

B E T W E E N

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

Claimants

-and-

PERSONS UNKNOWN and Others

Defendants

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**CLAIMANTS' SKELETON ARGUMENT ON THE MERITS**

*For hearing at 10.30 am on 26<sup>th</sup>, 27<sup>th</sup> and 30<sup>th</sup> May 2022*

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**INTRODUCTION**

1. The Claimants' first skeleton argument sets out relevant legal principles relevant to this application, dated 18<sup>th</sup> May 2022. This second skeleton argument addresses the merits of the Claim and the substantive issues raised by Defendants. The aggregate length of the two documents exceeds 20 pages. Having regard to the nature of the case and the intention in setting out relevant legal principles in the first skeleton argument, the Court is asked to give permission to rely on both documents.

2. The Claimants seek:

- An injunction, including an anticipatory injunction<sup>1</sup>, to protect the HS2 Scheme.
- Orders for alternative service; and
- As the Claimants have previously been granted several orders prohibiting trespass and nuisance in relation to parts of the HS2 Land,<sup>2</sup> the Claimants ask that these be discharged (along with discontinuance of the underlying proceedings) upon the grant of the order that is now applied for<sup>3</sup>.

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<sup>1</sup> Formerly referred to as a *quia timet* injunction

<sup>2</sup> See Particulars of Claim, paragraph 7.

<sup>3</sup> A draft of which was filed with the application, and which has been amended following the Directions hearing.

3. The Defendants who have been identified and joined individually as Defendants to these proceedings, are referred to as “**the Named Defendants**”; whilst reference to “**the Defendants**” generally, includes both the Named Defendants and those persons unknown who have not yet been individually identified. The names of all the persons engaged in unlawful trespass were not known at the date of filing the proceedings (and are still not known). That is why different categories of “persons unknown” are identified as Defendants 1 to 4. That was and remains an appropriate means of seeking relief against unknown categories of people in these circumstances.<sup>4</sup>

4. This skeleton argument deals with:

[1] Trespass

[2] Nuisance

[3] A real risk of continued unlawfulness

[4] Reasons to grant the order against known defendants

[5] Reasons to grant the order against persons unknown

[6] Scope

[7] Service and knowledge

5. In broad terms, the questions arising are: (1) have there been unlawful acts which justify the grant of relief; (2) do the circumstances and history further justify relief in anticipation of those acts continuing; (3) are the defendants correctly described? If the answer to those broad questions is ‘yes’, then the further issues are: (4) whether the proposed order would operate fairly and proportionately, and; (5) without unintended consequences for lawful activity?

6. The purpose of the order, if granted, is simply to allow the First and Second Claimant to get on with building a large piece of linear infrastructure. Its purpose is not to inhibit normal activities generally, nor to inhibit the expression of whatever views may be held. The fundamental disagreement with those who appear to defend these proceedings is as to what constitutes lawful protest. The Claimants say that they are faced with deliberate interference with their land and work with a view to bringing the HS2 Scheme to a halt.

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<sup>4</sup> See *Boyd & Anor v Ineos Upstream Ltd & Ors* [2019] EWCA Civ 515 at [18]-[34], summarised in *Canada Goose v Persons Unknown* [2020] EWCA Civ 303 at [82] (as we deal with in detail below in Part 5 of this skeleton argument).

7. That is not lawful, and it is not lawful protest.
8. A summary schedule of the points taken by Defendants is appended to this skeleton argument.
9. On Monday 23<sup>rd</sup> May the Claimants will provide the Court with an Administrative Note which will include a consolidated list of suggested reading, having regard to any skeleton argument received from any Defendant. It will also include an update of those Defendants who have, by then, signed undertakings that they will not trespass or otherwise continue to interfere with the HS2 Scheme and so have been removed from the list of named Defendants.<sup>5</sup>

## [1] TRESPASS

### The Claimant's Rights to the HS2 Land

10. As set out in **Dilcock 1 [B145 onwards] and Dilcock 4 [B179]**, the HS2 Scheme at present consists of Phases One and 2a, pursuant to the HS2 Acts. Section 4(1) of the Phase One Act gives the First Claimant power to acquire so much of the land within the Phase One Act limits as may be required for Phase One purposes. The First Claimant may acquire land by way of General Vesting Declaration ("GVD") or the Notice to Treat ("NTT") and Notice of Entry ("NoE") procedure. Section 15 and Schedule 16 of the Phase One Act give the First Claimant the power to take temporary possession of land within the Phase One Act limits for Phase One purposes.
11. In relation to Phase 2a, section 4(1) of the Phase 2a Act gives the First Claimant power to acquire so much of the land within the Phase 2a Act limits as may be required for Phase 2a purposes. As with Phase One, the First Claimant may acquire land by way of the GVD, and the NTT and NoE procedures. Section 13 and Schedule 15 of the Phase 2a Act give the First Claimant the power to take temporary possession of land within the Phase 2a Act limits for Phase 2a purposes.
12. In addition to the powers of acquisition and temporary possession under the Phase One Act and the Phase 2a Act, some of the HS2 Land has been acquired by the First Claimant under the statutory blight regime pursuant to Chapter II of the Town and Country

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<sup>5</sup> Those undertakings, received to date, are at **[D/18; D/22]**.

Planning Act 1990. The First Claimant has acquired other parts of the HS2 Land via transactions under the various Discretionary HS2 Schemes set up by the Government to assist property owners affected by the HS2 Scheme.

13. Further parts of the HS2 Land have been acquired from landowners by consent and without the need to exercise powers. To be clear, there are no limits on the interests in land which HS2 Ltd may acquire by agreement. Finally, the Claimants hold some of the HS2 Land under leases – most notably, the First Claimant’s registered office at Snowhill in Birmingham and its office at The Podium in Euston, both of which have been subject to trespass and (in the case of The Podium) criminal damage by activists opposed to the HS2 Scheme (the incident of trespass and criminal damage at The Podium on 6 May 2021 is described in more detail in **Jordan 1** [29.3.2; **B/10/095**]).

