

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS & PROBATE LIST (ChD)

Case No: PT-2025-000739

Courtroom 10

The Rolls Building
7 Rolls Building
London
EC4A 1NL

Wednesday, 30th July 2025

Before:
THE HONOURABLE MR JUSTICE MELLOR

UNIPER UK LTD

-v-

JOSHUA BARTER, SAM WILLIAMS, IAN JOHNSON, LUKE BADHAREE & PERSONS
UNKNOWN

MR A ROSENTHAL KC (instructed by Herbert Smith Freehills Kramer LLP) appeared on behalf of
the CLAIMANT
NO APPEARANCE by or on behalf of the DEFENDANTS

WHOLE HEARING

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A **Case called.**

MR JUSTICE MELLOR: Mr Rosenthal?

MR ROSENTHAL: My Lord, I appear on behalf of Uniper UK Ltd. And you have helpfully indicated that you have had an opportunity to do some reading, which hopefully will short-circuit some of the work that I might otherwise have had to do this morning.

B MR JUSTICE MELLOR: Okay.

MR ROSENTHAL: You will have seen that I am seeking interim injunctions to restrain trespassers, including persons unknown, from trespassing at the former power station at Ratcliffe-on-Soar. Injunction applications of this sort have been heard frequently by the High Court in recent years. Unusually, in this application you will have seen that the claimant seeks injunctive relief against two different categories of trespasser that are often encountered in this type of case. Although factually unusual, some might say unfortunate, we do not suggest that that gives rise to any legal complexity or difference from other cases that have been heard and reported. What I was proposing to do is to take Your Lordship through the submissions in my skeleton, which I can do rather more quickly with Your Lordship's indication. I was going to start with the named defendants and then address the persons unknown. You will have seen that we also seek orders for substituted service. As I did in the skeleton, what I was proposing to do, unless it is convenient to do it in a different order, is to deal with that last, having covered the ground, as it were, with the substantive applications.

D MR JUSTICE MELLOR: Okay, no, that is fine.

MR ROSENTHAL: In the skeleton argument at page two onwards, I have set out the background to the applications, and I do not propose to go through all of that detail. I ought to draw Your Lordship's attention specifically to the claimant's title, given that that forms the basis of the causes of action that the claimant relies on.

F MR JUSTICE MELLOR: Okay.

MR ROSENTHAL: And the registered title is exhibited to the first witness statement of Graeme Robertson and it is at page 45 in that exhibit.

G MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: This is a registered freehold title, and on page 47, near the bottom, you will see that it is registered to the claimant, Uniper UK Ltd.

MR JUSTICE MELLOR: Right.

H MR ROSENTHAL: At page 52, there is a plan that shows the extent of the registered title, being everything on that plan that is bounded by the red line. I draw that to your attention because over the page, on page 53, you will see that what is described as the power plant, which is the subject

A of the application, does not extend to the whole of the land within the claimant's registered title on page 52. Very roughly, it is part of the land above the A road that you can see about halfway down on page 52-

MR JUSTICE MELLOR: Yes.

B MR ROSENTHAL: -bisecting the parts of the registered title. It is not the whole of that area above the A road, but it covers most of it.

MR JUSTICE MELLOR: Okay. And the area which is going to be the subject of the injunction, it excludes the substation in blue?

C MR ROSENTHAL: Indeed. And that is the area shown in blue, and when I get to the draft order, we have sought to make that clear in the order.

MR JUSTICE MELLOR: Yes. So, that substation is still operating, is it?

MR ROSENTHAL: Yes.

MR JUSTICE MELLOR: There is also mention of a technology centre on this site. That is still operating too, is it?

D MR ROSENTHAL: As I understand it, yes.

MR JUSTICE MELLOR: Okay.

MR ROSENTHAL: But we do not suggest that either of those things have any bearing on the order that we are seeking.

E MR JUSTICE MELLOR: Okay, yes.

MR ROSENTHAL: But their existence, I suppose, is of relevance and supports the grant of the injunction, but it does not affect its terms.

MR JUSTICE MELLOR: Sure, yes.

F MR ROSENTHAL: I should also, I suppose, draw your attention to the fact that at paragraph six of Mr Robertson's statement on page 37, he refers to a further freehold title, this is 6C, which is in separate ownership, but that only relates to substrata. It does not relate to the surface of the land, so that does not affect the claimant's right to possession of the land that it relies on for the purposes of this application.

G MR JUSTICE MELLOR: Yes. Okay.

MR ROSENTHAL: So, by way of very high-level summary, but inviting Your Lordship to take account of the account that I have set out at pages three to the top of page six of my skeleton argument, so far as incursion by Travellers is concerned, there is evidence, principally in the witness statement of Mr Close, but also in the witness statement of Andrew Skelton at page 172 of two recent incursions and further warnings of other possible incursions. The first and the most serious was over the weekend of 25 April of this year. There is direct evidence from Mr Skelton in his

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A witness statement, who was on site at the time, and Mr Close gives evidence at paragraphs 13 to 18 based on his subsequent reviews of the CCTV footage and other images taken after the Travellers had vacated the site.

I draw your attention in particular to the points in paragraph 14 of Mr Close's statement on page 63. In particular he refers to violence and aggression on the part of the Travellers, theft of materials from the site, and at C and D, the fact that the police were unable to assist until the afternoon of Monday 28 April, Travellers having entered on the evening of the 25th.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: At paragraph 15, he summarises the exhibited images which show firsthand some of the damage that was caused. I do not propose to take Your Lordship through those photographs. We say they are accurately summarised in that account. And at paragraph 17, Mr Close explains that damage was caused which is estimated by the claimant at approximately £1.85 million. You will have seen that the claimant has not included a claim for damages in the claim for, I would suggest, obvious reasons, but the cost to the claimant is still highly relevant to the exercise of the Court's discretion in terms of whether an injunction should be granted.

