

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

BETWEEN:

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

Claimants

- and -

PERSONS UNKNOWN & OTHERS

Defendants

CORE BUNDLE
(Volume A)
for hearing on 16 May 2023

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1 St Paul's Place

Sheffield

S1 2IX

Telephone: 0114 283 3312

Email: HS2Injunction@dlapiper.com

Reference: RXS/380900/401

Solicitors for the Claimants



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

MR JUSTICE JULIAN KNOWLES

QB-2022-BHM-000044

Between:

(1) HIGH SPEED TWO (HS2) LIMITED

(2) THE SECRETARY OF STATE FOR TRANSPORT

-and-

Claimants

- (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")
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

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.

A Defendant who is an individual who is ordered not to do something must not do it himself/herself or in any other way. He/she must not do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

UPON the Claimants' application by an Application Notice dated 25 March 2022.

AND UPON Mr Justice Cotter making an Order on 11 April 2022 approving service on the Cash's Pit Defendants (as defined in this Order), granting a possession order, declaratory relief and interim injunctive relief in relation to the Cash's Pit Land.

AND UPON Mr Justice Julian Knowles making an Order on 28 April 2022 making directions and approving service in respect of the Claimants' Application on Named Defendants (as defined in this Order).

AND UPON the Court accepting the Claimants' undertaking that they 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 Claimants confirming that this Order is not intended to prohibit lawful protest which does not involve trespass upon the HS2 Land and does not block, slow down, obstruct or otherwise interfere with the Claimants' access to or egress from the HS2 Land.

AND UPON the Claimants confirming that they do not intend for any freeholder or leaseholder with a lawful interest in the HS2 Land to fall within the Defendants to this Order, and undertaking not to make any committal application in respect of a breach of this Order, where the breach is carried out by a freeholder or leaseholder with a lawful interest in the HS2 Land on the land upon which that person has an interest.

AND UPON the Claimants confirming that this Order is not intended to act against any guests or invitees of any freeholders or leaseholders with a lawful interest in the HS2 Land unless that guest or

invitee undertakes actions with the effect of damaging, delaying or otherwise hindering the HS2 Scheme on the land held by the freeholder or leaseholder with a lawful interest in the HS2 Land.

AND UPON HEARING Counsel for the Claimant, Mr Richard Kimblin KC, Mr Michael Fry, Ms Sioned Davies and Mr Jonathan Welch, and for the Sixth Defendant Mr Timothy Moloney KC and Mr Owen Greenhall, other Defendants in person and various non-Defendants in person.

IT IS ORDERED THAT:

Definitions

1. In this Order, the following defined terms shall apply:
 - a. The “HS2 Proceedings Website” means the webpages at: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>.
 - b. The “Cash’s Pit Defendants” means D1, D5 to D20, D22, D31 and D63 whose names appear in the schedule annexed to this Order at Annex A.
 - c. The “Named Defendants” means D5 to D63 whose names appear in Annex A.
 - d. The term “Defendants” refers to all Defendants 1 – 63.
 - e. The “Cash’s Pit Land” means all of the land known as Cash’s Pit, Staffordshire shown coloured orange on Plan A annexed to the Order dated 11 April 2022 and reproduced as an annexe to this Order (“**Plan A**”).
 - f. The “Harvil Road Land” means the land subject to the Order of David Holland KC (sitting as Deputy Judge of the High Court) in PT-2018-000098 dated 4 September 2020 and the Order of Mrs Justice Heather Williams dated 1 September 2022.
 - g. The “Crackley and Cubbington Land” means the land subject to the Order of Mr Justice Marcus Smith in PT-2020-BHM-000017 dated 3 May 2021 and sealed on 7 May 2021.
 - h. The “HS2 Land” means all of the land acquired or held by the Claimants in connection with the High Speed 2 Railway Scheme shown coloured pink and green on the plans which are available electronically on the HS2 Proceedings Website. For the avoidance of doubt, the Cash’s Pit Land, the Harvil Road Land and the Crackley and Cubbington Land are included within the HS2 Land.

Service by Alternative Method – Proceedings

2. 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.

