter protest once aboard an aeroplane, potentially after it has taken off.

(e) Cs' proposed language is straightforward and not (foreseeably) open to misinterpretation or loophole-finding. The Supreme Court's guidance in *Wolverhampton* at [221] was that the defendants should be identified by reference to conduct prior to what would be a breach but, if necessary, could be identified by reference to intention. This is a case where it is necessary to do so.

(f) Notably, although the form of words somewhat masks this, in truth the conventional "in connection with" formula also involves an inquiry into subjective "intentions".

67. In relation to the prohibited acts:

(1) Cs propose solely to prevent entering, remaining and occupying the Airports. This mirrors the approach taken in the *Heathrow* case, although it diverges from the orders in *Manchester Airport plc and ors v Persons Unknown* granted by Her Honour Judge Coe K.C. [pp.650-683], in which there was a lengthier list of prohibited acts. Either approach might be justified; but, any further prohibited activity could only be undertaken by a person if they first breached the terms of the order by entering onto the prohibited land.

(2) In relation to Cs' land on which Ds would be trespass, such an order does not prohibit any conduct that might conceivably be lawful (because Cs alone have the right to control the terms of any licence on the part of the public to enter their land).

(3) In relation to protest on the Third Party Areas and the highways, the order would only capture entry onto that land by a person which was done for the purposes of protesting on the land or an aeroplane. There is a theoretical level of lawful protest which would not amount to nuisance and would not breach the Byelaws: but since

[9] ¶37 of Mr Hodder's statement [p.77]
[10] ¶44 of Mr Martin's statement [p.187]

this would be almost entirely passive and ineffectual, it is hardly likely to materialise; and, above all, there is no way of predicting when a "peaceful" protest might morph into a disruptive one.

(4) The wording suggested by Cs respects the *Wolverhampton* [222] guidance about prohibiting otherwise lawful conduct no further than proportionate to vindicate Cs' rights, in that any prohibition of "innocent" conduct is minimal, incidental and no more than strictly necessary.

***Geographical & temporal limits***

68. Cs accept that they are not legally entitled to possession and control of the whole of the land outlined in red in Plans 1, 2 and 3, because of the Third Party Areas / highways. But, for the reasons set out above they seek relief in respect of the entirety of the land outlined in red on those plans.

69. These additional considerations also support avoiding making any distinction between different areas of land within each airport:

(1) First: any injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do:

(a) In large part, the red line boundary on the Plans follows the physical boundary features of the operational limits of the Airports. There are, some, limited exceptions, being: (i) where there are roadways which form the boundaries; and (ii) 'island' sites. But, on the whole, the identification of the land to which the injunctions relate is clearly identifiable by features on the ground and on which the Orders and warning notices can be affixed.

(b) It may be actively misleading to anyone reading an order if there were areas carved out within the Airports as it might create the impression that, were they to get to any of the Third Party Areas, they would have positive permission / sanction to carry out their protests on those parts, when, in fact, to do so would constitute a trespass.

(c) Thus, Cs' approach ensures there can be no realistic doubt in the mind of any person whether or not they are in an area which is subject to the injunctions.

(2) Second: in view of the way in which Ds have been identified, there is the potential that protesters might use any "carved out areas" to circumvent the orders, i.e., by stating that their purpose is to protest only in the Third Party Areas, therefore complicating the question of whether they fall within the class of "newcomers".

(3) Third: C1, C2 and C3 are the persons with responsibility for the administration and management of the airport as a whole — hence their byelaw making powers.

70. To this end, the definitions of the subject to the injunction within the proposed draft order have been drafted so as to enable anyone reading the draft Orders to identify (by means of a red line on the plan) the general location of the boundaries of the protected site.

71. Cs seek Orders with review periods of 12 months. 12 months is what is reasonably necessary to protect Cs' legal rights in view of the carefully planned and now well-funded campaign planned by JSO.

### *Advertisement of the application*

72. The application is necessarily without notice in view of the respondents being "Persons Unknown". But it is also a case where any advertisement, of the kind mentioned by the Supreme Court in *Wolverhampton* at [226], risks "tipping off" Ds as to what might happen at a hearing of the application, which might lead to them taking some of the action which the injunctions seek to prevent. The evidence of Mr Hodder, Mr Martin and Mr Jones necessarily exposes some of Cs' vulnerabilities and shows that (and how) it is possible for protesters to trespass, cause a nuisance on land and set up these protests on short notice.

### *Service & s. 12 Human Rights Act 1998*

73. Cs seek an order for alternative service of the relevant documents. Alternative service is the method designed to bring the proceedings and Orders to the attention of Ds. That is the conceptual requirement which was identified by the Supreme Court at [167(ii)] and [230] – [231] of *Wolverhampton*. It is a moot point whether the Supreme Court in *Wolverhampton* was identifying a distinction between "service" and "notification" with any intention to change the practice which has previously been established. In the present context, it is not the purpose of an order for "alternative service" to deprive a newcomer of any defence that he or she might be able to advance if faced with a committal application, as to whether he or she was sufficiently on notice of the order. However, sensitivity about this point has led to the emergence of a different technique in some recent orders: of dispensing with service and merely indicating what measures the Court requires the Claimant to take by way of giving notice of the order to Persons Unknown. This might perhaps be something of a difference without a distinction — but Cs are not wedded to one approach rather than the other.