After these Travellers left, in paragraph 18, Mr Close describes additional security measures that were implemented. And at paragraph 19, there is the first of the notifications I mentioned on this occasion from a local police officer who went to the trouble to attend the site to inform of similar incidents in the locality. And notwithstanding the additional security measures, there was a second incident on 26 June, which is described at paragraph 21 onwards. The claimant does not know whether or not this was the same or included the same people as those who entered in April. On this occasion, they attempted to enter, they used cutting equipment, they damaged the gates, they damaged the security bollards, but they were thwarted on this occasion by the attendance of police officers on that evening.

MR JUSTICE MELLOR: Yes, police officers attending in force.

MR ROSENTHAL: Indeed.

MR JUSTICE MELLOR: With 10 patrol vehicles.

MR ROSENTHAL: Indeed, and that did the trick on that occasion. But the claimant's evidence, and Mr Close says this in his statement, is that in light of the difficulties in securing police attendance on the first incursion, the claimant cannot be confident that that will happen should this occur again.

MR JUSTICE MELLOR: Yes. And you have had a recent, 17 July, police report?

MR ROSENTHAL: Indeed, paragraph 27.

MR JUSTICE MELLOR: Yes.

A MR ROSENTHAL: And then there is evidence at 28-31 of similar incidents at industrial sites further
afield across the country. And to state the obvious, the claimant does not know who these people
are and so seeks injunctions against persons unknown in the form that we have set out in the draft
B order. The other category of trespasser against whom the order is sought is a category described
as urban explorers, which I would suggest is an unduly grand label given to people who trespass
to scale large structures and then post evidence of it on social media. Now, in this category we
have named four defendants, although you may have seen at the end of my skeleton I have a
point to come to about one of them, and also persons unknown. And the evidence we rely on in
C support of this aspect of the application begins at paragraph 35 of Mr Close's witness statement,
and it is contained entirely in the remainder of that statement. He gives evidence of an incident
in paragraph 35 in April 2024 when five trespassers entered the site and were arrested, and the
police informed the claimant that one of those was the first defendant, Joshua Barter.

MR JUSTICE MELLOR: Yes.

D MR ROSENTHAL: And then at 36, he describes additional security measures, which included dog
patrols, additional CCTV, etc., and the existence of a five-kilometre perimeter fence around the
site. But, as you will have seen, those measures have not prevented further entry onto the site by
urban explorers, who give claimants in the position of this party the benefit of the evidence of
E what they have been doing by posting it all on their social media accounts. And so I do not
propose to go through all of the detail that follows in Mr Close's witness statement, if
Your Lordship has read it.

MR JUSTICE MELLOR: Yes, I have.

F MR ROSENTHAL: But, by way of summary, you will have seen each of the named defendants has a
Facebook profile on which there are posts containing photographs and comments which, as
described in some detail by Mr Close, evidence that each one of them has unlawfully entered the
Ratcliffe site, as well as other sites, other power station sites, for this purpose. And there are
numerous photographs in and amongst those posts of these individuals present on the site. I will
G just highlight one, if I may, at page 126, which shows, according to Mr Close, the first defendant
at the top of the 190-metre-odd high chimney stack on the site, lying close to the edge, with
someone else taking his photograph. So, that is the sort of thing that we are seeking to prevent
by this injunction.

H In addition to the named defendants, Mr Close refers to a number of Facebook groups. In
particular at paragraph 58, he refers to a group that describes itself as Abandoned UK, which
features posts by what is described as the urbex community. And that includes people who cannot
be identified from these posts trespassing at this site. And at paragraph 60, Mr Close refers to a

A YouTube video that was posted before the plant closed that shows a group of individuals walking around the site with various comments that have been posted since, and that was posted by this Abandoned UK group. And so in addition to the named defendants who we have been able to identify via social media accounts, the claimant also seeks an injunction to restrain this category of behaviour against persons unknown.

MR JUSTICE MELLOR: Yes, okay.

MR ROSENTHAL: Now, in terms of the jurisdiction and approach to these things, I have referred in my skeleton argument to the *Wolverhampton City Council* Supreme Court judgment. And before I pick it up again in my skeleton at page six, I think it is useful just to refer Your Lordship to the principal parts of that and the matters that were actually decided by the Supreme Court in that case. That was a claim by Local Authorities, a number of them – I think there were 38 separate claims that were heard together by 38 authorities – for injunctions to restrain Travellers from setting up unlawful encampments. And there are a number of features specific to that case that do not arise in this and other cases.

MR JUSTICE MELLOR: Right.

MR ROSENTHAL: Including a cause of action available to Local Authorities under the Town and Country Planning Acts against those who set up encampments of this sort unlawfully. But the key for present purposes is that the Supreme Court considered a number of points of principle about the grounds of what are described as newcomer injunctions. Now, if I can refer you first please to paragraph 167 of the judgment. If you have the authorities bundle, it should be on page 65.

MR JUSTICE MELLOR: Okay. Yes.

MR ROSENTHAL: Thank you. So, having gone through at some considerable length the various authorities and arguments that I need not trouble Your Lordship with about whether or not this so-called newcomer injunction is a thing that the Court ought to engage with, at 167 the court concluded that there is no obstacle in the way of granting injunctions against newcomer Travellers on an essentially without-notice basis regardless of whether in form, interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted either generally or on the facts of any particular case. They are only likely justified as a novel exercise of an equitable discretionary power if, and then a number of factors are set out, some of which I will pick up in my submissions. And in particular, at number one, there is a compelling need sufficiently demonstrated by the evidence for the protection of civil rights or enforcement of planning control, which of course does not arise here. And then at

A two there is procedural protection which also features in the approach that the Court is required to take to these cases.