14. The entitlement to possession can be seen in the exhibits to **Dilcock 1: JAD1 [Bundle F], JAD2 [Bundle E], JAD3 [C/vol B/5/284 onwards]** (which are also provided through online links<sup>6</sup>). The land is coloured as follows:<sup>7</sup>

a. Pink land: of which the Claimants are either owner with freehold or leasehold title. The basis of title is explained in **JAD2 [Bundle E]**, (Table 1 reflects land acquired by the GVD process, Table 3 that acquired by other means – e.g. private treaty).

b. Green land: in respect of which the First Claimant is entitled to temporary possession pursuant to section 15 and Schedule 16 of the Phase One Act and section 13 and Schedule 15 of the Phase 2a Act. (Table 4 of **JAD2: E085-153**).

15. There is no doubt that the Claimants have the necessary rights in the HS2 Land to obtain the relief sought. The Court can therefore be satisfied that the Claimants are entitled to possession of all of the land comprising the HS2 Land.

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<sup>6</sup> <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>

<sup>7</sup> Further detail is provided at **Dilcock 1**, paragraphs 28-33.

## The evidence of trespass

16. **Jordan 1** [B/10/065 onwards] contains ample evidence of trespass by (primarily) persons unknown both on the Cash's Pit Land, and elsewhere along the HS2 Scheme route. Whilst the focus of the trespass has been various 'protest camps', it has not been confined to those sites, and activists have ranged widely across the HS2 Land at times to carry out their direct-action activities.

## [2] NUISANCE

17. The HS2 Scheme is specifically authorised by Acts of Parliament. Notwithstanding its democratic legitimacy and public interest, the HS2 Scheme has been subjected to a long running campaign of "direct action" – that is, action which interferes with the HS2 Scheme. These actions began in October 2017 and have continued. They have become more serious in terms of damage, danger, delay and financial impact.<sup>8</sup> Between Q4 of 2017 and December 2021, 1007 incidents have had an impact on operational activity. Up to December 2021, it had cost £121.62 million (for Phase One alone) to deal with anti-HS2 direct action. These costs are borne entirely by the public purse.<sup>9</sup>

18. There has been significant violence, criminality and risk to the life of the activists, HS2 staff and contractors.<sup>10</sup> This has given rise to very serious safety concerns.

19. As noted in **Jordan 1** at [12; B/10/069], the direct action has appeared less about expressing the activists' views about the HS2 Scheme and more about causing direct and repeated harm to the HS2 Scheme with the overall aim of "stopping" or "cancelling" the HS2 Scheme.<sup>11</sup> As a number of courts have observed when dealing with injunction applications related to the HS2 Scheme, that is not how decisions are made in a democratic society.<sup>12</sup>

20. Of the many incidents which have occurred over recent years, **Jordan 1** provides

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<sup>8</sup> though the actual number is likely much higher (see **Jordan1**, para 13)

<sup>9</sup> **Jordan 1**, para. 15.

<sup>10</sup> 129 individuals were arrested for 407 offences from November 2019 - October 2020; **Jordan 1**, paras. 14 and 23.

<sup>11</sup> See for example the remarks of D5 quoted at **Jordan 1** [21.2].

<sup>12</sup> See for example, Andrews J. (as she then was), in the Cublington and Crackley judgment: *SSfT and HS2 v Persons Unknown* [2020] EWHC 671 (Ch) at [36] and [42]. And see *DPP v Cuciurean* at [84].

examples of the unlawful conduct. These include incidents such as **[B/10/082 onwards]**:

- i. Using lock-on devices to attach to tunnel shoring and to other activists to resist removal from within dangerous hand-dug tunnels on trespassed land at Euston Square Gardens (**Jordan 1** [29.1.8]), and attacking with a wooden stick those attempting to remove a protestor from the tunnels (**Jordan 1** [55.5]).
- ii. Significant abuse including verbal abuse, slapping, punching and spitting in the face of HS2 security officers, in the height of the covid pandemic – (**Jordan 1** [29.1.10(c)]); assaulting a security officer resulting in hospital attention being required (**Jordan 1** [29.8.2]); throwing human waste and a smoke grenade at HS2 contractors (**Jordan 1** [29.8.3]); and carrying weapons including knives and machetes whilst trespassing on the HS2 Land (**Jordan 1** [29.8.4]).
- iii. Obstruction of access to HS2 sites including lying down in front of compound gates (**Jordan 1** [29.2.1]), dumping a boat in front of a site entrance (**Jordan 1** [29.2.4.1]) and staging a “die-in” by lying on the ground blocking both lanes of a public highway near to a site entrance (**Jordan 1** [29.2.4.3]).
- iv. Damage to buildings and equipment including: breaching and damaging fencing followed by assault of 2 security officers, starting of a fire in a skip, 6 vehicles and a marquee damaged, and a number of electronic items stolen (**Jordan 1** [29.1.1]); cutting hydraulic hoses risking spillage (**Jordan 1** [29.3.1]); and scaling one of HS2’s offices in central London, graffitiing and smashing windows (**Jordan 1** [29.3.2]).
- v. Climbing on a lorry of tarmac at a point which obstructed access to works being undertaken during a period of possession of the M42, bring work to a halt (**Jordan 1** [29.1.4])
- vi. Environmental damage including ‘spiking’ trees with nails (both those scheduled for felling and others) (**Jordan 1** [29.4.1])(**Dilcock 4** [42] **[B/14/209]**); interference with ecological mitigation works (**Jordan 1** [29.4.2]); waste and fly tipping (**Jordan 1** [29.4.3]).
- vii. An activist climbing underneath and attaching to a 13-ton tracked extraction vehicle stationed on soft ground, putting life at considerable risk through potential for crushing (**Jordan 1** [29.1.5]).

