D. Transcripts.

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
[2023] EWHC 56 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 21 December 2022

Before:

MRS JUSTICE HILL

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(3) ~~CASE WITHDRAWN~~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 and MS C CROCOMBE (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

(V i a M S T e a m s H e a r i n g)

MRS JUSTICE HILL:

INTRODUCTION

1 This is my judgment on two separate applications for urgent interim relief in the form of injunctions and powers of arrest. They were listed together before me on 20 December 2022 (yesterday), although the cases have not been formally consolidated.

2 The first application dated 9 December 2022 is made by Birmingham City Council. It relates to a Part 8 claim issued on 16 November 2022.

3 The second application, dated 12 December 2022, is made by Wolverhampton City Council, Dudley Metropolitan Borough Council, Sandwell Metropolitan Borough Council and Walsall Metropolitan Borough Council, who together I shall refer to as "the Wolverhampton Claimants". It relates to a Part 8 claim issued on 7 October 2022.

4 By both applications, the claimants seek injunctions to prevent "car cruising" or "street cruising" within their jurisdictions. These terms were described by Bean LJ in *Sharif v Birmingham City Council* [2020] EWCA Civ 1488 at [1] as referring to a:

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

5 There is no statutory definition of car cruising or street cruising as far as I am aware, but it involves (to adopt the wording of the draft injunction in the Wolverhampton case) gatherings of two or more people where some of those present engage in motor racing, motor stunts or other dangerous or obstructive driving. Street cruises also attract participants who, whether or not they are taking part in the driving or riding, support or encourage others to do so, play loud music, rev their engines, show off their own cars, and engage in other similar antisocial activities. These activities are highly dangerous, having caused serious injury and, in some cases, fatalities. The activities taking place at these cruises are frequently unlawful.

6 In each of the cases before me, an urgent interim injunction did not form part of the initial application but recent events are said to mean such relief is necessary in the immediate future.

7 In the Birmingham case, the injunction is sought against six named defendants, as well as two categories of persons unknown.

8 The Wolverhampton case does not involve any named defendants. The injunction is sought against three categories of persons unknown.

9 I have been greatly assisted by the written and oral submissions from Jonathan Manning and Charlotte Crocombe, counsel for Birmingham City Council, and Michael Singleton, counsel for the Wolverhampton Claimants.

THE FACTS

The Birmingham claim

10 The evidence provided in the Birmingham claim was primarily in the form of several witness statements from Michelle Lowbridge, the council's antisocial behaviour manager, and PC Mark Campbell, the subject lead for Operation Hercules, which is West Midlands Police's tactical approach to street cruising. PC Campbell also exhibited various statements from residents and a local councillor describing the serious adverse impact of car cruising on their daily lives. He also exhibited a statement from a security guard at a supermarket in Birmingham who described how the car park is used as a meeting point for car cruises.

11 From this evidence, the particulars of claim, and the skeleton arguments the factual background to the Birmingham claim can be summarised as follows.

12 On 3 October 2016, HHJ Worster, sitting as a Judge of the High Court at Birmingham District Registry, made an injunction in almost identical operative terms to the ones sought in this claim with a power of arrest with effect from 24 October 2016. That order was extended by HHJ Rawlings on 22 October 2019 expiring on 1 September 2022.

13 The evidence suggests that the 2016 injunctions successfully disrupted the continuation of the problems of cruising in the Birmingham area. This meant that the problems faced by local residents, businesses and other road users were significantly reduced but not eliminated altogether. The Covid-19 pandemic and its accompanying restrictions further suppressed street cruising activity in the Birmingham area to some extent for a time.

14 As a result of decisions of the High Court in cases involving Traveller injunctions sought by other authorities, such as *London Borough of Enfield v Persons Unknown & Ors* [2020] EWHC 2717 (QB) and *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2021] EWHC 1201 (QB), Birmingham City Council and the West Midlands Police stopped enforcing the injunction pending clarification of the law by the Court of Appeal.

15 The combination of the lifting of lockdown restrictions, the perception by street cruisers that the 2016 injunction was unenforceable due to the issues with the case law to which I have alluded, and then the expiry of that injunction on 1 September 2022, has, on the evidence, led to an increase in the number of calls to the police for assistance that is significant.

16 The evidence of PC Campbell, particularly his statement dated 24 October 2022, provided a clear explanation of the improvement in the quality of life that was experienced when the previous injunction was made and enforced, and to the problems that have now resurfaced. PC Campbell's evidence also explained why the other powers the police have sought to use to deal with street cruising have proven ineffective (see, in particular, his evidence at paras.52-53, pp.C72-C73 of the bundle).

17 On 14 January 2022, the Court of Appeal handed down its decision in *London Borough of Barking and Dagenham & Anor v Persons Unknown & Ors* [2022] EWCA Civ 13 holding, in summary, as follows:

(1) It is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as s.37, which is the main power under

which I am being asked to make this injunction and I will return to that shortly (see [72] and [120] *per* Sir Geoffrey Vos MR);

(2) *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 is authority for the proposition that where a persons unknown injunction is made, whether an interim or final order, a "newcome"r who breaches its provisions knowing of them becomes a party to the proceedings at that stage and can apply for the injunction to be discharged (see [30] and [82] *per* Sir Geoffrey Vos MR);

(3) This route to having the injunction reconsidered adequately protects the rights of such newcomer defendants as the court retains jurisdiction and supervision of such proceedings until the injunction comes to an end (see [92]);

(4) One of the premises of *Gammell* was that injunctions generally could be validly granted against newcomers in unauthorised encampment cases (see [99]);

(5) In *Ineos Upstream Ltd v Persons Unknown and others* [2019] EWCA Civ 515, the Court of Appeal held that there was no conceptual or legal prohibition on suing persons unknown who were not currently in existence but would come into existence when they committed the prohibited tort (see [94]);

(6) There is no reason why the court cannot devise procedures when making longer term persons unknown injunctions to deal with a situation in which persons violate the injunction and make themselves new parties and then apply to set aside the injunction originally violated as happened in *Gammell* itself (see [82]); and

(7) The Supreme Court decision in *Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau Intervening)* [2019] UKSC 6 did not deal with these principles as they were not relevant to the case and did not disprove them.

18 The parties in these claims submitted that in light of the decision in *Barking and Dagenham*, the issue of service, while important in the usual way, is not a requirement that goes to the jurisdiction of the court to make an interim injunction against persons unknown, or, indeed, a final one.

19 Birmingham City Council took the view that despite this ruling, it was appropriate to apply for a fresh injunction with a power of arrest, not least given that the 2016 injunction only had a few months to run.

20 The witness statement of Michelle Lowbridge dated 13 October 2022 explained that the authority has considered its duties under the Human Rights Act 1998 and its public sector equality duty under the Equality Act 2010, s.149.

The Wolverhampton claims

21 The evidence provided in the Wolverhampton claims comprised overarching statements from Adam Sheen, a solicitor employed by Wolverhampton City Council with conduct of the applications; Pardip Nagra, team leader for Wolverhampton's antisocial behaviour team; Chief Superintendent Ian Green, West Midlands Police Force lead for Operation Hercules; Paul Brown, communications manager for Wolverhampton; and PC Campbell.

22 Pardip Nagra's statement provided a summary of witness evidence from members of the public and businesses as well as the local authority leads across each of the four local authority areas within the Wolverhampton group and also exhibited relevant statements. As in the Birmingham claim, PC Campbell exhibited various statements from residents, a local councillor, and two MPs.

23 From this material and the other documents, the factual background to the Wolverhampton claims can be summarised as follows.

24 On 1 October 2014, HHJ Owen QC granted an injunction to restrain car cruising in the Wolverhampton area. This was renewed by HHJ McKenna on 9 January 2018. The original injunction was in force from 2 February 2015 until 1 February 2021. An application was made to further extend this order but that was adjourned following the first instance decision in *Barking and Dagenham*.

25 As with the Birmingham claim, the evidence in the Wolverhampton claims shows that the 2014 injunction caused or contributed to a substantial reduction in car cruising in the Wolverhampton area and the other areas within this group, and that the committal proceedings brought for breach of the original injunction served as a deterrent to persons contemplating car cruising. I note, in particular, the statements of Pardip Nagra, paras.32-42; PC Campbell, para.71; Pardip Sandhu, para.6; Steve Gittins, para.3; PS Plant and Jennifer Bateman, paras.11-14.

26 Again, the Wolverhampton Claimants' evidence show that there has been a marked increase in car cruising activity since the lapse of the 2014 injunction, and, again, I note the evidence of Pardip Nagra, paras.43-55, 59, and 70; PC Campbell, paras.72-73; Pardip Sandhu, para.13; Steve Gittins, paras.4-10; Jennifer Bateman, paras.,8-11; Margaret Clemenson, Richard Hubbard-Harris, and John Slater-Kiernan.

27 Like Birmingham City Council, the Wolverhampton Claimants recognise that the Court of Appeal's decision in *Barking and Dagenham* changed the legal landscape with respect to persons unknown injunctions and, accordingly, they also decided to make a fresh application for an injunction rather than attempting to amend or extend the 2014 one.

28 Mr Singleton informed me that no impact assessment has been carried out by his clients in accordance with the public sector equality duty. He submitted that there were no protected characteristics obviously engaged, nor is there a human right to drive in such a manner that deaths are caused.

THE PROCEDURAL HISTORY

29 The Birmingham claim is brought against six named defendants, one of whom has been anonymised. Each name defendant is someone known to have been involved in promoting car cruising. When the Birmingham case was issued, the claimants served the claim form personally on all the name defendants, save for one. Ms Lowbridge exhibited the relevant certificates of service in her witness evidence. The exception to this was Rashani Reid. No papers were left by the process servers in respect of him. However, the fact of the claim having been made had already been publicised on West Midlands's Police's Facebook page and Mr Reid saw information about it there. He then contacted PC Campbell.

30 Mr Manning informed me that Birmingham has made contact with the solicitor who represented several of those against whom contempt proceedings were brought arising out

of the original injunction to update them as to developments. Ms Lowbridge also explained in her evidence that on 1 December 2022, a letter was sent to 71 individuals who had been stopped as part of a police operation related to car cruising on 30 May 2020 to advise them of the proceedings. Mr Singleton informed me that prior to an application to renew the Wolverhampton injunction in early 2021, which was later adjourned as I have indicated in light of the developing case law, the Wolverhampton Claimants wrote to every alleged contemnor under the original injunction to update them. None of them expressed an interest in becoming involved in the proceedings.

31 On 7 December 2022, a hearing took place in the Birmingham case before HHJ Kelly, sitting as a Judge of the High Court in the Birmingham District Registry. On that date, the named defendant, albeit anonymised as "ABC", attended the hearing. Mr Manning informed me that ABC indicated at the hearing that she was "reporting back" to the other name defendants. HHJ Kelly permitted certain amendments to the claim form at this hearing. The claimant had hoped to obtain an interim junction at this hearing but HHJ Kelly invited them to make an application for alternative service being aware that the Wolverhampton Claimants had, by this point, done so.

32 After the hearing, HHJ Kelly's order was again served personally on the named defendants and they were made aware of the next hearing date of 14 October. On that date, a further hearing took place before HHJ Kelly this time involving both claims. Mr Reid and another named defendant in the Birmingham claim, Thomas Whittaker, attended. Mr Manning informed me that Mr Reid indicated his concern at his name being in the media, and Mr Whittaker expressed a concern at needing time off work to deal with the hearings. Both addressed the Judge and said that they did not want to be defendants.

33 On 14 December, HHJ Kelly made an order in each case permitting the claimant to serve the relevant documents on the persons unknown by alternative means pursuant to CPR 6.15 and 6.27. The relevant documents in each case were the claim form; the particulars of claim; the application for an injunction with a draft of the injunction order sought and the draft power of arrest; the interim relief application; the alternative service application; and the notice of the hearing on 20 December 2022.

34 The alternative means of service ordered by HHJ Kelly in each case were, in summary:

(1) Issuing a media release to local print publications, radio stations, and websites;

(2) Placing information about the applications on the claimants' social media accounts;

(3) Updating the dedicated pages on the claimants' website about the injunction application;

(4) Ensuring that the homepage of the claimants' main website had a prominent and direct link to the dedicated website;

(5) Uploading a video about the applications to YouTube and the claimants' website and social media accounts;

(6) Making hard copies of the documentation available at the front desk at the claimants' main office; and

(7) Requesting West Midlands Police to post information on their social media accounts.

35 These steps were to be undertaken by 23.59 on 16 December 2022, save that if it was not possible to meet that deadline with respect to the YouTube video, that was required to be uploaded by 23.59 on 21 December 2022.

36 The Court of Appeal had recognised in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 at [50] that posting on social media and attaching copies of documentation at nearby premises would have a greater likelihood of bringing notice of the proceedings to the attention of defendants.

37 The methods of alternative service approved by HHJ Kelly are similar to those approved by Julian Knowles J in *High Speed Two (HS2) Ltd & Anor v Four Categories of Persons Unknown & Ors* [2022] EWHC 2360 (KB). At [22]-[23] of that judgment, he noted that the methods of service used by the claimants had been based on those which had been endorsed and approved by the High Court in other cases where injunctions were sought in similar terms to those in this application.

38 In the Birmingham case, HHJ Kelly also ordered that the claimant use best endeavours to post a link to the dedicated webpage on certain Instagram accounts known to be involved in promoting car cruising and to send private messages to the account holders if those accounts, again by 23.59 on 16 December 2022.

39 The orders also provided that (i) the relevant documents were deemed served on the defendants at 23.59 after the final step in the alternative service provisions had been complied with; (ii) each claimant file evidence of their compliance with the provisions for alternative service within seven days; and (iii) anyone who wished to appear at the final hearing should file and serve on the claimant an acknowledgement of service no later than 4.00 p.m. on 20 January 2023.

40 By a statement dated 19 December 2022, Paul Brown, communications manager in the communications team of Wolverhampton City Council, confirmed that all the alternative service provisions had been complied with in respect of the Wolverhampton Claimants, including the uploading of the YouTube video. It therefore appears that the final step in the completion of the alternative service steps in the Wolverhampton claims was the uploading of that video and assuming that that took place, as it appears to have done on 19 December, the effect of HHJ Kelly's order is that persons unknown, the persons unknown defendants, had been deemed served with the documents at 23.59 on 19 December 2022.

41 At the hearing on 20 December 2022, I was provided with an unsigned but approved statement from Ms Lowbridge in respect of the Birmingham claim, again confirming that all the alternative service provisions had been complied with, including the uploading of the YouTube video on 19 December 2020. Again, the effect of HHJ Kelly's order is therefore that the persons unknown defendants to the Wolverhampton claims are deemed to have been served with the documents at 23.59 on 19 December.

42 Mr Manning informed me that after the 14 December 2022 hearing, he had a discussion with both Mr Reid and Mr Whittaker and that they indicated that they might make written representations for consideration at the 20 December 2022 hearing. No such representations have been received.

THE URGENCY OF THE APPLICATIONS

43 The claimants submitted that the applications for interim relief were urgent due to the risk of fatalities or serious injuries at imminent car cruising events.

44 I was provided with evidence of incidents in Stevenage in July 2019, Warrington in April 2022 and Scunthorpe in September 2022, which gave a graphic illustration of the real dangers of car cruising involving, as they did, various fatalities and life changing injuries.

45 However, more pertinently, PC Campbell's evidence explained that on 20 November 2022, a fatal road traffic collision occurred in Oldbury, which is within the local authority area of one of the Wolverhampton Claimants, Sandwell. Two people who had been spectators at a car cruising event were killed. His evidence was clear that their deaths were directly linked to illegal street racing (see his witness statement dated 9 December 2022 at para.8).

46 Further, his evidence was that the police are anticipating an upsurge in car cruising events in the immediate future. In particular, there is a large car cruising event planned for 26 December 2022, Boxing Day, which according to para.14 of PC Campbell's 9 December 2022 statement is an annual event that is likely to attract a significant number of people. He explained that last year, it attracted in the region of two hundred vehicles and that during the event, cars raced each other along roads, including the A38 Sutton by-pass, the A47, including Fort Parkway, and Heartlands Parkway. He also explained that it attracted large amounts of antisocial behaviour, including criminal damage in a number of car parks, including that of the Asda in Minworth where Christmas trees were set on fire with the flames from modified cars. I accept that this evidence illustrates that there is a very real and substantial risk of death or serious injury in the coming days due to car cruising.