Although this all refers to injunctions against Travellers, you will see from paragraph 235 of this judgement at page 80 that the general guidance that the court was giving was intended to extend
B beyond Traveller cases. There is a particular reference to protest cases, but it is clearly not limited to those two categories, and indeed the guidance has been applied in all trespasser cases of this sort subsequently.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: Now, I will come back to what are described as the substantive and procedural
C safeguards in a moment. Just picking up in my skeleton, if I can deal first of all with the four named defendants and the claim for injunctive relief against them-

MR JUSTICE MELLOR: Sure.

MR ROSENTHAL: -so this is page six of my skeleton.

D MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: Now, it might be asked why we have bothered to single out these four individuals as they would be caught by an injunction against the persons unknown anyway. The reason is set out in *Wolverhampton* in fact at paragraph 221 on page 77, where the court made clear that, notwithstanding the jurisdiction to grant injunctions of this sort against persons unknown, at 221
E the actual or intended respondents to the application must be defined as precisely as possible, and insofar as it is possible actually to identify persons to whom the order is directed and who will be enjoined by its terms by name or in some other way, the Local Authority, or indeed any other claimant, ought to do so. The fact that a precautionary injunction is also sought against
F newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so and serving them with the proceedings of order if necessary by seeking an order for substituted service.

MR JUSTICE MELLOR: All right.

MR ROSENTHAL: So, that, My Lord, is why we name four individuals, because as Mr Close explains
G in the evidence I took you to, the claimant has identified them from their Facebook posts.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And, as I said, you will have seen that in taking that course we now have concerns about the second defendant, but I will come to that in the context of service. For now, I will just
H deal with all four named defendants. So, at paragraph 21 of my skeleton argument on page six, I have addressed the usual *American Cyanamid* principles which apply to applications for interim injunctive relief against named defendants and going through those briefly. First of all, we say

A there is clearly a serious issue to be tried here on the evidence. Both categories – well, in fact, sorry, I will undo that. We are just dealing with urban explorers as against the named defendants. This is a claim that is based principally on trespass, and to that end it is, we would suggest, unanswerable. They have no right to enter the site in the way that they do, or indeed at all.

B Secondly, we say it is clear here that damages would not be an adequate remedy for the claimant. There is no evidence that any of these people would be in a position to pay damages and that, more significantly, I would suggest, the loss that the claimant suffers as a result of the health and safety risks that are caused by these exploits cannot be quantified in money terms to enable the claimant to be compensated in damages if they continue to trespass and scale the structures on
C the site.

And then the balance of convenience we say clearly favours the grounds of an injunction, that there are simply no factors that weigh in favour of permitting the defendants to continue to trespass in this way. Given that this is a *quia timet* or precautionary injunction, we also have to
D satisfy the Court that there is a real and imminent risk of further such conduct occurring in order to justify the grounds of a precautionary injunction. At paragraph 22, I have referred to *Hooper v Rogers* and the *Vastint* case. In short, I do not propose to take Your Lordship to those, unless you would particularly like me to. What can we get from *Hooper v Rogers* is that ‘imminent’
E here means ‘not premature’. The reference to that is on page 50B of the report for your own reference. That is page 221 of the authorities bundle.

MR JUSTICE MELLOR: Okay.

MR ROSENTHAL: And in *Vastint* there is a convenient summary by Mr Justice Marcus Smith at
F paragraph 31, which is page 228, of the factors that a Court has to address when considering whether to grant a precautionary injunction and we refer in particular to factor number three in paragraph 31, where he says that there is a two-stage test. First, is there a strong probability that unless restrained by injunction the defendant will act in breach of the claimant’s rights and, secondly, if the defendant did so would the harm resulting be so grave and irreparable that,
G notwithstanding the grant of an immediate interlocutory injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate? For the reasons I have given, we say that in relation to the activities of these four individuals that these tests are clearly satisfied here. And that there is in essence as clear a justification as one could find to grant an injunction to restrain these individuals.

H And just to give some support to that, Mr Close refers in his witness statement to an online post by the first defendant, which is at page 132 of the bundle, which suggests that so far as he is

concerned if an injunction is granted that will deter him from subsequently trespassing and engaging in this sort of activity on our site. So, if Your Lordship has page 132.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: This is Joshua Barter's, D1's Facebook page, and the final post on the right-hand side under the heading 'comments' he suggests in that, we say, that he would not enter a site if he is aware that there is an injunction in place.

MR JUSTICE MELLOR: Yes, I would not know. I have never been back after an injunction. Okay, yes.

MR ROSENTHAL: So, we say that that reflects awareness on his part, which is likely to be reflected in the other named defendants, of the need to abide by orders of the Court.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So, for those reasons we submit that it is appropriate to make the orders that we seek against the named defendants.

MR JUSTICE MELLOR: Okay.

MR ROSENTHAL: So far as persons unknown are concerned, I have already taken Your Lordship to the point of principle that was decided in the way it was decided in the *Wolverhampton* case, that there is no barrier in place of the Court granting a precautionary injunction against persons who are not identified other than by reference to the wrongful activity which is sought to be prevented, and individuals will, as explained in that case, become bound by the order if they engage in the activity that is prohibited.

At page seven of my skeleton, I have, after paragraph 24, summarising the principles I have already taken you to at 167 in *Wolverhampton*, I have referred to the fact that those principles have in subsequent cases been recasted into a checklist, as it is sometimes described, of substantive and procedural requirements. And the most helpful place I would suggest to find that checklist is in the judgment of Mr Justice Ritchie in *Valero Energy v Persons Unknown*, which I will come to in a moment. But that was a case I ought to flag where the claimant was seeking a final determination of the claim for an injunction, rather than interim relief. But to demonstrate that the checklist that he used there is equally applicable at the interim stage, I would refer you, just by way of example, to the decision of Mr Justice Thompsell in *The University of London v Harvie-Clark*, which is behind tab three, if you have tabs. It begins at page 121 in the PDF bundle.