- viii. Scaling a 150ft crane in the early hours of the morning with no safety equipment, causing danger to passing air traffic (**Jordan 1** [29.1.7]).
- ix. Constructing a defensive tower on the HS2 Land at Small Dean to resist removal, protected with barbed wire and booby-trapped with expanding foam and razor wire to create danger and delay for those seeking to evict the camp (that eviction cost £5m and took over a month) (**Jordan 1** [29.6.3] and [58]).
- x. Digging defensive tunnels and structures at Cash's Pit, entering and remaining in these tunnels to resist removal, in breach of the possession order and injunction recently granted over this land (latest update on attempts to remove activists from Cash's Pit Land set out in **Dilcock 4** [33]-[43] [**B/14/197**]).

These matters constitute a nuisance.

### [3] A REAL RISK OF CONTINUED UNLAWFULNESS

21. The trespass and nuisance will continue, unless restrained, as shown by by **Jordan 1** [**B/10/072 onwards**]:

15.1.D27, after being removed from the tunnels at Euston Square Gardens in February 2021 stated "*this is just a start*" (**Jordan 1** [21.3]).

15.2.D6 on 23 February 2022 stating that if an injunction was granted over one of the gates providing entrance to Balfour Beatty land, they "*will just hit all the other gates*" and "*if they do get this injunction then we can carry on this game and we can hit every HS2, every Balfour Beatty gate*" (**Jordan 1** [21.12]).

15.3.D6 on 24 February 2022 stating if the Cash's Pit camp is evicted, "*we'll just move on. And we'll just do it again and again and again*" (**Jordan 1** [21.13]).

15.4.D17 said in a video on 10 March 2022: “*let’s keep...causing as much disruption and cost as possible. Coming to land near you*” (**Jordan 1** [21.14]).

15.5.Further detail is given of recent and future likely activities around Cash’s Pit and other HS2 Land in the Swynnerton area at **Jordan 1** [72]-[79].

22. The possession order and injunction made by the Court on 11 April 2022 was sealed and sent to the Claimants for service. A number of individuals remain in occupation of the unauthorised encampment and there is evidence of breaches of the injunction discussed at **Dilcock 3** [46; **B/13/195**], and **Dilcock 4** [36; **B/14/208**]. This continues to demonstrate flagrant disregard for orders of the Court.

23. The Claimants reasonably anticipate that the activists will move their activities to another location along the route of the HS2 Scheme. Given the size of the HS2 Scheme, it is impossible for the Claimants to reasonably protect the entirety of the HS2 Land by active security patrol or even fencing.

### **Previous injunctive relief**

24. The Claimants have obtained a number of other injunctions in respect of HS2 Land. These are detailed in **Dilcock 1** at [37] – [41] [**B/11/155**].<sup>13</sup>

25. Generally, the Court expects its orders to be obeyed. The pursuit of contempt of court proceedings against D33, D32, D24, D25, D26, and D30 demonstrates that the Claimants are seeking to ensure compliance with the injunctions in order to protect their interests (and to uphold the authority of the Court).

26. D33 (Mr Cuciurean) was found in contempt by Marcus Smith J on 13 October 2020. Committal proceedings against the remainder listed above were settled following wide ranging undertakings from the Defendants to those proceedings, and the Court accepting the Defendants’ sincere apologies for breaching those injunctions (see undertakings at

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<sup>13</sup> In addition to those granted in respect of Euston Square Gardens, which have fallen away as the activists have left the tunnels.



[C/5/474], and judgment at [Auth/25]). **Dilcock 4** explains that the Claimants are preparing further committal applications in respect of breaches of the Cash's Pit injunction [B/14/209].

#### **[4] REASONS TO GRANT THE ORDER AGAINST NAMED DEFENDANTS**

27. The defences which have been filed, and representations received from non-Defendants, make points which are, in summary<sup>14</sup>:

- i. The actions complained of are justifiable because the HS2 Scheme causes environmental damage. This is incorrect and is a point which has been decided against these and other claimants in other proceedings [A/14/274];
- ii. The order would interfere with rights under Art 10 and 11 ECHR. This order would not do so for the reasons given below;
- iii. Lawful protest would be prevented. It would not because the prohibited actions are defined, the protest would have to give rise to the unlawful consequences described, and the Order expressly states that such protest is unaffected;
- iv. Restriction of rights to use public highway and public rights of way. These are specifically carved out in the order (paragraph 4).
- v. Concern from those who occupy or use HS2 Land pursuant to a lease or licence with HS2. Those persons and their invitees are there with the Claimants' consent and therefore would not be defendants and would not otherwise fall within the terms of the order in any event.

28. The balance of the issues raised are addressed in the remainder of this skeleton argument and the legal principles skeleton argument.

#### **[5] REASONS TO GRANT THE ORDER AGAINST PERSONS UNKNOWN**

29. The activists engaged in direct action are a rolling and evolving group. The group is an unknown and fluctuating body of potential defendants. It is not effective to simply

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<sup>14</sup> There is a schedule of the defences and responses in the Annex to this skeleton argument.

include named defendants. It is therefore necessary to define the persons unknown by reference to the consequence of their actions, and to include persons unknown as a defendant.

30. The definitions of ‘persons unknown’ in this case are apt and appropriately narrow in scope. The definitions would not capture innocent or inadvertent trespass.

31. There would be no interference with Art 10 and 11 rights because there is no right to cause the type and level of disruption which would be restrained by the order, and there is no right of protest on private land. Turning to the *Zeigler* questions:

- i. The Defendants’ action goes well beyond the exercise of Art 10 and 11 rights. There are many clear statements to the effect that the intention is to frustrate, delay and add cost to the works. That is not ‘expression’.
- ii. Even if there is an interference with those rights, it is in pursuit of many legitimate aims: protecting private rights in property; preventing violence and intimidation; preventing the waste of public funds; enabling a lawfully considered and consented HS2 Scheme to be implemented for the public benefit, as determined by Parliament. The latter is fundamentally important in a democratic society.
- iii. The balance is fairly struck and is a rational means to do no more than prevent the unlawful activity as well as its calculated unlawful and disruptive consequences.