47 As I have already explained, the application for urgent interim relief has been served on the named defendants in the Birmingham claim and the effect of HHJ Kelly's order is that the persons unknown defendants have both been deemed served with it. Given the compressed time scale, there has not been three days between service of the applications and the hearing date. However, given the imminent risks of death or serious injury, I am satisfied that it is appropriate to determine the application in a period shorter than three days as permitted by the practice direction to CPR 23A(4.1). The same practice direction provides at CPR 3 that an application may be made without service in certain circumstances, namely where there is exceptional urgency and where the overriding objective is best furthered by doing so being two of them. To the extent that I am wrong in my analysis as to whether the applications have been served on the persons unknown, I am satisfied that both these conditions in CPR 23A(3) are met such that it is appropriate for me to determine the applications at this stage.

SUBMISSIONS AND DISCUSSION

48 Under the Senior Courts Act 1981, s.37:

> "(1) The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so."

The 'B&Q' and 'Bovis' criteria

49 These applications are for precautionary, or in the Latin *quia timet*, relief to prevent future car cruises. The claimants submit that the evidence clearly shows that car cruising will

happen if not restrained. The claims are put on the basis that car cruising is a public nuisance, namely a nuisance which:

> "...materially affects the reasonable comfort and convenience of life of a class of His Majesty's subjects..." (*Attorney General v PYA* Quarries [1952] QB 169 at [184])

50 The claimants have various powers enabling them to bring proceedings to restrain such a nuisance. The principal power relied upon is the Local Governments Act 1970, s.222. This provides that a local authority may bring civil proceedings in its own name where it considers it:

> "...expedient for the promotion or the protection of the interests of the inhabitants of its area."

51 As to this power, in *Stoke-On-Trent City Council v B and Q (Retail) Ltd* [1984] 1 Ch 1 at 23B, Lawton LJ observed 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."

52 In *City of London Corp v Bovis Construction Ltd* [1992] 3 All ER 697, the Court of Appeal considered an injunction granted under s.222 to tackle nuisance caused by noise. Bingham LJ said this at [714]:

> "The guiding principles must I think be:
>
> (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution...;
>
> (2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see the *Stoke-on-Trent* case at 767B, 776C, and *Wychavon District Council v Midland Enterprises (Special Events) Ltd* (1986) 86 LGR 83 at 87; and
>
> (3) that the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them..."

53 The claimants also have a duty under the Highways Act 1982, s.130, to assert and protect the rights of the public to the use and enjoyment of the highway which is reinforced at s.130(5) by the power to institute proceedings. In addition, they have a power under the Localism Act 2011, s.1, to do anything that individuals with full capacity generally may do

in any way whatever and unlimited by the existence of any other power of the authority which to any extent overlaps with the general power.

54 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.

55 I am fortified in that finding by the observation of Bean LJ in *Sharif* at [42] about the 2016 Birmingham car cruising injunction to the effect that:

> "Judge Worster and Judge McKenna were well entitled to conclude, in the words of Bingham LJ's third criterion in *Bovis*, 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."

56 It is a feature of these applications that they seek borough-wide injunctions. In *Bromley LBC v Persons Unknown & Others* [2020] EWCA Civ 20 at [102]-[108], the Court of Appeal, while holding that borough-wide injunctions will be difficult to justify against travelling communities due to the specific duties owed by public authorities to those communities, it did not address such orders nor suggest that the principles there should apply to other types of application, or that such orders would always be inappropriate or disproportionate.

57 It was submitted to me in writing that in these cases, borough-wide orders are sought but only in circumstances where criminal and dangerous behaviour has been committed and where the rights of a specific community are not engaged in any similar way to the traveller cases. I accept those submissions.

58 It is also relevant that these are not cases in which a private business seeks to protect its commercial interests. Rather, they are claims by elected local authorities seeking to discharge their statutory duties. Such claims are within the category of claims in which an injunction can be issued against the whole world as in *Venables v News Group Newspapers Ltd* [2001] Fam 430 to which the Court of Appeal referred in *Barking and Dagenham* at [75].

59 I agree that the orders sought are necessary and proportionate subject to what I shall say shortly about compliance with the *Canada Goose* criteria as there is no other means of effectively protecting the local people referred to in the various jurisdictions of the local authority claimants. It is relevant that courts have previously considered these issues on two occasions and concluded that any interference with the rights of the defendants were justified and proportionate. It is right to note that none of the human rights even 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 grounds for seeking and granting the orders sought, and they help illustrate the necessity and proportionality of them.

60 I have also considered the fact that in *Birmingham City Council v Shafi* [2008] EWCA 1186; [2009] 1 WLR 1961, the Court of Appeal held that where an antisocial behaviour order (an "ASBO") was available under the Crime and Disorder Act 1988, it would usually be inappropriate for the court to exercise its discretion to grant an injunction against named defendants if the procedure described by that Act was not used but, instead, an application was made under s.222. This is because the 1998 Act was considered to contain safeguards such as the requirement to prove allegations to the criminal standard of proof for defendants that were not present in the 1972 Act, i.e. in ordinary civil proceedings. However, in *Sharif* (to which I have already referred), the Court of Appeal held that *Shafi* was not relevant to and did not prevent the grant of an injunction under s.222 to restrain car cruises. For completeness, I should note that Mr Manning advanced in writing several other persuasive reasons of principle to the effect that *Shafi* is no longer good law and/or is distinguishable, and I agree with and adopt those submissions.

The 'Canada Goose' requirements regarding persons unknown

61 The fact that some of the defendants to the Birmingham claim and all of those in the Wolverhampton claims are persons unknown means that further important matters need to be considered. The guidelines set out for the Court of Appeal in *Canada Goose* at [82], endorsed again by the Court of Appeal in *Barking and Dagenham*, in respect of persons unknown are as follows:

> "(1) The '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. The 'persons unknown' defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the 'persons unknown'.
>
> (2) The 'persons unknown' must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
>
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.
>
> (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as 'persons unknown', must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
>
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

> (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.
>
> (7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

I address each of these criteria in turn.

Criteria 1 and 2

62 In the *Canada Goose* case, the court was concerned with protestors but the principles apply to car cruises. The categories of defendants in these cases have been fashioned in accordance with the *Canada Goose* guidance with the aim of ensuring that the injunction against persons unknown identifies the persons who are bound by it. That is why the claimants no longer seek an order in identical terms to those originally provided, which simply describe the defendants as persons unknown without reference to the activity which would turn them into the defendants.

63 The Birmingham persons unknown defendants are defined as follows:

> "(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."

64 The Wolverhampton defendants are defined as follows:

> "(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 Wolverhampton 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 same hours in a gathering of two or more persons within the Wolverhampton area as 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. where 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 Wolverhampton area shown on Plan A (attached)."

65 In my judgment, these definitions meet the *Canada Goose* requirements.

Criteria 3

66 This refers to the sufficiently real and imminent risk of a tort being committed to justify precautionary relief.

67 I am satisfied that this test is met on the basis I have already referred to which shows that car cruising is a public nuisance, that there is a real and immediate risk of car cruising occurring in the future and thus further instances of this tort of public nuisance. In light of this and the fact that this type of public nuisance poses a very real and substantial risk of death or serious injury as described by PC Campbell, I consider that precautionary relief is, in principle, justified.

Criteria 4

68 This requires that the defendants being subject to the interim injunction must be individually named if known and identified, and if not, must be capable of being identified and served with the order, if necessary by alternative service.

69 As to this criteria, similar considerations to service of the documents considered by HHJ Kelly on 14 December would arise with regard to service of any interim injunction. The parties have accepted that the need for a newcomer to be made aware of the injunction requires greater procedural safeguards and publicity.

70 The draft orders therefore provide that any interim order would be publicised by all of the methods of alternative service approved by HHJ Kelly. In addition, the claimants have made provision within the draft orders for the use of physical and/or electronic road signs at various key points in their geographical areas to further publicise the existence of the order.

71 During yesterday's hearing, I pressed counsel for the Birmingham claim as to how quickly their signs could be updated with information about any interim injunction made. It is anticipated that this could be done by around 10 January 2023. My understanding is that the Wolverhampton Claimants use electronic signs as well as physical ones and changes could be made to their electronic signs in a shorter period with their physical signs being changed shortly thereafter.

72 In my judgment, the combined effect of the alternative service provisions authorised by HHJ Kelly and the road signs I have just referred to mean that effective notice of the injunction can be given to persons unknown.

73 So far as it is relevant, CPR 81.4 now provides as follows:

> "(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.
>
> (2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
>
> ...
>
> (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
>
> (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service..."

74 All the methods of notice I have referred to are set out in the draft orders. I accept the submission that the notice provision should achieve the joint aims of ensuring that knowledge of the injunction is widely disseminated throughout the claimants' local authority areas and protecting any newcomers from committal proceedings where they have unknowingly breached the order. It is envisaged that the injunction would not come into force until the claimants have complied with all the steps provided for in the order and, accordingly, this element of the *Canada Goose* requirements is met.

Criteria 5 and 6

75 Birmingham City Council sought both an interim and final injunction that would prohibit "mere" participation in the gathering of a car cruising event. It was argued that this was appropriate because these events take place at night in places to which the law abiding public do not usually go except as users of the highway trying to pass through. It was said that the court should not show undue consideration for those who gather to encourage antisocial behaviour and that there is no other proportionate means of protecting the rights which the claimants seek to protect. In particular, Mr Manning contended that the evidence shows that spectators are a major part of the problem and that their presence encourages the drivers and causes very considerable risk to their own and others' safety. He emphasised in further submissions today that several of the recent serious incidents have involved spectators being killed or injured.

76 The Wolverhampton Claimants sought an interim injunction on a narrower basis than their final injunction application. For interim purposes, they sought to injunct direct participation in car cruises by those who are drivers, riders, or passengers only.

77 In my judgment, it is appropriate at this interim stage to limit both injunctions to those who are drivers, riders, or passengers for the reasons advanced by Mr Singleton, namely bearing in mind the time constraints and the requirements for service and notice.

78 Further, the Wolverhampton draft order made clear on its face that it was not intended to prohibit lawful motorsport taking place on private land where planning permission has been granted and such activities take place under an approved code or license from a recognised regulatory body. Counsel for Birmingham agreed to add such a provision to his draft and, in my judgment, this is appropriate to assist further in ensuring that the parameters of the injunction are well understood.

79 After further discussion in submissions today, Mr Manning was content to remove from his draft in the Birmingham case wording containing certain sub-clauses around supplying or using illegal drugs, public urination, shouting, swearing, and abusing others. While these activities do happen at car cruises, he accepted they did not meet his own "bare minimum" test which was appropriate given the interim stage of these proceedings.

Criteria 7

80 This relates to the need for clear geographical and temporal limits. I am satisfied that these requirements are met. Both draft orders have clear geographical limits as are illustrated by the maps and plans at schedule 1 of the draft Birmingham order and plan A appended to the draft Wolverhampton order. Both claimants are content to work towards a prompt return date in early February 2023 shortly after the 20 January 2023 deadline HHJ Kelly set for any acknowledgements of service.

81 Pulling all of these threads together, I am satisfied that all of these factors mean that it is appropriate to make the interim injunction sought.

THE POWER OF ARREST SOUGHT

82 The Police and Justice Act 2006, s.27, provides in material part that if the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person, it may, if ss.(3) applies, attach a power of arrest to any provision of the injunction.

83 Paragraph(3) provides that:

> "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.

This power is triggered by the fact that the application has been made under s.222.

84 The claimants submitted that a power of arrest is needed to provide an effective means of enforcement for the injunction if granted as, in short, the paper committal procedure would not enable police to deal with the problems by arresting participants at the scene and bringing them before the court. Moreover, it was said that the paper procedure is lengthy and depends on the authority knowing the names and addresses of those taking part. Without being able to identify the names of participants and to locate them, paper applications for committal are likely to be impossible to prosecute.

85 I accept the claimants' submission that a power of arrest sought is appropriate noting that it is limited to those who are the direct participants in street cruises through being riders, drivers, or passengers. These 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).

FURTHER CASE MANAGEMENT DIRECTIONS

86 The draft orders will make provision for a prompt return date in early February 2023. They will include a requirement for each claimant to file evidence as to their compliance with the various methods by which the interim injunction is to be publicised.

87 In respect of the alternative service provisions, I expressed my concerns during yesterday's hearing that although evidence had been provided to the effect that the relevant documents have been uploaded to websites and publicised on social media channels, etc, there is no evidence yet available as to how many times the relevant news items have been viewed, how many times social media posts had been shared, etc. This type of data analytics evidence had been provided to Julian Knowles J in *HS2* before he made the final injunction (see [224]-[227] of the judgment).

88 In my view, it is important that the judge considering whether to make a final injunction in these cases has this information available to them. For that reason, I will make provision within the draft orders, for such evidence to be provided seven days before the return date.

89 I also indicated during yesterday's hearing that if the injunction was granted, both claimants should continue to correspond with those against whom enforcement proceedings were taken in relation to the earlier injunction and the power of arrest, and the 71 individuals referred to in the Birmingham claim to ensure they are aware of developments and could apply if they saw fit to apply to the court to vary or discharge the order. The draft orders should make appropriate provision for that.

CONCLUSION

90 For all these reasons, I am content to draft the interim injunctions sought with the modifications I have set out.

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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IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
33 Bull Street
Birmingham B4 6DS

Monday, 6 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
(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 and MS C CROCOMBE (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.

MR SHABIR (was not present until 2.00 p.m. and appeared in Person).

P R O C E E D I N G S

I N D E X

Monday, 6 February 2023

(10.42 a.m.)

MR JUSTICE FREEDMAN: Good morning.

MR MANNING: Good morning, my Lord. I represent Birmingham City Council in the first case.

MR JUSTICE FREEDMAN: Mr Manning?

MR MANNING: Yes. My learned friend, Mr Singleton represents Wolverhampton and three other local authorities in a separate application, and the two have been heard together.

MR JUSTICE FREEDMAN: They are not consolidated?

MR MANNING: They are not consolidated, but since the early case management in December of last year they have been heard at the same time. As my Lord may have seen from the papers, on 20 and 21 December last year there was a hearing before Hill J, at which she granted both applications for emergency interim relief in the form of injunctions prohibiting street cruising in the respective areas of the various local authorities, until a date in the first two weeks of this month, which was at that time to be fixed, and has now been fixed for today.

MR JUSTICE FREEDMAN: Until a date when it was reviewed. It was not the expiry of the injunction.

MR MANNING: No, no. No. So today is the return date, effectively, of that, and the first occasion on which we come before the court having complied in full with the various requirements for service by alternative means, set out in the orders of her Ladyship dated 22 December.

MR JUSTICE FREEDMAN: So how long was the hearing in front of her?

MR MANNING: It was argued for effectively a day and a half. We had an in person hearing on 20th, and her Ladyship then considered the matter overnight, and we reconvened remotely on the afternoon of 21st at which time there were some other matters that her Ladyship wished to canvas with counsel, and then she gave judgment.

MR JUSTICE FREEDMAN: On the 22nd?

MR MANNING: On the 21st.

MR JUSTICE FREEDMAN: On the 21st, yes.

MR MANNING: And the orders were then sealed, dated 22nd.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: My Lord, so far as the Birmingham case is concerned, I have certificates of service for the interim injunction, because the Birmingham application differs from the

Wolverhampton one in that there are six named defendants, and they have been served personally both with the orders of 22nd December, and with a covering letter and notice of today's hearing, and I have certificates of service from the process server. I also have a certificate of service which relates to certain people who were the subject of enforcement proceedings in relation to previous injunctions for car cruising that have been obtained by Birmingham. It was agreed at the last hearing that Birmingham would write to tell them about these proceedings, and that was done, and I have a certificate in relation to that as well. I do not know whether my Lord would like me to hand those up?

MR JUSTICE FREEDMAN: Just before we get into the detail, can we just look at an overview in relation to this?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: I understand that a person was arrested as a result of an allegation following the exercise of a power of arrest, and the allegation that this motorist was in breach of the High Court injunction.

MR MANNING: I have that information, my Lord, I do not have any more information. I am told he was arrested last night.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: And obviously under the scheme of the Act he would have to be produced within 24 hours.

MR JUSTICE FREEDMAN: So, therefore, if he was arrested last night, which I think was just after 10 p.m. last night, which I think was just after 10 p.m., he would have to be brought to court today?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: And I wonder whether we ought just to consider the logistics in relation to that, and the interface between that and this application? Have you had the opportunity of seeing a witness statement of PC Whitmore?

MR MANNING: No, I have not. May I just turn my back for a moment?

MR JUSTICE FREEDMAN: Yes, please.

MR MANNING: (After a pause) I understand that my own instructing solicitor has just emailed a copy of that witness statement to me, but I have not seen it yet.