MR JUSTICE MELLOR: Yes. Interestingly, it looks like that case is coming back tomorrow.

MR ROSENTHAL: Oh, is it? I did not even know that. Well, Your Lordship will be familiar with the principles.

A MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And in particular, at paragraph 18 onwards, page 124, you will see that in this context of an application for an interim injunction, Mr Justice Thompsell applied the *Valero Energy* criteria or checklist.

B MR JUSTICE MELLOR: Right.

MR ROSENTHAL: And at paragraph 22, he made the point that the principles fall into two categories, substantive requirements and procedural requirements, which he then went through. And for your reference, I think that the best place to find the checklist itself is in *Valero Energy*, which is behind tab two.

C MR JUSTICE MELLOR: Mm-hmm.

MR ROSENTHAL: And it begins at page 112 of the PDF. And there are a number of headings and subheadings. And what I have sought to do in my skeleton argument, and what I will now just take Your Lordship through, is to address each of these requirements. But before I do, I would just reiterate the point at the top of page eight, I think it is, in the skeleton argument, that these are not presented as hard and fast requirements. They are factors that the Court ought to take into account in exercising the general discretion that the Court has in deciding whether to grant an injunction. There may be cases where some of the factors might not be appropriate, or a different approach might lend itself. But here, like in most of the other cases where newcomer injunctions are sought, we submit that this checklist is a convenient and helpful way for Your Lordship to approach the jurisdiction.

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E MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So, at page eight onwards in my skeleton, I go through this checklist in the order that it is set out in the *Valero Energy* case. And I will just take Your Lordship briefly through the various requirements. So, in terms of substantive requirements, we have to show a cause of action. As with the named defendants, we say that in relation to both categories of trespasser, there is an answerable cause of action in trespass and nuisance. And all of those, both of those causes of action, together with a further cause of action in relation to property damage, they are all pleaded in the claimant's particulars of claim. Secondly, full and frank disclosure. I make the point in the skeleton that the claimant recognises that it has to comply with this duty, even though in this case, unlike many of the others, we have given or sought to give such notice as we are able to, to the defendants.

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H MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And so we approach this application on the basis that this is a requirement that we have to satisfy, and we have sought to do so. Number three, we have to demonstrate,

A Your Lordship, that there is sufficient evidence to prove the claim. But by that it clearly means
sufficient evidence to prove the substantive factors that we need to establish for the purposes of
obtaining interim relief. This is not a final hearing, either by way of summary judgment or trial,
and in that context there is clear evidence of a serious issue to be tried. And I have addressed
B that at paragraphs 29 and 30 of my skeleton.

And in particular, at paragraph 30, I have addressed the question of whether there is sufficient
evidence of a real and imminent risk of further trespass, nuisance and property damage to justify
a precautionary injunction in this case. Now, so far as Traveller groups are concerned, we rely
on the evidence that I have already referred Your Lordship to of subsequent attempts to gain
C entry after the initial incursion on the weekend of 25 April and subsequent warnings from the
police that I have referred Your Lordship to. And the second incursion having been attempted
after security measures were bolstered on the site, we say that demonstrates that there remains a
real and imminent risk of further such activity. And most recently, that is evidenced in the reports
D of a Traveller group in the vicinity on 17 July at paragraph 27 of Mr Close's witness statement.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So far as the claim against persons unknown engaging in urban exploration activity
are concerned, we rely on, again, the evidence in Mr Close's witness statement of social media
posts by groups that engage in this activity, in which there are posts by individuals who cannot
E be identified, such as the Abandoned UK group I have already referred to. That is described at
paragraph 58 of Mr Close's witness statement. And we submit that on the basis of that evidence,
this site is clearly of considerable interest to urban explorers, and it is likely that an injunction
would prevent that activity from occurring. So, we say, as I have submitted in relation to
F defendants one to four, there is clearly a real and imminent risk here in the sense that the grant
of an injunction is not premature of further incidents of trespass by urban explorers who cannot
be identified if no injunction is granted.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So, we say there is sufficient evidence to prove the things that we need to prove for
G the purposes of this application. Number four, at the very bottom of page nine of the skeleton,
Your Lordship has to be satisfied that there is no realistic defence to the claim, and I would refer
you to paragraphs 31 to 34 of my skeleton. Clearly, none of the defendants has filed a defence
or indicated any opposition to the application. And of course, that is not sufficient.
H Your Lordship has to be satisfied on the merits that there is not a realistic defence. And we would
say it is impossible to conceive of any possible defence to the trespass and nuisance claims, or
indeed the claim in respect of property damage.

A MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: Now, I make the point in my skeleton that this case relates solely to trespass and other wrongs that are committed on private land. There are not in this case the issues that sometimes arise in the protester cases of members of the public exercising rights over the land. So far as the Travellers are concerned, if they are setting up encampments, it is conceivable that they could seek to rely on Section 6 of the Human Rights Act and seek to invoke their right to protection for their home and family life under Article 8 of the European Convention. And that would, given that this is private land, it is not a claim brought by a public authority, that would have to be on the basis that the Court has a duty in considering their defence to address and take account of their Article 8 rights.

Now, if any such defence were raised, it would, in my submission, have no prospects of success. It is inconceivable that a balance of the rights of Travellers to respect for their private and family life and the interference of those rights by a democratic society on the one hand, and the protection of the rights and freedoms of others, namely the owner of this site, could possibly afford Travellers who enter this site in circumstances of this sort any defence to the claim.

MR JUSTICE MELLOR: And it certainly would not allow them to strip out copper [inaudible].