Injunction in force

3. With immediate effect, and until 23.59 on 31 May 2023 unless varied, discharged or extended by further order, the Defendants and each of them are forbidden from doing the following:
 - a. entering or remaining upon the HS2 Land;
 - b. deliberately obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the HS2 Land; or
 - c. interfering with any fence or gate on or at the perimeter of the HS2 Land.
4. Nothing in paragraph 3 of this Order:
 - a. Shall prevent any person from exercising their rights over any open public right of way over the HS2 Land.
 - b. Shall affect any private rights of access over the HS2 Land.
 - c. Shall prevent any person from exercising their lawful rights over any public highway.
 - d. Shall extend to any person holding a lawful freehold or leasehold interest in land over which the Claimants have taken temporary possession.
 - e. Shall extend to any interest in land held by statutory undertakers.
5. For the purposes of paragraph 3(b) prohibited acts of obstruction and interference shall include (but not be limited to):
 - a. standing, kneeling, sitting or lying or otherwise remaining present on the carriageway when any vehicle is attempting to turn into the HS2 Land or attempting to turn out of the HS2 Land in a manner which impedes the free passage of the vehicle;
 - b. digging, erecting any structure or otherwise placing or leaving any object or thing on the carriageway which may slow or impede the safe and uninterrupted passage of vehicles or persons onto or from the HS2 Land;
 - c. affixing or attaching their person to the surface of the carriageway where it may slow or impede the safe and uninterrupted passage of vehicles onto or from the HS2 Land;
 - d. affixing any other object to the HS2 Land which may delay or impede the free passage of any vehicle or person to or from the HS2 Land;
 - e. climbing on to or affixing any object or person to any vehicle in the vicinity of the HS2 Land; and
 - f. deliberate slow walking in front of vehicles in the vicinity of the HS2 Land.

6. For the purposes of paragraph 3(c) prohibited acts of interference shall include (but not be limited to):
 - a. cutting, damaging, moving, climbing on or over, digging beneath, or removing any items affixed to, any temporary or permanent fencing or gate on or at the perimeter of the HS2 Land;
 - b. the prohibition includes carrying out the aforementioned acts in respect of the fences and gates; and
 - c. interference with a gate includes drilling the lock, gluing the lock or any other activities which may prevent the use of the gate.

Service by Alternative Method – This Order

7. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below).
8. Pursuant to CPR r.6.27 and r.81.4:
 - a. The Claimants shall serve this Order upon the Cash's Pit Defendants by affixing 6 copies of this Order in prominent positions on the perimeter of the Cash's Pit Land.
 - b. Further, the Claimants shall serve this Order upon the Second, Third and Fourth Defendants by:
 - i. Affixing 6 copies in prominent positions on the perimeter of each of the Cash's Pit Land (which may be the same copies identified in 8(a) above), the Harvil Road Land and the Crackley and Cubbington Land.
 - ii. Advertising the existence of this Order in the Times and Guardian newspapers, and in particular advertising the web address of the HS2 Proceedings Website, and direct link to this Order.
 - iii. Where permission is granted by the relevant authority, by placing an advertisement and/or a hard copy of the Order within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place advertisements on local parish council notice boards in the same approximate locations.

- iv. Publishing social media posts on the HS2 twitter and Facebook platforms advertising the existence of this Order and providing a link to the HS2 Proceedings Website.
 - c. Service of this Order on Named Defendants may be effected by personal service where practicable and/or posting a copy of this Order through the letterbox of each Named Defendant (or leaving in a separate mailbox), with a notice drawing the recipient's attention to the fact the package contains a court order. If the premises do not have a letterbox, or mailbox, a package containing this Order may be affixed to or left at the front door or other prominent feature marked with a notice drawing the recipient's attention to the fact that the package contains a court order and should be read urgently. The notices shall be given in prominent lettering in the form set out in Annex B. It is open to any Defendant to contact the Claimants to identify an alternative place for service and, if they do so, it is not necessary for a notice or package to be affixed to or left at the front door or other prominent feature.
 - d. The Claimants shall further advertise the existence of this Order in a prominent location on the HS2 Proceedings Website, together with a link to download an electronic copy of this Order.
 - e. The Claimants shall email a copy of this Order to solicitors for D6 and any other party who has as at the date hereof provided an email address to the Claimants to the email address: HS2Injunction@governmentlegal.gov.uk
9. Service in accordance with paragraph 8 above shall:
- a. be verified by certificates of service to be filed with Court;
 - b. be deemed effective as at the date of the certificates of service; and
 - c. be good and sufficient service of this Order on the Defendants and each of them and the need for personal service be dispensed with.
10. Although not expressed as a mandatory obligation due to the transient nature of the task, the Claimants will seek to maintain copies of this Order on areas of the HS2 Land in proximity to potential Defendants, such as on the gates of construction compounds or areas of the HS2 Land known to be targeted by objectors to the HS2 Scheme.
11. Further, without prejudice to paragraph 8, while this Order is in force, the Claimants shall take all reasonably practicable steps to effect personal service of the Order upon any Defendant of

whom they become aware is, or has been, on the HS2 Land without consent and shall verify any such service with further certificates of service (where possible if persons unknown can be identified) to be filed with Court.