MR JUSTICE FREEDMAN: Right, we will work out how to deal with this, but it is not a long statement, and I think you ought to see it. We need to make arrangements for, presumably, if he can be brought to court at, say, 2 o'clock, that would seem the most sensible time, but we would need to find out if that is possible.

MR MANNING: Yes, my Lord.

MR JUSTICE FREEDMAN: I would also need to know how that possible committal application was going to be prosecuted by the claimant, whether it was going to be by you or by somebody else, and then there would have to be a decision as to whether I would deal with it or whether the Resident Judge would deal with it. If you are going to be dealing with it then the logic is that I should deal with it.

MR MANNING: Yes. I am available to deal with it, and it may be that that is the most sensible course, but I am happy to go in front of, with respect, anyone, but I do not know what my learned friend's commitments are today.

MR JUSTICE FREEDMAN: I am available to deal with this case today. The only reason why I was canvassing anyone else was just in case the parties were keen that we did not, in any way, reduce the time spent on this application today, but I am not in any way expressing any view one way or the other in relation to that. What I suggest we should do is that you should read that together with Mr Singleton----

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: -- and work out how you would propose what order the court should make now about when the court should deal with it, and a timetable around that, and around hearing this substantive matter.

MR MANNING: My Lord, yes. I have got it up on screen now, so I can deal with that, if that is a matter that my Lord would find convenient.

MR JUSTICE FREEDMAN: Yes. Should I adjourn for five minutes so that you can consider that?

MR SINGLETON: It may be helpful, my Lord. I understand that this is a breach of the Birmingham injunction, rather than what we call the 'Black Country' injunction with Wolverhampton and three others. So, in essence, decisions on how that is being pursued are very much for my learned friend and those instructing him.

If I can add what is hopefully a neutral point, breaches of injunctions of this nature where a power of arrest is exercised have to be brought to the court within 24 hours as my learned friend has indicated. Normally, and that is not a legal expression, if there are admissions made it tends to be dealt with in 20 to 25 minutes. If somebody wishes to contest it obviously there is an unqualified right to do so, and there is an unqualified right to legal aid, and only short directions are given. I do not know if that assists my Lord's thinking.

MR JUSTICE FREEDMAN: It does, because what was new to me in relation to what you said was the idea that it would be dealt with on admissions in 20 to 25 minutes, bearing in mind that it is quite a complicated sort of matter, in the sense that the Act is simple, but there are things around it that are not simple.

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: And I would be quite keen for somebody to have legal representation.

MR SINGLETON: Certainly that is a standard that has been supported by the Court of Appeal on numerous occasions. Generally, if somebody indicates they have any issue, even if it is what might amount to mitigation or reduction in seriousness of what they had done, directions are given so they can take proper legal advice. What I would call the 'summary disposal' tends to arise when somebody says: 'Yes, I did it. I knew I shouldn't, but I just want to get this over with because I've got to go back to work'.

MR JUSTICE FREEDMAN: And then also one would also have to consider, if the person was given bail, whether there was any risk of absconding. But if there was not then one can give up to eight days is that right?

MR MANNING: I think my Lord, with the agreement of the person brought before your Lordship, could give a remand on bail without the eight day time limit. The eight days is a maximum for a remand in custody.

MR JUSTICE FREEDMAN: Oh, is it?

MR MANNING: I think.

MR JUSTICE FREEDMAN: Because I did a case fairly recently where maybe people did not think it through with the care that you are mentioning, but there was a remand on bail and they were being brought back within eight days.

MR MANNING: Obviously, we will check all of this.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: My experience in these sorts of cases is that if my Lord is satisfied sometimes the appropriate course is simply to adjourn the hearing and release the person for them to return, without formally remanding them on bail. That obviously is a matter for the court, but sometimes it can make things more straightforward at first hearing when there is no particular risk of absconding or reoffending.

MR JUSTICE FREEDMAN: Right. All right. I think the important point now is for you to go and make the enquiries, and if, in fact, the person is ready to be brought in much earlier then it may be undesirable for the person to be kept until 2 o'clock, but it is just a question of there are

a lot of people to sort out and a lot of practicalities. I think I should leave that with you now, and you should report back as soon as you are ready.

MR MANNING: We will do. Thank you, I am very grateful, my Lord. May I just indicate before your Lordship rises, so far as the substantive proceedings today, Birmingham have not received any indication from any defendant or anybody else who was being informed of these proceedings, that they wished to attend, and certainly no one is here at the moment, to my knowledge, although I may be speaking too soon.

MR JUSTICE FREEDMAN: (After a pause) Is there a Mr Arif who is one of the defendants?

MR MANNING: I do not believe so, my Lord, but he may be someone – I am just checking the list. He is someone who was written to, who was not named as a defendant, but was told about today's hearing, and told that he could attend if he wished to, so it may be that while I am taking instructions on the committal point I can also speak to him and find out what his position is.

MR JUSTICE FREEDMAN: Yes. It sounds as if it is going to take more than five minutes, so I am going to go to my room and I am available to come back.

MR MANNING: I am very grateful.

MR SINGLETON: My Lord, there is one matter which this is perhaps a logical moment to raise it. With one exception, there has been no response to the publicity campaign, the writing to previous contemnors. I touched on it in my supplemental skeleton argument and said we had had an email from a member of the public. I will hand up a copy in a moment, my Lord, but it is quite short. It is from a gentleman called Richard Evan. "Good afternoon, first I would like to . . ." I will correct whatever the spelling errors ". . .state:

> "I do condemn street racing and any anti-social behaviour that comes with street racing. I feel that there should be tough penalties for people caught street racing because of the lives this has taken and more lives it will. So I believe they should be allowed where organisations, people should be allowed to meet and express an interest in cars, everything automotive. I think there should be a system put in place where, if an organisation wants to organise an event, a static event, there should be an online application submitted to the local Councillor for the organisation for the event.
>
> I feel that doing an outright ban on any meetings, good or bad, will just push the scene underground although there is no responsibility on those (inaudible) who organise them. So if you put somebody in who's responsible for them, i.e. the name on the application people are going to have more respect. I would be more than willing to help and participate in any meetings called about what's the best way to help. Please don't hesitate to contact me."

I can develop my response to that fairly shortly. Static car meetings on private land would not be caught by this injunction unless either stunts or obstructive driving would be performed at or adjacent to that land, or there was a genuine expectation that this would happen, no doubt subject to matters such as public liability insurance and the owner's permission, that could be arranged without reference to the local authority anyway. Such a meeting, on its face, does not strike me as something that would offend against the order sought. I will had a copy up, my Lord for the sake of completeness. (Same handed)

MR JUSTICE FREEDMAN: Thank you very much.

(Short break)

MR JUSTICE FREEDMAN: Mr Manning?

MR MANNING: My Lord, thank you very much for the time. I am sorry I have come back into court with comparatively little information. What I do know is that the defendant is in the course of being transported from Perry Barr Police Station to the court in a van. We are told he left the police station at 10.30 this morning and that the intention was that he would be brought straight there, although we have also been told that there were prisoners for the Magistrates' Court in the van as well, so it may be that the drivers will have different instructions. But, in any event, he ought to be arriving quite soon, but I cannot tell when. I spoke to security on the ground floor and they have not been informed that anyone is arriving, but they have said they will bring him straight up to this floor when he does arrive.

MR JUSTICE FREEDMAN: Are they equipped to do that?

MR MANNING: I think it is something that they have to do from time to time in this court because there are no cells here.

MR JUSTICE FREEDMAN: Yes. But they are, therefore, equipped----

MR MANNING: Yes, I believe so.

MR JUSTICE FREEDMAN: They are capable of doing it?

MR MANNING: And they certainly did not seem particularly fazed by the suggestion that they would be receiving somebody.

MR JUSTICE FREEDMAN: Right.

MR MANNING: So, my understanding is that, all things being equal, he ought to be arriving very soon, and when he does get here there are arrangements in place for him to be brought up to the court.

MR JUSTICE FREEDMAN: Are there arrangements for him to be held pending being brought up to the court?

MR MANNING: Yes, normally they use an interview room, and they just have a security person standing by the door, I do not think it is any more high tech than that.

MR JUSTICE FREEDMAN: Right.

MR MANNING: Having discussed the matter with my instructing solicitor it is my strong feeling that the overwhelmingly likely course of action is that the matter will have to adjourn today to be pursued on another occasion. My experience in other cases has been that the course of action that is usually pursued is that the local authority reduce to writing the precise allegations of breach as would be expected in a paper committal application.

MR JUSTICE FREEDMAN: In accordance with CPR81.4?

MR MANNING: Yes. Because even though this is a shortened form of bringing the person who is accused of breach to court, nonetheless, if the matter is to be adjourned and if they are to have the right to legal advice that has a substantive meaning, it is right that they should know exactly what it is they are accused of. So what I would suggest is, and we do not have any detailed draft directions that I can hand up, but what I would broadly suggest is that it would be sensible, subject to what he may say when he gets here, for the matter to adjourn on some fairly tight directions as to the provision of written information as to the allegations of breach----

MR JUSTICE FREEDMAN: There are tight directions against the local authority.

MR MANNING: Yes – for the matter to come back. The other advantage of serving a paper committal notice is that under the terms of the power of arrest, unless the committal is dealt with within 28 days, then it falls away, whereas if we served notification in accordance with Part 81, then it can proceed as a paper committal even if it is not brought back within 28 days. Given, at this stage, that we know very little about what the defendant is going to say, or what the situation is going to be regarding witness availability and court availability, it might be just more straightforward to proceed with it in that way.

MR JUSTICE FREEDMAN: And, therefore, if the court decided to do that, it would not be remanding him on bail, but it would be adjourning the case and allowing the arrest to come to an end.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: What is the expression? How does one express that?

MR MANNING: He would simply be released from custody. Of course, he would need to be released formally by the court.

MR JUSTICE FREEDMAN: Yes. And then the case would be adjourned.

MR MANNING: The case would be adjourned.

MR JUSTICE FREEDMAN: And there is no power of arrest, he does not come to court because there is no remand on bail.

MR MANNING: Well, if he does not come to court----

MR JUSTICE FREEDMAN: What you would then have to do is you would have to seek a bench warrant or something like that?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: So it would be adjourned to a date to be fixed, or would it be adjourned to a date?

MR MANNING: It would depend really whether the court was able to give us a date.

MR JUSTICE FREEDMAN: Yes. So how long would you need?

MR MANNING: I thought we ought to be able to serve a notice by the end of this week, Friday, 10th.

MR JUSTICE FREEDMAN: I think you could probably do it faster than that.

MR MANNING: We probably could, yes.

MR JUSTICE FREEDMAN: You are just being cautious.

MR MANNING: I am, but yes, I am sure it could be done more quickly than that.

MR JUSTICE FREEDMAN: What would normally the time be?

MR MANNING: I do not know whether there is a specific normal timing, but I should imagine we could do it within the next two days.

MR JUSTICE FREEDMAN: But once somebody has been arrested for something then it is very important that they know precisely what the matter----

MR MANNING: I am in my Lord's hands, and I would not guarantee to be able to do it today, but I am sure we could do it tomorrow if that was----

MR JUSTICE FREEDMAN: By the end of tomorrow.

MR MANNING: -- if that was your Lordship's view.

MR JUSTICE FREEDMAN: And then there would be a question as to how long he would need, and he will not know at the moment because, assuming he is contesting it, he would want to have to find solicitors and get legal aid and all of that.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Anything else to be said about that?

MR MANNING: No, only that I am content, if my Lord is content, to make progress with the substantive matter today, and when he gets here I would be quite content for my Lord to take him, sort of interpose him----

MR JUSTICE FREEDMAN: Yes.

MR MANNING: -- if my learned friend is content with that.

MR SINGLETON: I have no objection to that, my Lord, it seems sensible.

MR JUSTICE FREEDMAN: Yes, good.

MR MANNING: Seeing as I am on my feet, at this hearing today what the claimant, Birmingham City Council, is seeking is for my Lord to continue the interim order made, although formally it does not need continuation because it continues unless varied or discharged, but we would be seeking a slightly wider order than that which was granted by Hill J.

On the occasion that the matter came before her Ladyship in December the injunction was limited to the conduct of drivers and passengers in vehicles. It had been Birmingham's application that the terms of the injunction should also include spectators at car cruises, and those who organise them, and that was the original draft of the injunction that had been put before the court. Given that it was being dealt with on an urgent basis, and that service had not been properly effected – perhaps I should say 'fully' effected – her Ladyship was not content that at that stage it was appropriate to grant an injunction in terms that were any wider than might actually be the bare minimum that would deal with a particular incident that the local authority were concerned with, namely that there was likely to be a meet on Boxing Day, which potentially would be very large.

The situation today is that all those defendants have been served personally, both with the interim order and with the notice of today's hearing.

MR JUSTICE FREEDMAN: You mean the named defendants.

MR MANNING: The named defendants in the Birmingham case, and none of them has either filed an acknowledgement of service in accordance with the directions on the last occasion, nor has attended today.

My Lord, in relation to the two categories of persons unknown for whom service by alternative means was granted, the Authority has fully complied with the terms of Schedule 3 of the order that was granted on the last occasion. That order appears in my Lord's bundle at page A14,

A15 and A16. The witness statement of Michelle Lowbridge, her fifth and sixth statements, which are on pages C70 with exhibits, and C81 with exhibits, sets out the dates on which the various matters required by the Schedule were carried out, all of which, aside from the physical street furniture sign, were completed before Christmas, and the signs themselves were completed – this is on page C85 of Ms Lowbridge's sixth statement – were completed on 27 January, which is 17 days longer than the period allowed for in the order.

MR JUSTICE FREEDMAN: Where is that set out?

MR MANNING: On page C85, which is in the middle of Ms Lowbridge's sixth statement, at paragraph 18, she refers to Schedule 3(1)(i) which was requiring the maintenance of permanent signs, and she says that the signage has been updated, and she exhibits it, but at 19 she says that:

> "Due to having to have these manufactured and delivered there was a delay to expediting this because of the Christmas and New Year period and it was not possible to do this by 10th January 2023 as stipulated in Schedule 3 1(i) of the order. However the signs were updated on 27th January 2023."

The photographs of the new signage includes both metal signs which my Lord can see an example of on page C103.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: And also it has been possible for the Authority to use electronic signage, an example of which is at page C108. And also it has been possible for the Authority to use electronic signage, an example of which is at page C108. In due course, I would respectfully ask my Lord to approve the service that has taken place as good service, notwithstanding that there was a delay of some 17 days in this particular aspect of the compliance, for the reasons set out by Miss Lowbridge in her witness statement.

At this point, all I say is that notwithstanding all of these methods, both of personal and alternative service, no defendant has filed acknowledgement of service or attended court today. There was a gentleman who attended, that my Lord was told about before your Lordship rose, and that was a Mr Arif, who had been written to on 24 February.

MR JUSTICE FREEDMAN: On 24th of what?

MR MANNING: Sorry, 24 January 2023, informing him that this application had been made, that a new interim injunction with power of arrest, dated 22 December, together with the notice of the hearing date and the Council's evidence, could be found at the web address set out

in the letter, or he could get a paper copy at the Council's offices with the address given. Then in bold type "**The case is due to be heard again on 6 February**", and that if he would like to take part he should file an acknowledgement of service no later than seven days before the hearing date, or "you can still attend court to make your views heard".

He did attend. I spoke to him with my instructing solicitor. He had understood that he was required to attend court because something was alleged against him. We informed him that that was not the case, that we were simply telling him that he had the right to attend and he had every right to come in and address your Lordship if he wished to do so, but he did not have to if he did not want to. He said that he preferred to leave if he was not actually required to be here, because he did not like courts, and he had no interest in taking part in the proceedings. So he has left, but he was the only person to attend.

My understanding from my instructing solicitor is that the two other people who were written to on that list telephoned to ask whether they were required to attend, and whether they were party to the proceedings, and on being told that they did not have to attend, they were simply being written to to inform them in case they wished to do so, they both said that they did not wish to attend.

MR JUSTICE FREEDMAN: Sorry, these two other people?

MR MANNING: They telephoned my instructing solicitor on receipt of the letter of 24 January, simply to enquire whether they were required to attend, and whether they were part of the proceedings, but had no interest in coming to court when told that they were not under any obligation to do so.

So, the position today is that these matters have been fully ventilated locally in the media, and by the Authorities and the Police's own social media announcements and information, and no one has wished, it seems, to take part in the proceedings, at least at this stage. On that basis, and on the basis that the local authority continues to be of the view that it is actually an important aspect of this order that, in particular, spectators are within the terms of the injunction, though it has never been sought to include them within the terms of the power of arrest. Notwithstanding that today is only a review of the interim order, and not the final hearing, nonetheless, it would be my application that, in the circumstances, the interim order should be varied so that it would include spectators at a car cruise, or 'street cruise', as we have called it, and also people organising or promoting them.

