

On behalf of: Applicants/Claimants  
By: Robert Shaw  
No: 1  
Exhibit: RS1  
Date: 10 December 2020

**PT-2020-BHM-000017**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
PROPERTY TRUSTS AND PROBATE LIST  
BIRMINGHAM DISTRICT REGISTRY**

BETWEEN:

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

**(2) HIGH SPEED TWO (HS2) LIMITED**

Applicants/Claimants

- and -

**(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE  
CONSENT OF THE CLAIMANTS ON LAND AT SOUTH CUBBINGTON WOOD,  
SOUTH OF RUGBY ROAD, CUBBINGTON, LEAMINGTON SPA SHOWN  
COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN A  
ANNEXED TO THE PARTICULARS OF CLAIM**

**(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE  
CONSENT OF THE CLAIMANTS ON LAND AT CRACKLEY WOOD, BIRCHES  
WOOD AND BROADWELLS WOOD, KENILWORTH, WARWICKSHIRE  
SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON  
PLAN B ANNEXED TO THE PARTICULARS OF CLAIM**

**(5) ELLIOTT CUCIUREAN**

Respondents/Defendants

---

**WITNESS STATEMENT OF  
ROBERT SHAW**

---

**I, ROBERT SHAW, of DLA Piper UK LLP, 1 St. Paul's Place, Sheffield S1 2JX WILL  
SAY as follows:**

1. I am a solicitor of the Senior Courts of England and Wales and a Legal Director at DLA Piper UK LLP LLP with day-to-day conduct of this matter under the supervision of my partners.
2. I am authorised to make this Witness Statement on behalf of the Claimants in this claim in support of the Claimants' application for an extension of the injunction granted by Mrs. Justice Andrews on 17 March 2020 (the "**March Injunction**"), which is otherwise due to expire on 17 December 2020.
3. The March Injunction was imposed by the Court on 17 March 2020 by the Order of Mrs. Justice Andrews ("**Order**"), in respect of the Cubbington Land and Crackley Land (which together I refer to as "**the Land**"). A copy of the Order is at pp. 1-10.
4. As I explain below, the reason that this temporary extension is sought is that the Claimants are intending to make an application to vary the March Injunction more substantively:
  - 4.1 for a longer period;
  - 4.2 against a number of proposed named respondents; and
  - 4.3 potentially, in respect of additional land brought within the relevant HS2 development sites and to address interference with the access to and egress from the Claimants' land,but a combination of factors and recent developments which I explain further below have meant that it is neither practicable nor convenient for this substantive application to be made at this juncture.
5. This application is therefore intended to maintain the status quo for a reasonably short period until that substantive application can be brought, and arrangements made for a full hearing of that application. The purpose of this statement is to:
  - 5.1 provide a brief background to these proceedings and to update the Court on relevant proceedings and matters that have taken place since these proceedings were last before the Court;
  - 5.2 explain why the Claimants' consider that there is a continuing and ongoing risk of trespass and obstruction of access to the Land which is the subject

of the March Injunction so as to justify a temporary extension to that relief; and

5.3 set out the Claimants' intention to make a substantive application on notice and to explain why that application is not being made at this juncture.

6. The matters I set out in this statement are within my own knowledge, unless stated otherwise, gained from reviewing incident reports, photographic and video footage made by the Second Claimants' contractors and its own specialist security team, my discussions with several members of the Second Claimant's team - including individuals from the legal, security and land and property teams. The contents of this statement are true to the best of my knowledge and belief.
7. There is now shown to me a paginated clip of documents which I exhibit hereto as RS1. Page numbers without qualification refer to that exhibit.

#### **Earlier Proceedings**

8. These proceedings concern two development sites for the HS2 railway project at the Land.
9. The Land is being developed by the Claimants and their contractors as part of the scheme of works ("**Scheme**") authorised by the High Speed Rail (London - West Midlands) Act 2017 (the "**Act**"). The Second Claimant ("**HS2 Ltd**") is the statutory undertaker for the HS2 project. The whole of the Land is within the Act limits, and the works being carried out on the Land are either works for the construction of Phase One of the HS2 railway, or works consequent on, or incidental, to those works.
10. The Scheme is a controversial one, and works at the Land have attracted (and continue to attract) extensive protest action on environmental and other grounds. Some of that protest activity has been lawful but the Land is impacted by regular and persistent unlawful direct action severely disrupting the works at these sites.
11. These actions have been considered previously by the High Court. As can be seen from its terms, the March Injunction was granted by Mrs. Justice Andrews in order to seek to prevent that unlawful conduct.

## **The March Injunction**

12. The Claimants commenced these proceedings on 19 February 2020. The Claim was brought against two categories of persons unknown (the First and Second Defendants) and two named defendants (the Third and Fourth Defendants).
13. The Claimants also applied for interim injunctive relief to prevent trespass to the Land, in circumstances where there had been a lengthy history of such conduct going back to September 2019. A full-day hearing took place before Mrs Justice Andrews on 17 March 2020:
  - 13.1 The Third and Fourth Defendants, Mr. Rukin and Mr. Bishop, were represented by counsel (Mr. Wagner of Doughty Street Chambers and Mr. Powlesland of Garden Court Chambers, respectively). The First and Second Defendants did not appear and were not represented.
  - 13.2 The Defendants raised numerous arguments about their opposition to the Scheme, which were considered by Mrs Justice Andrews in her judgment of that date ([2020] EWHC 671 (Ch)). I exhibit that judgment at pp. 11-20.
  - 13.3 At paragraph 2 of her judgment, Mrs Justice Andrews noted that *“Mr. Wagner also assisted the Court by drawing attention to points that he considered might have been made by the “persons unknown” trespassing on the Cubbington land and Crackley Land”*.
  - 13.4 Mrs Justice Andrews granted the March Injunction on that day, albeit it did not commence until 4pm on 24 March 2020. It is subject to a longstop date of 17 December 2020.
  - 13.5 As can be seen from the detailed directions at paragraphs 13 to 18 of the Order:
    - 13.5.1 the Third and Fourth Defendants were removed as defendants to these proceedings;
    - 13.5.2 the proceedings were effectively stayed unless and until any named person sought substantively to challenge the Claimants' entitlement to injunctive relief or the form of the order. I can



confirm that no person has sought to do so since the March Injunction was made; and

13.5.3 the Claimants also had liberty to apply to extend or vary this Order, and that is the basis for this application.

#### **Protestor Activity since the March Injunction**

14. Following the grant of the Order, a High Court Writ of Possession was issued on the 24 March 2020 (“**Writ**”) in this Court under which Mr. Gary Bovan, a High Court Enforcement Officer (employed by High Court Enforcement Group Limited (“**HCE**”)) was commanded to enter the Land and cause the Claimants to have possession of it (a copy of the Writ can be found at pp.21-22).

15. I am informed by Mr. Bovan that:

15.1 in respect of the Cubbington Land, on 23 March 2020, the day before the March Injunction became effective, the First and Third Defendants voluntarily vacated the Cubbington Land. However, they left behind items of camping equipment such as tents and there remained three tree house platforms at height in trees on the Cubbington Land.

15.2 in respect of the Crackley Land:

15.2.1 on 26 March 2020, Mr. Bovan and a team of enforcement officers from HCE attended the Crackley Land and commenced the eviction of the Second Defendants in these Proceedings pursuant to the Writ. On the same day, the land was cleared of 18 persons on the ground, leaving 5 protesters at height (i.e. in trees). Mr. Bovan informs me that the people occupying the Crackley Land were situated at Camp 1 (marked on the plan at p.24) and that so far as he is aware, most of those people relocated to Camp 2 (as also marked on the plan at p.24).

15.2.2 Steps were then taken to arrange the removal of the persons at height (which proved additionally difficult under Covid-19 Government guidelines as enforcement officers from HCE were instructed by the Second Claimant to keep a distance of 2m between themselves and any protestors where at all possible) and

it was not until 3 April 2020 that all protestors were removed from the trees and the Crackley Land.

- 15.3 After 3 April 2020, Mr. Bovan and enforcement officers from HCE were involved, with the Claimants' permanent security contractors, in a continuous 24/7 security operation in order to prevent protestors entering on to or to remove protestors from both the Crackley Land and Cubbington Land. It was not until 5 July 2020 that Mr. Bovan felt confident that, as incursions by protestors onto the Land had reduced sufficiently, the Writ could be closed.
16. Whilst possession of the Land was ultimately returned to the Claimants by Mr. Bovan and HCE, since the imposition of the March Injunction protestor activity in opposition to the Claimants' works at the Land has continued.
17. The focus of that activity has shifted to Camp 2. This is a protest camp situated on third-party land (which is not land covered by the March Injunction) adjacent to the Crackley Land.
18. Camp 2 is directly adjacent to the perimeter fence of the Crackley Land and was established prior to the original protest camp being evicted and dismantled by Mr. Bovan and enforcement officers from HCE. A picture of Camp 2 is at p.25.
19. On the whole, this protest camp is generally peaceful, but it is used by protestors as a base from which to launch incursions on to the Land and carry out other protests in the vicinity of the Land.
20. There have at other times been other ad hoc protest camps which have been set up in the vicinity of the Land, although not on the Land itself. These camps often form the base for temporary incursions on to the Land.
21. The numbers of persons occupying Camp 2 is fluid with the position on the ground changing on a day to day basis such that:
- 21.1 persons unknown come and go from, with new persons joining, Camp 2 regularly;
- 21.2 the total number of persons and their identity appears to change on a daily / weekly basis; and

- 21.3 due to the transient nature of protesters between HS2 development sites, Camp 2 has been occupied by as few as 10 people, and at the date of this witness statement, 16 people are present, all of adult age.
22. On average, the number of protesters on or in the vicinity of the Land who are visibly opposed to the HS2 Scheme range between about five and 30 a day. These persons, when not engaged in protest activities elsewhere on the Land, are often found in occupation of Camp 2.
23. Between April 2020 and November 2020 the Claimants have experienced continuing incidents of trespass on to the Land, and other unlawful conduct:
- 23.1 there have been approximately 21 incidents involving trespassing to or obstruction of access to / egress from the Land (of which the Claimants are aware and/or which were significant enough to be formally reported by their security contractors) since the March Injunction was made. Such acts reinforce the Claimants belief that there continues to be an ongoing risk of unlawful conduct (and, for the reasons given at paragraphs 47 - 53 below, such a risk is increasing and not decreasing).
- 23.2 there have also been several incidents where protesters have sought to interfere with / block access to the Land, which I also explain further below.
24. Whilst (as these incidents show) the March Injunction has not been wholly successful in stopping trespass, the Claimants believe that the amount of trespass would have been much greater but for the March Injunction.
25. It is not realistic to attempt to give an account of each and every incident that has been recorded at the Land. This statement therefore sets out a number of the more significant incidents, and a range of examples of the sort of protest activity that the Claimants continue to be subject to.
26. There has also been an increasing number of incidents of trespass on land within the Claimants' possession, but which is not 'protected' by the March Injunction. It is convenient to describe this land at this time as "the Additional Land". No part of this application is intended to extend the March Injunction to the Additional Land, but as I indicated in the introduction to this statement, the Claimants are



considering whether to seek injunctive relief over the Additional Land in due course.