Discontinuance and discharge of Orders

12. The following claims are discontinued with no order as to costs:
 - a. PT-2018-000098 (Harvil Road); and
 - b. PT-2020-BHM-000017 (Cubbington and Crackley).
13. The following orders of the court are discharged and replaced by the injunction contained in paragraph 3 of this Order:
 - a. The Order of David Holland QC (sitting as Deputy Judge of the High Court) in PT-2018-000098 dated 4 September 2020 and sealed on 18 September 2020 and the Order of Mrs Justice Heather Williams dated 1 September 2022 (in respect of the Harvil Road Land);
 - b. The Order of Mr Justice Marcus Smith in PT-2020-BHM-000017 dated 3 May 2021 and sealed on 7 May 2021 (in respect of the Crackley and Cubbington Land); and
 - c. The Order of Mr Justice Cotter dated 11 April 2022 and sealed on 12 April 2022 (in respect of the Cash's Pit Land).
14. The Claimants' application, dated 23 August 2022 to extend the three interim injunctions referred to in paragraph 13 above, shall stand withdrawn with no order as to costs.

Further Case Management

15. This Order will be reconsidered at a hearing to be listed on approximately a yearly basis between 15 and 31 May to determine whether there is a continued threat which justifies continuation of this Order. It will be the Claimants' responsibility to arrange such a hearing and to place details of any such hearing on the HS2 Proceedings Website.
16. Without prejudice to the foregoing, any 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) via the contact details set out below. Schedule A to this Order indicates the process

which must be followed for any such application. Useful sources of support and information are listed in Schedule C.

17. 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 (unless they are already named as a defendant).
18. Any Named Defendant or other person who believes that they will or might bring themselves within the definition of the “persons unknown” by their conduct and who wishes to oppose these proceedings should file an Acknowledgment of Service pursuant to CPR Part 8.3 and serve a copy on the Claimants solicitors via the email address set out in paragraph 28 below. Schedule B to this Order indicates the process which must be followed.
19. Any Defendant who fails to comply with paragraph 18 above shall not be permitted to defend these proceedings or take any further role in these proceedings without further order of the Court and shall be liable to have injunctive relief continued against them without trial pursuant to CPR r.3.5.
20. The Claimants otherwise have liberty to apply to extend or vary this Order or for further directions.
21. Save as provided for above, the Claim be stayed generally with liberty to restore.

Costs

22. There be no order as to costs as between any of the parties to the proceedings to date in respect of the trial hearing on 26 and 27 May 2022 or any other steps to date in these proceedings.
23. If the Claimants intend to seek a costs order against any person in respect of any future applications in these proceedings or any future hearing, then they shall seek to give reasonable advance notice of that fact to that person.

Documents in the Claim and Application

24. All documents relating to these proceedings and this Order may be downloaded at: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>.
25. A single hard copy of any document will be sent within 21 days of the receipt of a reasonable request for that document or documents via the Claimants’ solicitors whose contact details are set out below so long as any requests include a postal address and the full name of the requestor.

Communications with Claimants and the Court

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

Birmingham District Registry
Civil Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DW

E: qb.birmingham@justice.gov.uk
T: 0121 681 4441
F: 01264 785 131
DX: 701987 Birmingham 7

