

Claim no: QB-2022-BHM-000044

IN THE HIGH COURT OF JUSTICE  
QUEEN'S KINGS BENCH DIVISION  
BIRMINGHAM DISTRICT REGISTRY

Between:

(1) HIGH SPEED TWO (HS2) LIMITED

(2) THE SECRETARY OF STATE FOR TRANSPORT

Claimants

-and-

(1) ~~PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER LAND KNOWN AS LAND AT CASH'S PIT, STAFFORDSHIRE SHOWN COLOURED ORANGE ON PLAN A ANNEXED TO THE ORDER DATED 11 APRIL 2022 ("THE CASH'S PIT LAND")~~

NOT USED

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER ~~LAND ACQUIRED OR HELD BY THE CLAIMANTS IN CONNECTION WITH THE HIGH SPEED TWO RAILWAY SCHEME SHOWN COLOURED PINK AND GREEN AND BLUE ON THE HS2 LAND PLANS AT ANNEXED TO THE APPLICATION NOTICE~~ <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings> ("THE HS2 LAND") **WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES**

(3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH ACCESS TO AND/OR EGRESS FROM THE HS2 LAND **IN CONNECTION WITH THE HS2 SCHEME WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT, WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING BY** THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES **WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT** WITHOUT THE CONSENT OF THE CLAIMANTS.

(4) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HS2 LAND, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HS2 LAND WITHOUT THE CONSENT OF THE CLAIMANTS

(5) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE)

AND ~~58~~ 62 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

**(68) PERSONS UNKNOWN BY UNLAWFUL MEANS OBSTRUCTING, IMPEDING, HINDERING, OR DELAYING WORKS OR ACTIVITIES AUTHORISED BY THE HS2 ACTS, IN EXPRESS OR IMPLIED AGREEMENT OR COMBINATION WITH ANOTHER PERSON WITH THE INTENTION OF CAUSING DAMAGE TO THE CLAIMANTS**

**Defendants**

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**RE-AMENDED PARTICULARS OF CLAIM**

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**ADDENDUM TO PARTICULARS OF CLAIM**

I. On 20 September 2022, Mr Justice Julian Knowles gave judgment in these proceedings: [2022] EWHC 2360 (KB).

II. At [217], Julian Knowles J held:

“I am satisfied that it is more likely than not that the Claimants would establish at trial that the Defendants’ actions constitute trespass and nuisance and that they will continue to commit them unless restrained. 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. I am satisfied the Claimants would obtain a final injunction.”

III. At [230]:

“I reject the suggestion the injunction will have an unlawful chilling effect, as D6 in particular submitted. There are safeguards built-in, which I have referred to and do not need to mention again. It is of clear geographical and temporal scope. Injunctions against defined groups of persons unknown are now commonplace, in particular in relation to large scale disruptive protests by groups of people, and the courts have fashioned a body of law, much of which I have touched on, in order to address the issues which such injunctions can raise, and to make sure they operate fairly. I also reject the suggestion that the First Claimant lacks ‘clean hands’ so as to preclude injunctive relief.”

- IV. In consequence of his findings, the learned judge granted an interim injunction by order dated 20 September 2022 (“**Injunction**”) with provision for a review on a yearly basis (“**Review Hearing**”). The learned judge stayed this Claim generally with liberty to restore.
- V. In order for the stayed Claim to be understood, the Claimants have not edited the substance of the Amended Particulars of Claim filed on 26 April 2022 and set out below. Instead, the Claimants provide this update and additional pleading in a form which makes the current position easier to understand. A reference to a paragraph of the Amended Particulars of Claim is in the form “paragraph x APOC”.
- VI. The Claimants wish to add the further land to the Injunction, which is referenced at paragraph 6 APOC and to facilitate this, new plans have been produced showing the land of which the Claimants are entitled to possession as at March 2023 (the “**March 2023 HS2 Land Plans**”). The plans span 275 sheets (including index maps to assist with orientation). Producing the plans in hard copy and multiple times would generate a very large amount of paper and navigation of the plans is also easier electronically. Accordingly, the plans (along with copies of all other documents relating to this case) have been placed online on the RWI Updated Website. The Claimants seek permission to update the definition of “HS2 Land” to reference the March 2023 HS2 Land Plans.
- VII. **Dilcock 11** explains the history of these proceedings, and updates the position in respect of the HS2 Scheme. **Dobson 1** provides further details of the defendants, explains the effectiveness of the Injunction, identifies updated tactics used by activists to target the HS2 Scheme and explains the continued risk to the HS2 Scheme. **Groves 1** provides further details of the impact of the Injunction Order and the emerging pattern and feared impact of further targeting of the HS2 Scheme.