MR JUSTICE FREEDMAN: Can I ask you a few questions?

MR MANNING: Yes, my Lord, of course.

MR JUSTICE FREEDMAN: In respect of the extensions in relation to alternative service, was there an application made before the expiry of the time for the extensions?

MR MANNING: No, there was not, my Lord. There was a provision in the injunction itself – and I will turn it up – it basically said that the witness statement that had to be filed, I think it is paragraph 11 of the order on page A11, and it made provision for the claimant to file a witness statement confirming that the steps to effect service have been taken. Then it says:

> "If paragraph 1 of Schedule 3 has not been fully complied with the claimant shall outline the deficiency and provide an explanation so that the Judge may consider whether to authorise retrospective alternative service pursuant to CPR----"

MR JUSTICE FREEDMAN: Oh, I see, so it has in mind not making a prospective application but the matter being dealt with retrospectively.

MR MANNING: Yes, that was the way that the----

MR JUSTICE FREEDMAN: What is the page reference?

MR MANNING: It is page A11 of my Lord's bundle, and it is paragraph 11 of the order under the heading "Service", it is the second part of that paragraph on line 3.

MR JUSTICE FREEDMAN: (After a pause) Yes, that is good. Thank you. So that is one question. The second question is: have there been injunctions in other courts in respect of spectators?

MR MANNING: Yes, my Lord. The history of this matter in Birmingham has been that the injunction in force between 2016 and October 2022 included spectators, in fact, it was in the same form as the order that we seek in these proceedings. I think the previous injunction, as I have said, included spectators within the definition of people who may be participating in a street cruise, so that they may be potentially capable of breaching the order, but not within the terms of the power of arrest which was limited to drivers and passengers in vehicles.

MR JUSTICE FREEDMAN: So a potential difficulty about that is this: that you would have the spectator who is almost inciting the whole thing and organising it, and you might have a spectator who is a passive observer, and so you get into 'jokey-type' territory from the criminal law into the civil law.

MR MANNING: My Lord, I see the principle that my Lord points out, but what I would say is in terms of whether or not – perhaps it might be helpful to consider the definition of street cruise,

and participating in a street cruise in the order itself. The second Schedule on page A13, sets out the current definitions, and what paragraphs 1 and 2 taken together provide for are certain outcomes caused by certain activities. What we would seek in paragraph 1, and in paragraph 3, is an extension to that definition so it would refer to, or apply to, 'any person whether or not a driver or rider', and the same in paragraph 3: 'a person participates in the street cruise whether or not he is the driver or rider of or passenger in or on a motor vehicle. If he is present and performs or encourages any other person to perform any activity.' So, it would have to be shown, in order for a breach to be made out, that a spectator was either performing or, alternatively, was encouraging one of the prohibited acts so as to cause one of the outcomes referred to.

So, a passive observer, unless it could be argued that by his mere presence he encouraged, which I accept would be a difficult argument for the authority, would not be caught. It would only be an observer who was actively encouraging such conduct. Now, that would be a matter for evidence, but it is right that in circumstances where there could be a dispute of that kind that the power of arrest should not apply to such a person, because if it came to a hearing at which the court did not consider that he should be, on the evidence, found to have encouraged such activities, then it is right that he should not be arrested even for a short period. As opposed to a driver, or somebody in a motor vehicle, performing a dangerous activity where we say the power of arrest is an essential component of enforcement of the order, given the risk of serious harm caused by the actual performance, as opposed to the encouragement.

MR JUSTICE FREEDMAN: Mr Manning, I follow that. Having said that, injunctions have to be worded carefully because of the sanction of breach and the prospect of committal.

MR MANNING: Yes, of course.

MR JUSTICE FREEDMAN: And in one sense you are right, it is evidential, but in another sense there is an uncertainty, or it might be said that there is an uncertainty, in relation to the difference between what is a passive observer, and what is encouragement that is on the wrong side of the line. Clearly, somebody who is the organiser of the event is on the wrong side of that line, but in relation to observing 10 people on the back row, is one going to distinguish between those people who are interested to see what is going on, and somebody who gets very excited and cheers, and between those two there are a number of other possibilities, as anybody who has been to a spectator sport knows.

MR MANNING: My Lord, yes, I accept that. What I would say is this, and I do not want to be disingenuous about it, the idea is that it would be better and safer if people did not attend these

events at all, but one has to accept that however effective an order of this kind may be enforcement may be required, and therefore one has to accept the situation may arise in which people will be present, and I entirely accept need to know their rights, quite aside from the evidential issue of whether they have breached.

MR JUSTICE FREEDMAN: Just bear with me one moment. (After a pause) I am told that the paperwork has been delivered by the police, but there is no sign of the respondent yet, in the person who has got the power of arresting in his the statement, and there is the statement of PC Whitmore. There is the court process, dealing with a person arrested, in a document headed "Operation Hercules", and there is the interim injunction. And there is, but I have not opened it, some exhibit with CCTV digital images.

MR MANNING: I should imagine that is the in-car video.

MR JUSTICE FREEDMAN: So, shall I hand this down to counsel?

MR MANNING: I am not sure whether that should stay with the court.

MR JUSTICE FREEDMAN: It should stay with the court?

MR MANNING: I think probably it should.

MR JUSTICE FREEDMAN: It is not for the court alone, is it? Is it confidential?

MR MANNING: I do not think so, no, my Lord. I am happy to have it.

MR JUSTICE FREEDMAN: No, I will keep it here for the moment – so long as everybody remembers that it is there.

MR MANNING: Yes, my Lord.

MR JUSTICE FREEDMAN: I should remember more because it is next to me (laughter) but still helped by others reminding me.

MR MANNING: I am slightly surprised that this has arrived without the prisoner, but doubtless there is a reason for that.

MR JUSTICE FREEDMAN: So we were talking about these differences of degree.

MR MANNING: My Lord, yes. Ultimately, it is my submission that if a person is told that they are not allowed to encourage another person to perform an activity such as dangerous driving or racing, or performing stunts in a car at a car cruise, not just on any occasion but at a particularly defined event, then that gives them enough information to know what they may or may not do. I, of course, accept that there may be degrees in which the question of whether or not they have crossed the line from interest to encouragement, but in my submission that is always going to be the case in relation to any matter in the way it comes before the court whether it is a criminal offence or a breach of contract, there are always going to be questions about whether the conduct that they have, in fact, engaged in amounts to encouragement.

So long as they are aware that performing acts of encouragement are caught by the injunction, then in my respectful submission it really does come down to a question of evidence as to whether the court is satisfied to the criminal standard that the inunction has been breached.

MR JUSTICE FREEDMAN: Let us give an analogy – the problem with analogies is that there are always distinctions – but the court has, for a long time, said that it is not good enough to say that you should have an injunction against breach of confidentiality. Why? Because without a definition in relation to it the person will not know whether it is a breach or not.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Now, here, you say things like: 'Well, if the person is told that they are not allowed to encourage another to perform an activity and they are given enough information, then that is going to give rise to a breach', but it begs the question as to what that means. What troubles me at the moment is the idea of some person watching something that has attracted attention and goes there and watches, or watches and expresses some audible reaction, how one knows from the wording of the order what is and what is not a breach of the injunction.

MR MANNING: I suppose it may be possible to try and define "encouragement" more closely, whether by – I mean I have not devoted time to thinking about this so I am slightly on the hoof----

MR JUSTICE FREEDMAN: Yes.

MR MANNING: -- but one could perhaps exclude certain things, or perhaps give examples, or include certain things such as encouragement by words or gestures, or something of that sort: for the avoidance of doubt, a person does not encourage by merely standing there watching, or something like that.

MR JUSTICE FREEDMAN: Another question which arises in respect of this – I am sorry to lob all these questions at you----

MR MANNING: No, not at all.

MR JUSTICE FREEDMAN: -- is that given that this is merely an application for an interim injunction, rather than a final injunction, whether these matters are best addressed at the final injunction stage?

MR MANNING: In a way I think we are probably content to – I was going to say: "leave that to my Lord", but of course it is not for me to leave it to my Lord, it is for me to decide whether I am making an application or not, so I accept that. But I hear the force of my Lord's observation and I will certainly take instructions on that.

MR JUSTICE FREEDMAN: Yes, you can do that. Can I then deal with a matter that you may well be coming back to, and that is this: according to the evidence, these injunctions went into some abeyance between the *Barking* case at first instance, and the *Barking* case in the Court of Appeal. When the *Barking* case judgment came in the Court of Appeal, which was supportive in particular in relation to the fact that there did not have to be finality as to who the people were at the time of either the interim injunction or the final injunction, and all the supportive things in relation to the breadth of section 37 of the Senior Courts Act. I do not know if it is mentioned in the skeleton arguments, or in the statements in front of me, but as I understand the position, and you will correct me if I am wrong, particularly Mr Singleton will know about it, the Supreme Court, as I understand it, is hearing the appeal from the Court of Appeal, according to my research, on Wednesday and Thursday of this week.

MR SINGLETON: That is my understanding, my Lord, yes.

MR JUSTICE FREEDMAN: And that could be very supportive of the application that is being made. On the other hand, it could run completely contrary to the application and I am interested to hear from both of you what the impact of that is to this interim application.

MR MANNING: My Lord, yes. When this matter came before Hill J before Christmas, she was informed that the Supreme Court was scheduled to be hearing the appeal this week, but both parties submitted that even after the hearing there may well be some delay of several months before the Supreme Court delivers judgment and, in the meantime, the Court of Appeal's decision is, in our respectful submission, supportive of the jurisdiction of the court to make orders of this sort.

One of the reasons why I recall, and my learned friend will correct me if I am misremembering, the suggestion was that there should be an order with a return date today for a review, leading to a final hearing, was that it may well be that before a final hearing takes place we will have the benefit of the Supreme Court's decision, and at that point the parties can decide whether or not they should proceed or whether or not the position in law, as it emerges from the Supreme Court, renders it necessary to either modify or abandon the attempt to obtain these injunctions. But, I would certainly submit that the court today should apply the law as it is today, and that the Supreme Court's decision can doubtless, and will doubtless, be taken into account, even if it were to come after a final hearing. The court would retain a supervisory role in relation to these orders, and the claimants would be clearly in a position where they would need to reconsider whether any order that they had obtained could be maintained as a result of what the Supreme Court say.

MR JUSTICE FREEDMAN: I follow that. It is extremely helpful. Obviously, the case in the Supreme Court is not over until you receive the judgment.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: On the other hand, what happens if, in the course of the hearing later in the week, there are some very serious concerns expressed? This is even more uncertain in its definition than the matters that you were helping me about just a moment ago. Now, some of the arguments are just the usual type of arguments where it is all part and parcel of the exchange and the forming of views, and sometimes there might be some very serious expression of concern. Would it be that if there was something that arose of that latter type that there may be a need just to alert the court to it?

MR MANNING: My Lord, may I say three things about that?

MR JUSTICE FREEDMAN: Yes.

MR MANNING: The first is that the injunctions in the case before the Supreme Court are different from the ones that we seek in the sense that they relate to unauthorised encampments by Romany gypsies and travellers, who have not only their own rights under the Human Rights Act and the European Convention, but in respect of whom the State is obliged to take positive steps to facilitate their travelling way of life. Therefore, the issues in that case are not the same, in my submission, as in a case where what the local authority is seeking to prevent is dangerous public nuisance, and potentially criminal activity.

The second point is that it is not uncommon for comments and questions raised during the hearing subsequently to resolve themselves in a judgment in a way that is different than those expressions on the basis of either answers given, or reflection and discussion with colleagues while judgment is being prepared.

The third point I would make is that if my Lord is concerned about the possibility that something could arise during the course of the hearing, that might cast either light or doubt on whether or not there is a problem with this kind of order, I am certainly content on behalf of Birmingham to in some way consider what is said, and this matter could be brought back to court if there was something that the parties considered the court needed to be aware of arising from that hearing.

MR JUSTICE FREEDMAN: Or the court could give judgment next week.

MR MANNING: Yes. My learned friend has a colleague in chambers who is taking part in that hearing, and I think his instructing solicitor is also involved, so it should be possible for the parties to be alerted quite soon.

MR JUSTICE FREEDMAN: Yes, I was taken by the fact that Wolverhampton was before the Supreme Court.

MR SINGLETON: Yes. Junior counsel for Wolverhampton is a colleague in chambers, Miss Caney, and she has a pupil at the moment, and she will be taking her pupil with her, certainly after the hearing in front of Hill J, the pupil prepared a comprehensive note, so I would hope we would have something in writing, obviously it would not be an agreed transcript, that could be placed before the court.

MR JUSTICE FREEDMAN: Yes, I do not think I will be watching the screen.

MR MANNING: To an extent these are matters that I think may need to be seen before one knows whether there is something that is considered.

MR JUSTICE FREEDMAN: Yes, because your three points cumulatively are strong points, it does not exclude the possibility but it reduces the possibility.

MR MANNING: Yes, agreed. The claimant in the Birmingham case, subject to the matter of broadening the injunction, as to which I will take instructions on my Lord's observation that the final hearing may be the more appropriate time to raise that, subject to that it is the claimant's position that the order that was made by Hill J has had beneficial effects. I have a witness statement from PC Campbell, which is not in the bundle because it was only made on Friday, and I have only just seen it, but I can hand it up. His evidence would be that there has been a significant decrease in the number of meets in Birmingham, and the number of calls to service that have been sought, and that the feared meet on 26 December did not, in fact, take place at all. So we would respectfully submit that both the history of events during the currency of the previous injunction and the short period that has elapsed since 22 December all suggest that these orders do, in fact, have effect to reduce the danger to the people of Birmingham, which is the purpose of it.

MR JUSTICE FREEDMAN: Have there been any other incidents that have caused injuries anywhere in the country since 21 December?

MR MANNING: Not that I am aware of or that those instructing me are aware of. The last one that we are aware of was in November of this year, which is referred to in the evidence, in Oldbury, I think. It was an incident that started in Birmingham and finished, tragically, in the area of the Authorities represented by my learned friend.

So, at the very least, I would submit that on this review there is no basis, no reason to do anything other than allow Hill J's order to continue.

MR JUSTICE FREEDMAN: You would submit, would you, that if the court accedes to that then the court does not need to start marking, paragraph by paragraph, the work of Hill J?

MR MANNING: No.

MR JUSTICE FREEDMAN: You are inviting the court to say that it is an order where there is no reason for it not to continue. Can I just invite you to go to – am I interrupting your course of thought?

MR MANNING: No.

MR JUSTICE FREEDMAN: If we go to Hill J's judgment.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: I have a small number of questions. Paragraph 29, she refers to one of the defendants being anonymised.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: And I notice that there is the third defendant, it said: "case withdrawn" but the name is not anonymised, it----

MR MANNING: It was the seventh defendant whose name was anonymised.

MR JUSTICE FREEDMAN: Oh, I see.

MR MANNING: She is referred to as "ABC".

MR JUSTICE FREEDMAN: I see, yes.

MR MANNING: They are referred to as ABC. That defendant appeared before Her Honour Judge Kelly on 6 December.

MR JUSTICE FREEDMAN: Oh, was this the person who did not want to be in the proceedings?

MR MANNING: They did not particularly want to be in the proceedings and they have not taken part since then, but they asked for anonymity on the basis that they had been the victim of serious crime in the Birmingham area, and by being named with the address being given, they were concerned about their safety.

MR JUSTICE FREEDMAN: Oh, I see. When you say "victim of serious crime", you mean some crime other than this one.

MR MANNING: Unrelated. I think, from memory, it was a previous sexual assault by an ex-partner.

MR JUSTICE FREEDMAN: Right.

MR MANNING: And they were concerned not to be named in the proceedings and the local authority took no point about that, and the Judge was satisfied and granted anonymity.

MR JUSTICE FREEDMAN: Thank you. On a different definition of the persons unknown, in "Criteria 1 and 2", which is from paragraph 62 onwards, that remained in the order of Hill J, did it not?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: But she knocked out spectators, presumably, or not in the heading, but in the form of the order?

MR MANNING: Not in the heading but in the form of the order.

MR JUSTICE FREEDMAN: And what did her order say, neither for the purpose of the power of arrest nor for the purpose of the order?

MR MANNING: The spectators?

MR JUSTICE FREEDMAN: Yes.