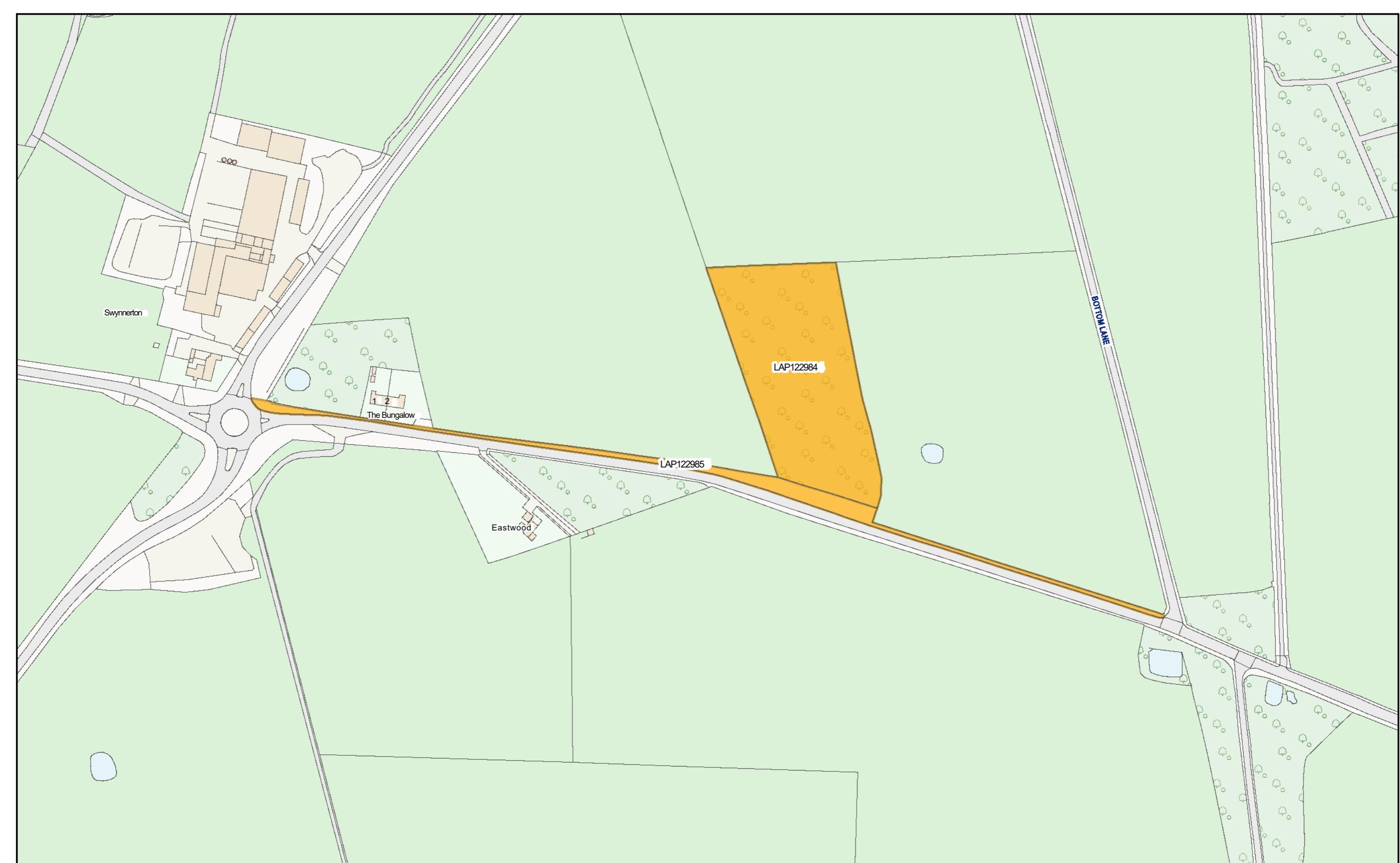
27. Any person who wishes to view or download copies of the documents shall contact the Claimants' solicitors via the contact details below.
28. The Claimants' solicitors and their contact details are:

FAO: HS2 TEAM
DLA PIPER UK LLP
1 St Paul's Place
Sheffield
S1 2JX

E: HS2Injunction@dlapiper.com
T: 0114 283 3312
DX: 708580 Sheffield 10
Ref: RXS/380900/378

Dated: 20 September 2022

PLAN A – CASH'S PIT LAND



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Legend

Cash's Pit Land



High Speed Two
Phase One/ Phase 2A
Injunction Mapping

PLAN A

Internal

HS2

Registered in England, Registration number 06791686.
Registered office: 2 Snowhill, Queensway, Birmingham B4 6GA.