32. There is a real and imminent risk of torts being (or continuing to be) committed:

a. The evidence has been summarised above and is provided more fully in **Jordan 1 [B/10]**. There is an abundance of evidence that leads to the conclusion that there is a real and imminent risk of the tortious behaviour continuing in the way it has done in recent years across the HS2 Land.

b. Protection is sought across all of the HS2 Land because, as has been shown, the direct action protests are ongoing and simply move from one location to another seeking to cause maximum disruption across a large geographical extent. Once a

particular protest ‘hub’ on one part of HS2 Land is moved on, the same individuals will invariably seek to set up a new ‘hub’ from which to launch their protests elsewhere on HS2 Land.

c. Removal on each occasion from an established ‘hub’ requires considerable resource output, and more importantly poses considerable risks to personal safety of staff *and* the activists themselves (see, for example, the extreme risks to life for both involved in the Euston Square Gardens tunnel occupation of February 2021, as explained by Steyn J and Linden J [**Auth/25/472-4**]).

d. The HS2 Land is an area of sufficient size that it is not practicable to police the whole area with security personnel or to fence it, or make it otherwise inaccessible.

33. This has been the pattern of behaviour which has continued over the last approximately 4 years and is well documented in **Jordan 1 [B/10]**. There is no reason to anticipate this pattern of behaviour ceasing (see for example **Dilcock 4** at [33] – [43] [**B/14/207-210**]).

34. In terms of the need for a geographically broad injunction to effectively restrain the tortious conduct, the Court has encountered a similar scenario recently: the ‘Insulate Britain’ protests in the autumn of 2021. Those protests displayed a similar strategy of seeking to cause disruption across a very wide area, leading to the need for National Highways to obtain interim injunctions in respect of the M25, other large areas of strategic road, and ultimately across the whole strategic road network. Lavender J held:

*“If the claimant is entitled to an injunction, then I do not consider that it is appropriate to require the claimant to continue seeking separate injunctions for separate roads, effectively chasing the protestors from one location to another, not knowing where they will go next.”<sup>15</sup>*

35. Similarly, judicial notice may be taken of Transport for London’s wide-ranging injunctions across a large number of roads in London – again, the scale of the coverage of the injunction was necessitated by the nature of the disruptive protest activity,<sup>16</sup> and the fact that if the injunction was limited to one area, the protesters would invariably simply

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<sup>15</sup> Ibid., Lavender J at [24(7)(c)].

<sup>16</sup> See Orders in: QB-2021-003841; QB-2021-004122, both dated 15 December 2021.

move to another accessible and effective location.<sup>17</sup>

36. For these reasons, it is submitted that there is a real and imminent risk of torts being carried out unless this injunction is granted across the whole of the HS2 Land.

37. *Canada Goose* at [82] provides guidance.<sup>18</sup> The Claimants have sought to take a balanced approach, set out in **Dilcock 1** at [42] - [47]:

a. The Claimants have named as Defendants to this Application individuals known to the Claimants including:

- i. those believed to be in occupation of the Cash's Pit Land, permanently or from time to time;
- ii. the named defendants in the Harvil Road Injunction;
- iii. the named defendants in the Cubbington and Crackley Injunction; and
- iv. individuals whose participation in incidents is described in the evidence in support of this claim and the injunction application and not otherwise named in one of the previous categories.

b. In the case of D32, he has already given a wide-ranging undertaking<sup>19</sup> not to interfere with the HS2 Scheme, and the Claimants have only named him because he is a named defendant to the proceedings for both pre-existing injunctions. The same is true for other Defendants involved in the Euston Square Gardens incident as detailed below.

c. The Claimants will remove the Defendants who have also more recently given undertakings to the Court.<sup>20</sup>

38. In respect of requirements (2) to (7) of *Canada Goose*, the Claimants submit these are met in this case:

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<sup>17</sup> See Orders in: QB-2021-003841; QB-2021-004122, both dated 15 December 2021.

<sup>18</sup> (1) Name known Ds; (2) PU must be defined by reference to conduct; (3) sufficient real and imminent risk of the tort before granting interim relief; (4) alternative service must be set out in the order; (5) prohibitions to correspond to the tort; (6) clear terms; (7) interim injunction should have clear geographical and temporal limits. See further legal principles skeleton at §20

<sup>19</sup> Exhibited to Dilcock 2.

<sup>20</sup> These include D47 (Tom Dalton) [D/18/54] and D56 (Elizabeth Farbrother) [D/22/68]; the Claimants have made further invitations (as set out in the schedule of Defendants' responses, and Bundle D, Vol A) and will update the Court in advance of the hearing.

- a. The definitions of the First to Fourth Defendants in these proceedings are sufficiently precise to target the relevant conduct.
- b. There is a sufficient risk of a tort being committed to justify *quia timet* relief :
- i. The Claimants have been subject to a long-running campaign of direct-action involving trespass on the HS2 Land, in opposition to the HS2 Scheme, as already explained.
  - ii. Various activists have expressed the intention to continue and to expand their activities in the future (as detailed above).
  - iii. The Defendants are motivated, resourceful and not deterred by traditional security measures. **Jordan 1 [B/10]** contains substantial evidence of the protestors removing security fencing, creating relatively elaborate camps and other structures and refusing to move promptly (and indeed resisting removal by locking-on to acrow-props within hand-dug tunnels, in the Euston Square Gardens incident) when challenged by security or contractors on the sites.
  - iv. The nature (especially size and varied terrain) of the sites are such that traditional security methods are unlikely, without more, to be successful.
  - v. The most extreme of the activists' activities show no signs of tailing off or reducing, indeed they are continuing as shown by the present situation at Cash's Pit (see **Dilcock 4 [33] – [43] [B/14/207]**). The threats to continue such activities can therefore be taken seriously. They are not empty words.
- c. The Court has indicated what is required by way of alternative service. As set out in **Dilcock 4 [B/14]**, these service provisions have been complied with.
- d. The concern regarding the definition of unlawful conduct is not germane here as it is a case of trespass and nuisance, where defining the unlawful conduct is straightforward.

e. The description of persons unknown uses non-technical language, is clear in its scope and application, and is similar to language approved by the courts in similar cases.

f. The geographical limit required is broad but justifiable – as it was in the National Highways strategic road network injunction (see above). In any event, the land is identified in maps available to view online. The requirement for a temporal limit is also satisfied here.