MR MANNING: No, they were removed entirely, so the injunction only applies to people who participate by being a driver of a vehicle, a rider of a motorcycle or a passenger. It does not apply currently to any spectator at all, and it does not apply to organisers or those who publicise or promote cruises, which was the other extension that the City Council was seeking, but, again, I will take instructions on the same basis that my Lord mentioned.

MR JUSTICE FREEDMAN: I mean if it is very close, then even if you did not have a person who was that sort of person, if it was a person who was procuring the breach by the fact that, knowing about the injunction, they were setting up an event and issuing tickets or whatever for the participants to take part, then even without those words they might find themselves foul of aiding and abetting the breach of the court's injunction.

MR MANNING: Yes. I would gratefully accept that.

MR JUSTICE FREEDMAN: And you would not really get into the problem as to degree, because in order to get there, there would have to be a strong case that they were procuring, or wrongfully assisting.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: That is very helpful. Can you now help me about this: one of the points that is made – is it in *Canada Goose* – is that when one knows about defendants they must be individually named if known and identified. It is the fourth of the criteria at paragraph 61. How does that apply in this case? I just ask that in this context: this is a matter that was before the court on 21 December, we have moved on by a month and a half since then.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Is there information that has come to the court since then about persons known who were previously unknown?

MR MANNING: The only person who, to my knowledge, is potentially known, who was previously unknown, is Mr Shabir, who was arrested last night, as having taken part. Now, I know that there were other potential participants last night who I imagine are still being assessed by the police. The six currently named defendants in the Birmingham case are those whose names were known to the local authority as being currently involved. But, I do accept there is a broader question.

My Lord may have seen from Hill J's judgment (paragraph 30) that, in December 2022, 71 individuals who had been stopped as part of a police operation in 2020, were written to, to advise them of the proceedings and that Wolverhampton had written to various people in 2021. My Lord, I have informed the court this morning that on 24 January a further group were written to.

The view that the local authority in the Birmingham case, at any rate, have taken is simply because in some cases many years ago somebody was either brought to the attention of police for activities of this kind or were even committed by the court for breach, does not necessarily mean that they are a person whose name is known and who should be joined as a defendant. The reason for that is twofold----

MR JUSTICE FREEDMAN: Just one second. (After a pause) Yes.

MR MANNING: First, people should be allowed, if they have not been involved, or come to the attention of police or the local authority as being involved ,for some years, to go about their business without constantly being named as defendants in legal proceedings – in matters which plainly, as we have seen from Mr Arif this morning, have caused him considerable concern over the past few days since receiving the letter. Adding these people as named defendants with all the consequences of making them parties to legal proceedings would be, in my submission, disproportionate, where there is no current evidence they are engaging in activities of this sort, nor that they have done so other than some years ago.

In relation to the 71 people who were written to in December, and those who were written to in January, I think the latest involvement that could even be alleged was in 2020, which is getting on now for three years ago.

MR JUSTICE FREEDMAN: Is there any assistance from the Just Stop Oil cases, and Extinction Rebellion cases where the courts have had to grapple with the addition of parties?

MR MANNING: My Lord, I am trying to think. May I come back to you on that in a moment? The second matter – while I remember it – that I was going to raise was that it becomes almost impossible logistically to deal with cases of this kind, with potentially hundreds and hundreds of people who have to be named as a defendant and served personally, again, where there is no suggestion that they are currently involved. I am just trying to think of the case law on the Just Stop Oil – my learned friend may know them better than I. I cannot think of any.

MR JUSTICE FREEDMAN: Just let me think about something. (After a pause) I think, if I am not mistaken, there may be a case of Bennathan J who looked through all of this. I certainly dealt with a case about it myself – I do not know if it is reported – involving Just Stop Oil. I am not talking here about any final injunctions, I am only talking about interim injunctions. But I do think that there is a bit of learning in relation to this because this is the application of the fourth principle in *Canada Goose*.

MR MANNING: Yes. Certainly, I do not resist the principle.

MR JUSTICE FREEDMAN: But you are saying it is a question of degree?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: And if it is three years ago then it is too remote, you are saying, to mean that there is an imminent threat?

MR MANNING: Yes, from that person. The *Ineos v Boyd* principles, which were upheld in *Cuadrilla,* for injunctions of this kind being available there had to be an imminent threat of an act which was properly restrained, and we would say in relation to those people we cannot show that. But I am certainly grateful for my Lord's suggestions as to that consideration that has been given, and I will certainly go and carry out further researches on that.

What we would suggest, and have suggested in previous cases, is that as names come to the knowledge of the Authority, as frequently they do during the course of proceedings of this kind, we have made applications to join people to the proceedings, and certainly if people are subject of committal proceedings there is provision in I think Schedule 3, paragraph 3 of the order that where committal proceedings are taken the court will consider whether to join the defendant as a named defendant, and whether to make any further order.

So, I can certainly say that the Authority have been aware of that principle, and have sought to discharge their obligations by naming the defendants they have named, and have considered whether or not it was appropriate to name other people who had previously been involved. If my Lord----

MR JUSTICE FREEDMAN: Just bear with me one moment. (After a pause) The case of Bennathan J that I had in mind, which is not quite what I was recalling, but it is still very relevant to this type of application, is a case called *National Highways v Persons Unknown* [2022] EWHC 1105 (QB) and it involves a named defendant and 132 other named defendants, and the hearing was 4 and 5 May 2022, judgment on 11 May 2022. You will look at that and no doubt tell me whether it is of assistance or not of assistance.

MR MANNING: My Lord, yes, of course.

MR JUSTICE FREEDMAN: (After a pause) Apparently the defendant is in the annex now, and listing is asking whether we want the defendant in at 2 o'clock, which would seem sensible.

MR MANNING: If that is convenient for my Lord.

MR JUSTICE FREEDMAN: Yes. I do not see any reason why we need to go into deal with the whole matter over lunch, rather than interpose it at that convenient moment.

MR MANNING: Yes, I am certainly happy with that.

MR JUSTICE FREEDMAN: Do you agree?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: There is no human rights element of prejudice?

MR MANNING: I do not think so.

MR JUSTICE FREEDMAN: Right. I mean people do have to have a break in order to concentrate.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Yes. Do you want to say anything more in relation to this application?

MR MANNING: I do not think so at this stage, my Lord, unless there is something that would assist.

MR JUSTICE FREEDMAN: No, right, thank you very much, and we will come back to what we are going to do at 2 o'clock.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Mr Singleton?

MR SINGLETON: My Lord, there are a number of procedural issues that arise in the Black Country case, which I have hopefully brought to the fore in my supplemental skeleton. The order of Hill J was not strictly compliant with 'within the time limits'. There are two noted omissions. The first is that what is referred to as the "data analytics" evidence was not produced in time. That has now been done, and my Lord should have I believe it is the sixth statement of Mr Brown, it was filed separately, my Lord will not find it in the bundle.

In short, what I say about that is, it has been done and there is nothing that was not done that would have affected the evidence because this is simply we have looked at our records and this is "how many engagements" – is the phrase used – there has been with the various social media channels. Now that information would have been the same whether it was provided in time or late, and whilst it is a failure, it should not have occurred, I am not seeking to minimise it, it can have no effect on the proceedings. The court has the information to consider with regard to the data analytics evidence.

The second matter, and it is of greater concern, is the writing to previous defendants in the proceedings. It was picked up late – I think it was Thursday – and it has been done, and by first class post has been sent to all the relevant people. Indeed, a similar exercise was undertaken in 2021, and my Lord will have a second loose statement filed on Friday from Mr Adam Sheen, the solicitor with conduct of the case, in which firstly, and quite properly, he apologises for the omissions.

MR JUSTICE FREEDMAN: I cannot remember the statement.

MR SINGLETON: My Lord, can I rehearse the contents for your Lordship?

MR JUSTICE FREEDMAN: Yes, please, but I would like to have another copy of it.

MR SINGLETON: Yes, it was certainly CE filed, and I understand a copy was forwarded to my Lord's clerk. In essence what Mr Sheen says is, first, we are extremely sorry, this is a matter of deep regret. What we have done to put it right is send out letters immediately, but realistically those will not have arrived until today. In respect of one of the Authorities, Dudley Metropolitan Borough Council, at the time of making that statement they were unable to locate the four defendants who they have proceeded against. That said, and it does not form part of the statement, this morning they had an email from the solicitor with conduct of Dudley saying all four were identified, and their operations' manager personally delivered the letters on Saturday of this week. I can arrange for my Lord to receive a copy of that email.

The second point Mr Sheen makes is that this exercise was undertaken in 2022 when they were looking to renew the order. Since the order lapsed there had been no new bodies, nobody in 2022 wished to be added as a party or to attend and, indeed, two also were actively hostile – words to the effect of: "That's all over, I want to get on with my life". So, my Lord, as I say there has been a failure, and we apologise, but again, given that this, in our case, was essentially a repetition of what we had done before, there has been no application or

attendance, or contact from anybody indicating that they wished to be present today, whether to oppose the order, or whether to comment on its appropriateness. The only contact we have had is that email I have shown you.

In the circumstances, I would ask that my Lord say that there has been good service. The witness statement of PC Campbell, which deals with the----

MR JUSTICE FREEDMAN: Which one?

MR SINGLETON: It will be the third, I believe, my Lord. Again, it is something I have touched on in the skeleton. He is quite certain that, for want of a better phrase, the fraternity who engage in this are fully aware of what is going on. In fact, my Lord, Mr Brown's witness statement, which is in the bundle, it is his fourth, makes it clear that the injunction itself has attracted considerable publicity, not simply the steps taken by the claimant, but the local media have picked up on it and have run articles about it and items, so that it is quite widely known about.

PC Campbell's statement, my Lord, appears in our bundle at pages K4 and following, but at K5, paragraph 5, the officer expresses the view that the injunction is now well-known to those affected, and they have already started to seek alternative locations for their events. It is the same statement that confirms that the Boxing Day meeting did not go ahead.

I am not seeking to gloss over those failures, they have been addressed, and indeed enforced within the spirit of the order where there is a like paragraph to that in the Birmingham order, it is page J10, paragraph 7 which is the order of Hill J, and contends we have got the retrospective service authorisation.

MR JUSTICE FREEDMAN: And, I suppose, that one could provide for a liberty to apply without change of circumstance.

MR SINGLETON: Those instructing me are acutely aware of their obligations, not only in relation to the obtaining of injunctions, but of course, they are public authorities and there is the effect, what one might call the ordinary duty of candour, is reinforced here, and if it were to turn out that in Wednesday's post there was something from somebody saying: 'Actually, I wanted to be there' then they will inform the court, even if the individual concerned has not sent anything direct to the court.

My Lord, the question of where we go from here, which is a little inelegantly phrased, begins to become rather like a flow chart, one of the elements in it is: if Supreme Court do X we get if the Supreme Court do Y. But before we get to that, my Lord, can I briefly speak to the form of the draft order that the Black Country Authorities seek?

It differs from the Birmingham order, and that is not a criticism. What we seek is, in effect, an order that is not made final unless somebody wants it to be made final and contest it. The form of order employed is modelled closely on that made by Julian Knowles J in some of the *HS2* litigation. What it does, my Lord, is imposes prohibitions as to service and so forth, but then stays the proceedings. They are to be reviewed annually and the duration has to be specified, but there are provisions at Schedules B and C of that draft, which permit somebody to be joined as a party or, indeed, bring the matter to trial. The attraction of an order in that form is that nobody need prepare for a potential lengthy hearing, not knowing what a defendant might want to raise, but something in the order of two to three days, when it is not necessary. There is clear provision in Schedule C for somebody to activate that so they are not being shut out. The court retains control of the order, although it is strictly *obiter* and one doubts whether it has entirely survived the Court of Appeal in the *Barking and Dagenham* case. One of Nicklin J's concerns at first instance was that in effect they were interim orders over which the court had little control, which could run in perpetuity. This does not fall foul of that. It is an order that can be amended or varied, it is expressly set out that that can be done, and also----

MR JUSTICE FREEDMAN: But I think Nicklin J's concern would not necessarily be allayed by that, because what happens is that it is still for very lengthy periods of time, in circumstances where the usual nature of an interim order is that the interim order is a lead up to a final order.

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: The fact that people keep on looking at the interim order is helpful, but in the end an interim order is no more than an interim order pending a final order.

MR SINGLETON: The way to address that particular mischief, my Lord, is that the order is granted for a period of, let us say, three years as were the original Black Country orders. It is reviewed annually. Of course, anybody who is brought to court in contempt may well wish to seek discharge of the order, so it is regularly within the court's control.

MR JUSTICE FREEDMAN: But actions do not last for three years unless they are very complicated actions, which these are not.

MR SINGLETON: No, my Lord.

MR JUSTICE FREEDMAN: So why should a temporary order be semi-permanent, subject to discharging it?

MR SINGLETON: My Lord, the rationale for that is that this order remains a live thing and therefore the court can amend it, discharge parts of it, add to it. There is, I would submit, a greater degree of control vested in the court when it is looking at an interim order, and of course it will be entirely open for a Judge on a review hearing to say: 'I am not satisfied with this at all. I am going to give some rather strict directions' and have it brought back for a final hearing.

MR JUSTICE FREEDMAN: Is there some law in relation to the duration of interim orders?

MR SINGLETON: Not that I am aware of, my Lord, beyond the sort of general propositions that things should not extend into the mists of time.

MR JUSTICE FREEDMAN: I think it is a bit more specific than that, is it not? Let us just give an example. In relation to invasive orders, like search and seizure orders, the court says that if the particulars of claim are not served----

MR SINGLETON: Within so many days.

MR JUSTICE FREEDMAN: -- within a short period of time, then it might strike out the order because the order is just an interim order, and he is entitled to know what he is meeting. All of that is emphasising that these orders are temporary orders, and should not last longer than is necessary. How is three years consistent with that?

MR SINGLETON: The three years, my Lord, is obviously designed to address the mischief of street racing or car cruising. It is not something that only occurs for a few weeks and then stops. It is something that historically has occurred, and continued to occur until an order is put in place.

MR JUSTICE FREEDMAN: But that is a good reason for a final order, is it not?

MR SINGLETON: The difficulty would then become adding parties. I appreciate obviously if there is a person who is unknown in its broadest sense the defendant may well fall within it and have to apply to be a party and *Gammell* would be a good example of that.

Be that as it may, my Lord, that is the order that we are seeking. But to take a couple of paces back, we have a situation where the Supreme Court may affect matters significantly. We also have, as my Lord has just outlined, a possible need for a final hearing. If all of that applies, my Lord, then I would respectfully submit that what should be done today is this should be treated as effectively the return date on an ordinary interim injunction following without notice relief being granted, and then I think because of the issue with the Supreme Court it might be

appropriate to set a further review hearing and, of course, my Lord, one does not know when their Lordships will deliver judgment. It is being heard this week, 8th and 9th. It was given an expedited hearing, and that much I know, so we would hope that their Lordships would be handing down a judgment by the end of term, and I do note that in the recent – I better check and confirm this but I am reasonably confident – in the Tate Gallery nuisance case, that was, I believe, heard in early December last year and we had judgment last week. I was surprised myself when I looked at it, I think that was the one that took two months, and certainly their Lordships can move with some alacrity, and if they have given something an expedited hearing, they also granted permission to intervene to Liberty, another civil rights body, and the Government and HS2 are both intervening, so it is not a case without widespread interest if I can put it that way, and not simply to just local authorities. Clearly, if HS2 want the matter considered it is going to be much wider than that.

So, insofar as one can gaze into the crystal ball I would certainly hope that by the end of April we would have a judgment and, if not, then we will then provision to say "give notice X days before". First, the Supreme Court is quite good about advance publicity, saying: 'We will be handing down a judgment in the case of *X* a week on Thursday', but those instructing me would be involved earliest. Obviously, it would be a contempt to comment on the content of the judgment, but I do not think contemplating the proposed date of handing down would amount to breach of any embargo.

MR JUSTICE FREEDMAN: Right. I think we ought to break shortly. How much longer have you got on your submissions?

MR SINGLETON: Not a great deal. I was in front of Hill J, Mr Manning was standing up when the music stopped, so he ended up with most of the heavy lifting. There are a few points I think I would like, subject to any comment your Lordship has, to address the issue of spectators, and I need to take instructions on the extent of the power of arrest. At the moment we would apply it to our first two. I know Birmingham do not want an injunction, are not proposing an injunction, a power of arrest, forgive me, that would apply to spectators. That may well meet the mischief of what----

MR JUSTICE FREEDMAN: Are there any matters that you are going to be talking about that will touch or concern, that you are going to be talking about in relation to the substantive obligation, the substantive issues, that are relevant to how the court deals with the particular person who is going to be before the court at 2 o'clock?