Scale at A3: 1:2,500

0 24 48 72
Metres

Doc Number: PH1-HS2-LP-MAP-100-000083 Date: 22/03/22

CORE-A-13

ANNEX A – SCHEDULE OF DEFENDANTS

PART 1

DEFENDANT NUMBER	UNNAMED DEFENDANTS
(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”)
(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 ON THE HS2 LAND PLANS AT https://www.gov.uk/government/publications/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, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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

For the avoidance of doubt, any person who has been a defendant in these proceedings, or who has given undertakings to HS2, may nevertheless become Defendant 1 – Defendant 4 as a person unknown if they commit any of the prohibited acts.

PART 2

DEFENDANT NUMBER	NAMED DEFENDANTS
(5)	Mr Ross Monaghan (aka Squirrel / Ash Tree)
(6)	Mr James Andrew Taylor (aka Jimmy Knaggs / James Knaggs / Run Away Jim)
(7)	Ms Leah Oldfield
(8)	Not Used
(9)	Not Used
(10)	Not Used
(11)	Mr Tony Carne
(12)	Ms Amy Lei
(13)	Mr Tom Holmes
(14)	Not Used
(15)	Not Used
(16)	Ms Karen Wildin (aka Karen Wilding / Karen Wilden / Karen Wilder)
(17)	Mr Andrew McMaster (aka Drew Robson)
(18)	Mr William Harewood (aka Satchel / Satchel Baggins)
(19)	Mr Harrison Radcliffe (aka Log / Bir_Ch / Sasha James)
(20)	Mr George Keeler (aka C Russ T Chav / Flem)
(21)	Mr William French (aka Will French / Took)
(22)	Mr Tristan Dixon (aka Tristan Dyson)
(23)	Mx Scarlett Rien (aka Leggs)
(24)	Not Used
(25)	Not Used
(26)	Not Used
(27)	Mr Lachlan Sandford (aka Laser / Lazer)
(28)	Mr Scott Breen (aka Scotty / Digger Down)
(29)	Not Used
(30)	Not Used
(31)	Mr Rory Hooper
(32)	Not Used
(33)	Mr Elliot Cuciurean (aka Jellytot)
(34)	Mr Paul Sandison
(35)	Not Used
(36)	Mr Mark Keir
(37)	Mr Thorn Ramsey (aka Virgo Ramsay)
(38)	Mr Vajda Robert Mordechaj

DEFENDANT NUMBER	NAMED DEFENDANTS
(39)	Mr Iain Oliver (aka Pirate)
(40)	Ms Jess Walker
(41)	Mr Matt Atkinson
(42)	Ms Hannah Bennett
(43)	Mr James Ruggles (aka Jimmy Ruggles)
(44)	Mr Nick Grant (aka Potts)
(45)	Mr Stuart Ackroyd
(46)	Ms Wiktoria Paulina Zieniuk
(47)	Not Used
(48)	Mr Conner Nichols
(49)	Mr Sebastian Roblyn Maxey
(50)	Ms Jessica Heathland-Smith
(51)	Ms Ella Dorton
(52)	Mr Karl Collins
(53)	Mr Sam Goggin
(54)	Not Used
(55)	Not Used
(56)	Not Used
(57)	Ms Samantha Smithson (aka Swan / Swan Lake)
(58)	Mr Jack Charles Oliver
(59)	Ms Charlie Inskip
(60)	Mr Xavier Gonzalez Trimmer
(61)	Mr David Buchan (aka David Holliday)
(62)	Ms Leanne Swateridge (aka Leayn / Flowery Zebra)
(63)	Mr Dino Misina (aka Hedge Hog)

ANNEX B – WORDING FOR NOTICES

[On the package containing the Order]

“VERY URGENT: THIS PACKAGE CONTAINS AN ORDER OF THE HIGH COURT AND YOU SHOULD READ IT IMMEDIATELY AND SEEK LEGAL ADVICE. IF YOU NEED ANOTHER COPY PLEASE CONTACT –

FAO: HS2 TEAM
DLA PIPER UK LLP
1 St Paul’s Place
Sheffield
S1 2JX

E: HS2Injunction@dlapiper.com
T: 0114 283 3038
DX: 708580 Sheffield 10
R: RXS/380900/378

All documents relating to these proceedings and this Order may be downloaded at:
<https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>”

SCHEDEULE A – STEPS TO VARY OR DISCHARGE THIS ORDER

If, in accordance with paragraph 16 above, any Defendant or any other person affected by this Order wishes to apply to vary or discharge this Order, to ensure effective case management by the Court the following indicative steps must be followed:

1. Any person seeking to contest the Claimants' entitlement to interim relief should file with the court (i.e. send to the court) and serve (i.e. send to the Claimants):

- (a) An N244 application form¹;
- (b) Written grounds (which may be contained in within the N244 application form or a separate document) for:
 - i. permission to bring the application; and
 - ii. the application (i.e. reasons for the proposed variation / discharge of the Order).