27. The Claimants continue to recognise that the HS2 Scheme is a controversial one, and that those engaged in protest or demonstrations against it may have genuine and sincere concerns. The Claimants have tried to engage with those concerns and HS2 community engagement continues to engage with and address the concerns of protestors via similar initiatives.
28. The Claimants do not seek to stifle anti-HS2 views, but seek the Court's assistance to try to ensure that the protestors do not resort to unlawful direct action protest. Not only is that conduct unlawful, but it is extremely disruptive (and therefore expensive), dangerous and – in many instances – unpleasant and difficult for those engaged in work at the site. In outline:
  - 28.1 the Land is an active construction works site. The works timetable requires coordination between numerous different contractors and subcontractors of different specialisations. The mere presence of unauthorised protestors on the Land is unsafe when heavy works are planned, and usually requires those works to be paused. Where, as is often the case, protestors actively interfere with works, the problem is even more acute. The knock-on effect and cumulative effect of these delays is severe. They serve to increase costs, and require increased security and legal costs. All of these costs are ultimately borne by the public purse;
  - 28.2 the acts of trespass and obstruction are often accompanied by incidents of verbal harassment and physical intimidation of contractors including some violent acts;
  - 28.3 very considerable police resources have been required to assist with incidents on the Land, again at considerable public expense;
  - 28.4 attempts to maintain order at the Land are further hindered by the fact that temporary metal Heras-style security fencing is regularly moved, damaged or tampered with – and the Court-mandated notices warning of the existence of the March Injunction are regularly defaced or torn down;
  - 28.5 the Covid-19 pandemic has not noticeably reduced the level of protest at the Land. It has, however, made it difficult for the Claimants' security



contractors to seek to engage constructively with trespassers and ask them to leave – as protestors are often complaining about the lack of "social distancing" by the security personnel in those circumstances.

29. I have been provided with a written statement from two members of the Second Claimant's security contractor's Incident Response Team, Mr. Danny Barnard and Mr. Adam Smith, following observation of Camp 2 on 22 November 2020. A copy of the statement is at p.26. As can be seen, Mr. Barnard and Mr. Smith were informed by a Mr. Terry Sandison, that the protestors intend to use Camp 2 as *"their wintertime camp"* and that they are *"looking at the possibility of expanding the camp to house a larger number of protestors"*.

### **Contempt of Court Proceedings**

30. The Claimants have brought two separate applications in these proceedings for contempt of court against (i) the Fifth Defendant (Mr. Elliott Cuciurean); and (ii) Dr. Ian "Larch" Maxey in respect of some of those incidents of trespass mentioned at paragraph 23.1 above.
31. On 16 October 2020, the court found Mr. Cuciurean to be in contempt of the Order on 12 separate occasions between 4 April 2020 and 14 April 2020. The order of the court in this regard can be found at pp.27-33. Mr. Cuciurean has appealed and an expedited appeal hearing is listed for either 16 or 17 February 2021 with a time estimate of 1.5 days.
32. The application regarding Dr. Maxey is currently being amended by the Claimants in light of the judgment against Mr. Cuciurean and a hearing date is not yet scheduled.
33. For the purposes of this statement, I mention these separate applications as evidence that the Claimants will seek to enforce the Order should the Defendants act in defiance of the Order and to explain why the Claimants perceive there to be an ongoing risk of unlawful conduct.

### **Obstacles to substantive application**

34. In the circumstances, the Claimants' intention is to make a substantive application to:
- 34.1 further extend the injunction in time;

- 34.2 add a number of named defendants to the proceedings, who have been involved in such direct action protest and whom the Claimants believe they are now able to identify; and
- 34.3 potentially, include additional parcels of land which have been brought into the Scheme since these proceedings were last before the Court and to address interference with the access to and egress from the Claimants' land.
35. However, whilst the preparation of the substantive application and evidence is well progressed, the Claimants are not at present in a position to finalise and make the substantive application, nor do they consider that it would be practicable. The reasons for that are as follows.
36. First, until the incidents on 31 October 2020 and 20 November 2020 (explained in more detail in the Schedule exhibited at pp. 34-42)), the Claimants did not consider that it would necessary to seek an extension to the March Injunction. This was because:
- 36.1 Whilst protestors remained at Camp 2 and in the general vicinity of the Land, it appeared to the Claimants that the March Injunction (and the contempt of court proceedings related to that injunction) had reduced considerably the nuisance it was intended to prevent (that being trespass onto the Land in opposition to the felling of trees in ancient woodlands).
- 36.2 It appeared in recent months that the protest activity at the Land was reducing (such that it could be managed solely through the Claimants' own security contractors and arrangements (such as fencing, CCTV and perimeter detection sensors)).
- 36.3 Moreover, the works to fell trees, which the Claimants understood to be the focus of the unlawful direct action protest, had largely been completed by July 2020. As the works on the Land no longer involved tree clearance or ancient woodland, the Claimants assumed (wrongly it now appears) that the protest activity would move to other locations.
- 36.4 The nature of the incidents on 31 October and 20 November 2020 (and in consideration of the incidents since March 2020), together with the indication from Mr. Sandison that there is likely to be an increase in

numbers at Camp 2, has meant that the Claimants resolved recently to seek further injunctive relief in order to maintain protection to the Land.

37. Second, the question of which named persons should properly be added as named defendants is being kept under review by the Claimants. The Claimants intend to take a proportionate approach, though a difficult judgment call is sometimes required as to whether an individual's involvement in unlawful action was a 'one off' occurrence, or is evidence of a continued risk of future unlawful conduct. At present the Claimants have compiled a provisional list of named defendants which runs to 31 individuals, but are working to reduce this provisional list so far as reasonable before bringing the substantive application. In this regard, the actions of individuals taking part in the "wintertime camp" I identify at paragraph 29 above will be critical.
38. Third, the Claimants fully recognise and respect that persons who they name as defendants to these proceedings on the intended substantive application will likely wish to be heard in response. Some of those persons are likely to be litigants in person. It is also anticipated (from the Claimants' own experience) that there may be others who wish to apply to be joined as named defendants or otherwise make representations, and that there may be significant local or press interest with such persons also wishing to attend the hearing. Given the Covid-19 situation there are obvious constraints associated with arranging a physical hearing, and arrangements for a remote hearing will require planning as between the Claimants' representatives and the Court so as to facilitate access by all those who may wish to be heard. It is intended that the four month extension being sought by the Claimants should give sufficient time for a listing of a hearing of the substantive application to be arranged, and for arrangements to be put in place to facilitate remote access to that hearing from anyone who may wish to be heard on it.
39. Fourth, due to the Covid-19 pandemic and recent national lockdown between 5 November 2020 and 2 December 2020, the practicalities of collating and putting together the necessary evidence and paperwork have been inherently more difficult:
- 39.1 The representatives from the Claimants who are able to give relevant instructions and evidence are, largely, working from home and / or their available time has been impacted by practical changes which have been required on the ground.



- 39.2 It has been particularly difficult more recently to obtain full factual evidence from the Second Claimant and its agents because of the logistical constraints which we are now working within as well as other pressures on the available time of those who are involved in this process (which involves obtaining up to date evidence from a number of different contractors and sub-contractors of different specialisations).
40. Fifth, it is anticipated that the outcome of the Fifth Defendant's appeal of his committal for contempt of court may have an impact on the terms of the order sought by the Claimants. The appeal hearing has now been listed for 16/17/18 February 2021. The Claimants therefore seek an extension which will allow time for the Court of Appeal to hand down judgment and for that judgment to be considered by the court seized of the substantive amendment application, hence the choice of four months for this extension such that there is at least a month in between the appeal hearing and the substantive application hearing.
41. In particular, the grounds of appeal advanced by the Fifth Defendant include allegations that the site boundaries of the Land are unclear; complaints as to whether alternative service had been effected; and a complaint that paragraph 10 of the Order was part of the service requirements.
42. As such, there have been a number of complex 'moving' parts and practical difficulties - including matters outside of the Claimants' control - which have prevented the Claimants from realistically being in a position to file the substantive application before the expiry of the existing relief on 17 December 2020.

**Need for and approach to an interim temporary extension of the March Injunction**

43. In the circumstances, given the continued threat to the Land and recent increase in violent incidents, the Claimants urgently seek a temporary extension of the 17 December 2020 longstop date in order to maintain the existing protection which they have been afforded by the Court, pending the Claimants' intention to file and serve the substantive application.
44. The current application seeks to obtain the minimum protection that is necessary to protect the Claimants' interests; the Claimants do not seek an injunction over any additional land at this stage, nor do they seek to extend the injunction in time



beyond that they consider reasonably necessary to put in place arrangements for and have determined a substantive application.

45. As things stand, there are no named defendants to these proceedings who need to be served with this application other than the Fifth Defendant (who has solicitors on the record as acting). As I noted above, no person has ever sought to challenge the March Injunction (or the Order as a whole).
46. Nevertheless, it is the Claimants' intention to try to take steps to draw this extension application to the attention of interested parties. This application is urgent, but not - the Claimants accept - secret. The Claimants intend to file updated evidence at the hearing of this application to update the Court on those steps, and any response received.

#### **Continued threat to the Land and Summary of Incidents since making of March Injunction**

47. Since the making of the March Injunction there have been a number of incidents of trespass that the Claimants consider amount to a breach of the terms of the Order. Whilst the March Injunction has not wholly prevented unlawful disruption, it has been broadly successful and remains of great assistance to the Claimants' activities.
48. I exhibit to this statement a Schedule (which can be found at pp.34-42), which records a number of the more significant incidents and a range of examples of the sort of protest activity that the Claimants continue to be subject to, which have occurred since the March injunction was imposed. The source of this information is from my own experience having dealt with the applications for contempt of court brought against the Fifth Defendant and Dr. Maxey, reviewing the incident log reports, reviewing material received from the Second Claimant's agents, and discussions with and taking instructions from individuals from the Second Claimant's legal, security and land and property teams. On some occasions the incident logs provided to me recorded the location of the incidents using the What3Words geocode system – these co-ordinates (where available) are shown on the Schedule.
49. Some of the incidents in the Schedule are not breaches of the March Injunction, but as set out above, the Claimants' intention is to seek the Court's assistance in

preventing those activities from occurring on additional land which is under the control of the Claimants.

50. The Court is asked particularly to note two incidents in the Schedule, which have crystallised the Claimants' need for both a short extension to the March Injunction, and the need for the substantive application. The Claimants concern is that violent incidents are increasing in both number and the violence used, and such incidents will increase yet further if the Land is not protected by an injunction:

50.1 on 31 October 2020 (Incident 15 in the Schedule) between 30 and 40 protestors trespassed on the Land, in breach of the March Injunction, gaining access by use of chainsaw. Two security guards were injured, 8 were subjected to abuse, equipment was stolen and there were incidents of arson and criminal damage; and

50.2 on 20 November 2020 (Incident 17 in the Schedule) there was further criminal damage to the Claimants' equipment, on investigation security staff were threatened with an axe and with a dog, a security officer was punched and assaulted, and two security staff sustained minor injuries.

51. It will be apparent from the Schedule that the government guidelines and regulations concerning 'lockdown' during the Covid-19 pandemic have not materially (if at all) discouraged or prevented unlawful protest activity at the site. This conduct is therefore exposing the Claimants' contractors and sub-contractors working on the site to further unnecessary risk. The reports from security contractors at the site, in particular, are that - whilst protestors remonstrate with them about not keeping adequate 'social distance' - the same courtesy is not extended in return.

52. I also exhibit (at p.57) to this witness statement a video of the Fifth Defendant, taken on 16 October 2020 immediately after the conclusion of the sentencing hearing in respect of the Claimants' contempt of court application, wherein the Fifth Defendant can be seen:

52.1 at 20 minutes 56 seconds – saying that he does not consider his suspended sentence “*will make much difference*”.

- 52.2 at 21 minutes 8 seconds – explaining his intentions “*go to all the others sites that are not injuncted*” and then explaining that he has no remorse or regrets for his actions.
- 52.3 at 21 minutes 55 seconds – saying that there are other people “*waiting to go back and run around the woods and stop their work*”.
53. The Claimants believe that the Schedule and video of the Fifth Defendant show that, should the March Injunction not be continued, there is likely to be an increase in incidents of this type which would adversely impact the works required at site in order to implement a scheme which has been mandated by Parliament.