MR SINGLETON: I do not believe so, my Lord. He is not our defendant, and I do not think it would be entirely appropriate. I suppose I could get my knitting out and sit at the foot of the guillotine, but I do not think that is either dignified or proper.

MR JUSTICE FREEDMAN: Right. Is there anything that either you or Mr Manning wants to say in advance of 2 o'clock in order that the court is ready to go?

MR MANNING: I do not think so, my Lord. I will take further instructions over the lunch adjournment, I do not know whether I will be able to speak to Mr Shabir before 2 o'clock, but I will try to.

MR JUSTICE FREEDMAN: Yes, it would be useful if you could, obviously telling him that you are not his adviser and that he will be encouraged to have independent legal advice.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Right, I will sit again at 2 o'clock. What would be the format, he would come in with somebody, would he?

MR MANNING: I believe so, yes.

MR SINGLETON: They are normally brought in with an escort officer.

MR JUSTICE FREEDMAN: Yes, without chains.

MR SINGLETON: They normally come through the door in handcuffs, but I have yet to see a Judge fail to direct that the handcuffs should be removed, and that the officer sits next to him.

MR JUSTICE FREEDMAN: Will you remind me about that, that they should be removed.

MR MANNING: Yes, of course.

MR JUSTICE FREEDMAN: Does anybody know anything – well, perhaps enquiries can be made as to what the police view is in relation to him, in case that is relevant to issues about bail.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Thank you very much. I will sit again at 2 o'clock.

(Adjourned for a short time)

MR MANNING: My Lord, you will see that Mr Shabir has now been produced. I have had a brief opportunity to speak to him, and have explained to him that while I cannot advise him, he is entitled to legal advice if he wants it, and he is also entitled to other things including a reasonable time to prepare for any hearing, and that he would be brought before you now in order for this hearing to take place.

My Lord, it is alleged that Mr Shabir breached the injunction granting----

MR JUSTICE FREEDMAN: Can somebody just identify that it is Mr Shabir?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Associate, could you just identify that it is Mr Shabir?

THE ASSOCIATE: What is your name, please?

MR SHABIR: Mohammed (inaudible) Shabir.

THE ASSOCIATE: And your address?

MR SHABIR: (Address given).

MR JUSTICE FREEDMAN: Thank you very much. Do sit down.

MR MANNING: Thank you, my Lord. It is alleged that last night Mr Shabir breached the injunction granted by Hill J on 22 December 2022 by driving a Toyota Yaris, registration number WX51DJY at speeds in excess of 60 miles an hour while overtaking and undertaking a number of vehicles, and then swerving from one lane to another narrowly missing a vehicle in that lane, along the A45 Small Heath Highway, where the speed limit is 40 miles an hour.

My Lord, I understand that Mr Shabir would like to take advantage of seeking legal advice before this matter is dealt with, but doubtless he will be able to tell you what his position is. Certainly, from the City Council's point of view, we would not oppose an adjournment in order for him to be able to do so, and in relation to that on the information I have from West Midlands' Police, Mr Shabir is a man of good character, so to the extent that any arrangements need to be made to secure his future attendance at court it is right that I should inform you that I have no information to suggest that there is any reason why he would not attend.

MR JUSTICE FREEDMAN: And are you saying, Mr Manning, that in those circumstances if the court thought it appropriate you would simply seek that the matter be adjourned, with Mr Shabir being released to a date to be fixed?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: And that the claimant, and we will go into details about it, but that your clients would file the relevant documents by close of business tomorrow?

MR MANNING: Yes, I think what I would ask is that we would file a paper, a document setting out the alleged breaches by close of business tomorrow. I would ask for a little further time to file further evidence and, if at all possible, if we could be given a return date today so that Mr Shabir has a date before he leaves court that he knows he has to come back on. I understand that that may not be possible, but if it were it would be very helpful.

In a case of this kind, Mr Shabir would not be required to file any evidence or response if he did not want to, but it may be appropriate to set a timescale for him to do should he wish to do so.

MR JUSTICE FREEDMAN: And how would he go about obtaining legal advice?

MR MANNING: My Lord, I am told that the City Council could provide him with a list of solicitors who may be able to help him and, depending on his circumstances, he may be entitled to legal aid to defend the proceedings.

MR JUSTICE FREEDMAN: (After a pause) I thought, according to the rules he is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be able without any means test.

MR MANNING: Yes, that is my understanding.

MR JUSTICE FREEDMAN: All right, anything else?

MR MANNING: Not at this stage, my Lord.

MR JUSTICE FREEDMAN: Mr Shabir, do you want to stand up. Can I just explain to you what has happened so far and then you can either comment about it at this stage or you do not have to say anything, but let me just tell you.

The case of the claimant, which is the Birmingham City Council, is that there was a court injunction in relation to car cruising, and it is alleged that you were knowingly in breach of that injunction. The injunction had attached to it a power of arrest, and what happened last night was that you were arrested by the police, kept in custody overnight and brought to court within the 24 hours that you have to be brought to court.

The local authority is intending to seek to commit you for a breach of the court order, that means that there is a contempt application that they want to make before the High Court. At the moment you come before the court without any legal representation. You do not have the benefit of having seen what the allegations are. You are not in a position, without seeing the allegations, to comment upon it, although that does not mean you cannot, and the claimant has to prove its case so that the court is sure that there was a knowing breach of the court's injunction. To that end there were a lot of protections that are made available to you, including that you are entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid, which may be available without any means test.

In a case such as this it is sometimes the case that defendants are kept in custody until the case is heard. It is sometimes the case that the defendant is put on bail and has to attend and give up the bail. But in this case the view of the local authority is that it is content that you should be released from custody, and that there should be a date fixed for the committal, with directions in relation to it so that the court can consider it, but not considering it in the current circumstances where you are in custody pursuant to the power of arrest. Do you understand what I have been saying?

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: I take it that you want to have an opportunity to----

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: -- to have legal representation and that would enable you, if you thought right, to challenge the facts, to challenge the law, to challenge the principles, anything, but with the benefit of legal representation. I take it that you are understanding everything that is being said in court, are you?

MR SHABIR: I am trying, sir.

MR JUSTICE FREEDMAN: It is not a linguistic difficulty, it is a difficulty about legal talk, is it?

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: But do you understand the gist of what I am saying? Do you get the broad idea?

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: I am not asking you to say anything because it is important that it is for the prosecution to prove the case, not for you, but is there anything else that you want to say at the moment?

MR SHABIR: No.

MR JUSTICE FREEDMAN: You do not have to tell me, but the local authority is offering to give you a list of solicitors, you would not have to choose from that list, you may have a solicitor that you know, or that friends know, who would be able to help. That is for another time, is it? You would not know which solicitor to go to, is that right? Or have you got some ideas?

MR SHABIR: I'm afraid not (inaudible) I can't afford.

MR JUSTICE FREEDMAN: Yes. I am wondering about time for coming back in relation to this matter. The first point is that the local authority will make the application in which they state the relevant facts, and all the matters that they rely upon, and that will be required to be served

by the end of tomorrow, and then there will be some evidence to support that. The evidence in support is not going to be very extensive, but I would have thought it obviously has to be this week.

MR MANNING: Yes, we have one statement, but my instructions are that there are other officers who will be giving statements.

MR JUSTICE FREEDMAN: (To Mr Shabir) Do you want to sit down for the moment.

MR MANNING: I was going to ask for seven days to do that, but it is a matter for my Lord.

MR JUSTICE FREEDMAN: I think that the evidence should be ready by the end of Thursday, is that achievable?

MR MANNING: May I just have a moment?

MR JUSTICE FREEDMAN: Yes.

MR MANNING: (After a pause) What I have been told is that there are other sources of CCTV evidence that the police need to secure, and one is from the petrol station which is just by where the incident occurred, which is not in the possession of the police at this stage. There is also potentially other video evidence that they would like to produce, and they are not going to be in a position to do that by Thursday of this week. In fact, what the officer was saying was that he thought he would probably need 10 days to be able to do that, which was even more than the seven that I had originally suggested. But those are my instructions.

In my submission there is good reason why the claimant should be entitled to try and find that evidence and serve it on the defence.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: And one would have thought that Mr Shabir would be unlikely to be able to get legal representation and legal aid in place within the next 10 days in any event, so that would be my application, I would seek until the 16th, which would be Thursday of next week.

MR JUSTICE FREEDMAN: Mr Shabir, it is difficult for you to contribute to this discussion, but I am thinking of giving a longer time than until Thursday. You will have a detailed application by the end of tomorrow, and then the evidence will follow. I think what I am going to order is the following: I am going to order, first, the statements of facts with the contempt application should be by Tuesday, 4.30 p.m. on 7 February, and then I am going to allow seven days from then, until Tuesday, 4.30 p.m. on 14 February for the evidence. I am going to order that there be permission to apply on any person's part either to reduce that time, or to extend that time, right? So that means that if your solicitors would want it to be faster than that they can come before me on 24 hours' notice to make that application.

I could then direct that there be a certain period of time from that for a response, with liberty to apply again, or I could have a further directions hearing after the evidence has been received, and Mr Shabir is represented.

MR MANNING: Yes, I think that----

MR JUSTICE FREEDMAN: I would like to give a generous amount of time.

MR MANNING: Yes, I do not object to that at all. From the claimant's point of view it would be preferable to have fewer hearings than more.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: I am not sure that Mr Shabir can be required to----

MR JUSTICE FREEDMAN: No, he would not be, it would just be that he has an opportunity to give evidence.

MR MANNING: Oh, I see. I think that would be our preference.

MR JUSTICE FREEDMAN: It could be, on another analysis, that it is simply said that the case is adjourned to a date to be fixed, and that there is a direction that in the event that evidence is relied upon by Mr Shabir that that should be not less than seven days before the hearing.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Are there any precedents in relation to this, any other cases that have been before this court.

MR MANNING: I am sure that there are.

MR JUSTICE FREEDMAN: I think what I am going to do is this: Mr Shabir, you are released from the custody part, but I am going to be fixing now the arrangements for the return day. I am going to go out and make one or two enquiries about what the court could do, so will you stay in court while I fix all of this. Is there anything that you want to say about the timings?

MR SHABIR: I do need the more time.

MR JUSTICE FREEDMAN: The more time?

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: All right, do sit down.

MR MANNING: I wonder, before my Lord, rises, if Mr Shabir has any holidays booked, or hospital appointments or anything of that sort, it might help----

MR SHABIR: I have no holidays booked, or anything.

MR JUSTICE FREEDMAN: Or other important commitments?

MR SHABIR: No.

MR JUSTICE FREEDMAN: Right, I will come back shortly.

(Short break)

MR MANNING: (Recording begins): . . . and a copy of this order and power of arrest. So, what I was proposing to do was include, I think it is necessary to include a copy of the order and power of arrest with the formal pleading that will be served tomorrow.

MR JUSTICE FREEDMAN: And the copy of the claimant's application or supporting documents.

MR MANNING: Those can be served in hard copy, obviously they are also available online if Mr Shabir would prefer, but we can, I am sure, produce a file of those documents to be served on him----

MR JUSTICE FREEDMAN: That makes sense because----

MR MANNING: -- at the same time.

MR JUSTICE FREEDMAN: -- he and his solicitors are entitled to have all relevant information, which includes how the order was ever made.

MR MANNING: Yes. Yes, I am happy to do that, and I am sure----

MR JUSTICE FREEDMAN: And a copy of the order and the power of arrest.

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: There is a proviso relating to copies of DVD evidence relied on but, in fact, at this stage, no DVD evidence has been relied on, and we have also included the power to redact names and addresses of individual witnesses, obviously not the professional witnesses, but there are one or two neighbours and civilians who have given evidence.

MR JUSTICE FREEDMAN: Right. And so that would be?

MR MANNING: Those would be the witness statements between pages C160 and C182, there are a series of short statements – in fact I think it is C159 and C182, I read across incorrectly.

MR JUSTICE FREEDMAN: C159, did you say?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: It then says the court will consider whether to join the defendant, I presume as a named defendant.

MR MANNING: Yes, I would have thought that he should be joined.

MR JUSTICE FREEDMAN: Yes. I hope somebody is taking a note of this on your side, or counsel, because I am going to require that all this be put into the form of an order.

MR MANNING: My Lord, yes. Does your Lordship require a written application to join him as a defendant, or would my oral application this afternoon be adequate? I suppose Mr Shabir's legal representatives might want to consider it and make representations as to whether he should be joined. It seemed to me to be fairly inevitable, but I suppose----

MR JUSTICE FREEDMAN: Let us park that about what stage the joinder should take place, because I do have in mind having a directions' hearing after this, but at the moment the reason why paragraph 2 was very important is so that there is a level playing field where Mr Shabir knows, or his solicitors know, what the nature of the case is, within which the power of arrest is said to have arisen.

The next thing is that I would direct that on your side you serve a notice of application by 4.30 p.m. on Tuesday, 7 February. You were saying the reason why you could not do it by Thursday was because some of the written evidence is outside the police control, for example, CCTV in a petrol station – is that right?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: So, I will direct that the written evidence in support to be given by affidavits or affirmations.

MR MANNING: My Lord, as to that, police statements are normally in section 9 format, which contains a clear statement as to the knowledge of the consequences of not telling the truth in a witness statement and are clearly signed. On occasions the court has given permission for statements in section 9 format to be used in committal proceedings where the officer is intending to attend court and give oral evidence in any event. I wondered whether my Lord might be willing to permit the use of section 9 statements rather than affidavits.

MR JUSTICE FREEDMAN: The witness statements now contain a statement that is quite similar to the section 9 statement about being aware of the consequences of perjury.

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: And the starting point for contempt, because of the nature of that jurisdiction, is that one has affidavits or affirmations.

MR MANNING: I understand that is the normal rule.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: In certain cases of this kind the court is prepared to dispense with the requirement for affidavits in relation to professional witnesses such as police officers who are signing their names under section 9 statements, and are likely to be attending to give evidence----

MR JUSTICE FREEDMAN: I am not going to dispense with it because the wording of the provision is that it must be supported by written evidence given by affidavit or affirmation, so there would be certain exceptional circumstances where an application could be made to dispense with it, but with such a strong starting point I do not see why, in the circumstances of this case, to impress the solemnity on the witnesses, the evidence should be anything other than by affidavit of affirmation, and that is by 4.30 p.m. on Tuesday, 14 February 2023. Can we just go back to what is going to be served by 4.30 p.m. tomorrow?

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: We have (i) the notice of application.

MR MANNING: Yes, my Lord.

MR JUSTICE FREEDMAN: (ii) the material at A16 at paragraph 2----

MR MANNING: Yes, my Lord.

MR JUSTICE FREEDMAN: -- of Schedule 3 to the order of Hill J. (iii) an application to join the defendant to the proceedings as a named defendant, and then the order today ought to be served as well by 4.30 p.m. tomorrow.

That order will say that I have heard counsel for the claimant and I have heard the defendant in person, and it will remind the defendant, it will remind Mr Shabir, that he has the right to be legally represented in contempt proceedings, that he is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test, that he is entitled to a reasonable time to prepare for the hearing, and that he is entitled, but not obliged, to give written and oral evidence in his defence, and that he has the right to remain silent, and to decline to answer any question the answer to which may incriminate him. It will also say that Mr Shabir was informed that he has the right to obtain legal advice and representation, and that he has indicated that he wishes to avail himself of that right, and those will be, I think, a preamble or recitals to the order.

My own provisional view about this is that the order ought to say no more in relation to the timetable for Mr Shabir to answer these matters, but that there ought to be a directions' hearing of an hour, which would be in the week commencing Monday, 20 February, and in that hearing, and it could be a one hour hearing – I will still be in Birmingham at that point in time – there will be consideration of whether Mr Shabir should be joined as a defendant, and consideration of what order, if any, should be made as regards any evidence in response, and typically that might provide that if so advised, but without any obligation to do so, he files and

serves written evidence in response by a certain time, but it would make clear that he was under no obligation to respond, and that his failure to do so would not affect his entitlement to give written and oral evidence in his defence at trial.

The court would also want to see in good time the evidence of the claimant in relation to the matter, and that there would also be then, fixed on that hearing, the time for the hearing of the contempt application, with the time estimate, etc. and that the costs will be in the contempt application, or costs reserved is probably best at the moment.

MR MANNING: Yes, probably.

MR JUSTICE FREEDMAN: If there are any developments in the meantime as regards the Supreme Court case, that will also give an opportunity for reflection at that hearing, which is another of the reasons why I am proposing to do it that way. But, above all, the reason why I am proposing to do it this way is so that we have an even playing field, because at the moment Mr Shabir comes in obviously looking at this with some concern, and without advice, and by this stage he will have received the documents, hopefully he will have legal advisers and he will be able to proceed from there?