### **Unlawful Means Conspiracy**

- VIII. As set out in paragraph 1 APOC, HS2 is the Nominated Undertaker appointed by Parliament to carry out the works and activities set out in the HS2 Acts. **Dobson 1** describes how as a result of the effectiveness of the Injunction, action targeting the HS2 Scheme includes activists working together to cause loss and damage to the Claimants by unlawful means.
- IX. **Dobson 1** explains that targeting of the HS2 Scheme by activists has recently included:

- a) Trespass on land which is not HS2 Land, but over which HS2 is exercising powers granted under Schedule 4 of the HS2 Acts;
- b) Anti-social behaviour including graffiti, swearing, making threats, egg-throwing and assault on HS2 Land;
- c) Criminal damage in and around the HS2 Land;
- d) Disrupting works on land over which HS2 was exercising powers under the HS2 Acts; and
- e) Interfering with fences and gates in and around the HS2 Land.

X. In particular, the action targeting the HS2 Scheme has:

- a) Resulted from a combination or concerted action between two or more persons;
- b) Involved unlawful means, including trespass, nuisance, breach of orders and statutory notices, and battery.
- c) Involved individuals who:
  - i. Are aware that the activities that they are taking part in are unlawful;
  - ii. Intend to cause the Claimants' loss or harm;
  - iii. Have overtly acted in unison; and
  - iv. Have caused damage to the Claimants by reason of loss or delay.

XI. The Claimants reasonably fear that unless the Defendants are restrained from conspiring to injure the Claimants by unlawful means, the Defendants will continue to conspire to cause such loss or damage by unlawful means.

XII. By reason of the matters set out herein and in Dobson 1 and Groves 1, there is a real and imminent risk of the Defendants pursuing unlawful means conspiracy against the Claimants unless restrained by this Honourable Court.

XIII. Accordingly, the Claimants apply, by way of Application Notice and supporting witness evidence provided in respect of the Review Hearing in May 2023, for an order restraining the Defendants obstructing, impeding, hindering, or delaying works or activities authorised by the HS2 Acts, by unlawful means, in express or implied agreement or combination with another person with the intention of causing damage to the Claimants.

## **Introduction**

1. The First Claimant (“**HS2**”) is the nominated undertaker (“**Nominated Undertaker**”) appointed by the Secretary of State for Transport under:
  - 1.1. section 45 of the High Speed Rail (London – West Midlands) Act 2017 (the “**Phase One Act**”) by way of the High Speed Rail (London-West Midlands) (Nomination) Order 2017; and
  - 1.2. section 42 of the High Speed Rail (West Midlands - Crewe) Act 2021 (the “**Phase 2a Act**”) by way of the High Speed Rail (West Midlands - Crewe) (Nomination) Order 2021.

**Together the “HS2 Acts”** to construct the High Speed Two Railway Scheme (commonly referred to as “HS2” and referred to in these Particulars as: the “**HS2 Scheme**”).
2. The Second Claimant is the Secretary of State for Transport (“the **SoS**”).
3. The Claimants are entitled as Nominated Undertaker, alternatively as the freehold or leasehold owner, to prevent trespass and nuisance to the use of, and access to, land acquired or held in connection with the HS2 Scheme (the “**HS2 Land**”).
4. Those Defendants who have been identified and joined individually as Defendants to these proceedings are set out in Annex 1 to these Particulars. Where necessary the Defendants whose names appear in Annex 1 are referred to as “the Named Defendants”, whilst reference to “the Defendants” includes both the Named Defendants and those persons unknown who have not yet been individually identified.
5. The Defendants have taken part in a series of unlawful actions against the HS2 Land since October 2017 (the “**Anti-HS2 Action**”). The Anti-HS2 Action to date has included blocking access to the HS2 Land, damaging HS2’s vehicles, trespassing on land, and digging and occupying tunnels and building fortifications on the HS2 Land without permission. Some of the Anti-HS2 Action has led to criminal charges, and in

respect of other Anti-HS2 Action, the Court has granted injunctive relief and committal orders.