MR ROSENTHAL: Well, quite, precisely. And on a sort of higher level, I make the point in paragraph 33 of my skeleton that these rights are enjoyed by individuals, not by the Travellers as some sort of class or genus.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And I refer to what is in fact the *Wolverhampton* case in the Court of Appeal, where it was called *Barking and Dagenham v Persons Unknown*, where that point is made – I will just give Your Lordship the reference – by the Master of the Rolls at page 182, and it is paragraph 105. I do not propose to read it out to Your Lordship, but that is the reference for that principle. And, essentially, what is said is that if an argument of that sort is to be raised, it is to be addressed by the Court at the point where individuals seek to be joined to the proceedings, so that the Court can balance an individual's rights under Article 8, rather than the earlier stage that we are at, where there are no individuals in this category.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And it goes without saying that urban explorers cannot pray in aid their human rights to sanction the sort of conduct that they engage in. So, we say that on this issue there is no realistic defence apparent to any of these defendants. And then, on the substantive issues, I am going back to page 10 of my skeleton, the balance of convenience. In paragraph 35, I refer to a question that is raised by Mr Justice Ritchie in the *Multiplex* case, which is at page 187 in the

A authorities bundle. And it is paragraph 15 of that judgment on page 191, where he contrasts the
court's test in a final injunction with the test that has to be applied where an interim injunction is
being sought. And the question is whether, going back to *Wolverhampton*, the compelling need
B that is described at paragraph 167 of that judgment needs to be shown where there is an
application for an interim injunction. He suggests in paragraph 15 that it does not, and it is simply
the general balance of convenience. I am not going to invite Your Lordship to apply that here,
because we say that the compelling need is clearly here shown, and it is demonstrated by the
evidence that we have adduced. And so, I would invite Your Lordship to apply that test-

MR JUSTICE MELLOR: Okay.

C MR ROSENTHAL: -and find that that is established. And then on this point, at paragraph 38 of my
skeleton argument, I make the point that it is relevant in the context of the balance of convenience
to consider whether there are other measures that the claimant could have taken, short of coming
to court to seek an order to prevent this offending activity. And I have already referred to the
D factual material that underpins this. At 38.1, I make the point that, notwithstanding the increased
security after 25 April, there was a further incursion. The additional security measures, which
include surveillance and also dog patrols, have not been successful in preventing entry by urban
explorers. And then again, I make the point about the evidence, such as it is, that the grant of an
injunction does have a deterrent effect in relation to urban explorers.

E MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So, for all of those reasons, we say that the balance of convenience, even applying
the higher *Wolverhampton* standard, clearly favours the grant of injunctions in this case. And
then, finally, Your Lordship has to be satisfied that damages are not an adequate remedy. The
F same point applies here as I made in relation to the main defendants, save that there is clearly no
evidence that those who engage in this activity, whose identity is not known, would be in a
position to pay any damages. There is evidence that just the first incursion by the Travellers
caused £1.8 million-odd worth of loss. And in addition to loss caused by physical damage that
G is caused, the defendants cannot compensate the claimant for the offending activity that causes
the sort of health and safety risks which we say are largely incapable of being quantified in money
terms. So, this is clearly a case in which damages are not an adequate remedy.

MR JUSTICE MELLOR: Yes.

H MR ROSENTHAL: They are the substantive requirements. I can take rather more briefly the various
procedural requirements listed by Mr Justice Ritchie in *Valero*, and it might assist to have to hand
the terms of the order that we are seeking, as I [inaudible], which is at page 29 of the bundle.

MR JUSTICE MELLOR: Yes.

A MR ROSENTHAL: So, the first procedural requirement is that persons unknown have to be adequately
identified, and we have sought to do that in the – you will see in the heading to the claim, by
referring generically to those who enter without the consent of the claimants. Now, I ought to
point out that this, in effect, amalgamates both categories of trespasser, but we thought that there
B is no reason to have two separate categories of persons unknown by reference to the purpose with
which they seek to enter without consent, because this is private land and a trespass is a trespass,
unlike, for example, the university protester cases where there may be people lawfully onsite who
do not have consent. So, we say that that is sufficient identification of persons unknown.
C The second requirement is that the terms of the injunction ought to direct clearly the conduct that
is to be restrained by the Court's injunction. Well, if I can invite you to look at paragraphs one
and two of the substantive order on page 31, what we have sought to do is to, in paragraph one,
to set out the prohibitions against all five defendants, as it currently is. So, at 1A that covers all
defendants who trespass, and then B, C and D are activities which we say, on the evidence, urban
D explorers have been engaging in. So, therefore, 1A to D covers all five defendants.

MR JUSTICE MELLOR: You see.

MR ROSENTHAL: And then paragraph two is separated out because that is further activity that on the
evidence has been carried out by the Travellers who have entered, and so that applies only to
persons unknown, the fifth defendant. So, that is why we set it out in that way, and we would
E suggest that that is the clearest way in the slightly unusual circumstances of this case of
addressing all of the conduct that we say ought to be prohibited by the Court's order.

MR JUSTICE MELLOR: I mean, paragraph one is, as you say, directed at the urban explorers, and yet
there are two categories of persons unknown.

F MR ROSENTHAL: Yes.

MR JUSTICE MELLOR: One is the Travellers and the other one are the unidentified urban explorers.

MR ROSENTHAL: Yes.

MR JUSTICE MELLOR: So, should paragraph one not – I suppose paragraph one does apply to all
G five.

MR ROSENTHAL: And that is the intention, My Lord.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: Forgive me if I did not explain it properly. The intention is not to differentiate in
one and two between urban explorers and Travellers as such.

H MR JUSTICE MELLOR: Right.

A MR ROSENTHAL: 1A is intended to cover both categories and to be an order made against all defendants. 1B, C and D is intended to cover urban explorers, and therefore is an order to be made against all defendants.