MR MANNING: My Lord, yes. My Lord, I do have a list of solicitors that I can give Mr Shabir.

MR JUSTICE FREEDMAN: Yes. Is this from the court?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: So, Mr Shabir needs to know this. You will be provided with a list of solicitors. There is no advice from the court, or recommendation from the court, the choice has to be, in the end, your choice. If you were dissatisfied with a lawyer that is not a reflection on the court, the court is not assuming some duty to you, and so you do not have to use that list, if you find that there are other people around but I believe they may have a franchise about from the legal aid. This is not a criminal case, it is a civil case but these are the sort of people who can help. Is that all right?

MR MANNING: May I give that to Mr Shabir now?

MR JUSTICE FREEDMAN: Yes. Mr Shabir, do sit down. Can I just say to you, what I have been trying to do, through what must sound quite complicated to you, is I am trying to make sure that you have all of the relevant documents, and you will have a lot that will be provided by tomorrow. You will have the order from today, and the order must also include liberty to apply to discharge and vary, Mr Manning. It will then contain a requirement that the claimant's evidence has to come by Tuesday of next week.

I am not putting in any requirements in relation to your evidence at this stage for two reasons. First, because I am going to organise that, without having a full hearing, we will have a further directions hearing at which your solicitor, barrister, or whatever it is, can attend and we can see where we have got up to and what the lie of the land is from hereon. Then, there may be a direction that if you are going to serve evidence you are encouraged, if advised, to provide some evidence by a certain time, but it will also say that in this sort of case whether you do give that evidence or you do not, it does not affect your entitlement to come to court and give written and oral evidence at the full hearing. Do you have any questions arising out of that?

MR SHABIR: (No audible response)

MR JUSTICE FREEDMAN: Right. And the order will also say that Mr Shabir was released from custody and that there would be a hearing that he or his solicitors would be required to attend, but it is not on the basis of bail. Is there anything else that you think we ought to cover? There may be things that occur to you and Mr Singleton – well, not necessarily to Mr Singleton but to you between now and the drafting of the order.

MR MANNING: I would propose to include a recital that Mr Shabir was provided with a list of solicitors who may be able to assist, but without any recommendation being made. But aside from that----

MR JUSTICE FREEDMAN: Can I see that list?

MR MANNING: Yes, of course. (Same handed)

MR JUSTICE FREEDMAN: It is not that I am going to contribute to it, it is just that I want to have sight of everything that is passing. (After a pause) Yes, thank you.

Now, Mr Shabir, I do not want you to mention the address in open court, but will the local authority have your address to be able to serve you with the documents tomorrow?

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: It may be sensible for you just to come to some arrangement with them as to how you would receive the documents if that would be easier for you, but I would rather it happened in whatever is the easiest way for you. Do sit down.

MR MANNING: My Lord, I believe that we have the address, but we will check with Mr Shabir that it is correct.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: And obviously if there are other means of service that he would prefer we can discuss that as well.

MR JUSTICE FREEDMAN: Yes. Do you think that is the right order about him not being added as a defendant until there is an application, so then it is done on notice?

MR MANNING: I think, my Lord, that he and/or his legal advisers ought to have the opportunity to consider that, and I do not think he is prejudiced, and I do not think the claimant is prejudiced, by that matter being held over to the next hearing, so I am content with that.

MR JUSTICE FREEDMAN: Is there anything else that we need to do? Mr Shabir, what we are doing at the moment is that the order that was made by the Judge in December, there is consideration at the moment as to whether that order continues. Now, you are very welcome to stay and hear it, but there is no reason why you should, although it may be that one of the things that your solicitors might be asking for is they might be asking for some transcripts, I do not know.

MR MANNING: I was going to suggest, my Lord, that with the documents served tomorrow, we should include a transcript of the hearing today.

MR JUSTICE FREEDMAN: That is very good idea.

MR MANNING: The decision, and of today's discussion.

MR JUSTICE FREEDMAN: Including the discussion, that is an excellent idea, and that would be very helpful to you, would it not?

MR MANNING: Yes.

MR JUSTICE FREEDMAN: What we are trying to do is we are trying to have as many protections for you as possible.

MR SHABIR: (Not near to a microphone) When you state that the court is going to be continuing with regard of the order that's in place, do you refer to how long it's going to be in place for, if it's going to come to an end, or what do you mean by that?

MR JUSTICE FREEDMAN: What I mean by that is that there is an order that was made by Hill J----

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: -- in December and the court is asked now to----

MR SHABIR: Remove that completely.

MR JUSTICE FREEDMAN: -- review it.

MR SHABIR: Oh, review, okay?

MR JUSTICE FREEDMAN: Yes. And at the moment there is nobody here to contest that order, so, in theory you could come and contest it now----

MR SHABIR: No.

MR JUSTICE FREEDMAN: -- it is up to you, but another possibility is that your solicitors may want to contest the order, and that does not have to be done today.

MR SHABIR: Yes.

MR JUSTICE FREEDMAN: It can be done at another time. In a perfect world you would be here with the solicitors and they would stay here and be objecting, but it may be that – I mean if you feel that you can contribute yourself to it, but it sounds a bit----

MR SHABIR: It's (inaudible).

MR JUSTICE FREEDMAN: Yes. Have I missed anything?

MR MANNING: I do not think so, my Lord. Subject to what my Lord decided to do today in relation to the substantive matters, it might be appropriate to warn Mr Shabir that at the present time the injunction remains in force, and he should comply with it, but obviously it depends slightly on what course my Lord sees fit to adopt today in relation to it.

MR JUSTICE FREEDMAN: Mr Shabir, there is an order in place in this case that was ordered by Hill J. I am reviewing that order, but for the moment until such time as the order is in any way changed, you must assume that that order remains in full force and effect, and therefore I am saying nothing about what has happened up to now, whether there has been a breach or there has not been a breach, but I am just saying that you should not think that because you are leaving the court now that that order has somehow ceased. It remains there and you and your solicitors will be, no doubt, looking at that order again – I say "again", you will be looking at the order, I do not know whether you have looked at it before. Anything else?

MR MANNING: My Lord, I do not think so, no.

MR JUSTICE FREEDMAN: Mr Singleton?

MR SINGLETON: Before the short adjournment I outlined some points on the nature of the order and procedural aspects which had not been fully complied with. My Lord, I think I just touched on the issue of spectators.

MR JUSTICE FREEDMAN: You are now moving on to your speech?

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: It is up to Mr Shabir, is it not, as to whether Mr Shabir stays here or leaves?

MR SINGLETON: Oh, of course, my Lord, it is a public court.

MR JUSTICE FREEDMAN: (To Mr Shabir) It is a public court. You are no longer required to be here but you will be required, when you receive the order, to do the things that are required by the order, and you are required at the moment to observe the order of Hill J.

MR SHABIR: Will this be part of the transcript that I will be receiving?

MR JUSTICE FREEDMAN: I think it should be.

MR MANNING: My Lord, yes. I mean obviously, I do not think it will be available tomorrow.

MR JUSTICE FREEDMAN: No, it will not be available tomorrow.

MR MANNING: But we will certainly ask for a transcript.

MR JUSTICE FREEDMAN: We will have a transcript of the whole of today.

MR SHABIR: All of it, yes?

MR JUSTICE FREEDMAN: Yes. And if it goes over to another day, for example, make sure there is a transcript of that as well. Good.

MR SHABIR: Thank you.

MR JUSTICE FREEDMAN: Thank you. So, stay or go to the back, or whatever, but you are released from custody.

UNKNOWN SPEAKER (1): My Lord, he has to go back to the van and I have to make a phone call to get him released out of our custody.

MR JUSTICE FREEDMAN: Oh, is that how it works?

UNKNOWN SPEAKER: Yes, yes.

MR SHABIR: Yes.

UNKNOWN SPEAKER (1): And I'll need a date as well, if you've got one, for his next hearing so I can put it on my paperwork.

MR JUSTICE FREEDMAN: I do not have a date.

THE ASSOCIATE: Put it "date to be fixed".

MR JUSTICE FREEDMAN: Date to be fixed.

UNKNOWN SPEAKER (1): Yes, that'll do.

MR JUSTICE FREEDMAN: And you take him back to?

UNKNOWN SPEAKER (1): His property is on our van, so we've got to take him back to the van, all we do is phone the police to make sure there's no more charges and then we can release him.

MR JUSTICE FREEDMAN: You are not taking him there with any physical restraint?

UNKNOWN SPEAKER (1): I have got to put him back in handcuffs because he is back in custody. He's still in our custody until we release him.

MR JUSTICE FREEDMAN: Can I ask you not to?

UNKNOWN SPEAKER (1): No. It's a public area, he's still in GEOAmey hearing until I phone up----

UNKNOWN SPEAKER (2) (Not near to microphone): We have to have authorisation from the police that there are no other matters, orders, because if we just release him there could be other matters.

UNKNOWN SPEAKER (1): I've still got to put him in cuffs and double cuff him down to the van.

UNKNOWN SPEAKER (2): He won't leave this building. He's staying here----

UNKNOWN SPEAKER (1): Yes.

UNKNOWN SPEAKER (2): – just until we've got the say so that he can be released from the handcuffs. We can't release him from them.

MR MANNING: My Lord, this is something that arises fairly regularly. As I understand it, the escort officers cannot release someone, a subject, in accordance with the court's order, until they confirm with the police that there are no outstanding warrants or other matters for them to be----

MR JUSTICE FREEDMAN: I am content about that, but the question is does that mean that he has to be restrained?

MR MANNING: My understanding is that that is a matter for the escort officers to decide. To be perfectly honest with my Lord, I have never quite got to the bottom of this, but it is what the courts are regularly told by the escort officers. I am certainly not saying that they are wrong about that.

MR SINGLETON: My Lord, there is little I can contribute above and beyond what my learned friend has said. It may be appropriate if the escort officer simply takes Mr Shabir to one of the rooms where people are held before being produced in court. I can see no reason there why he would need to be secured. They can make their enquiries, and once they are satisfied or otherwise let him go or keep him.

UNKNOWN SPEAKER (2): My Lord, we won't be able to leave this room without him being handcuffed because it's not a secure environment so we've lost control if he's not----

MR JUSTICE FREEDMAN: I follow. I follow. Thank you for telling me that. I am going to rise for five minutes, and I will come straight back.

(Short break)

MR JUSTICE FREEDMAN: I am grateful to the officers for their assistance, and I appreciate that you have got rules to follow in the way in which you say. The issue here is that I have, myself, said that Mr Shabir is released from custody, so what I want to do now is I want to find

a practical way of dealing with this in a way that respects Mr Shabir and respects your legitimate concerns. Now, there are two ways of dealing with this as far as I am concerned. One is that Mr Shabir voluntarily stays in court while the relevant things are brought to him in court, if that can be done, and sign off the papers in court, not involving a restraint. If that is not possible, then you have obviously got your rules to follow, but I would want a supervisor or somebody from whom you take instructions to come before me and explain the position, or find some other way in which we can resolve all of this.

UNKNOWN SPEAKER (1): My Lord, if I could have him cuffed to a legal room on this floor my colleagues can make a phone call to our bosses and the police----

MR JUSTICE FREEDMAN: Yes.

UNKNOWN SPEAKER (1): -- okay the release, and then we can release him from this floor and he can make his own way then.

MR JUSTICE FREEDMAN: Yes.

UNKNOWN SPEAKER (1): But I just need those phone calls to cover----

MR JUSTICE FREEDMAN: You make the phone calls, take as long as you like. Mr Kapir----

MR SHABIR: Shabir.

MR JUSTICE FREEDMAN: Mr Shabir, sorry. I am sorry, it is my fault.

MR SHABIR: No worries.

MR JUSTICE FREEDMAN: I should know the name, there is a particular reason why I do know the name, and therefore I should not be making a mistake. Mr Shabir, I am sure, is not in a rush, particularly in circumstances where I am showing respect to his rights.

UNKNOWN SPEAKER (1): I mean the phone calls will only be about ten minutes, quarter of an hour, my Lord.

UNKNOWN SPEAKER (2): She's actually making them.

MR JUSTICE FREEDMAN: That is fine. Is that all right, Mr Shabir?

MR SHABIR: Thank you, Sir.

MR JUSTICE FREEDMAN: I would like to thank the officers for their conscientiousness, and for helping with this process.

UNKNOWN SPEAKER (1): It's no problem, my Lord.

MR JUSTICE FREEDMAN: I am going to continue the hearing now and then we will----

UNKNOWN SPEAKER (1): Does he need to be here for this?

MR JUSTICE FREEDMAN: He does need to be here in the sense that he needs to be here rather than going out under a restraint. As soon as you are ready, as soon as the supervisor is coming

in, or you have found the other method, then I will interrupt this so that you can then be released. There is someone on the way, is that right?

UNKNOWN SPEAKER (2): Someone is making the call as we speak.

MR JUSTICE FREEDMAN: Great, thank you very much. Yes.

MR SINGLETON: My Lord, I think I had broken off my submissions having reached the issue of spectators.

MR JUSTICE FREEDMAN: Yes.

MR SINGLETON: And what I have said, my Lord, is that we do seek an extension as far as spectators. I heard what my Lord said to my learned friend and it may be that the risk can be mitigated by simply removing spectators from the ambit of the power of arrest as Birmingham have done in their case.

It is not, my Lord, however, a speculative matter. I touched on it in the supplemental skeleton argument, it is at paragraph 18: "The involvement of spectators is a major feature of 'car cruising'----"

MR JUSTICE FREEDMAN: Sorry, forgive me, I am just looking at where I put your skeleton.

MR SINGLETON: It is paragraph 18. They ". . . encourage the drivers either actively by cheering . . ." waving ". . . or passively by providing an audience." Secondly, spectators put themselves in considerable danger and, my Lord, the two matters to which we have referred in terms of fatalities or serious injury are the Stevenage incident, where a car, as described (inaudible – coughing) skidded – and the reference to the paragraphs there are to PC Campbell's statement – skidded and injured 14 spectators. Similarly, the Oldbury fatalities, which prompted this application to be made on an urgent basis, were both young people spectating at the event where a car lost control and, as I understand it, clipped the kerb, left the road and hit spectators.

It may not always have been perfectly easy to distinguish between the man walking his dog across the retail park car park, seeing something going on and goes and looks further. But, as Mr Manning said, that is evidential. Those standing there cheering people on are clearly spectating and the police are likely to observe before they do anything. There is no point coming roaring up with blue lights on and people running away if they have not seen what they were looking at.

MR JUSTICE FREEDMAN: So if you do not have a power of arrest, which you concede, and there is a spectator there, what happens next as regards enforcement of the injunction?

MR SINGLETON: My Lord, if they can be identified, of course, process can be issued, an application to commit.

MR JUSTICE FREEDMAN: That must be quite rare that they could be identified?

MR SINGLETON: Yes, we would much prefer a power of arrest, I make no bones about that.

MR JUSTICE FREEDMAN: Yes, but if you do not have a power of arrest, as you have conceded a power of arrest, where is it going to lead to, unless it happens to be the policeman's neighbour?

MR SINGLETON: Yes, I mean the power of arrest would undoubtedly be of considerable attraction to any such order.

MR JUSTICE FREEDMAN: But you are concerned about the power of arrest because of the reasons that I have given.

MR SINGLETON: My Lord, yes. There is not a perfect solution, but this is aimed at a particular sort of behaviour. In the case of the Black Country application, we have excluded a significant part of daylight hours from the operation of the order, because ordinary members of the public are entitled to use the highway, and one factor is it extends to obstructive driving. A funeral cortège, and this was a concern expressed in 2015/16, may well cause obstruction because they drive slowly but there are precious few funerals before 9 am, and after 3.30, so that is why there is that gap.

Similarly, a lawful protest, and one has been mooted, I do not think it took place, by the taxi drivers in Wolverhampton who were objecting to licensing terms and conditions, they wanted to drive around the ring road to draw attention. Again, it might well be a nuisance but it would be disproportionate to restrain at this stage. If they were doing it every day we might look again at the matter. The restriction we have is from essentially late afternoon to school hours, for want of a better phrase, in the morning. People gathering on retail parks outside of those hours will not be caught in this if they are going shopping. If they are gathering up, revving their engines and racing 'round the car parks, and others are going there because they know that will, or may, happen, then that provision is appropriate, and the power of arrest may well be necessary but I understand and accept my Lord's concerns.

The point I wish to make, my Lord, is it is not analogous to saying that there has been trouble at Wolverhampton Wanderers' football ground so we are not letting anybody in this particular stand.