6. The Claimants ~~have~~ produced plans showing the HS2 Land coloured Pink, Blue and Green. Those plans span 283 pages and are best viewed electronically and have therefore been uploaded to: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings> (the “HS2 Land Plans”). As a matter of form they ~~have been~~ were introduced as Exhibit JAD1 to **Dilcock 1**. ~~The plans have been revised as set out in Dilcock 3~~. That part of the HS2 Land over which a possession order ~~is sought~~ has been granted, being land known as Cash’s Pit, Staffordshire (the “Cash’s Pit Land”) is shown coloured orange on Plan A annexed to ~~these Particulars~~ the Order of Cotter J dated 11 April 2022.
7. The Claimants have previously obtained several interim injunctions preventing unlawful trespass and nuisance in claims: PT-2018-000098 (Harvil Road); PT-2020-BHM-000017 (Cublington and Crackley); CO/361/2021 (Euston, Steyn J) and PT-2021-000132 (Euston, Mann J). In respect of PT-2020-BHM-000017 (Cublington and Crackley), a committal order has been made against a named defendant, Mr Cuciurean (**D33**). In respect of CO/361/2021 and PT-2021-000132 (Euston, Steyn J and Mann J), the Claimants have issued committal proceedings against 5 named defendants. ~~Those committal proceedings were discontinued by the First Claimant after wide-ranging undertakings and apologies were provided by each of the 5 defendants to the court.~~
8. Presently, the First Claimant is faced with a significant unlawful trespass and obstruction of access in respect of the Cash’s Pit Land which serves to illustrate the issues the Claimants face in respect of such unlawful activity along the route of the HS2 Scheme. ~~On 11 April 2022, Mr Justice Cotter made a possession order and granted injunctive and declaratory relief in respect of the Cash’s Pit Land. The Claimants seek continuance of that Order. Although the First Claimant seeks a possession order in these proceedings specifically in respect of the Cash’s Pit Land,~~ ~~€~~The facts giving rise to the need for that ~~€~~Order are illustrative of the wider issues which the Claimants face: there are other significant Anti-HS2 Action activities which nevertheless continue to take place along the HS2 Land and experience has shown that the removal of the Defendants from the Cash’s Pit Land is highly likely to mean that the issues are simply displaced to another part of the HS2 Land.

9. In accordance with the HS2 Acts, (Schedule 16 and Schedule 15 respectively) the Claimants are entitled to take temporary possession of certain identified land. That right to possession is a statutory right to possession, bespoke to HS2, and HS2 does not acquire title to the land in question. In effect, the statutory right to possession under the HS2 Acts overlays the existing title and is good against anyone on the land – including the owner of the land.

10. As set out in these Particulars of Claim, the Claimants are only concerned with the Anti-HS2 Action. For the avoidance of any doubt, the Claimants do not seek an injunction against any person with a lawful freehold or leasehold interest in land over which the Claimants have taken temporary possession.

#### **The Cash's Pit Land**

~~11. The First Claimant has an immediate right to possession of the Cash's Pit Land.~~

~~12. The Defendants have never been a tenant or sub-tenant of the Cash's Pit Land.~~

~~13. The Cash's Pit Land does not include residential property.~~

~~14. As explained further below, the Claimants do not know all of the names of the Defendants. As to D5 to D20; D22; D31; and D63 ("the Cash's Pit Named Defendants"), the basis for joining them to these proceedings is set out at paragraph 42 and 49 of the First Witness Statement of Julie Amber Dilcock filed and served in support of this claim ("Dilcock 1").~~