### **HS2 Programme Delays and Costs**

54. The Claimants substantive application will explain in greater detail the Claimants’ current programme of works at the Land, but in summary, works are planned up until approximately November 2029, which is the current forecast “delivery into service” (ie. when trains will start running) date for the HS2 Scheme.
55. If the Claimants’ works are restricted or not possible as a result of interference by protest action, it could have the potential ultimately to delay the date upon which the HS2 Scheme is delivered into service, which would increase the costs to the public purse, and delay the realisation of the significant benefits of the HS2 railway.
56. It is imperative that the Claimants and their contractors have uninterrupted use of the Land without obstruction in order that they can work in accordance with and maintain their programme in order to meet the HS2 Scheme timetable.
57. To date, protestor action has caused considerable impact (and cost) to the HS2 Scheme. The Claimants have sought to put together a broad estimate of the additional cost of the development of the Land by reason of the delays and additional expenses caused by protestor activity at the site (not including legal costs). In this regard, I am informed by Christina Wallace, a senior project manager for the Second Claimant, that protestor related costs at the Land (covering matters such as enhanced security and fencing, delay and disruption to works, damage (up to the insurance excess) and management time) is estimated to be approximately £5,500,000. These are costs that have had to be borne by the public purse.



58. Without an extension of the March Injunction, the anticipated costs caused by protestor activity at the Land are likely to be considerably higher after 17 December 2020.

### **Conclusion**

59. As has always been the Claimants' position - they have no desire to prevent, and they continue to respect, the Defendants' rights to peaceful protest. However, it is not necessary or lawful for the Defendants to trespass on the Land or to interfere with the rights of the Claimants to access the Land in order to express their views. The Defendants have other means of expression and lawful protest. Unlawful activities by the protestors put themselves, the police and the Claimants' contractors and employees at serious risk of physical harm. The Claimants are concerned particularly by the evidence of increasingly violent unlawful direct action protest.
60. It remains the case that the Defendants do not have the consent or permission of the Claimants to enter onto the Land and their presence continues to significantly impact Scheme works causing disproportionate delay and expense which is ultimately borne by the public purse.
61. The Claimants reasonably fear that the Land remains at continuing risk of trespass should the March Injunction be allowed to lapse without the continuation of the injunction, given the number of incidents that have recently been experienced by the Claimants on or in the vicinity of the Land and the expressed commitment of the Defendants to continue with protest activity at the Land.
62. I confirm that the Claimants remain prepared to continue to offer the cross-undertaking in damages contained in the March Injunction.

### **Statement of Truth**

63. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Dated 10<sup>th</sup> December 2020

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a horizontal line, positioned above a dotted line.

**ROBERT SHAW**

On behalf of: Applicants/Claimants  
By: Robert Shaw  
No: 1  
Exhibit: RS1  
Date: 10 December 2020

**PT-2020-BHM-000017**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
PROPERTY TRUSTS AND PROBATE LIST  
BIRMINGHAM DISTRICT REGISTRY**

BETWEEN:

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

**(2) HIGH SPEED TWO (HS2) LIMITED**

Applicants/Claimants

- and -

**(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE  
CONSENT OF THE CLAIMANTS ON LAND AT SOUTH CUBBINGTON WOOD,  
SOUTH OF RUGBY ROAD, CUBBINGTON, LEAMINGTON SPA SHOWN  
COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN A  
ANNEXED TO THE PARTICULARS OF CLAIM**

**(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE  
CONSENT OF THE CLAIMANTS ON LAND AT CRACKLEY WOOD, BIRCHES  
WOOD AND BROADWELLS WOOD, KENILWORTH, WARWICKSHIRE  
SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON  
PLAN B ANNEXED TO THE PARTICULARS OF CLAIM**

**(5) ELLIOTT CUCIUREAN**

Respondents/Defendants

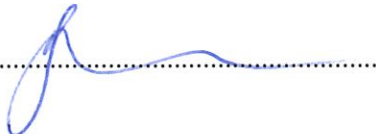
---

**EXHIBIT OF  
ROBERT SHAW**

---

This is the exhibit marked RS1 referred to in the witness statement of ROBERT SHAW  
dated this 10<sup>th</sup> day of December 2020

Signed .....



**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
PROPERTY, TRUSTS AND PROBATE LIST  
BIRMINGHAM DISTRICT REGISTRY**



**Before: Mrs Justice Andrews  
On: 17 March 2020**

PT-2020-BHM-000017

**B E T W E E N:**

- (1) THE SECRETARY OF STATE FOR TRANSPORT  
(2) HIGH SPEED TWO (HS2) LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT SOUTH CUBBINGTON WOOD, SOUTH OF RUGBY ROAD, CUBBINGTON, LEAMINGTON SPA SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN A ANNEXED TO THE PARTICULARS OF CLAIM

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT CRACKLEY WOOD, BIRCHES WOOD AND BROADWELLS WOOD, KENILWORTH, WARWICKSHIRE SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN B ANNEXED TO THE PARTICULARS OF CLAIM

(3) MATTHEW BISHOP

[Henceforth being removed as a Defendant pursuant to paragraph 13 of this Order]

(4) JOE RUKIN

[Henceforth being removed as a Defendant pursuant to paragraph 13 of this Order]

Defendants

---

**ORDER**

---

**PENAL NOTICE**

**IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED**

**IMPORTANT NOTICE TO THE DEFENDANTS**

**This Order prohibits you from doing the acts set out in this Order. You should read it very carefully. You are advised to consult a solicitor as**







**soon as possible. You have the right to ask the Court to vary or discharge this Order.**

**UPON** the Claimants' claim by Claim Form dated 19 February 2020 ("the **Claim**"), and the Claimants' accompanying application by Application Notice dated 19 February 2020 ("the **Application**")

**AND UPON READING** the Claim Form, Particulars of Claim, First Witness Statements of Alan Robert Payne, Jeremy Tadeusz Corvin-Czarnodolski and Shona Jenkins, the evidence of service in the Second Witness Statement of Shona Jenkins, the First Witness Statement of Raymond Finch, the Witness Statement of Mark Seymour and the accompanying certificates of service, and the witness statements of the Third Defendant and the Fourth Defendant.

**AND UPON** hearing Tom Roscoe, Counsel for the Claimants, Adam Wagner, Counsel for the Third Defendant, and Paul Powlesland, Counsel for the Fourth Defendant.

**AND UPON** the Third Defendant, Matthew Bishop and the Fourth Defendant, Joe Rukin being present upon the making of this order

**AND UPON** the Court accepting the Claimants' undertaking that the Claimants will comply with any order for compensation which the Court might make in the event that the Court later finds that this Order has caused loss to a Defendant and the court finds that the Defendant ought to be compensated for that loss.

**AND UPON** the Court indicating that it would expect the Claimants to inform the Court in writing (marked for the attention of a High Court Judge) if the HS2 project is postponed, suspended or cancelled, or there was such other change in circumstances which may affect the appropriateness of interim injunctive relief, so that the Court may give such further directions as appropriate.

**AND UPON** the Third and Fourth Defendants indicating to the Court via their witness statements and counsel that they: (i) intend to leave the land subject to these proceedings upon the making of the following orders for possession; and (ii) have no intention of returning to any part of that land save as is required to dismantle the protest camps within the time limits set out in this Order, such that there is no need for the Court to impose an injunction upon them or require any formal undertaking from them.

## **IT IS ORDERED THAT:**

### **Service by Alternative Method**

1. Pursuant to CPR r. 6.15 and r.6.27, the steps that the Claimants have taken to serve the Claim, the Application and the evidence in support on the Defendants shall amount to good and proper service of the proceedings on the Defendants and each of them. The proceedings shall be deemed served on 4 March 2020.

### **Possession Order**

2. The First and Third Defendants shall forthwith give the Claimants vacant possession of all of the land at South Cubbington Wood, South of Rugby Road, Cubbington, Leamington Spa as shown coloured green, blue and pink and edged in red on Plan A annexed to the Particulars of Claim and reproduced as an annexe to this Order ("**Plan A**") ("**the Cubbington Land**").
3. The Second and Fourth Defendants shall forthwith give the Claimants vacant possession of all of the land at Crackley Wood, Birches Wood and Broadwells Wood, Kenilworth, Warwickshire, as shown coloured green, blue and pink and edged in red on Plan B annexed to the Particulars of Claim and reproduced as an annexe to this Order ("**Plan B**") ("**the Crackley Land**")

(together referred to as "**the Land**").

### **Injunction**

4. From 4pm on 24 March 2020, and save for the matters set out in paragraph 5 of this Order:
  - 4.1 The First Defendant and each of them are forbidden from entering or remaining upon the Cubbington Land; and
  - 4.2 The Second Defendant and each of them are forbidden from entering or remaining upon the Crackley Land.
5. Nothing in paragraph 4 of this Order:
  - 5.1 Shall prevent any person from exercising their rights over any open public right of way over the Land. Those public rights of way shall, for

the purposes of this Order, include the “unofficial footpath” between two points of the public footpath “PROW 130” in the location indicated on Plan C annexed to the Particulars of claim and reproduced as an annexe to this Order;

5.2 Shall affect any private rights of access over the Land held by any neighbouring landowner.

6. The order at paragraph 4 above shall

6.1 remain in effect until trial or further order or, if earlier, a long-stop date of 17 December 2020.

### **Declarations**

7. The Court makes declarations in the following terms:

7.1 The Claimants are entitled to possession of the Cubbington Land and the Defendants have no right to dispossess them and where the Defendants or any of them enter the said land the Claimants shall be entitled to possession of the same.

7.2 The Claimants are entitled to possession of the Crackley Land and the Defendants have no right to dispossess them and where the Defendants or any of them enter the said land the Claimants shall be entitled to possession of the same.

### **Service of the Order**

8. Pursuant to CPR r. 6.27 and r. 81.8, service of this Order on the First and Second Defendants shall be dealt with as follows:

8.1 The Claimants shall affix sealed copies of this Order in transparent envelopes to posts, gates, fences and hedges at conspicuous locations around the Cubbington Land and the Crackley Land.



- 8.2 The Claimants shall position signs, no smaller than A3 in size, advertising the existence of this order and providing the Claimants' solicitors contact details in case of requests for a copy of the order or further information in relation to it.
- 8.3 The Claimants shall email a copy of the Order to the email address "helpstophs2@gmail.com"
- 8.4 The Claimants shall further advertise the existence of this order in a prominent location on the websites: (i) <https://hs2inwarwicks.commonplace.is/>; and (ii) <https://www.gov.uk/government/organisations/high-speed-two-limited>, together with a link to download an electronic copy of this Order.
9. The taking of the steps set out at paragraph 8 shall be good and sufficient service of this Order on the First and Second Defendants and each of them. This Order shall be deemed served on those Defendants the date that the last of the above steps is taken, and shall be verified by a certificate of service.
10. The Claimants shall from-time-to-time (and no less frequently than every 28 days) confirm that copies of the orders and signs referred to at paragraphs 7.1 and 7.2 remain in place and legible, and, if not, shall replace them as soon as reasonably practicable.
11. Pursuant to CPR r. 6.27 and r. 81.8, service of this Order on the Third and Fourth Defendants shall be dealt with as follows:
- 11.1 The Claimants shall post a copy of the Order to the Third Defendant at his normal place of residence being: 51 St Nicholas Road, Radford Semele, Leamington Spa CV31 1UN;
- 11.2 The Claimants shall post a copy of the Order to the Fourth Defendant at his address for service, being: 2 Ceasar Road, Kenliworth, CV8 1DL.
12. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below).

### **Further directions**

13. The Third and Fourth Defendants be removed as defendants to these proceedings.
14. No Defendant shall be required to file an acknowledgment of service.
15. The Defendants or any other person affected by this order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimants' solicitors immediately (and in any event not less than 48 hours before the hearing of any such application).
16. Any person applying to vary or discharge this order must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time.
17. The Claimants have liberty to apply to extend or vary this Order or for further directions.
18. Save as provided for above, the Claim be stayed generally with liberty to restore.