39. Beyond satisfying the above elements, it is appropriate to make brief submissions on several further points of detail.

### **Convention rights, generally**

40. There remain a multitude of other forums for debating the merits of the HS2 Scheme, and the order sought would not deprive the Defendants of their right to exercise that voice. The order does not seek to prohibit lawful protest.

41. To the extent there would be interference with the Convention rights of the Defendants (which is not accepted), this interference must be balanced against the rights of the Claimants under Article 1 Protocol 1, insofar as the Claimants are entitled to possession of the HS2 Land and are being deprived of that by the unlawful protest, which is actively threatened to continue. The proportionality balance struck in this jurisdiction between rights of owners and those with no permission to be on private land is embodied in the law of trespass, and it would be unattractive to disturb this position on the basis of sometimes violent direct action.

42. There is a strong public interest in the democratically consented HS2 Scheme being completed on time and in minimizing public expense on security. The Defendants' activities actively seek to increase such costs. The public expense to date as a result of unlawful direct action is substantial: £121.62 million to December 2021. But this is not only or even primarily about cost – it is also about safety and real risk to life.

43. Although each individual direct action may appear small in the context of the HS2 Scheme as a whole, that is not a reason to overlook its impact since, as the Divisional

Court put it in *DPP v Cuciurean*, “that argument could be repeated endlessly along the route of a major project such as this. It has no regard to the damage to the project and the public interest that would be caused by encouraging protesters to believe that with impunity they can wage a campaign of attrition” (at [87]). The Claimants adopt the Divisional Court’s dicta as their submission in this case.

44. If article 8 Convention rights are argued, the Claimants will rely on *Ackroyd v HS2 Ltd* [2020] EWHC 1460 (QB) (an application by protestors for an injunction to restrain from a building owned by HS2). The court held that it was “inevitable that... a court would conclude that the removal... was justified. The steps taken to remove them were taken by an owner of land who is seeking to fulfil an important statutory purpose” (at [11]).

## [6] SCOPE

45. The geographical scope of the order which is sought is certainly extensive. The reason for a route-wide injunction is simple: the trespass and disruption progresses along the route. The alternative is to follow the protesters to wherever they chose to go next and to seek to obtain injunctive relief time after time. That has been the history to date. It is expensive both in its effect on the HS2 Scheme and in litigation costs. It is a greater burden on the Court than the single injunction.

46. There is no principled reason to object to the injunction on the grounds of its total length. If there is a reason in principle why a particular parcel of land should not be within the scope of the order, then those reasons can be given. That is not anybody’s case, save for D36 (Mr Kier; **D/E/1468**). His ‘Ground 1’ is answered by **Dilcock 4 [B/14]**.

47. We draw attention to **[B/8/049]**:

- i. The order is time-limited. Paragraph 3 contains an injunction with a long stop date of 31 May 2023;
- ii. Paragraph 4 provides clarity on the HS2 Land, i.e. which land is affected;
- iii. Paragraphs 5 and 6 provide explicit guidance on what may constitute prohibited acts of obstruction and interference. The injunction contains express exceptions for use of public rights of way or private rights of access over HS2 Land, and lawful use of the public highway (paras. 4(a)-(c)).

48. These provisions are an answer to many of the points raised by those who have responded to the proceedings. They are further answered by the proposed service and knowledge requirements.

## **[7] SERVICE AND KNOWLEDGE**

49. If the Court decides that the order should be made, how would it be served and what is the role of knowledge?

### **Service**

50. The Service of the Application was considered at the directions hearing on 28 April 2022. At that hearing, Julian Knowles J Ordered that the steps contained at paragraph 2 of the Order would amount to good and sufficient service of the Application **[B/7/042]**. Those steps are proposed to be repeated.

51. The methods of service were based on those which had been endorsed and approved by the High Court in other cases where injunctions were sought in similar terms to those in this Application. The methods of service to date have been effective in publicising the Application.

52. There were 1,371 views (at 24 April 2022) by users of the Route Wide Injunction Website: **Dilcock 3** [11; **B/13/182**]. By 17<sup>th</sup> May 2022 there had been 2,315 page views of which 1469 were from unique users: **Dilcock 4** [17; **B/14/202**]. So, in round terms, there were an additional 1000 views since the Directions hearing.

53. Twitter accounts have shared information about the Application and/or the fundraiser to their followers. The number of followers of those accounts is 265,268: **Dilcock 3** [16; **B/12/183**]

54. A non-exhaustive review of Facebook shows that information about the injunction and / or the link to the fundraiser has been posted and shared extensively across pages with thousands of followers and public groups with thousands of followers. Membership of the groups on Facebook to which the information has been shared amounts to 564,028: **Dilcock 3** [17; **B13/184**].



55. A similar point may be made in respect of YouTube: **Dilcock 3** [23; **B/13/188**].

56. **Dilcock 4** ([7] – [17]; **B/14/199**) sets out how the Claimants have complied with the additional service requirements pursuant to the directions of Julian Knowles J dated 28 April 2022. Those measures are not reliant on either notice via website or social media. They complement and add to the very wide broadcasting of the fact of the proceedings.

57. It is submitted that the totality of notice, publication and broadcasting is very extensive and effective. Service of the order by the same means would be similarly effective, and that is what the First Claimant proposes.