~~15. The basis of the First Claimant's entitlement to possession of the Cash's Pit Land is set out at paragraph 46 of Dilcock 1. In summary, the First Claimant is entitled to take possession of the Cash's Pit Land pursuant to its powers under section 13 and Schedule 15 of the Phase 2a Act, but has not yet taken possession due to the ongoing trespass.~~

~~16. The First Claimant requires possession of the Cash's Pit Land in connection with the HS2 Scheme, construction of Phase 2a of which is authorised by the Phase 2a Act. In particular, the Cash's Pit Land is required for "Phase 2a purposes" within the meaning of section 61 of the Phase 2a Act.~~

## **Trespass to the Cash's Pit Land**

11. The circumstances in which the Cash's Pit Land has been occupied are as follows:

11.1. The Claimants believe a fluctuating group of individuals have been occupying the Cash's Pit Land (or part of it) since around March 2021. At present it is understood that there are in the region of 15 to 20 adults in occupation of the Cash's Pit Land, but numbers fluctuate on a daily basis. The Claimants have no specific information about the presence or otherwise of children on the Cash's Pit Land.

11.2. Many of the Cash's Pit Named Defendants are known to the First Claimant's security team and have trespassed upon other HS2 Land owned by the Second Claimant and/or land to which the First Claimant is entitled to possession on previous occasions across both Phase One and Phase 2a of the HS2 Scheme. The First Defendant and all of the Cash's Pit Named Defendants (together: the "**Cash's Pit Defendants**") are trespassers on the Cash's Pit Land and save for the Cash's Pit Named Defendants, their identities are not known.

11.3. It is not known precisely how or where the Cash's Pit Defendants gained access to the Cash's Pit Land, but access would likely have been gained easily given the nature of the Cash's Pit Land as open (albeit heavily wooded) land.

11.4. An encampment has been established on the Cash's Pit Land comprising a number of structures including tents, wooden structures (incorporating towers) and structures in trees. The Cash's Pit Defendants are understood to be opposed to the continuation of the HS2 Scheme on environmental, economic or other grounds. It is to be inferred from their conduct that the Cash's Pit Defendants by their unlawful trespass wish to prevent or delay or render more difficult and expensive works on the Cash's Pit Land and other HS2 Land in the area by the Claimants and their contractors.

11.5. The encampment on the Cash's Pit Land has been used by the Cash's Pit Defendants as a base of operations for action attempting to block access to and disrupt HS2 Scheme works on other land in the vicinity. Severe disruption has been caused to the First Claimant's contractor Balfour Beatty and necessitated



them seeking injunctive relief to restrain the interference with their access. On 17 March 2022, the Court granted the injunction, which is exhibited to **Dilcock 1**. The encampment has also been used as a base of operations for sporadic incidents of trespass on other HS2 Land in the vicinity of the encampment on which works are being carried out by Cadent Gas to divert a gas pipeline. Some of these incidents are described in detail in **Jordan 1**.

12. On 23 February 2022, the First Claimant gave the occupiers of the Cash's Pit Land written notice to vacate and warned that Court proceedings would be issued if the Cash's Pit Land was not vacated. The circumstances of that notice are set out at paragraph 46 of **Dilcock 1**. The Cash's Pit Defendants (or some of them) remain in occupation of the Cash's Pit Land without the consent of the First Claimant.

~~13. In the premises the First Claimant is entitled to and so claims an order for possession of the Cash's Pit Land. Dilcock 3 sets out the Claimants' service of the Cotter J Order.~~

#### **~~Declaratory Relief~~**

~~14. The First Claimant also seeks declaratory relief confirming its immediate right to possession of the Cash's Pit Land.~~

#### **Trespass and nuisance**

14. As set out at paragraph 3 above, the Claimants have a right to possession of the HS2 Land.

15. The Anti-HS2 Action involves trespass on the HS2 Land; disruption of the works on the HS2 Land; and disruption of the use of roads in the vicinity of the HS2 Land causing inconvenience and danger to the Claimants and to other road users.