### **Costs**

19. The Claimants shall pay the costs of attendance at the hearing by Counsel for the Third and Fourth Defendants on the standard basis to be subject to summary assessment on the papers if not agreed by 12.00pm on 20 March 2020. If no such agreement is reached, brief written submissions are to be provided to the Judge's clerk by midday on 20 March 2020.
20. Save as aforesaid, there shall be no order as to the costs of the Claim or the Application as between the Claimants and the Third and Fourth Defendants.
21. The Claimants' entitlement to recover costs against any further named defendants in the future shall be reserved to any further hearing.

**AND UPON** the Claimants' oral application for permission to appeal from the order at paragraph 19 above.

22. Permission to appeal refused on the basis that the decision as to costs was within the scope of the Court's discretion.

### **Communications with the Court**

23. All communications to the Court about this Order (which should quote the case number) should be sent to:

Court Manager  
Birmingham Civil and Family Justice Centre  
High Court of Justice  
Chancery Division  
Priory Courts  
33 Bull Street  
Birmingham  
B4 6DS

The telephone number is 0121 681 4441. The offices are open weekdays 10.00am to 4.00pm.

24. The Claimant's solicitors and their contact details are:

Eversheds Sutherland (International) LLP of:  
1 Callaghan Square  
Cardiff  
CF10 5BT

DX: 33016 Cardiff

Tel: 020 7497 9797

Ref: JENKINSW/335547-000130

**Dated: 17 March 2020**













Neutral Citation Number: [2020] EWHC 671 (Ch)

Case No: PT-2020-BHM-000017

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE LIST**  
**BIRMINGHAM DISTRICT REGISTRY**

Priory Courts, 33 Bull Street  
Birmingham  
Date: 20/03/2020

**Before :**

**THE HONOURABLE MRS JUSTICE ANDREWS DBE**

-----  
**Between :**

(1) THE SECRETARY OF STATE FOR  
TRANSPORT  
(2) HIGH SPEED TWO (HS2) LIMITED

**Claimants**

- and -

(1) PERSONS UNKNOWN ENTERING OR  
REMAINING WITHOUT THE CONSENT OF  
THE CLAIMANTS ON LAND AT SOUTH  
CUBBINGTON WOOD, SOUTH OF RUGBY  
ROAD CUBBINGTON, LEAMINGTON SPA

(2) PERSONS UNKNOWN ENTERING OR  
REMAINING WITHOUT THE CONSENT OF  
THE CLAIMANTS ON LAND AT CRACKLEY  
WOOD, BIRCHES WOOD AND BROADWELLS  
WOOD, KENILWORTH, WARWICKSHIRE  
(3) MATTHEW BISHOP  
(4) JOE RUKIN

**Defendants**

-----  
-----  
**Tom Roscoe (instructed by Eversheds Sutherland (International) LLP) for the Claimants**  
**Adam Wagner (instructed by Harrison Grant) for the Third Defendant**  
**Paul Powlesland (instructed on direct access) for the Fourth Defendant**  
**The First and Second Defendants did not appear and were not represented.**

Hearing date: 17 March 2020  
-----

**Approved Judgment**



**Mrs Justice Andrews:**

**INTRODUCTION**

1. This is a claim brought by the Secretary of State for Transport and High Speed Two (HS2) Limited for relief in respect of unlawful protest camps and related activities on two parcels of land referred to in these proceedings as “the Cubbington Land” (which is shown on Plan A annexed to the Particulars of Claim), and “the Crackley Land” (which is shown on Plan B). The two parcels of land are geographically close to each other. Ancient woodlands form a part of each parcel of land and are also nearby. The evidence indicates that there appears to be a connection between the two sites, with occupants moving from one to the other, though the camps have not been continuously occupied.
2. The claim is brought against “persons unknown” entering or remaining without the consent of the Claimants on the Cubbington Land and the Crackley Land respectively. However, there are also two named individual defendants, Mr Matthew Bishop and Mr Joe Rukin. They have each served witness statements and appeared at the hearing represented by counsel, Mr Wagner on behalf of Mr Bishop and Mr Powlesland on behalf of Mr Rukin. Mr Wagner also assisted the Court by drawing attention to points that he considered might have been made by the “persons unknown” trespassing on the Cubbington Land and Crackley Land respectively, who are named as the First and Second Defendants and who were not represented at the hearing. I am grateful to both defence counsel and to Mr Roscoe, who appeared on behalf of the Claimants, for their lucid and focused arguments.
3. The relief that is sought falls under three heads: first, a claim for possession of the land, secondly, declaratory relief, and thirdly an interim injunction to restrain future trespasses upon the land. Having heard submissions on 17 March 2020, I stated that I would grant the Claimants relief in substantially the terms in which it was sought, subject to certain amendments discussed with counsel, but I refused to grant an injunction against Mr Bishop or Mr Rukin and awarded each of them the costs of their counsel’s attendance at the hearing. I also stated that I would set out my reasons in a reserved judgment which would be handed down in due course. This is that judgment.

**BACKGROUND**

4. I am satisfied on the evidence adduced by the Claimants that they have the status to pursue a claim for trespass on the land; the means by which they became entitled to possession is immaterial for those purposes. Indeed, the contrary was not argued by Mr Wagner or Mr Powlesland. There was no dispute before me that the Claimants are either the owners of the land or, in the case of HS2, they have taken temporary possession of the land pursuant to their statutory powers under the High Speed Rail (London-West Midlands) Act 2017 (“the 2017 Act”) for the purpose of carrying out “Phase One” works authorised by the Act in respect of the High Speed Two (“HS2”) railway project.
5. This is a controversial and high-profile project that is specifically authorised by the 2017 Act. It has raised genuine concerns and deep-rooted opposition in many quarters, particularly on environmental and ecological grounds.



6. As in an earlier case involving a claim in respect of trespass by protesters against the HS2 project, *Secretary of State for Transport and High Speed Two (HS2) Limited v Persons Unknown* [2019] EWHC 1437 (Ch), on each of the two affected parcels of land there are three categories of land shaded blue, pink and green on the plans. The blue land is land of which the Secretary of State is the freehold owner. The pink land is land that has been acquired by the Secretary of State pursuant to his powers of compulsory purchase under the 2017 Act. The green land is land in the possession of HS2 by reason of the exercise of its powers under section 15 and Schedule 16 of the 2017 Act. The outer boundary of the whole of the land on each of the two affected areas is edged in red on the plans.
7. The plans indicate that on the Cubbington site there are two protest camps which have been set up in a blue area. The site of the upper camp is close to an unofficial footpath through the ancient woodland which is the continuation of an existing public right of way. The Claimants have power under the 2017 Act to close and divert public highways, but they have not yet exercised it in respect of that footpath. A public footpath closer to the site of the lower camp has been closed, and the Claimants believe that the protesters initially entered the site from this path by moving the Heras fencing that closed it off on or about 29 September 2019.
8. The protest camp on the Crackley site is on a much smaller parcel of blue land that is roughly the shape of an isosceles triangle on Plan B. At the time when the camp was erected on 12 October 2019, Mr Rukin believed that land belonged to a Mrs Shanks. He has asserted in his evidence that the freehold was not acquired by the Secretary of State until 26 November 2019. In fact it would appear that Mr Rukin is mistaken in that regard, because although Mrs Shanks was the registered owner of land with the title number EX42259, a portion of that land (edged in green on the title plan) was removed in November 2018 and registered as part of title No WK501441. The Secretary of State has been the registered freehold owner of the latter, including the area on which the camp was erected, since November 2018. In any event, even if Mrs Shanks had owned the land at the time when the camp was initially set up, it does not affect the Secretary of State's present right to possession of the land, about which there can be no dispute. The protesters have had plenty of time since 27 November 2019 in which to dismantle their tents and leave, but they have not yet done so.
9. The court was told by Mr Bishop, the spokesman for the protestors on the Cubbington land, that the protesters with whom he is associated are local residents, normally law-abiding citizens, whose main concern is to ensure that the contractors working on the project adhere to the promises and assurances that they have given in respect of the preservation of the ancient woodland, and in particular that they do not act unlawfully by, for example, felling trees that are outside the published construction zones, or disregarding protected species of wildlife.
10. The Cubbington protestors say that their sole purpose in trespassing on the land is to monitor and take photographs or film the activities of the contractors in order to preserve evidence of alleged wrongdoing. They have no intention of disrupting the contractors going about their lawful business and were committed to ensuring that their protest was peaceful. To that end, Mr Bishop drew up a Camp Code of Conduct to which all the protestors who stayed in the two camps on the Cubbington Land subscribed.



11. The Claimants accepted, as do I, that Mr Bishop's activities as a concerned local resident have been genuine and sincere, and that at all times he has acted responsibly and peacefully. He is seen as a very important moderating influence, who has forged a good relationship with the HS2 representatives.
12. Mr Rukin has a wider agenda, in that he is the Campaign Manager of "Stop HS2" which as its name suggests, is opposed to the project in principle. However, so far as the occupation of the Cubbington Land and Crackley Land is concerned, Mr Rukin supports Mr Bishop's evidence that this is aimed at protecting the ancient woodland and observing and recording HS2 Ltd and their contractors' operations with a view to reporting any illegal activities to the relevant authorities. He denies that he or anyone associated with him or the camps has been responsible for litter or any anti-social behaviour on the land.
13. Unfortunately, the evidence of Ms Jenkins and Mr Corvin-Czarnodolski ("Mr Corvin") on behalf of the Claimants indicates that not all trespassers on the Cubbington Land and Crackley Land are so well-behaved. People have carried out damage to the Heras fencing which is used to demarcate the land, in some areas pulling it down and abusing workmen who have taken in panels to repair it; nails and glass have been placed on roads used by construction traffic, and some people have actively blocked access to the sites or erected structures on them which have impeded the work.
14. Moreover, as Mr Roscoe rightly pointed out, and as Mr David Holland QC held in the previous HS2 case to which I have referred, however laudable the motives of a trespasser may appear to be, it is no defence to a claim in trespass for the trespasser to say they are only on the land to prevent or obtain evidence of unlawful activities which might otherwise go undetected.

*Service of the proceedings*

15. There is a bespoke procedure for serving trespassers who are "persons unknown" with a claim for possession of the land under CPR 55.6. That procedure was followed by the Claimants' solicitors and the process servers, Mr Finch and Mr Seymour, but additional steps were also taken to bring these proceedings to the attention of anyone likely to have an interest in defending them. I am satisfied that the further steps that were taken, described in the evidence of Ms Jenkins, were both reasonable and sufficient, as evidenced by the fact that Mr Bishop and Mr Rukin were able to respond to the claim and instruct counsel to represent them.
16. The Claimants have made an application, to the extent that the elements of the claim go beyond a claim for possession, for an order that the steps taken to bring the claim form to the attention of the defendants (including the "persons unknown" defendants) were good alternative service methods pursuant to CPR 6.15 and 6.27. I am satisfied that they were. Quite apart from the fact that these service methods sufficed to bring the proceedings to the attention of the two named defendants, Ms Jenkins' second witness statement confirms that a number of interested parties have sought and obtained copies of the proceedings since the notice was published on the websites to which she refers.