### **Knowledge**

58. The First Claimant does not propose to rely only on the fact of service as just described. Together, these ensure the injunction would prohibit only unlawful and disruptive protest, with sufficient carve-outs to ensure that others are unaffected, namely:

- a. An individual who inadvertently strays onto the HS2 Land will not fall within the definition of the “Persons Unknown” caught by the injunction unless they also act with the consequence of causing disruption, interference, damage, delay etc.;
- b. Even *if* an individual inadvertently trespasses onto the HS2 Land and has the effect proscribed under the injunction (e.g. causing delay), they will only be fixed with liability for breach of the injunction where it can be proved to the criminal standard that they had knowledge of the injunction and that the breach was deliberate.
- c. There is an analogy here with the balance struck in the National Highways SRN-wide injunction which effectively required a personal warning.

59. The law guards against liability for inadvertent breach. The Court considered service

provisions in great detail in respect of the committal of Mr Cuciurean:<sup>21</sup>

*“Given that, in the case of Category 3 Defendants, the service provisions in the order will have to deal with the question of notice to an unknown and fluctuating body of potential defendants, there may very well be cases where (i) the rules on service may have been complied with, but (ii) the person infringing the order knows nothing about even the existence of the order, when infringing it, or that he or she is doing anything wrong. In such a case, provided the person alleged to be in contempt can show that the service provisions have operated unjustly against him or her, the service against that person may be set aside.*

*I stress that where it can be shown that the service provisions that apply in the case of a given order can be shown to have operated unjustly, this is a matter that goes not merely to sanction (although such matters might also be relevant to sanction). Where the person subject to the order can show that the service provisions have operated unjustly against him or her, then service ought to be set aside and the threat of committal removed altogether. It is not, to my mind, sufficient to say, in such a case, that there is a contempt, but that the punishment ought to be minimal or none.”*

60. Arising from those committal proceedings, the Court of Appeal analysed the provisions for alternative service:<sup>22</sup>

*At [60]: “The cases make it clear that any provision for alternative service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant. But that is a standard to be applied prospectively. I can see that, in principle, a defendant joined as a person unknown might later seek to set aside or vary an order for service by alternative means, on the grounds that the Court was misinformed or otherwise erred in its assessment of what would be reasonable.”*

*At [69]: “[regarding the Hoarding Fence] This could not be mistaken for*

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<sup>21</sup> *SSfT and High Speed Two (HS2) Limited v Cuciurean* [2020] EWHC 2614 (Ch), Marcus Smith J at [63(7)]; [Auth/17/310]

<sup>22</sup> *Cuciurean v SSfT and High Speed Two (HS2) Limited* [2021] EWCA Civ 357 – at [14] – [15], [25] – 26] and [70] [A/14/276]

*anything but an outward and visible sign that those in possession of the land beyond it were asserting their rights to maintain possession”.*

61. Paragraphs 12 - 14 discharge previous injunctions (which the Claimants consider are otiose if the draft order is granted in substantively the terms set out) and discontinue the underlying proceedings (the permission of the court is required for this where an interim injunction has been made – CPR 38.2). Consolidation would therefore simplify and clarify matters for the Defendants, by providing for the same terms across the whole route.<sup>23</sup>

## **CONCLUSION**

62. Subject to any modifications the Court considers appropriate, the Claimants respectfully ask that the Court make the Order in the terms sought.

**RICHARD KIMBLIN QC  
SIONED DAVIES  
No5 Chambers**

**MICHAEL FRY  
JONATHAN WELCH  
Francis Taylor Building**

**20 May 2022**

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<sup>23</sup> At present the Harvil Road and Crackley injunction terms differ from one another.

## ANNEX

### Summary of Responses to proceedings by Defendants and non-Defendants

<b>Name</b>	<b>Received [ref]</b>	<b>Summary</b>
D6 – James Knaggs	SkA for initial hearing (05.04.22)	Definition of persons unknown is overly broad, contrary to Canada Goose. Service provisions inadequate. No foundation for relief based on trespass because no demonstrate immediate right to possession, and seeking to restrain lawful protest on highway. No imminent threat. Scope of order is large. Terms impose blanket disproportionate prohibitions on demonstrations on the highway. Chilling effect of the order.
	Defence (17.05.22)	C required to establish cause of action in trespass & nuisance across all of HS2 Land <i>and</i> existence of the power to take action to prevent such. No admission of legal rights of the C represented in maps. Denied that Cash’s Pit land is illustrative of wider issues re entirety of HS2 Land. Denied there is a real and imminent risk of trespass & nuisance re HS2 Land to justify injunction. Impact and effect of injunction extends beyond the limited remit sought by HS2. Proportionality. Denial that D6 conduct re Cash’s Pit has constituted trespass or public/private nuisance.
D7 – Leah Oldfield	Defence (16.05.22) [D/3]	D7s actions do not step beyond legal rights to protest, evidence does not show unlawful activity. Right to protest. Complaints about HS2 Scheme, complaints about conduct of HS2 security contractors. Asks to be removed from injunction on basis of lack of evidence
D8 – Tepcat Greycat	Email (16.05.22) [D/4]	Complaint that D8 was not identified properly in injunction application papers and that she would like name removed from schedule of Ds.
D9 – Hazel Ball	Email (13.05.22) [D/7]	Asks for name to be removed. Queries why she has been named in injunction application papers. Has only visited Cash’s Pit twice, with no intention to return. Never visited Harvil Road.
D10 – IC Turner	Response (16.05.22) [D/8]	Inappropriateness of D10’s inclusion as a named D (peaceful protester, no involvement with campaign this year, given proximity to route the injunction would restrict freedom of movement within vicinity). Inappropriateness of proceedings (abuse of process because of right to protest). Complaints about HS2 Scheme.
D11 – Tony Carne	Submission (13.05.22) [D/10]	Denies having ever been an occupier of Cash’s Pit Land. Asks to be removed as named D.
D24 – Daniel Hooper	Email (16.05.22) [D/12]	Asks for name to be removed because already subject to wide ranging undertaking. Asks for assurance of the same by 20 <sup>th</sup> May.
D29 – Jessica Maddison	Defence (16.05.22) [D/14]	Injunction would restrict ability to access Euston station and prevent access to GP surgery and hospital. Restriction on use of footpaths, would result from being named in injunction. Would lead to her being street homeless. Lack of evidence for naming within injunction. Criminal matters re lock on protests were discontinued before trial. Complaints about HS2 contractor conduct.
D35 – Terry Sandison	Email (07.04.22) [D/15]	Complaint about lack of time to prepare for initial hearing.
	Application for more time –	Says he wishes to challenge HS2 on various points of working practices, queries why he is on paperwork for court but feels he