Any applicant shall explain clearly within their written grounds the differences between their grounds and the issues which the Court has already adjudicated upon in the judgment of Mr Justice Julian Knowles of [20] September 2022. A copy of the judgment can be found on the HS2 Proceedings Website; and

- (c) A witness statement(s) containing and/or appending all of the evidence to be relied upon in support of the application.

2. In order to file the above documents with the Court, the applicant should:

- (a) Send physical copies of the documents to the address at paragraph 26 of this Order; and/or
- (b) Speak to the Court to obtain an address to send electronic copies of the documents to.

3. In order to serve the above documents on the Claimants, the applicant should:

- (a) Send physical copies of the documents to the address at paragraph 28 of this Order; and/or
- (b) Send electronic copies of the documents to the e-mail address at paragraph 28 above.

4. The person making the application should indicate to the Court and Claimants whether they consider the matter requires a court hearing or can be dealt with by the judge reviewing the paper application and any response from the Claimants.

5. Thereafter the Claimants (i.e. HS2) shall have 14 days to file and serve evidence and submissions in response, including as to whether an oral hearing is required to determine the application.

6. Within 21 days, the Court shall decide:

- i. whether to grant permission for the application to proceed; and
- ii. if permission is granted, whether a hearing is necessary, and/or may request from the parties evidence on any further matters necessary to determine the application. If the

¹ See the following link which provides a digital version of the form, and guidance notes:
<https://www.gov.uk/government/publications/form-n244-application-notice>

Court decides that a hearing is necessary, it shall seek to schedule the hearing (accommodating availabilities of the parties) within 42 days (6 weeks).

7. If the Court decides that further evidence is needed from either party, it may set strict deadlines by which that evidence must be filed. Both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

SCHEDULE B – STEPS TO BRING MATTER TO TRIAL

If, in accordance with paragraph 18 above, any Defendant or other person affected by this Order wishes to apply bring the Claimants' proceedings (whether as a whole or in part) to final trial, to ensure effective case management by the Court the following steps must be followed:

1. If not already so, the person must apply to become a named defendant to the claim. This can be done by filing with the court (i.e. send to the court) and serving (i.e. send to the Claimants)

- (a) An N244 Application form²; and
- (b) a short statement explaining the reason for applying to become a named defendant (i.e. in order to contest the Claimants' claim).

2. In order to file the above with the Court, the person who is applying should:

- (a) Send physical copies to the address at paragraph 26 of this Order; and/or
- (b) Speak to the Court to obtain an address to send electronic copies to.

3. In order to serve the above on the Claimants, the person applying should:

- (a) Send physical copies to the address at paragraph 28 of this Order; and/or
- (b) Send electronic copies to the to the e-mail address at paragraph 28 above.

4. The person seeking to contest the Order and bring the matter to trial must then file and serve (see above as to how this is to be done):

- (a) An Acknowledgement of Service using form N210,³ explaining the reasons for contesting the Order (whether as a whole or in part), which must include a postal address for service together with (if they wish to be served with documents electronically in these proceedings) an email address to which such service may be effected;
- (b) An application for permission to contest the Order and to bring the matter to trial, which explains clearly the differences between their grounds of defence relied upon and the issues which the Court has already adjudicated upon in the judgment of Mr Justice Julian Knowles of [20] September 2022. A copy of the judgment can be found on the HS2 Proceedings Website;
- (c) A written Defence responding to the allegations set out in the Particulars of Claim (to the extent in the Defendant's knowledge); and
- (d) A witness statement(s) (verified by a statement of truth) containing and/or appending all the evidence to be relied upon in support of the application for permission and Defence (i.e. evidence explaining the basis for contesting the claim).