17. I am also satisfied that this is a case in which it was appropriate to bring the proceedings in the High Court.

*The law*

18. I was referred to three recent cases in the Court of Appeal which concerned claims for injunctive and other relief against protesters whose identities were unknown, namely, *Boyd and Corr  v Ineos Upstream Ltd and others* (“Ineos”) [2019] EWCA Civ 515; *Cuadrilla Bowland Ltd and others v Persons Unknown* (“Cuadrilla”) [2020] EWCA (Civ) 9 and *Canada Goose UK Retail Limited and another v Persons Unknown* (“Canada Goose”) [2020] EWCA Civ 303. I need only refer in this judgment to *Canada Goose*, as the Court of Appeal in that case addressed and confirmed the principles set out in *Ineos* and *Cuadrilla* and laid down, at [82], a set of procedural guidelines applicable to proceedings for interim relief against “persons unknown” in protester cases.
19. Importantly, the Court of Appeal concluded that a final injunction cannot be granted in a protester case against “persons unknown” who are not parties at the date of the final order – for example, protesters who join the protest group after the hearing for interim relief. An interim injunction, however, may be granted against “persons unknown” for such a period as will enable the claimant to identify wrongdoers either by name, or as anonymous but identifiable persons who have been served with the proceedings (thereby falling within Category 1 of the categories of unknown defendants referred to by Lord Sumption in *Cameron v Liverpool Insurance Co Ltd* [2019] UKSC 6, [2019] 1 WLR 147). Such an injunction must be subject to reasonable temporal and geographic limits and contain sufficient provision for anyone adversely affected by it to apply to the court to vary or discharge it.
20. The only other authority to which I need refer is *Secretary of State for the Environment v Meier* [2009] UKSC 11, in which the Supreme Court considered the extent to which an order for possession can be made in favour of a claimant in respect of land not actually occupied by a defendant. That is relevant in the present case because, particularly as regards the Crackley site, the protest camp has been set up in one distinct area, and much of the Crackley Land is currently unaffected. Lord Neuberger said at [64] that:
- “the notion that an order for possession may be sought by a claimant and made against defendants in respect of land which is wholly detached and separated, possibly by many miles, from that occupied by the defendants, accordingly seems to me to be difficult, indeed impossible, to justify. The defendants do not occupy or possess such land in any conceivable way, and the claimant enjoys uninterrupted possession of it. Equally, the defendants have not ejected the claimant from such land. For the same reasons, it does not make sense to talk about the claimant recovering possession of such land, or to order the defendant to deliver up possession of such land.”*
21. However, he went on to say at [65] that this did not mean that, where trespassers are encamped in part of a wood, an order for possession cannot be made against them in respect of the whole of the wood, just as much as an order for possession may extend to a whole house where the defendant is only trespassing in one room (at least if the rest of the house is empty). An order for possession may be made in respect of the



whole of a piece of land when the defendant is only in occupation of part of it and the remainder is empty.

22. The present case is different from the situation in *Meier* in that both plots are contiguous open countryside and woodland to which the Claimants have an entitlement to possession as part of one scheme of works. In *Meier* there were disparate plots of land situated some distance away from the land which was currently under occupation. Mr Corvin's evidence and Ms Jenkin's second witness statement establishes that there have been trespassers on the land in areas other than where the camps are situated or their immediate vicinity. The Claimants' possession of the land is not undisturbed so long as persons are wandering on it at will without permission. I am satisfied on the evidence that the Claimants need possession of the whole of each site to enable the works to be carried out in a practical and safe manner, and there is a degree of urgency because some of the essential preparatory work needs to be carried out before the bat mating season in April.
23. With the principles in those authorities in mind, I turn to consider the three heads of relief that were sought in the present case.

#### THE CLAIM FOR POSSESSION

24. The Claimants are undoubtedly entitled to possession of the land identified on the two plans. The Defendants (including anyone presently in occupation) are not entitled to be there. Realistically neither Mr Wagner nor Mr Powlesland sought to offer any defence to this aspect of the claim.

#### THE CLAIM FOR A DECLARATION

25. Mr Roscoe drew my attention to *Meier* at [93] and [94] where Lord Neuberger suggested that a declaration of entitlement to possession of the relevant parcel of land might facilitate the speedy removal of future trespassers by means of a writ of restitution, without the need for the landowner (or other person entitled to possession) to start fresh proceedings. He submitted that declaratory relief was therefore potentially of greater practical utility to his clients than an injunction, as the only recourse if an injunction were breached would be to bring proceedings for contempt of court against the individual(s) concerned.
26. Mr Powlesland and Mr Wagner cautioned against granting ancillary relief in a form that might cast the net too wide and potentially have an adverse effect on the legitimate interests of persons who were not served with the proceedings and who were not represented in court. They pointed out that the areas currently occupied by the protesters fell squarely within blue areas, denoting land belonging to the Secretary of State and within a relatively narrow corridor through the woodland, quite some distance from the green areas occupied by HS2.
27. Mr Powlesland submitted that if, for example, private landowners whose land had been completely surrounded by land requisitioned for the HS2 project might be affected by an order in favour of the Claimant, they should be served with the proceedings and have the right to be heard. He raised the prospect that there might be some issue, for example, as to whether the section 15 and Schedule 16 powers to take possession of land belonging to third parties had been properly exercised in the first



place and therefore whether the owners of that land might contest that HS2 were entitled to a declaration that they were entitled to possession of it for the purposes of the works. Those points of course merit serious consideration, but I would have thought that if any local landowner was going to protest about the exercise by HS2 of its powers under the 2017 Act they would have done so by now. The Claimants have not come rushing to court to seek this relief.

28. Nevertheless, it is important that any injunctive or declaratory relief is framed in such a way as to make it plain that any existing rights of third parties or the general public – such as rights of way, or private rights such as easements over the land that have not been removed by the 2017 Act (or powers exercised under the 2017 Act) are preserved. Matters of that type should be capable of being addressed in the drafting of any court order, and of course there should also be a general permission to any person adversely affected by the order to apply to the court to vary or discharge it.
29. Whilst there may be cases in which it would be appropriate to do so, I could see no principled reason in the present case for granting declaratory relief that was narrower in scope than the order for possession, for example by confining the declaration to the freehold land owned by the Secretary of State. Both types of relief arise in consequence of the Claimants collectively being entitled to possession of the whole of the two parcels of land. Given that Mr Roscoe has persuaded me that granting a declaration would serve a useful purpose in preventing future trespasses on land needed for the Phase One works, that purpose will only be served if I grant a declaration in the terms sought by the Claimants to the effect that they are entitled to possession of the whole of the Cubbington Land and the Crackley Land.

#### THE CLAIM FOR AN INTERIM INJUNCTION

30. This proved to be the most controversial aspect of the claim, and at one point I was minded to refuse such relief on the basis that the declaration would suffice to protect the Claimants' interests. However, Mr Roscoe made the valid point that an injunction may have a deterrent effect, at least so far as otherwise law-abiding protesters are concerned, and that the difficulties of enforcement which he acknowledged when pressing for declaratory relief have not prevented such relief from being granted by the courts in the past.
31. To the extent that injunctive relief was pursued against Mr Bishop and Mr Rukin personally, there was no evidence that either of these gentlemen was likely to trespass on the land in future if they were required by the Court to give possession back to the Claimants. Mr Wagner assured me that this was so in the case of his client, and that if I granted an order for possession the only purpose for which Mr Bishop would return would be to assist in the dismantling of the camps and the removal of any structures erected by the protesters. Mr Powlesland, in echoing those assurances, pointed out that Mr Rukin had gone to the trouble of seeking out land that he believed did not belong to the Secretary of State on which to set up the protest site at Crackley, which was a clear indication that he would not deliberately set out to trespass on land to which the Claimants had rights of possession.
32. I made it very clear to both Mr Bishop and Mr Rukin, who were present in court, that if they were found trespassing on the land in future contrary to those assurances, it would not bode well for them in any contempt proceedings. I did not require any



express undertakings to be given in lieu of an injunction because in order to obtain relief of either sort the Claimants must first establish a real and imminent risk of further torts being committed by the relevant defendant. The Claimants have failed to do so. That being the case, there is no need for either Mr Bishop or Mr Rukin to continue to be named defendants to these proceedings.

33. So far as the claim for injunctive relief against “persons unknown” (including new protesters) is concerned, there is no dispute that, apart from Mr Bishop and Mr Rukin, the previous and current occupiers of the Cubbington Land and Crackley Land have not been identified by the Claimants. Both Mr Wagner and Mr Powlesland raised the question whether sufficient steps had been taken by the Claimants to attempt to identify those other persons. There was no evidence, for example, that any of the “persons unknown” referred to in the evidence of Mr Corvin who were encountered by contractors, were asked the simple question “who are you?” That is fair comment, although it may be unrealistic to expect that a protester would answer that question. The group of protesters at the Crackley site comprised a handful of people, and the posts on social media could have been used in an effort to trace them, but it seems that apart from Mr Bishop and Mr Rukin no such effort was made. Indeed, no-one appears to have taken the fairly obvious step of asking Mr Bishop and Mr Rukin to identify them.
34. In the light of this, I accept that perhaps the Claimants could have done more to identify the protesters who were in occupation of the protest camps on the two sites; but bearing in mind the evidence of Mr Bishop, in particular, it seems unlikely that any of the existing protesters associated with the camps will engage in any future trespasses. The problem lies with those who did not abide by the Code of Conduct.
35. If an injunction is granted in the short-term the Claimants know that they will have to do better in terms of identifying those responsible if they are to convert it into a final order. In a case such as this, the test for interim relief is a higher one than the standard *American Cyanamid* test for an injunction, because it must be shown that the Claimants are likely to obtain final relief. I consider that they are. In this regard, the simple fact remains that, other than when exercising the legal rights that attach to public or private rights of way, no member of the public has any right at all to come onto these two parcels of land, even if their motives are simply to engage in peaceful protest or monitor the activities of the contractors to ensure that they behave properly. If persons are found trespassing in the future, and those people are identified or are sufficiently capable of being identified by the time of the hearing, then the conditions for final relief will be established.
36. The next thing that the Claimants must establish is that there is a sufficiently real and imminent risk of a tort being committed (in this case, a future trespass or trespasses) to justify *quia timet* relief. Mr Wagner submitted that much of the evidence of past behaviour relied on by the Claimants was contested. So far as the uncontested evidence was concerned – the nails and glass on the roadway, for example – these were isolated incidents for which the protesters at the camp were not responsible. Unlike *Cuadrilla* this was not a case where committed and experienced protesters were using direct action to disrupt the works every day, by standing in front of trucks and so forth. This was a case where peaceful protest camps had attracted one or two unfortunate incidents from outsiders, and going forward, such matters may well



resolve. If they did not, it would be open to the Claimants to come back with better evidence.

37. Mr Powlesland likewise submitted that so far as the Crackley land was concerned, the incidents logged on Plan D and referred to in Mr Corvin's evidence were all in the immediate vicinity of the camp. Some were well in the past, and had not been repeated, whilst others were apparently committed on the public highway. Once the camp has gone, he submitted there was unlikely to be any risk of repetition.
38. However, as Mr Roscoe pointed out, such control of the land as there was by the responsible element of the protesters will cease with the dismantling of the camps. The problem potentially lies with those of a more militant persuasion who are prepared to do the type of things that Mr Bishop and those associated with him would not do, and have vehemently denied doing in the past, such as the breaking down of fencing or cutting the ties and padlocks on it; the digging up of closed badger setts; and the placing of nails and glass on the access roads. People who are prepared to engage in that sort of behaviour are less likely than the current protesters to make themselves known and less likely to desist in the face of orders for possession and declarations of landowners' rights.
39. I am satisfied that there is enough evidence to demonstrate a real risk of further trespasses on the land in future by persons who are opposed to the HS2 project and that such persons are unlikely to confine their activities in the way in which the peaceful protestors allied to Mr Bishop and Mr Rukin have done in the past.
40. I was initially inclined to take the view that it might be possible to formulate any interim injunction in a more focused way that would specifically address the type of objectionable (and tortious) behaviour which is a particular cause for concern – breaking down fencing, for example. However, leaving aside the difficulties of proving individual responsibility for such acts, there is a wide variety of conduct that could disrupt the project – someone wandering into an area where soil has been excavated from the woodland for the purposes of replanting, for example. The concept of interference with the work of contractors is far more nebulous than trespass and there is a need to define with clarity precisely what someone is and is not entitled to do. Trespass is a binary and simple tort which is easily defined as entering on another person's land without permission, and therefore it is simple enough to formulate an injunction preventing future trespasses in terms that are clear and unambiguous.
41. Both Mr Wagner and Mr Powlesland raised consideration of whether HS2 had come to equity with clean hands. Reference was made to the evidence that their contractors had felled woodland that was outside the construction boundaries, and to Mr Rukin's evidence of incidents on other sites on the HS2 corridor where, for example, the habitats of nesting birds had been disturbed. Mr Roscoe's response was that the concerns that the Defendants have may well be legitimate concerns shared by the general public, but they have no private rights to protect the trees or the wildlife. There are bodies that do have such rights and they are the appropriate bodies to be policing the matter. There are ecologists who are actively involved in supervising the works, and it would be unrealistic to suggest that a largescale project of this type would not cause some ecological damage. Nevertheless, steps are being taken to mitigate that damage.