	N244 (04.04.22)	hasn't received proof of claims they have to use his conduct to secure injunction. Asks for a month to consider evidence and challenge the injunction and claims against himself.
D36 – Mark Kier	Large volume of material submitted (c.3k pages) [D/36/179-D/37/2916]	Mr Kier sets out four grounds: (1) the area of land subject to the Claim is incorrect in a number of respects; (2) the protest activity is proportionate and valid and necessary to stop crimes being committed by HS2; (3) the allegations of violence and intimidation are false. The violence and intimidation emanates from HS2; (4) the project is harmful and should not have been consented.
D39 – Iain Oliver	Response to application (16.05.22) [D/16]	Complaints about alleged water pollution, wildlife crimes and theft and intimidation on HS2's behalf. Considers that injunction is wrong and a gagging order.
D46 – Wiktoria Zieniuk	Not included in bundle	Brief email provided querying why she was included.
D47 – Tom Dalton	Email (05.04.22) [D/17]	Complaint about damage caused to door from gaffatape of papers to front door. Says he is happy to promise not to violate or contest injunction as is not involved in anti HS2 campaign and hasn't been for years. (Undertaking now signed)
D54 – Hayley Pitwell	Email (04.04.22) [D/19]	Request for adjournment and extension of time to submit arguments, for a hearing and for name to be removed as D. Queries whether injunction will require her to take massive diversions when driving to Wales. Complaint about incident of action at Harvil Road that led to D56 being named in this application – despite over factual matters (esp Jordan 1 para 29.1.10). Complaint that HS2 security contractor broke coronavirus act and D54 is suing for damages. N.b. no subsequent representations received.
D55 – Jacob Harwood	17.05.22 [D/20]	Complaint about injunction restricting ability to use Euston station, public rights of way, canals etc. Complaint that there is lack of evidence against D55 so he should be removed as named D.
D56 – Elizabeth Farbrother	11.05.22 [D/23]	Correspondence and undertaking subsequently signed.
D62 – Leanne Swateridge	Email (14.05.22) [D/23]	Complaint about reliance on crane incident at Euston. Complaints about conduct of HS2 contractors and merits of HS2 Scheme.
Joe Rukin	First witness statement (04.04.22) [D/24]	Says Stop HS2 organisation is no longer operative in practice, so emailing their address does not constitute service, and the organisation is not coordinating or organising illegal activities. Failure of service of injunction application. Scope of injunction is disproportionately wide, and D2 definition would cover hundreds of thousands of people on a daily basis. Complaints about GDPR re service of papers for this application. Concerns about injunction restricting normal use of highways, PRow, and private rights over land where it is held by HS2 temporarily but the original landowner has been permitted to continue to access and use it. Would criminalise people walking into their back garden.
	Second witness statement (26.04.22) [D/25]	Complains there is no active protest at Cubbington and Crackley now since clearance of natural habitats. Complains Dilcock 2 [8.11] is wrong about service of proceedings at Cubbington & Crackley Land.
Maren Strandevold	Email (04.04.22) [D/26]	Complaints about notice given for temporary possession land. Concern about temporary possession land and that there needs to be clear and unequivocal permission for those permitted to use

		their land subject to temporary possession to be able to continue to do so. Concerns the scope of the draft order is disproportionate.
Sally Brooks	Statement (04.04.22) <b>[D/27]</b>	Complaints about merits of HS2 Scheme, alleged wildlife crimes, and the need for members of the public to monitor the same
Caroline Thompson-Smith	Email (04.04.22) <b>[D/28]</b>	Objects to evidence of her, and that the injunction would prevent rights to freedom of expression, arts 10-11. Worry about adverse costs means she fears to engage with process.
Deborah Mallender	Statement (04.04.22) <b>[D/29]</b>	Complaints about merits of HS2 Scheme and conduct of HS2 Ltd and security contractors. Complaint that content of injunction has not been provided to all relevant persons.
Haydn Chick	Email (05.04.22) <b>[D/30]</b>	Email attachment of statement which will not open, plus article by Lord Berkeley, plus news story
Swynnerton Estates	Email (05.05.22) <b>[D/31]</b>	Email re whether Cash's Pit objectors had licence to occupy.
Steve and Ros Colclough	Letter (04.05.22) <b>[D/32]</b>	Consider themselves "persons unknown" by living nearby and using nearby PRow. Complaint that HS2 should have written to everyone on the route informing them.
Timothy Chantler	Letter (14.05.22) <b>[D/33]</b>	Complaints about conduct of HS2 security contractors (NET re treatment of other protesters). Objection to the injunction on the basis of right to protest etc.
Chiltern Society	Letter (16.05.22) <b>[D/34]</b>	Concerns about public access to PRow re HS2 Land. Concern of no adequate method to ensure a person using a footpath across HS2 Land would be aware of potential infringement. Concern that maintenance work on footpaths often requires accessing adjacent land which may constitute infringement.
Nicola Woodhouse	Email (16.05.22) <b>[D/35]</b>	Not lawful or practical to stop anyone accessing all land acquired by HS2. Maps provided are impossible to decipher, with land ownership not well defined. Excessive geographical scope. Notification of all relevant landowners is impossible. Residents of houses purchased by HS2 cannot move freely around their own homes, and members of the public cannot visit them.
<b>The below statements are contained within the submission of D36 (Mark Keir)</b>		
Val Saunders "statement in support of the defence against the Claim QB-2022-BHM-00044"	Undated <b>[D/37/2493]</b> (bundle D, vol F)	Merits of Scheme. Complaints about HS2 contractor conduct and alleged wildlife crimes. Protest important to hold HS2 to account.
Leo Smith "Witness statement" "statement in support of the defence..."	14.05.22 <b>[D/37/2509-2520]</b> (bundle D, vol F)	Merits of scheme/process of consultation. Necessity of protest to hold Scheme to account. HS2 use of NDAs re CPO. Photographs of rubbish left behind by protestors is misleading since they have been forcibly evicted. Protest mostly peaceful. Complaints about HS2 security contractor conduct. Alleged wildlife crimes. Negative impact on communities.
Misc statement – "statement in support of the defence..."	Undated <b>[D/37/2674-2691]</b> (bundle D, vol G)	Complaints about merits of scheme and conduct of HS2 security contractors against protesters.
Misc statement – "Seven arguments against HS2"	Undated <b>2692-2697</b>	Merits of scheme. Argues for scrapping.