MR JUSTICE MELLOR: But it is also appropriate for Travellers, actually.

B MR ROSENTHAL: Yes, it would be. But again, it is an order to be made against all defendants.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And then two, the purpose of separating out paragraph two is to ensure that the order does not go too far against the named defendants.

MR JUSTICE MELLOR: Okay.

C MR ROSENTHAL: Because that, because the activities in paragraph two are not evidenced in the activity that the named defendants have carried out on the site.

MR JUSTICE MELLOR: Yes, okay.

MR ROSENTHAL: So, that is why it is being done in that way.

D MR JUSTICE MELLOR: Right.

MR ROSENTHAL: Next requirement, keeping that open, is that these prohibitions must match the claim. Well, Your Lordship will have seen the particulars of claim at page 13. And we say that that requirement is satisfied. Fourthly, there must be appropriate geographic boundaries. And I took you at the beginning to a plan of the area that is to be covered by the injunction. If you go to page 30, you will see that we have defined the land that is the subject of these orders by reference to the plan, which is on page 34, which is the same as the plan I showed you earlier.

E MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And also the definition of the land makes clear that it excludes the area shaded in blue.

F MR JUSTICE MELLOR: I mean, the other land in the claimant's title, is that excluded because it is just, there is nothing there that is of interest to either group?

MR ROSENTHAL: Yes.

G MR JUSTICE MELLOR: Okay. Yes.

MR ROSENTHAL: It is – I cannot tell you precisely what is on it, but it is not part of the former power station.

MR JUSTICE MELLOR: Okay.

H MR ROSENTHAL: Then in terms of number five, going back to the list, temporal limits, it is made clear in Wolverhampton that these injunctions should not be made to remain in place indefinitely. We have proposed an initial 12-month period on the basis that that will cover most, albeit not all,

A of the remainder of the decommissioning period, which was estimated by Mr Close in his statement at two years from the end of September last year.

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: But 12 months as an initial period is consistent with most other cases of this sort.

B Number six in the list, service. We have sought to give notice of the application to all of the defendants, and I will address you in a moment on the substituted service application. Seven, there shall be a right for defendants to apply to set aside or vary the order, and that is at paragraphs three and four on page 32.

MR JUSTICE MELLOR: What sort of short-ish latest are we giving? Oh, not less than 48 hours?

C MR ROSENTHAL: Yes.

MR JUSTICE MELLOR: Okay, that is fine.

MR ROSENTHAL: And we have provided an email address for notification to be given.

MR JUSTICE MELLOR: Yes.

D MR ROSENTHAL: And then the final procedural matter on the checklist is to provide for a review hearing, but it is accepted now that that does not apply to interim injunctions because of the temporal limit that we have just looked at, the 12-month limit on the order. So, in effect the onus is on me to apply back to court if I want to extend that 12-month period.

MR JUSTICE MELLOR: Sure.

E MR ROSENTHAL: And again for your reference, paragraph 24 of *Multiplex*-

MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: -page 193 of the authorities bundle makes that clear.

MR JUSTICE MELLOR: Okay.

F MR ROSENTHAL: And then, finally, it is a requirement that I give an undertaking in damages. We say it is almost inconceivable that that would ever be realistically called upon, but for what it is worth the evidence in support of that is in Mr Robertson's first witness statement at paragraphs 16 and 17, page 39 of the hearing bundle.

G MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: So, for all of those reasons we invite Your Lordship to make the substantive orders that are sought by the application. And now I come, it might be said this is somewhat back to front, but I will explain why I have done it in this way, to the question of service by alternative means. So, necessarily, for person unknown I need an order permitting me to serve the

H proceedings and subsequent documents by alternative method. And likewise, for the reasons that are set out in Mr Robertson's first witness statement, we have applied for similar orders in

A relation to the first and fourth defendants. If I can invite Your Lordship please to turn to paragraph nine of Mr Robertson's statement at page 38 in the hearing bundle.

MR JUSTICE MELLOR: Yes.

B MR ROSENTHAL: Mr Robertson in that section of his witness statement sets out efforts that have been made to try to trace the individuals that have been identified from their social media posts. He refers at paragraph 11 to two addresses in the locality that have been found by an enforcement company that neither of those addresses is registered in terms of ownership of the properties to these individuals. And so he, as Mr Robertson rightly says at paragraph 12, the claimant cannot be sure that service, delivery to those addresses would be good service on these individuals. And C it is for that reason that the claimant sought permission to serve on the first and fourth defendants by the methods that are set out in paragraph 12.

MR JUSTICE MELLOR: Yes.

D MR ROSENTHAL: Mr Robertson's second witness statement, which begins at page 177 in the bundle, explains what has been done prior to this hearing to serve the first and fourth defendants. Page 178.

MR JUSTICE MELLOR: Yes, I have got that.

E MR ROSENTHAL: And so in terms of hardcopy documents, paragraphs 7A to C set out efforts that were made to deliver, or to send those documents, I should say, to the two addresses I have just shown you.

MR JUSTICE MELLOR: Mm-hmm.

F MR ROSENTHAL: And ultimately, it was necessary to hand-deliver and post these, the papers through the letterboxes at each of those addresses. So far as electronic copies of the documents are concerned, at subparagraph D on page 179, he explains that a dedicated website, or a dedicated webpage, I should say, has been created by the claimant and links to the documents uploaded to that. And then, so far as notification to the social media accounts of the first and fourth defendants is concerned, at E and F, he explains that the enforcement company that was instructed by the G claimant was able to send messages to the first, third and fourth defendants, but not the second defendant as the option on Facebook to send a message was not available on his Facebook profile. And so at F, you will see that the enforcement company took steps to find some alternative contact information for him and discovered a lady called Kayleigh Williams, who says that she is the H second defendant's mother, and gave an email address and the documents were sent to her. Now, for reasons I will come to, we have concerns about the position of the second defendant in light of all of that, but that is all that we were able to do to bring the proceedings to the attention of the second defendant. There is evidence that is exhibited by Mr Robertson of a number of Facebook

A posts, including from the first defendant and the fourth defendant, and also a Facebook group called Urbex Lost and Found, which the claimant believes is run by the third defendant. They have all received notice of this application. The posts themselves, and there are quite a lot of them, they begin at page 200.