42. Like it or not, Mr Roscoe submitted, secure access is needed to the whole of the site in order for the works to be carried out safely. You cannot have people roaming around freely on the site in order to carry out monitoring. As Mr Holland QC observed in the previous HS2 case at [136], *"there is no warrant for the court contemplating the commission of torts even if this could be described as "peaceful and non-violent civil disobedience" or "direct-action."* I respectfully agree.
43. At the end of the day, there is no material distinction to be drawn between the situation in that case and in this, so far as justification exists for granting an interim injunction. That said, I am not prepared to grant the injunction for a period of 2 years as Mr Roscoe initially sought. 9 months should suffice to cover the two key periods of the year within the ecological cycle referred to by Mr Corvin, namely April-May and September-October, and give the Claimants sufficient time to identify the "persons unknown" against whom they would seek final injunctive relief. These proceedings should not be allowed to remain unresolved for longer than is necessary.
44. The Claimants can always seek an extension of time, but at the present time of economic uncertainty, there are many factors which could have an impact on the future of this project. That is yet another reason why I am not prepared to grant an injunction for more than 9 months. Mr Roscoe offered to include in the order a provision requiring the Claimants to inform the Court if something that materially affects the future of the HS2 project arises during the period of the injunction and I consider it would be sensible to do so.

#### COSTS

45. Finally, there is the matter of costs. Mr Roscoe told the court that his clients did not seek their costs against either of the named defendants. Mr Wagner and Mr Powlesland sought orders for costs on the basis that the Claimants persisted in seeking injunctive relief against their clients, despite the evidence in their witness statements, and they failed to obtain it. Whilst they had admittedly trespassed on the land in the past, neither of these defendants resisted the claim for possession of the land or for declaratory relief. However, the Claimants still had to come to court to obtain that relief against the First and Second Defendants.
46. Mr Bishop and Mr Rukin only needed to attend the hearing in order to resist the claims for future injunctive relief made against them personally, which they did. It would not be fair to the Claimants to make them bear all the costs incurred by Mr Bishop and Mr Rukin, who had to put in evidence come what may; but in the light of the fact that the Claimants could and should have appreciated when they received their witness statements that there was insufficient evidence to justify seeking future injunctive relief against them, I consider that they should be awarded the reasonable costs of their counsel's attendance at the hearing. Mr Rukin instructed counsel on direct access; Mr Bishop instructed counsel and solicitors. Whilst it was reasonable to instruct both, it is not necessarily appropriate to make the unsuccessful party pay for the costs of both attending. In this case there was nothing special about the claim for injunctive relief that required a solicitor as well as counsel to be present in court. That is why I have restricted the recoverable costs to counsel's fees for attending the hearing.



**No. 66 - Combined Writ of possession and control**

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
PROPERTY, TRUSTS AND PROBATE LIST  
BIRMINGHAM DISTRICT REGISTRY  
High Court Claim No. PT-2020-BHM-000017



PT-2020-BHM-000017

**Claimants:**

- (1) THE SECRETARY OF STATE FOR TRANSPORT**
- (2) HIGH SPEED TWO (HS2) LIMITED**

**Defendants:**

**(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT SOUTH CUBBINGTON WOOD, SOUTH OF RUGBY ROAD, CUBBINGTON, LEAMINGTON SPA SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN A ANNEXED TO THE PARTICULARS OF CLAIM**

**(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT CRACKLEY WOOD, BIRCHES WOOD AND BROADWELLS WOOD, KENILWORTH, WARWICKSHIRE SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN B ANNEXED TO THE PARTICULARS OF CLAIM**

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

TO: *GARY BOVAN, an enforcement officer authorised to enforce writs of possession and control issued from the High Court.*

IN THIS CLAIM a Judgment or Order was made that the defendants give the claimants, THE SECRETARY OF STATE FOR TRANSPORT and HIGH SPEED TWO (HS2) LIMITED, forthwith possession of the land detailed in Schedule 1 below.

YOU ARE NOW COMMANDED:

(1) to enter the land detailed in Schedule 1 and cause the claimants, THE SECRETARY OF STATE FOR TRANSPORT and HIGH SPEED TWO (HS2) LIMITED, to have possession of it,

YOU ARE ALSO COMMANDED to indorse on this writ immediately after you have done so a statement of the manner in which you have enforced it and send a copy of the statement to the claimants THE SECRETARY OF STATE FOR TRANSPORT and HIGH SPEED TWO (HS2) LIMITED.

THIS WRIT WAS ISSUED by the Central Office, in the Birmingham District Registry of the High Court on (date) 24/3/2020 on the application of EVERSLEDs SUTHERLAND (INTL) LLP of 1 Callaghan Square, Cardiff, CF10 5BT, legal representative of the claimants.

WITNESS Robert Buckland QC Lord High Chancellor of Great Britain, the (date) 24/3/2020

The address for enforcement are (give address[es] including county and postcode).

All of the land at South Cubbington Wood, South of Rugby Road, Cubbington, Leamington Spa and all of the land at Crackley Wood, Birches Wood and Broadwells Wood, Kenilworth, Warwickshire

**SCHEDULE 1**

- 1. Date of Order: 17 March 2020**

**2. Details of land :**

- (i) all of the land at South Cubbington Wood, South of Rugby Road, Cubbington, Leamington Spa as shown coloured green, blue and pink and edged in red on Plan A reproduced as an annexe to the Order; and
- (ii) all of the land at Crackley Wood, Birches Wood and Broadwells Wood, Kenilworth, Warwickshire as shown coloured green, blue and pink and edged in red on Plan B reproduced as an annexe to the Order

**SCHEDULE 2**

1. Fixed costs on Judgment or Order	£	
2. Assessed costs (if any) [by costs certificate dated (date)]		£
3. <b>LESS</b> credits or payments received since Judgment or Order		£
	<b>Sub Total</b>	£ —
4. Fixed costs on issue		£
	<b>Total</b>	£ —

**Together with: -**

- A.** Judgment interest<sup>1</sup> at [8]% from; \_\_\_\_\_ 20\_\_ on sub-total above
- B.** Fees and Charges to which you are entitled

---

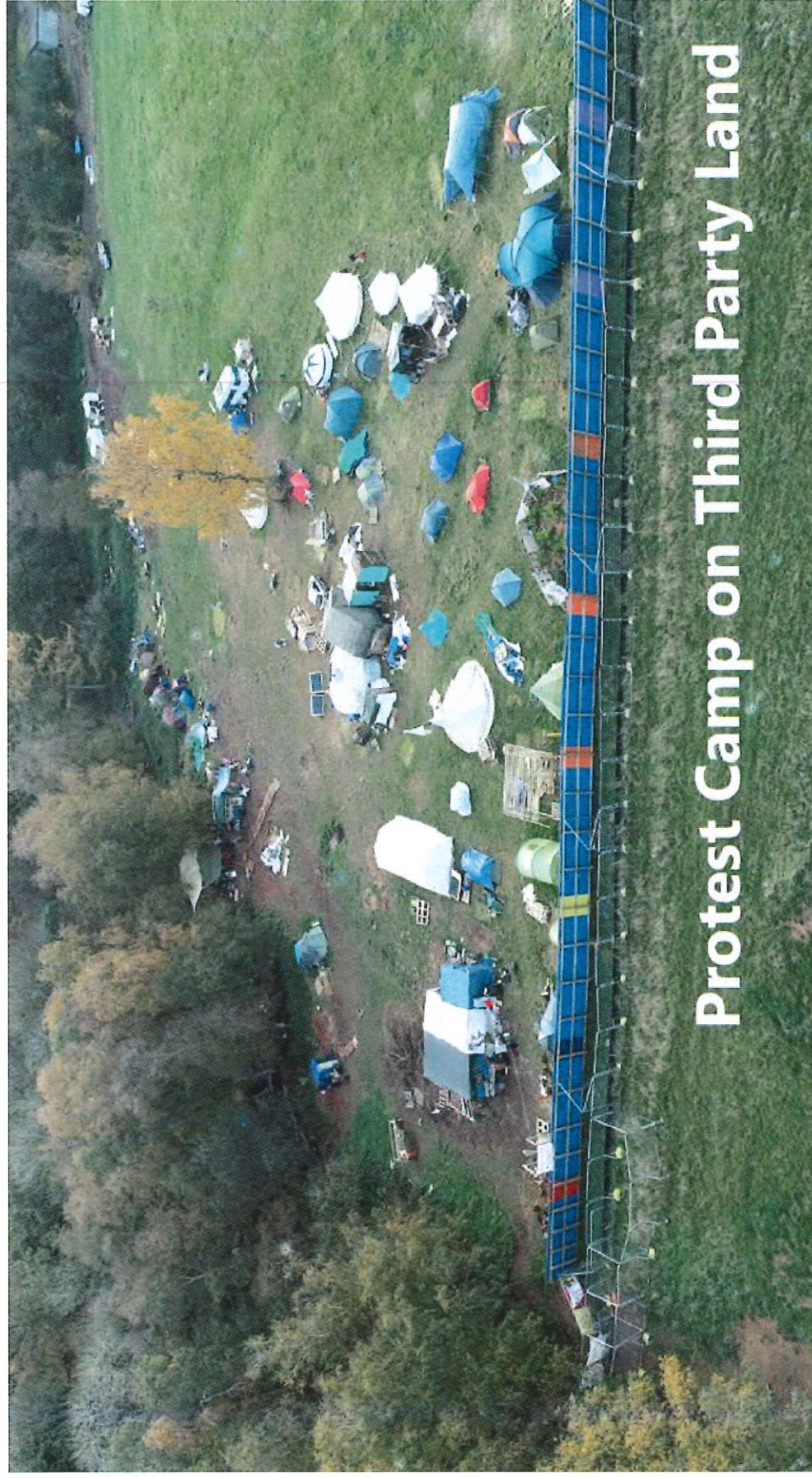
<sup>1</sup> S.17 Judgments Act 1838













### **Witness Statement of Danny Barnard and Adam Smith**

Incident regarding Crackly Wood threatening behaviour and a liquid thrown over the fence.

Date: 23/11/2020 Time of Incident: 12:30

At approx 12:30 I, Danny Barnard approached the fence at the Crackly Wood protestor Camp. Along with the full IRT team, we were tasked with gathering intelligence, show of force and to photograph the camp for the possibility of an increase in protestor numbers.

As we were taking pictures of the camp, approx 6 protestors approached the fence and climbed up on ladders and onto a small 'sentry' position.

Whilst we were engaging them in conversation in regards to the weather and a past incident that had happened, a bucket of water/urine was thrown over the fence. The initial bucket missed all of the IRT team.

We asked the protestors not to do this as we were engaging in a civil manner and were being polite to them.