Brenda Bateman – “statement in support of the defence...”	Undated <b>2698-2699</b>	Confusion caused by what HS2 previously said about which footpaths would be closed. Complaints about ecological impacts of Scheme, and other impacts. Complaints about use of CPO process. Right to peaceful protest should be upheld: injunction would curtail this.
Cllr Carolyne Culver – “statement in support of the Defence...”	Undated <b>2700-2701</b>	Complaints about conduct of Jones Hill Wood eviction. Issues over perceived delayed compensation for CPO. Need for nature protectors and right to protest.
Denise Baker – “Defence against the claim...”	Undated <b>2702-2703</b>	Photojournalist – concerns that injunction would limit abilities to report fairly on issues related to environment impact of HS2. Risk of arrest of journalists. Detrimental to accountability of project and govt. Concerns over conduct of HS2 security contractors.
Gary Welch – “Statement in support of the Defence...”	Undated <b>2704</b>	Criticism of merits of Scheme, and environmental impacts. Concern over closure of public foot paths recently.
Sally Brooks – “Statement in support of the Defence...”	Undated <b>2705-2710</b>	Alleged wildlife crimes. Need for members of public to monitor HS2 activities. Injunction would prevent this.
Lord Tony Berkeley – “Witness Statement”; “Statement in support of the Defence...”	12.05.22 <b>2711-2714</b>	Doubts HS2 has sufficient land to complete the project without further Parliamentary authorisation. Doubts HS2’s land ownership position generally given alteration to maps included with injunction application. Injunction is an abuse of rights, and an abuse of the laws of the country and HS2 Bill which brought it into being.
Jessica Upton – “statement in support of the Defence...”	Undated <b>2715-2716</b>	Criticism of merits of scheme, ecological impact etc. Concern that public need to be able to hold HS2 to account without being criminalised for it.
Kevin Hand – “statement in support of the Defence...”	9.05.22 <b>2717-2718</b>	Ecologist who provides environmental training courses to activists and protesters against HS2. Emphasises importance of public/protesters being able to monitor works taking place to prevent alleged wildlife crimes.
Mark Browning – “Statement in support of the Defence...”	Undated <b>2719</b>	Partners brother is renting a property HS2 has compulsorily purchased near Hopwas in Tamworth area. Concern that the management of the pasture will be criminalised if injunction granted. Therefore requests exemption from the injunction.
Talia Woodin – “statement in support of the Defence...”	Undated <b>2724-2731</b>	Photographer and filmmaker. Concerns about alleged wildlife crimes and assaults on activists. Injunction would disable right to protest.
Victoria Tindall – “statement in support of the Defence...”	Undated <b>2735</b>	Complaint about Buckinghamshire HS2 security van monitoring ramblers near HS2 site. Concerns about privacy.
Mr & Mrs Phil Wall – “Statement”	Undated <b>2737-2740</b>	Complaints about conduct of HS2 contractors regarding works in Buckinghamshire. Complaints about CPO/blight compensation issues for their property.
Susan Arnott – “In support of the Defence...”	15.5.22 <b>2742</b>	Merits of scheme. Protests are therefore valid.

Ann Hayward – Letter regarding RWI	6.05.22 <b>2743-2744</b>	Resident of Wendover. Difficulty of reading HS2 maps, so difficult to know whether trespassing or not. Complaints about HS2 contractor conduct. RWI too broad, and service would be difficult and may be insufficient meaning everyone in vicinity of HS2 works could be at risk of arrest – risk of criminalising communities. People need to know whether injunction exists and where it is, but HS2 maps are not well defined. Would be difficult to apply the order, abide by it and police it. Important for independent ecologists to monitor HS2 works.
Annie Thurgarland – “statement in support of the Defence”	15.05.22 <b>2745-2746</b>	Criticism of merits of scheme, especially re environmental impact. Need for public to monitor works re ecology and alleged wildlife crimes. People have a right to peaceful direct action.
Anonymous	16.05.22 <b>2747-2751</b>	Anonymity because concerned about intimidation. RWI would have direct impact on tenancy contractual agreement for home, as it lies within the Act Boundary and is owned by HS2. Would be entirely at the mercy of HS2 and subcontractors to interpret the contractual agreement as they chose. Concerned that they were not notified of the RWI given the enormity of impact on residents who are lessees of HS2. Vague term un-named defendants could extend to anyone deemed as trespassing on land part of homes and gardens. Concern therefore that all land within boundary could become subject to constant surveillance, undermining right to privacy. No clarity on terms of injunction regarding tenants and when they would and would not be trespassing. Complaints about ecological impact of Scheme. Complaints about conduct of HS2 security contractors.
Anonymous (near Cash’s Pit occupant)	Undated <b>2752-2753</b>	Complaints about impact of scheme on ability to use local area for recreation. Concerns that injunction would curtail protest right. Complaints about HS2 security contractors. Complaint that HS2 did not provide local residents with details of the injunction or proceedings.
Anonymous – “statement in support of the Defence...”	Undated <b>2754-2755</b>	Criticism of merits of Scheme, argument re right to protest.