16. In particular, the Anti-HS2 Action has:

16.1. On numerous occasions created immediate threats to life, putting at risk the lives of those engaging in the action, the Claimants, their agents, servants, contractors, sub-contractors, group companies, licensees, invitees and employees and potentially emergency services personnel.

16.2. Caused disruption, delay and nuisance to the Claimants, their agents, servants, contractors, sub-contractors, group companies, licensees, invitees and employees on the HS2 Land.

16.3. Prevented the Claimants, their agents, servants, contractors, sub-contractors, group companies, licensees, invitees and employees and members of the public from exercising their ordinary rights to use the public highway or inconvenienced them in so doing.

17. Further, the Defendants' conduct:

17.1. Is an unlawful trespass on the HS2 Land in circumstances where they are bare trespassers.

17.2. In respect of obstruction of access to the HS2 Land has exceeded the rights of the public to use the public highway and is in itself a trespass against the relevant highway authority.

17.3. Has endangered the life, health, property or comfort of the public and/or obstructs the public in the exercise of rights common to all Her Majesty's subjects such that a public nuisance has been created, and the Claimants have suffered particular damage over and above the general inconvenience and injury suffered by the public in expending (i) costs incurred in additional internal managerial and staffing time in order to deal with the protest action; (ii) costs and losses incurred as a result of delays to the HS2 Scheme programme; and (ii) other costs incurred in remedying the wrongs and seeking to prevent further wrongs.

17.4. Threatens, unless restrained, to continue the actions under preceding subparagraphs and to cause an interference with the reasonable use of the HS2 Land amounting to a private nuisance.

18. The Claimants reasonably fear that the Cash's Pit Defendants will not comply with the order for possession or declaration made by the Court and in particular that they will refuse to leave any structures on or tunnels that they have constructed under the Cash's Pit Land, placing themselves and those trying to remove them at significant risk. To

date, there has been no indication that the Cash's Pit Defendants have complied with the Order of Cotter J.

19. The Claimants also reasonably fear that, having removed the Cash's Pit Defendants from the Cash's Pit Land, the Defendants will return to trespass on or cause nuisance to the Cash's Pit Land or on other parts of the HS2 Land. The Claimants also, based on previous experience, reasonably fear that the Defendants will interfere with the access of the Claimants, their agents, servants, contractors, sub-contractors, group companies, licensees, invitees and/or employees to and from the HS2 Land and/or interfere with the fencing or gates at the perimeter of the HS2 Land.
20. By reason of the matters set out herein and in **Dilcock 1** and **Jordan 1**, there is a real and imminent risk of trespass and nuisance continuing to be committed in respect of the Cash's Pit Land and the HS2 Land.
21. The Defendants have openly stated an intention to continue to take part in direct action protest against the HS2 Scheme, through further protest action similar to that described herein unless restrained by this Honourable Court.
22. Accordingly, the Claimants apply, by way of the Application Notice and supporting witness evidence accompanying this claim, for **final** injunctive relief requiring the Cash's Pit Defendants to leave the Cash's Pit Land, declaratory relief and an order restraining the Defendants from trespassing upon or interfering with access to or the fencing and gates at the perimeter of the HS2 Land.

#### **RE-AMENDED PRAYER AND THE CLAIMANTS CLAIMS:**

- ~~(1) An order that the Cash's Pit Defendants deliver up possession of the Cash's Pit Land to the First Claimant forthwith;~~
- ~~(2) Declaratory relief confirming the First Claimant's immediate right to possession of the Cash's Pit Land;~~
- (1) **Final Interim** injunctive relief in the terms of the draft Order **appended to the Application Notice**;
- (2) Costs;

(3) Further and other relief.

**RICHARD KIMBLIN QKC**

**MICHAEL FRY**

**SIONED DAVIES**

**JONATHAN WELCH**


Dated this ~~25 day of March 2022~~ 26 day of April 2022

Re-Amendments dated this 27 day of March 2023

#### STATEMENT OF TRUTH

The Claimants believe that the facts stated in these Particulars of Claim are true. The Claimants 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.

I am duly authorised by the Claimants to sign this statement.

Signed:   
Claimants' Solicitor

Position or office held: **Litigation  
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