B MR JUSTICE MELLOR: Are any of these posts from the second defendant then?

MR ROSENTHAL: Yes, on page 200, about halfway down.

MR JUSTICE MELLOR: Okay, Sam Williams, yes.

MR ROSENTHAL: Yes. I think that is all there is from him. Yes. There is an indication there are posts from the fourth defendant, Luke Badharee, in particular on page 200, who refers, four up from the bottom, to the paperwork, suggesting he has received the appropriate links, and likewise, three up from the bottom, sorry, four up from the bottom is Joshua Barter, first defendant, posting, and then three up from the bottom is Luke Badharee, fourth defending, defendant, posting that he has got to sit down and read it. And then from Ian Johnson, the third defendant. So, we say that this is all evidence that the electronic communication of the claim and the application has indeed reached the first to fourth defendants.

D MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And then in addition, in relation to them, but also persons unknown, page 180, subparagraph G, Mr Robertson confirms that warning notices have been posted in the location described in his first witness statement, and the plan that he exhibited to that statement, showing the intended locations, is at page 59 in the bundle. And you will see that there are lots of spots around the perimeter fence where the warning notices were to be posted.

E MR JUSTICE MELLOR: Yes.

F MR ROSENTHAL: And then a copy of that notice that is in each of those locations is at page 184, which makes clear that hardcopies are contained at the outer gatehouse, and the map shows where that is. So, we say that is sufficient onsite notice, as it were, to alert the fifth defendant, the persons unknown, on the proceedings.

G MR JUSTICE MELLOR: And I am sure there will be a lot of people calling at Exchange House as well to pick up those documents.

MR ROSENTHAL: Well, maybe.

MR JUSTICE MELLOR: Anyway, we can-

MR ROSENTHAL: I am told it is quite a large pile, so-

H MR JUSTICE MELLOR: [Inaudible].

MR ROSENTHAL: So, in terms of the service application, it is made in terms of the claim under CPR Rule 615, which is page 261 of *The White Book*.

A MR JUSTICE MELLOR: Mm-hmm. Yes.

MR ROSENTHAL: I, before we come to that, it is in subparagraph one. What the Court is to be satisfied of is that there is a good reason to authorise service by a method or at a place not otherwise permitted. And then we also rely on subparagraph two, seeking an order that is in the draft, that the steps that we have already taken that I have identified to you amount to good service of the claim and the application notice.

MR JUSTICE MELLOR: Yes, okay.

MR ROSENTHAL: I referred in my skeleton argument to the Supreme Court decision in *Barton v Wright Hassall*. Again, I do not need to take Your Lordship through that in detail. It was rather different facts. But I would refer you to paragraph nine of that, of the judgment of Lord Sumption in that case, slightly unusually a majority judgment that he is giving there. It is page 201 in the authorities bundle. And he reiterates an earlier judgment of Lord Clarke in the *Abela* case. And, essentially, the point that is most relevant here is at the top of the next page, page 202. The court needs to ensure that the contents of whatever the relevant document is are brought to the attention of the person to be served.

And we say that the evidence that I have taken you to demonstrates that, so far as the named defendants are concerned, Your Lordship can be satisfied that the electronic messages and the electronic means of viewing the documents will bring and, indeed, have brought those defendants, or the attention of those defendants, the claim form and the application notice. So far as persons unknown are concerned, and of course the court in *Barton* was not dealing with persons unknown, the dedicated website on the claimant's – the dedicated page, I should say, on the claimant's website, and also the posting in numerous locations around the perimeter, we say is sufficient to comply with that direction and, therefore, that Your Lordship can be satisfied that there is good reason to authorise service by the methods that we have sought in our application. We also seek equivalent orders under Rule 6.27, which – it is page 279 in *The White Book* – applies Rule 6.15 to other documents in the proceedings, and I make the same submissions about that. And we have also, in the draft order, referred to Rule 81.42C. Now, that is at page 2,424 in *The White Book*.

MR JUSTICE MELLOR: Yes. That is for contempt I think actually.

MR ROSENTHAL: It is. We are not asking Your Lordship to decide any of the matters that would need to be satisfied for a contempt application. It is simply declaratory, really, that the Court has dispensed-

MR JUSTICE MELLOR: With personal service.

MR ROSENTHAL: -with personal service.

A MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And we rely on matters in the witness statement.

MR JUSTICE MELLOR: Okay.

B MR ROSENTHAL: So, for those reasons, I invite you to make the orders we have sought for alternative
service. But then that brings me to Mr Williams, the second defendant. Now, there is clear
evidence from his Facebook posts that he has trespassed on the site. But, as you have seen, the
claimant has not managed to notify him directly via his own Facebook page. And, instead, this
C lady, Kayleigh Williams, as described in Mr Robertson's second statement, pages 179 to 180,
has been located. And she claims to be the mother of a 16-year-old Sam Williams. And, as I
have indicated, the relevant documents were all sent to the email address that she provided. But
what the claimant cannot do is provide any verification that this person is indeed the mother of
the Sam Williams whose Facebook entries show that he has been trespassing on the claimant's
D land. Now, if that were all that we had, apart from the age issue, we would invite Your Lordship
to make the order in any event against Sam Williams.

MR JUSTICE MELLOR: Mm-hmm.