74. The reasons for seeking the orders proposed, are set out in the first witness statement of Mr Wright and are not repeated here.

75. Consistent with Cs' duty of full and frank disclosure, in addition to the various matters already addressed, Cs would like to make the Court aware of the following:

(1) First, Ds would no doubt wish to emphasise their strongly and genuinely held views about the negative aspects of fossil fuels and what they perceive to be the necessity of seeking to prevent it.

(2) Second, since Ds' Convention right to freedom of expression is engaged, and since Ds are (by definition) neither present nor represented, by virtue of s.12 of the HRA 1998 before making the order the Court must be satisfied either that (i) Cs have taken all practicable steps to notify the respondents, or that (ii) there are compelling reasons why the respondents should not be notified. As to that:

(a) Cs has proceeded on the basis that s12 applies and what they propose to do by way of service is – they submit – all that is "practicable." Cs note that "practicable" is a less stringent test than "possible".

(b) Cs struggle to think of additional steps beyond those proposed, which are realistically likely to draw these proceedings to a materially larger pool of interested respondents.

(c) Moreover, unless and until someone is named as a defendant, or knowingly breaches the order, there is strictly no defendant to the proceedings and, by parity of reasoning, no available respondent to Cs' application.

(3) In the circumstances, Cs submits that both (i) and (ii) are satisfied.

76. Clearly the issue of how alternative service / notification might be effected is one upon which there can be different approaches. If present or represented, Ds could have made submissions to the effect that further and additional measures could have been taken. It might be said on behalf of Ds (for example) that the existence of the injunction could be advertised in local or national press. Whilst it is right to draw these potential arguments to the attention of the Court in the absence of any representation for Ds, Cs submit that there is no good reason to consider that the steps already proposed are in any way inadequate, or that addition of any further measure would have any significant prospect of drawing the existence of the Order to the attention of someone who would not have been made aware of its existence by the measures actually undertaken.

### *Cross-undertaking*

77. It is difficult to envisage how the making of the injunction could cause any injury to any person at all. Even theoretically, any interference with Convention rights is necessarily predicated on Ds committing acts which would be unlawful. Therefore, it is hard to see how any respondent could suffer an injury which is incapable of being compensated adequately by Cs' cross-undertaking to pay compensation.

78. Notwithstanding that, Cs are prepared to offer cross-undertakings to the Court.

## (5) The draft order

79. Cs propose to go through the draft Order for each of the Airports at the hearing. At this stage, these characteristics of the drafts are noted:

(1) The Orders are clearly defined by reference to proposed conduct and which is expressed in everyday terms.

(2) The Orders provide for the ability and procedure for Ds, or any other person affected, to apply to the Court to vary or discharge the order, and to be joined to the proceedings on "generous terms".

(3) Ds may argue:

(a) If the Court is minded to grant an injunction it should order a return date in (say) two weeks time, as if this were a conventional form of without notice injunction application. That is a possibility — and it is the practice sometimes adopted in the past. However, *Wolverhampton* has made clear that claims of this kind are *sui generis* and that their distinctive character is that they are all "without notice", whether interim or final. In view of the clarification provided by *Wolverhampton*, the conventional precaution of a return date would be an unnecessary use of judicial resources, as well as adding needlessly to the costs. The putative Defendants, and anyone else concerned about the Orders, are fully protected by the liberty to apply, which may be exercised at any time prior to breach.

(b) The proposed obligation on Cs to join individual defendants to proceedings against "persons unknown" extends only to those individuals known and who have been identified. Cs are aware that a practice may have emerged in cases similar to this one, of applicants for such orders giving undertakings to (in effect) use best or reasonable endeavours to name defendants. But so far as Cs can establish, this is not supported by principle or authority. In particular, it is notable that the *Canada Goose* guidelines do not impose an onerous duty on a claimant to everything in its power, or the like, to identify those individuals.

(4) There is no provision in the Orders for notification of third parties, as there was in the *Manchester Airport* case [p.688]. This is because Cs have put their major tenants on notice of the proceedings already [¶¶29-32 of Mr Wright's statement, p.257]. In addition, *any* person has a right to apply to vary or set aside the Orders and the methods of notification used for the third parties were materially identical to those proposed for alternative service of Ds, such that appropriate steps to draw the Orders to the attention of the third parties are already being taken.

(5) It also provides Cs with permission to apply to extend or vary the Order. Cs will

of course keep the Orders and the claim under review for its duration.

(6) The Orders make it clear that no acknowledgement of service, admission or defence is required by any party in advance of the return date hearing. Costs are reserved.

(7) The Orders provide for periodic review.

80. Subject to any modifications the Court considers appropriate, Cs respectfully ask that the Court make the Orders in the terms sought.

TIMOTHY MORSHEAD K.C.
Tmorshead@landmarkchambers.co.uk

EVIE BARDEN
ebarden@landmarkchambers.co.uk

LANDMARK CHAMBERS

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