UNKNOWN SPEAKER (1): Excuse me, my Lord?

MR JUSTICE FREEDMAN: Yes.

UNKNOWN SPEAKER (1): The relevant information has been okayed. He has been released from custody from us, so you he is free to go now.

MR JUSTICE FREEDMAN: You are free to go. Do you want him to sign a form?

UNKNOWN SPEAKER (2): If you want to come down and collect your property.

UNKNOWN SPEAKER (1): He just needs to come to the vehicle to get his property, my Lord.

MR JUSTICE FREEDMAN: Right.

UNKNOWN SPEAKER (2): And then he won't be in handcuffs or anything, just walk with us and collect your property, and that's it.

MR JUSTICE FREEDMAN: That is fine. Can I thank you very much for doing that?

UNKNOWN SPEAKER (2): Yes, no problem. Thank you for understanding.

MR SHABIR: Thank you.

UNKNOWN SPEAKER (1): Thank you, my Lord.

(Mr Shabir left the hearing)

MR SINGLETON: At least that aspect (inaudible) the subject's liberty has been dealt with. I think, with respect, my Lord, both myself and Mr Manning, and the , have concerns about this where, if I would have written it down: "A High Court Judge ordered my release and they wouldn't let me go" I think the next sentence might contain the word "Tipstaff". It is bizarre, but we are where we are, I suppose, and I think it has been resolved satisfactorily.

MR JUSTICE FREEDMAN: I was very grateful for the co-operation of the officers. They did not stand on their dignity and they were willing to be flexible.

MR SINGLETON: And, although it may not have been apparent to my Lord, Mr Manning deserves some congratulation because it was his mobile phone that was lent so the relevant calls to be made.

MR JUSTICE FREEDMAN: I am sure he is a very selfless person, but that does not sound to me to be an extraordinary act. (Laughter).

MR SINGLETON: It may be he is on an unlimited minutes contract!

MR JUSTICE FREEDMAN: Yes, all right.

MR SINGLETON: So, my Lord, on the issue of spectators, there is not a great deal I can add to what has been said, and it may be that that is an issue that has to go off to another day, probably whether or not there should be a full hearing of the order, or at a full hearing, a final hearing.

MR JUSTICE FREEDMAN: Sorry, what – the issue of spectators?

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: Yes, it might have to be dealt with then.

MR SINGLETON: Hill J deliberately excluded spectators because of the potential difficulties.

MR JUSTICE FREEDMAN: The thing is that if you have got a power of arrest, and it deals with arresting the people who were in the cars, then that gives the scope to the police to bring the thing to an end, does it not?

MR SINGLETON: It gives some scope, it is not a complete protection because – and this appears in, I think, PC Campbell's first statement – what is not unusual is when the police arrive at an event, and typically events start, although do not always conclude on large car parks, large supermarkets and so forth, when police arrive they are often spotted on the way in and everybody is told to scatter, and the drivers drive off at speed and then later get a text message saying: 'Well, we've been to Tesco, we'll go to Sainsbury's now' sort of thing. But the spectators, of course, do not have those options, unless they are already in the cars with engines running. And they too may well get a later text, but they are delayed in their departure. Whereas the drivers, who I fully accept, in terms of moral responsibility (inaudible) are the prime targets. Of course, it will not be unusual for some of the spectators to have driven at other events, or perhaps be driving later in the evening. But, as I was saying, Hill J, was not content with the time we had allowed back in December, in fact it was an urgent application. The urgency, to some extent, has been addressed because this hearing has received widespread notice and publicity.

My Lord asked my learned friend whether he was aware of any further incidents where people had been injured since the order of Hill J. My instructing solicitor located an injury report. Two spectators were injured in Plymouth, which is not covered by either of these orders, but apparently there may well be an order in force down there, on 29th of this month, car cruising. So it is not the publicity about the Birmingham orders that has stopped everything, it is still going on and, indeed, in fairness to PC Campbell he anticipated it would still be going on, the phrase he uses is "massive decline" and "far fewer".

Similarly, my Lord mentioned the decision of Bennathan J in the *National Highways* case.

MR JUSTICE FREEDMAN: Yes.

MR SINGLETON: I have read it at some speed. It does not provide any particular guidance on the issue of the unnamed becoming named. There were 133 unnamed defendants, appearing on the transcript, and at paragraph 5 Bennathan J said this:

> "The Claimant sought summary judgment against 133 named Defendants. Those named Defendants have all been arrested by various police forces in operations connected to IB . . ."

It is Insulate Britain rather than just 'Stop Oil', but different head on the same Hydra, I suspect.

> ". . . IB protests, whereafter their details were notified to the Claimant under disclosure provisions of the interim injunctions . . ."

So what has happened there is there were a number of interim injunctions, they contained a provision saying that when somebody was – one assumes because I only have a draft order – identified or arrested, that the National Highways Agency was to be notified and they then took the step to join them. As with Mr Shabir, that was a post-arrest joinder, and so at present until somebody is identified, either following arrest or, let us say, on good intelligence, if somebody like PC Campbell is present, and whilst he does not effect an arrest of somebody but he knows who they are and informs us, we will then consider whether they should be added or not.

My Lord, I opened my submissions before lunch by observing the main issue before the court is where we go from here, and I think, with respect, my Lord has identified a number of options. The first was we simply adjourn judgment until next week pending the Supreme Court----

MR JUSTICE FREEDMAN: Just bear with me one moment.

MR SINGLETON: Of course.

MR JUSTICE FREEDMAN: (After a pause) Yes, what happened in the Just Stop Oil cases? There was a case before Yip J, and then the case came back to me on a return date, and a disclosure order was granted against the Police, that they had to disclose the name and address of people who had been arrested by their officers as a result of the protests on the roads, and that then led to the provision of names and that then led to them being joined, which is quite different from----

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: -- the historic position that Mr Manning was distinguishing, something that happened in 2020 saying: 'You were bad then so you are bad now'.

MR SINGLETON: Yes, and broadly speaking, given that our injunction elapsed over two years ago, and indeed there have not been any abusive breaches of that kind. The Black Country cases are much closer to the situation Mr Manning outlined. I should also add, in fairness to the police, that they have been extremely co-operative in providing information. The only areas where they have expressed reticence are where there are ongoing serious criminal investigations, for example, the November crash in Oldbury. It strikes me, my Lord, that that would be a very difficult submission to pursue on behalf of the local authority when there are charges such as causing death by dangerous driving, and then there would be consequential risks to people's liberty.

Similarly, in the *Tesco* case, which my Lord will have seen referred to, very briefly: a very large car park, 24 hours Tesco, the only day it is closed is Christmas Day. Christmas Day a group of youths in cars go tearing around the car park, down into the underground car park and back out again. One of them decides to sit his girlfriend on the bonnet, brakes sharply and she, of course, does not stop and hits a concrete dividing pillar – horrendous.

We did not bring proceedings against that driver, nor did we seek his name, it was subsequently in the papers, but he received a five or six year custodial sentence. I think if, in that sort of case, we had said: "Give us the names" they would say: "No, until we have made charging decisions, at which point we will resist it on the basis you might interfere with the criminal trial.

MR JUSTICE FREEDMAN: Well, that has been a valuable discussion, but I think we understand each other now. So you will move now to something else?

MR SINGLETON: Yes, I had covered spectators. The question is where we go from here.

MR JUSTICE FREEDMAN: Yes.

MR SINGLETON: *Quo vadis* I suppose if my Latin is still functional.

MR JUSTICE FREEDMAN: Well, according to the *Barking* case it is a particularly important area not to speak Latin.

MR SINGLETON: Yes. I am resisting the temptation to go to the Greek and say something would come nearer. But, my Lord, there are extremes to make, in sort of chronological order, a series of possibilities. There is a short adjournment and my Lord gives judgment after the hearing of the *Barking* case, it is now the *Wolverhampton* case in the Supreme Court. That is

an avenue I would counsel against and submit is inappropriate. My Lord will have read many decisions, some by a single Judge, some by three or five Judge courts where one of the Judges says: 'I was not very impressed with the submissions of Mr X on the case of *Smith v Jones*, and I questioned him and was not particularly satisfied. However, having reviewed *Smith v Jones*, and perhaps more certainly, *Bloggs v Brown*, I can see that I was incorrect, and Mr Smith was right.

Also, it is often a feature of multi-Judge panels that if there is a split in the court's thinking, one member may speak quite forcefully for a proposition and one member may speak quite forcefully against it. In fact, Mr Manning and I have had that experience in the Court of Appeal when we were on opposite sides of the case. One member of the court was very hostile to my case, and another was very hostile to Mr Manning's, and the third one sat there sphinx-like. So the danger there is one might seize on what appears to be, first of all, a powerful objection but when a decision is made actually is part of the minority decision or that individual Judge has changed his mind as a result----

MR JUSTICE FREEDMAN: So, put shortly, you mean that there is a limit to the extent to which you can guess what the result is going to be?

MR SINGLETON: Yes. My Lord, I mentioned in terms of timescales, and I did look it up over the adjournment, the *Tate Gallery* case was heard on 7/8 December and judgment was given on 1 February. Now, if one factors in the Christmas vacation, which I think I am right in saying for the Supreme Court is longer than for the lower courts, that is a very quick decision, that is less than two months. On the basis that there is considerable interest – and I do not mean interest by the public, I mean interest by affected parties, and parties potentially affected – I would hope and anticipate that the Supreme Court will be in a position to render a judgment fairly promptly by their Lordships' standards, certainly either just before or just after Easter one would be hoping for. So that is the first possible date we do something.

The second is that we continue Hill J's order in its current form – there would have to be some amendments with regard to service of various things but that is consequential – and list for further directions, or a further review, by a date which we anticipate the Supreme Court will have handed down judgment, so any directions given can be informed or, if necessary, orders discharged. That, in my respectful submission, may be, at the moment, the most appropriate course to pursue and – to adopt a phrase used, I think, by Nicklin J himself "holds the ring". The protection is in place. The protection is in accordance with the law as it stands today, but

if the Supreme Court take the view that 'persons unknown' injunctions are confined to very narrow categories of case such as *Venables* and the *Harry Potter* case, then so be it, this order probably cannot survive. But if it says 'no, these are appropriate subject to these safeguards' we can review the existence of safeguards and then, if appropriate, move to a final hearing.

MR JUSTICE FREEDMAN: Yes. Even accepting everything that you have said, the idea of leaving the judgment until after the hearing before the Supreme Court does cater for the unusual possibility that something may be said in that hearing that is a takeaway point that is relevant to the judgment, and it is a very limited period of time. So if the judgment was going to be given, for example, on Monday, early next week, the order remains in place, it is a review, you come and you see whether there is something to add to that, I do not think that is at all inconsistent with anything that either of you have said.

MR SINGLETON: I think to go back and repeat what my Lord said to me a moment ago when I was concluding on that point, the risk there is we seize on something that at the time seems crucial, but then several weeks later is not.

MR JUSTICE FREEDMAN: I am mindful about that submission. It is just that it may be that something unusual happens, like they all say collectively: "We are very, very concerned, we are going to do this, that or the other, and the specific reasons we will await. But because it is a matter of public concern and because people are being committed for contempt we feel an obligation to say that now."

MR SINGLETON: It does happen, my Lord.

MR JUSTICE FREEDMAN: It does happen. It is not as if I am then saying I am going to leave it for two months until a hearing at the end of March. We are talking about the hearing this week. It is a very unusual set of events that we are back to back with that hearing. And also, if I was departing from the caution that you have been giving, you would be able to tell me not to, but we will appraise it when we know the facts, and we will know the facts at the end of the week, so long as people are listening and taking it on board – and, because in the current system, if there is something dramatic I can listen to it, can I not? I can download it.

MR SINGLETON: My Lord, I can think of one case and I am not even sure if Mr Manning was in it, before the House of Lords, *The Riverside Housing* rents case – I know his then head of chambers was. I set it out by way of illustration. In that case the argument was about when social landlords could lawfully increase rents and the Statute was not particularly well drafted. There would be years where it would might be 367 days, and there would be years where it would be 364 because it was referenced to the first Monday, or something, in April. That is the basis on which it had fully contested at first instance, and in the Court of Appeal.

Apparently, Lord Neuberger walked in and said: 'Look, this is a simple construction point, it is this, this and this. Go away, and come back and address me.' What was anticipated to be a four day hearing I think turned into a day and a half. So, yes, I have to concede, it could happen.

MR JUSTICE FREEDMAN: Anyway, this is not a big issue, this is just about whether the judgment is going to be given tomorrow or----

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: -- Wednesday, or on Monday of next week.

MR SINGLETON: Yes.

MR JUSTICE FREEDMAN: Okay. Is that it?

MR SINGLETON: That is.

MR JUSTICE FREEDMAN: Right. Thank you. Is there anything else that you want to say, Mr Manning?

MR MANNING: My Lord, I do not know whether it is of particular importance. My understanding of the cases in which the police were ordered to give disclosure of the names of parties was where the litigant obtaining the injunction was a private party.

MR JUSTICE FREEDMAN: Yes.

MR MANNING: In a case where it is the local authority there are data showing protocols already in place, and so my expectation would be that the police would already be in a position to provide that information to Birmingham City Council, and I am sure the Wolverhampton Authorities.

MR JUSTICE FREEDMAN: So is Transport for London a private party?

MR MANNING: I did not know that it was Transport for London's cases that my Lord was involved in. The cases where I have seen that happen was where, for example, one of the private oil companies had obtained an injunction and wanted to be sure that the police had power to----

MR JUSTICE FREEDMAN: Oh, I see, yes. I follow that, but I had not appreciated that Transport for London would be – these cases where the roads were being blocked.

MR MANNING: Yes. It may not be, I do not know the case details. It may be that there was no data showing a protocol in place with Transport for London. All I was going to say was there is a protocol in place in relation to Birmingham, and I am sure Wolverhampton and West Midlands Police, and therefore I am not sure that any question of the police not providing that information without a disclosure order arises. That is all I was going to say.

In relation to judgment, I think I am fairly neutral on that point.

MR JUSTICE FREEDMAN: Well, I am going to leave judgment until Monday. I think not before Monday, but I will let you know on Friday about it. And when can I get a first draft order?

MR SINGLETON: On the assumption that my Lord continues Hill J's order in substantially the same form----

MR JUSTICE FREEDMAN: Sorry, I am not talking about that. I am talking about the order----

MR SINGLETON: Oh, for today's hearing.

MR JUSTICE FREEDMAN: -- for Mr Shabir.

MR SINGLETON: Ah, that is Mr Manning.

MR MANNING: I would propose to type something up on my way back from court this afternoon.

MR JUSTICE FREEDMAN: Good.

MR MANNING: So, either later this evening or first thing tomorrow morning.

MR JUSTICE FREEDMAN: Great. It will need to be first thing tomorrow morning or later this evening in order to finalise it before the deadline.

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: And there may be some changes, I have got some----

MR MANNING: My Lord, yes.

MR JUSTICE FREEDMAN: But I noticed that your solicitor was taking a good note.

MR MANNING: Yes, and I will, if I can perhaps take your Associate's email address.

MR JUSTICE FREEDMAN: Yes, certainly.

MR MANNING: Then I an email it to the court. If it is after hours, does your clerk have an email address.

MR SINGLETON: If it is Ms Peer then I do have it.

MR JUSTICE FREEDMAN: Yes, it is.

MR MANNING: Then I have it already. I am happy to send it to both of those addresses in case it is after the court has closed.

MR JUSTICE FREEDMAN: That is very good, yes, please. It is important that you send it to her, and then I can look at it overnight.

MR MANNING: Yes.

MR JUSTICE FREEDMAN: Is there anything else?

MR MANNING: I do not think so, my Lord.

MR SINGLETON: My Lord, if the judgment is being given next week, I have a three day case starting Tuesday, whether my Lord would consent to release me, obviously somebody would attend on behalf of the local authority. If my Lord insists I attend then so be it, I will have to make some urgent arrangements for my clients.

MR JUSTICE FREEDMAN: But if I am giving it on Monday?

MR SINGLETON: Monday does not present a problem.

MR JUSTICE FREEDMAN: I will aim for Monday, but if it is not Monday what I could do is I could do it early or late, if that helps you?

MR SINGLETON: If it could be done remotely----

MR JUSTICE FREEDMAN: Yes, remotely.

MR SINGLETON: -- certainly that would be helpful, my Lord. I am very grateful.

MR JUSTICE FREEDMAN: Yes. Thank you very much to you both. There may be some points that occur to me overnight, in which case I will correspond.

MR MANNING: Thank you, my Lord.

MR SINGLETON: Thank you.

(4.22 p.m.)

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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.