As various members of the IRT started to talk to individual protestors, another bucket of water/urine was thrown over the fence which hit myself.

As we were disengaging from the fence and the conversation we were threatened with pick axe/handles if we returned.

It was during this time that a protestor named Terry Sanderson divulged information that there were about 30 protestors stationed at the camp. He also stated that they will be using Crackly Wood as their wintertime camp as they had the infrastructure (winter tents/log burners and resupply strategies along with money to get a large gathering of people through the winter months. The protestors are also looking at the possibility of expanding the camp to house a larger number of protestors during the winter.

Adam Smith was part of this conversation in regards to protestor numbers and the wintering of their camp.

The incident was reported to Police 101. The following details are from the police:

- 1, Incident Number 185
- 2, PC Steve Jones 1134
- 3, Warwickshire Police.

The full police incident report to follow:

Nothing Further to Report  
Signed on original by  
Danny Barnard and Adam Smith

**IN THE HIGH COURT OF JUSTICE**

**Case No. PT-2020-BHM-**



**BUSINESS AND PROPERTY COURTS IN  
BIRMINGHAM**

**PT-2020-BHM-000017**

**PROPERTY, TRUSTS AND PROBATE  
LIST**

**Before the Honourable Mr Justice Marcus Smith**

**16 October 2020**

**B E T W E E N:**

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

**(2) HIGH SPEED TWO (HS2) LIMITED**

**Claimants/Applicants**

**-and-**

**ELLIOTT CUCIUREAN**

**Defendant/Respondent**

---

**ORDER**

---

**UPON** the Claimants' committal application dated 9 June 2020 to commit the Defendant for breaches of the order of Andrews J made on 23 March 2020, which enjoined persons unknown from entering or remaining on the Claimants' land at, inter alia, Crackley Wood without the consent of the Claimants (the **Committal Application**, the **Andrews Order**, and the **Crackley Land** respectively);



**AND UPON** the Judge hearing the Committal Application on 30 and 31 July 2020 and 17 September 2020;

**AND UPON** hearing Michael Fry, Counsel for the Claimants/Applicants, and Adam Wagner, Counsel for the Defendant/Respondent

**AND UPON** the Judge handing down judgment on the Committal Application on 13 October 2020 (Neutral Citation [2020] EWHC 2614 (Ch))

**AND UPON** dismissing in the aforementioned judgment the applications to commit the Defendant for breaches of Andrews Order in relation to the incidents alleged to have taken place at 11:25pm on 4 April 2020, 15 April 2020, 17 April 2020, 21 April 2020 and on 26 April 2020 respectively as they were not made out to the required standard

**AND UPON** finding in the aforementioned judgment that the Defendant, Mr Elliott Cuciurean, had failed to comply with the Andrews Order and was therefore in contempt of court as set out below (the **Contempts**)

<b>Contempt 1</b>	At 2030 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 2</b>	At 2135 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 3</b>	At 2245 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 4</b>	At 0025 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 5</b>	At 1052 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 6</b>	At 1055 on April 5 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 7</b>	At 1125 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.

<b>Contempt 8</b>	At 1224 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 9</b>	At 1332 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 10</b>	At 1339 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 11</b>	At 1358 on 14 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.
<b>Contempt 12</b>	At 1433 on 14 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.

**AND UPON** hearing Mr Michael Fry of counsel for the Claimants and Mr Adam Wagner of counsel for the Defendant on 16 October 2020 at a hybrid hearing taking place at the Birmingham Civil Justice Centre regarding the appropriate sentence to be imposed for the Contempts,

#### **IT IS ORDERED THAT**

1. For his Contempts, the Defendant, Mr Elliott Cuciurean, shall be committed to HM Prison Birmingham or such other of Her Majesty's Prisons as may be selected for a period of six months from the date of his apprehension (the **Sentence**). The Sentence is suspended for a period of one year on the following condition (the **Condition**):

That for a period of 12 months commencing from 16 October 2020, Mr Cuciurean must not breach any order of a court in England and Wales which:

- (1) has been made in proceedings concerning the development of the High Speed Two railway in which High Speed Two (HS2) Limited are a party or are interested;
- (2) is endorsed with a penal notice;
- (3) is properly served on Mr Cuciurean whether in person or by an alternative method ordered by the court; and



(4)prohibits (however phrased) entry upon any land by Mr Cuciurean (whether named as a defendant or as a “person unknown”).

2. The question of costs shall be resolved by Mr Justice Marcus Smith on the papers after further submissions from the parties.
3. Permission to appeal this order is not required. The time for appealing this order, whether on questions of liability or sentence, shall run from the date that this order is sealed, that is 23 October 2020.
4. The contemnor, Mr Elliott Cuciurean, has permission to apply to the Court to purge his contempt and to ask for the sentences imposed to be reduced.

**Service of this Order**

This Order shall be served on the Defendant by the Claimants.

## SCHEDULE 1

<b>Contempt 1</b>	At 2030 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 2</b>	At 2135 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 3</b>	At 2245 on 4 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 4</b>	At 0025 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 5</b>	At 1052 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 6</b>	At 1055 on April 5 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with



		the sentences for the other Contempts.
<b>Contempt 7</b>	At 1125 on 5 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 8</b>	At 1224 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 9</b>	At 1332 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 10</b>	At 1339 on 7 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 11</b>	At 1358 on 14 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with the sentences for the other Contempts.
<b>Contempt 12</b>	At 1433 on 14 April 2020, Mr Cuciurean entered the Crackley Land in breach of the Andrews Order.	6 months suspended to run concurrently with

		the sentences for the other Contempts.
--	--	--



## SCHEDULE OF INCIDENTS

No.	Date	Time	Location	Description of Incident
1	05-Apr-2020	11:25	Hoarding Fence at South Crackley Wood Compound.	<p>The Fifth Defendant (and other protesters) entered on to the Crackley Land by removing metal Heras security fence panels at the end of a wooden Hoarding Fence erected by the Claimants.</p> <p>Mr Bovan, the HCEO and six enforcement officers from HCE entered the occupied area and drove the protesters off the Crackley Land back towards Camp 2. Attempts were then made to reinstate the removed Heras fence sections to secure the land. This was met by resistance from approximately fifteen protesters, who removed the new fence panels into Camp 2.</p> <p>Protesters on the Hoarding Fence poured liquids onto the HCEO, to prevent the Heras fence being erected. As a result, three protesters were arrested, by Mr Bovan under section 10 of the Criminal Law Act 1977 and handed to Warwickshire Police and detained in police custody. The Respondent then tried to re-enter the Crackley Land using force on two of the enforcement officers. The Fifth Defendant was repelled but not detained and he then dispersed from the main crowd into Camp 2.</p> <p>The video at p.55, taken by an enforcement officer from HCE, records this incident.</p>
2	15-Apr-2020	11:50	Land at South East Crackley Wood	<p>The Fifth Defendant forced his way onto the Crackley Land by lifting metal Heras security fence at south east Crackley Woods. The Respondent then approached a working machine from the operator's blind side. As a result, the Second Claimant was forced to stop all works within the working zone.</p> <p>The Fifth Defendant then climbed onto a 360 degree tracked machine before the Claimants' security team and/or enforcement officers from HCE were able to prevent him from doing so. The Fifth Defendant climbed up the extending arm approximately 20 meters off the ground and locked himself onto the boom using a thumb lock.</p> <p>Four specialist HCE climbing officers were deployed, and with the aid of two hydraulic cherry pickers, released the Fifth Defendant. Despite requests from</p>

## SCHEDULE OF INCIDENTS

				<p>the enforcement officer to release himself, the Fifth Defendant refused to disengage the lock-on device which had to be cut off. This caused a regrettable injury to the Fifth Defendant.</p> <p>The Fifth Defendant was arrested by Mr Bovan under section 10 of the Criminal Law Act 1977. The Fifth Defendant was then handed to Warwickshire Police and detained in police custody.</p> <p>More than 22 people were laid idle awaiting the Fifth Defendant's removal from the working zone for a period of an hour at significant cost to the Second Claimant.</p> <p>The videos at p. 56, taken by Mr. Bovan's bodyworn camera, record this incident.</p>
3	30-Apr-2020	12:50	<p>Borehole Location, Crackley Lane, near Crackley Woods</p> <p>W3W: craft.index.jokes</p>	<p>One male and two female unidentified protesters gained access to an area on the Crackley Land where ground investigation works were taking place. This area was enclosed by metal Heras security fencing.</p> <p>The Claimant's local security team responded to the incident and the Ground Investigation team ceased work and left the Crackley Land.</p> <p>The situation lasted approximately 30 minutes and caused disruption to the works that were taking place.</p>
4	07-Jul-2020	09:50	<p>Entrance to LMJV/Five Rivers site at South Cubbington Wood, Rugby Road (B4453) Leamington Spa</p>	<p>Approximately 100 protesters convened at the entrance to the Cubbington Wood site, blocking access and egress to both vehicles and pedestrians. A police escort was in operation. The protest commenced peacefully and activity including the reading of speeches and singing songs.</p> <p>At 12:40, approximately 30 protesters from the group forced entry to the Cubbington Wood site by pulling apart the metal Heras security fencing attached to the main gate. Security personnel attempted to prevent the protesters from gaining access but were overwhelmed by the size of the group. Whilst maintaining social distancing, the security team shadowed the group</p>



## SCHEDULE OF INCIDENTS

				<p>through the Cubbington Wood site along the main compound metal Heras security fence line until the group reached the metal Heras security fence line adjacent to neighbouring privately owned woods.</p> <p>The group then exited the Cubbington Wood site into the neighbouring wood by forcing an exit through the metal Heras security fencing. Security personnel monitored the group as it proceeded through the private wood.</p> <p>After a short period of time, the group exited the wood on the Weston Under Wetherley side and crossed back onto the Cubbington Wood site. The group crossed the opposite side of the Cubbington site and once at the site perimeter fence adjacent to a public right of way (“<b>PROW</b>”), lifted the fence up off the ground, allowing the group to exit the site. The group then made its way along the PROW, walking in the direction of Ashbed Wood.</p>
5	09-Jul-2020	04:00	<p>South Cubbington Wood, Rugby Road, Cubbington</p> <p>W3W: massaged.overlook.darkens</p>	<p>Site security became aware of unknown person/s having placed nails and screws on the access and egress road to the Cubbington Wood site.</p>
6	13-Jul-2020	07:30	<p>Five Rivers Site, South Cubbington Woods, B4453 Rugby Road</p> <p>W3W: choppy.trinkets.popped</p>	<p>Between the hours of 07:30 and 09:00, the entrance to the Cubbington Wood site was blocked by two white females aged between 50 and 60 years old. The protesters had anti-HS2 banners and literature on their persons.</p> <p>During the time of the obstruction at the Cubbington Wood site entrance, staff members and four deliveries were prevented from gaining access to the site.</p> <p>The protesters agreed to move aside following discussions with security officers.</p>
7	13-Jul-2020	05:00	<p>Crackley Site (Five Rivers) Main Gate, Cryfield Grange Road, Kenilworth</p> <p>W3W: short.caked.muddy</p>	<p>Between 07:00 and 08:40, five protesters blocked Cryfield Grange Road preventing vehicles from accessing the Crackley Woods site. The protesters were carrying banners and walking slowly down the road, obstructing vehicles.</p>