E MR ROSENTHAL: But we do have concerns about the evidence that we have obtained that he might
be a minor, which means that the Court needs to consider and the claimant needs to consider Rule
21.2, which deals with the position of a child in civil litigation. And under sub-Rule 2, unless
the Court makes an order under paragraph three, a litigation friend must conduct proceedings on
a child's behalf. And then under Rule 3, the Court may make an order permitting a child to
conduct proceedings without a litigation friend. Now, if he is indeed a minor, that means that
this has to be considered, and the Court needs to consider either whether this person called
F Kayleigh Williams should be appointed as a litigation friend, or alternatively, an order should be
made under 21.3 permitting the second defendant to conduct the litigation against him without a
litigation friend. And I should also say that the evidence of his age is inconclusive.

MR JUSTICE MELLOR: Mm.

G MR ROSENTHAL: So, if you go to page 133 in the bundle, this is a screenshot from the Facebook page
of Joshua Barter, the first defendant, on 7 February of this year. And what he says is, 'It has been
months now, so this is what we did on Sam's 16th birthday'. And it is clear from the fact that it
is someone called Sam Williams making comments about this delay that that is the person we
have identified as the second defendant. And Sam Williams' first comment on that is, 'It wasn't
H my 16th. It was my 17th'. And so there is therefore evidence that Sam Williams had his 17th
birthday some months before 7 February of this year, so he may or may not be a minor. We just
do not know.

A The issue for the claimant here comes down to this: it is how the claimant is to comply with the direction of paragraph 221 in the *Wolverhampton* case, which I took you to at the outset. It is

B page 77 in the authorities bundle, which is the passage where the Supreme Court says that where defendants can be identified, they should be, and a claimant should not just rely on the person's unknown category where there are known individuals that are to be subject to the order. And

C there is not an obvious answer as to how that direction is best complied with in these circumstances.

Now, as I said in my skeleton argument, the claimant has reflected on this and taken the view, but this is subject to any direction from Your Lordship, that the best course here is simply to

D discontinue the claim against the second defendant and leave Mr Williams to the person's unknown order, which will bind him. And that that is really for two reasons. First of all, in terms of service, there is evidence that Mr Williams is aware of the proceedings, but unlike Ds one, three and four, the claimant has not been able to notify him directly via his Facebook page.

E And the second reason is the contradictory evidence about his age. And I do not go so far as to say that the requirement to identify a defendant in *Wolverhampton* does not apply to a minor, but it is clearly more difficult to identify not just an elusive trespasser, but if that trespasser turns out to be a minor, a relative or other person who can be that person's litigation friend. And so for those reasons, the claimant proposes to discontinue the claim against the second defendant, but rather than doing that before the hearing, it was considered appropriate to make these submissions to Your Lordship. And if Your Lordship disagrees and believes that the second defendant ought to remain a party in his own right, then of course we will abide by the Court's direction on that.

MR JUSTICE MELLOR: Okay. I mean, it strikes me that in terms of the threat that you are seeking to

F restrain by injunction, in terms of the urban explorers, the second defendant is perhaps just as likely to pose a threat as the other named defendants. So, I mean, I understand your caution, but I would be inclined to keep him as a named defendant.

MR ROSENTHAL: Very well. We are content to do that. I just wanted to-

G MR JUSTICE MELLOR: Yes, yes.

MR ROSENTHAL: -put all of that before the Court, as it were.

MR JUSTICE MELLOR: Sure.

MR ROSENTHAL: If he is kept as a named defendant, that then raises the question of whether an order ought to be made under Rule 21.2(2), or we would suggest that it really ought to be 3, given that

H we do not know – we know very little about Kayleigh Williams.

MR JUSTICE MELLOR: Yes.

A MR ROSENTHAL: And given that there is evidence that he might well be under 18, I think our preference would be for Your Lordship to make an order under 21.2(3), permitting the second defendant to conduct these proceedings without a litigation friend. And the justification for that is that such evidence as there is that he is a minor indicates that he is only just a minor.

B MR JUSTICE MELLOR: Yes.

MR ROSENTHAL: And secondly, it is clear from the wealth of Facebook evidence that he has been engaging in these activities on his own account. And, therefore, he is someone who is capable of dealing with being a party to these proceedings.

C MR JUSTICE MELLOR: Okay, I propose to make an order under 21.2(3), but I want you to include a specific liberty to apply to him to have a litigation friend appointed.

MR ROSENTHAL: Yes, of course.

MR JUSTICE MELLOR: Okay. Yes?

MR ROSENTHAL: Subject to those slight amendments, or additions, I should say, I would invite

D Your Lordship to make the order that we have sought at page 29 of the bundle.

MR JUSTICE MELLOR: Okay, thank you. I will just give a short ruling.

Judgment transcribed separately.

MR JUSTICE MELLOR: So, Mr Rosenthal, if you can tidy up the draft order, make those amendments that we discussed, I will get it sealed.

E MR ROSENTHAL: Yes. Thank you. I am very grateful. It was pointed out to me that there is one further minor amendment that will be needed as a result of the course that we are taking in relation to D2.

MR JUSTICE MELLOR: Mm-hmm.

F MR ROSENTHAL: At page 33 it currently provides for service pursuant to all of the rules I have relied on at paragraph C on the named defendants, including D2, by sending a message to their Facebook accounts. Well, that, in light of what has happened, I would ask to remove D2 from that and add a subparagraph D to refer to sending to the email address that we have used.

G MR JUSTICE MELLOR: Yes. Yes, thank you very much, yes.

MR ROSENTHAL: Thank you. I will make those amendments.

MR JUSTICE MELLOR: Good. Okay. Thank you very much.

MR ROSENTHAL: Thank you very. I am very grateful.

Court rises.

H **End of hearing.**

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