# SCHEDULE OF INCIDENTS

8	16-Jul-2020	03:00	Broadwell Woods, Bockenden Road, Kenilworth W3W: shades.assume.pads	<p>Stones were thrown at security officers and a security vehicle posted at an intersection between the Broadwell Woods site and the Crackley Woods site overflow car park.</p> <p>The officers were unable to identify the person(s) throwing the stones as it was dark at the time of the incident. One officer was hit on the head but was wearing full PPE including a protective hard hat and so sustained no injuries.</p>
9	19-Jul-2020	22:30	Crackley Wood, Crackley Lane, Kenilworth W3W: acid.lived.porch	<p>Security officers responded to a number of perimeter detection alerts which had detected intrusions to the perimeter of the Crackley Woods site, close to a badger sett in the marsh area of Crackley Wood.</p> <p>Upon arrival, security officers saw approximately 7 persons walking the metal Heras security fence perimeter, who were not identifiable as they were wearing face coverings. The security officers considered them to be affiliated with the protest camp.</p> <p>Upon seeing the security officers, the individuals left in the direction of the Camp 2 at the Crackley site.</p> <p>The security team identified 3 damaged metal Heras security fence panels immediately next to the badger sett.</p>
10	29-Jul-2020	06:30	Site entrance of the Five Rivers Compound, Rugby Road W3W: cubes.proofread.emptyied	<p>The entrance to the Cubbington Wood site was blocked by 15 protestors displaying anti-HS2 banners and signs.</p> <p>Security officers negotiated with the protestors to allow access for vehicles to the site as traffic congestion was making the immediate area unsafe.</p> <p>The Police were called to the scene and arrived at 06:45. The protestors remained at the entrance to the Cubbington Wood site but were moved to a grass verge to facilitate unrestricted access to and from the site. The protest was peaceful throughout.</p>



## SCHEDULE OF INCIDENTS

11	12-Aug-2020	16:12	Haul Road off Coventry Road (A429), South of Crackley Woods W3W: minus.rises.booth	<p>At 09:30 the protestors left the site along Rugby Road in the direction of the South Cubbington Wood protest camp which was situated in a wood on private land.</p> <p>Two male protestors approached a HS2 operative working in an excavator on a haul road at the Crackley Woods site. One of the protestors picked up a shovel that was laying on the ground nearby and swung it at the operative who was sitting in the cab of the excavator.</p> <p>The operative immediately dropped the bucket of the excavator onto the ground. As he did so, the first protestor dropped the shovel to the ground. The second protestor proceeded to mount the excavator and kick the side window of the excavator. The excavator operator then switched off the ignition and exited the cab of the vehicle. As a result, disruption to the works schedule was caused.</p> <p>A second member of staff attempted to video the incident whilst running to the scene. As the staff member approached the scene, one of the protestors snatched his phone from his hand. The two protestors then made off in the direction of Camp 2 at Crackley Woods, taking the phone with them.</p> <p>Later that evening, a male protester ran along a PROW from the direction of Camp 2 and threw to the ground what was identified to be a badly damaged mobile phone. It was not possible to identify the protesters as they had their faces covered and the events happened quickly.</p> <p>The mobile phone was recovered by site security and bagged for police attention.</p>
12	03-Sep-2020	13:00	South Wood, Crackley W3W: option.powder.salads	<p>At approximately 13:00, 17 protestors from Camp 2 pushed and pulled over metal Heras security fencing close to where HS2 operatives were felling trees in the South Wood at the Crackley Land. Two protestors, one male and one female, climbed under the metal Heras security fencing and moved directly towards a mobile elevated working platform machine (“MEWP”).</p>

## SCHEDULE OF INCIDENTS

			<p>The male was described as being white, a slim build, and an age of approximately late 20's to early 30's. He was described as having short brown hair, was unshaven, missing a number of front teeth, and wearing a black hooded top and grey-coloured trousers.</p> <p>The female was described as being white, aged approximately in her early 30's, with yellow coloured long hair, a proportionate build, and wearing a blue coloured hat, green coloured dress, brown coloured leggings, and black trainers with red, yellow and blue stripes.</p> <p>Both of the protesters climbed on to the MEWP, forcing HS2 operatives to take emergency action and immediately stop work. Site security then secured the area around the two protesters on the MEWP. The Police were called at 13:20.</p> <p>To enable works to continue, a second MEWP was tracked to the area. Upon seeing this, the male protestor leapt from the MEWP he was sitting on and attempted to climb the second MEWP but was restrained by security and removed from the area.</p> <p>Security personnel and Police officers engaged with the remaining protestor but she refused to climb down until work had concluded for the day. At 16:30 the female protestor voluntarily descended from the MEWP and the works resumed.</p> <p>Both protesters were arrested by the Police for aggravated trespass and pursuant to section 241 of the Trade Union and Labour Relations Act 1992.</p>
13	06-Sep-2020	<p>South Cubbington Wood, Rugby Road, Leamington Spa</p> <p>W3W: outs.sliders.life</p>	<p>During the course of the night of 6 September 2020, unidentified person(s) entered the Cubbington Land via an unidentified route and gained access to the woods and to the work area.</p> <p>Whilst on the site, the unidentified person(s) inserted metal screws into the trunks of trees that were sprayed / marked with different colours which depicted the current status of the tree. The photos at pp. 43-47 show some of the trees where screws had been inserted.</p>



## SCHEDULE OF INCIDENTS

				<p>The metal screws presented an extremely dangerous health and safety risk to the Claimants' contractors when working with machinery to fell such trees as there was the potential for the machinery to be damaged or even for the screws to be shot out of the trees like bullets.</p> <p>Disruption was caused to the works program as a result of this incident.</p> <p>At approximately 14:45, 3 protestors informed site security at the Cubbington site main gate that they had 'spiked' trees. The protestors were described as one white female wearing a green top and blue jeans, and two white males, one wearing a brown top the other a blue top.</p> <p>All three protestors left the main gate along Rugby Road in the direction of Cubbington Woods.</p>
14	20-Oct-2020	Broadwells Crackley Lane, Kenilworth  W3W: gain.starts.offer		<p>This incident occurred just outside of the Crackley Land,</p> <p>During the course of the evening of 20 October 2020 or early morning of 21 October 2020, person(s) unknown forced entry into the Five Rivers compound at the Claimants' Broadwell Woods site. Five Rivers are a sub-contractor to the Second Claimant's main contractor at the Crackley Land.</p> <p>Damage was caused to 5 pieces of plant equipment on site. The fuel tank caps were forced off and soil and woodland debris was pushed into the fuel tanks of each of the pieces of plant equipment. Glue was poured into each lock on the driver-side doors of each piece of plant equipment.</p>
15	31-Oct-2020	20:25	Five Rivers Site, Crackley Junction of Crackley Lane and Cryfield Grange Road	<p>On-site security officers reported that between 30 and 40 protestors gained access onto the Crackley Woods site at 20:25. The protestors gained access through a locked gate with the use of a chainsaw.</p> <p>The protestors entered the Crackley Woods site welfare tent, causing damage to the tent by slashing it, and injuring two security guards. One of the security</p>

## SCHEDULE OF INCIDENTS

				<p>guards was punched by a protester and the other was hit on the head with a fire extinguisher.</p> <p>The protesters submitted 8 security staff to 25 minutes of sustained abuse and threats. They shone lasers in the eyes of the security staff and stole radios, body-worn cameras and torches from staff members and set a nearby skip on fire.</p> <p>The protesters caused damage to at least five items of plant equipment by smashing windows, graffitiing, causing damage to electrical systems and placing mud and stones in the fuel tanks. Photos taken on 1 November 2020 in the aftermath of this incident are at pp. 48-51 of RS1.</p>
16	16-Nov-2020	14:00	Crackley Wood, Crackley Lane, Kenilworth	<p>Security personnel responded to a call at 14:00 concerning protestors pulling down site fencing and confronting operatives felling trees. As the security officers were making their way to the incident location along the PROW that runs through the Crackley Land, the two officers were confronted by a white male close to Camp 2 who appeared to be intoxicated. The protester was shouting incoherently about a past incident and threw a beer can at one of the officers, hitting the officer. The protester then picked up a stick/branch from the ground.</p> <p>At this point, a second white male with a dog came from the direction of Camp 2. Both protesters were shouting aggressively at the security officers, who attempted to reason with the two males. As the officers attempted to return into the Crackley site, one of the officers was hit on the back by the male with the stick. Further security officers then arrived at the scene and the two males made off in the direction of the Camp 2.</p>
17	20-Nov-2020		Cublington Woods	<p>Fencing and gates were found to have been pulled down and the sensor of a perimeter intruder detection device was found to be smashed. Video evidence from the device shows the trespasser to be wielding a weapon .</p> <p>One intruder approached security officers stationed at the site with an axe. This situation was diffused by the security officers.</p>



## SCHEDULE OF INCIDENTS

				<p>During this time, 6 or 7 further intruders with a dog threatened and verbally abused the security officers. Various items were thrown at the security staff, including logs, stones and a chair. Security officers were physically assaulted by being punched and by having a metal pole swung at them.</p> <p>Minor injuries were sustained by two members of security staff. The Police attended the scene and took statements from those involved.</p> <p>The photos a pp. 52-54 show some of the damage caused.</p>
--	--	--	--	--

**Incident on 6 September 2020 – Photo 1**





Incident on 6 September 2020 – Photo 2



Incident on 6 September 2020 – Photo 3





**Incident on 6 September 2020 – Photo 4**



Incident on 6 September 2020 – Photo 5





Incident on 31 October 2020 – Photo 1



Incident on 31 October 2020 – Photo 2





Incident on 31 October 2020 – Photo 3



Incident on 31 October 2020 – Photo 4





Incident on 20 November 2020 – Photo 1





Incident on 20 November 2020 – Photo 2





Incident on 20 November 2020 – Photo 3



## **Video Evidence**

**Date:** 5 April 2020

**File Name:** *Incident on 5 April 2020*

---



## **Video Evidence**

**Date: 15 April 2020**

**File Names: Incident on 15 April 2020 (Part 1)**  
**Incident on 15 April 2020 (Part 2)**

## **Video Evidence**

**Date:** 16 October 2020

**File Name:** *E. Cuciurean Interview*

**URL Link:**

[https://www.facebook.com/111893330507008/videos/387088238983284/? so =channel tab& rv =all videos c  
ard](https://www.facebook.com/111893330507008/videos/387088238983284/?so=channel%20tab&rv=all%20videos%20card)



On behalf of: Applicants/Claimants  
By: Robert Shaw  
No: 1  
Exhibit: RS1  
Date: 10 December 2020

**PT-2020-BHM-000017**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND  
AND WALES  
PROPERTY TRUSTS AND PROBATE LIST  
BIRMINGHAM DISTRICT REGISTRY**

BETWEEN:

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

**(2) HIGH SPEED TWO (HS2) LIMITED**

Applicants/Claimants

- and -

**(1) PERSONS UNKNOWN ENTERING OR  
REMAINING WITHOUT THE CONSENT OF THE  
CLAIMANTS ON LAND AT SOUTH CUBBINGTON  
WOOD, SOUTH OF RUGBY ROAD, CUBBINGTON,  
LEAMINGTON SPA SHOWN COLOURED GREEN,  
BLUE AND PINK AND EDGED IN RED ON PLAN A  
ANNEXED TO THE PARTICULARS OF CLAIM**

**(2) PERSONS UNKNOWN ENTERING OR  
REMAINING WITHOUT THE CONSENT OF THE  
CLAIMANTS ON LAND AT CRACKLEY WOOD,  
BIRCHES WOOD AND BROADWELLS WOOD,  
KENILWORTH, WARWICKSHIRE SHOWN  
COLOURED GREEN, BLUE AND PINK AND EDGED  
IN RED ON PLAN B ANNEXED TO THE  
PARTICULARS OF CLAIM**

**(5) ELLIOTT CUCIUREAN**

Respondents/Defendants

---

**WITNESS STATEMENT OF  
ROBERT SHAW**

---

DLA Piper UK LLP  
1 St Paul's Place  
Sheffield S1 2JX  
United Kingdom  
Tel: +44 114 283 3114  
Fax: 0114 276 5246

Ref: RXS/UKDP/380900/346/UKM/106899972.2  
Solicitors for the Applicant