5. Thereafter the Claimants shall have 14 days after service of the Defence to file and serve any evidence in reply.

6. The Court shall then list a hearing date for a Case Management Conference, at which it will:

² See the following link which provides a digital version of the form, and guidance notes:
<https://www.gov.uk/government/publications/form-n244-application-notice>

³ <https://www.gov.uk/government/publications/form-n210-acknowledgment-of-servicecpr-part-8>

- (a) determine the application for permission to contest the Order and to bring the matter to trial; and
- (b) should the application for permission be successful, give directions to parties for any further steps required prior to the final trial (such as filing further evidence). The Court may set strict deadlines by which the further steps must be taken and both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

7. Further:

- a. The Claimants shall prepare an electronic hearing bundle for the hearing and provide the Defendant(s) with access to the bundle not less than 14 days before the hearing.
- b. At the hearing, the Court shall consider whether injunctive relief shall be continued against any or all of the Defendants, whether on an interim or final basis.
- c. Any further application by the Claimants to add further named defendants, to have final relief granted against any Defendant(s) without trial pursuant to CPR r.3.5 and/or otherwise to amend its claim shall be determined at the hearing.
- d. The need for and form of any further case management directions through to trial or any further hearing shall be considered.

SCHEDULE C – USEFUL REFERENCES AND RESOURCES

The attention of all parties is drawn to the following references and resources:

Bar Pro Bono Unit – A possible avenue for obtaining free legal advice and/or representation:
<https://weareadvocate.org.uk/>

Support Through Court (formerly Personal Support Unit) – An organisation supporting litigants in person: <https://www.supportthroughcourt.org/>

Chancery Division Guide: <https://www.gov.uk/government/publications/chanceryguide>

Chancery Division Interim Applications Guide for Litigants in Person:
<https://www.judiciary.uk/publications/guide-litigants-person-chancery/>

Civil Procedure Rules Part 8: <https://www.justice.gov.uk/courts/procedurerules/civil/rules/part08>

Help with Court Fees website: <https://www.gov.uk/get-help-with-court-fees>



Neutral Citation Number: [2022] EWHC 2360 (KB)

Case No: QB-2022-BHM-000044

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

Birmingham Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 20/09/2022

Before :

MR JUSTICE JULIAN KNOWLES

Between :

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

Claimants

- and -

FOUR CATEGORIES OF PERSONS UNKNOWN

-and-

**ROSS MONAGHAN AND
58 OTHER NAMED DEFENDANTS**

Defendants

Richard Kimblin KC, Michael Fry, Sioned Davies and Jonathan Welch (instructed by DLA Piper UK LLP) for the Claimants

Tim Moloney KC and Owen Greenhall (instructed by Robert Lizar Solicitors) for the Sixth Named Defendant (James Knaggs)

A number of Defendants appeared in person and/or filed written submissions

Hearing dates: 26-27 May 2022

APPROVED JUDGMENT

CORE-A-23

Mr Justice Julian Knowles:

Introduction

1. If and when it is completed HS2 will be a high speed railway line between London and the North of England, via the Midlands. Parts of it are already under construction. The First Claimant in this case, High Speed Two (HS2) Limited, is the company responsible for constructing HS2. It is funded by grant-in-aid from the Government (ie, sums of money provided to it by the Government in support of its objectives).
2. To avoid confusion, in this judgment I will refer to the railway line itself as HS2, and separately to the First Claimant as the company carrying out its construction. The Second Claimant is responsible for the successful delivery of the HS2 Scheme.
3. This is an application by the Claimants, by way of Claim Form and Application Notice dated 25 March 2022, for injunctive relief to restrain what they say are unlawful protests against the building of HS2 which have hindered its construction. They say those protesting have committed trespass and nuisance.
4. There is a dedicated website in relation to this application where the relevant files can be accessed: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>. I will refer to this as ‘the Website’.
5. Specifically, the Claimants seek: (a) an injunction, including an anticipatory injunction, to protect HS2 from unlawful and disruptive protests; (b) an order for alternative service; and (c) the discharge of previous injunctions (as set out in the Amended Particulars of Claim (APOC) at [7]). The latter two matters are contained in the Amended Draft Injunction Order of 6 May 2022 at Bundle B, B049.
6. There are four categories of unnamed defendant (see Appendix 1 to this judgment). There are also a large number of named defendants.
7. The Claimants have made clear that any Defendant who enters into suitable undertakings will be removed from the scope of the injunction (if granted). The named Defendants to whom this application relates has been in a state of flux. The Claimants must, upon receipt of this judgment, in the event I grant an injunction, produce a clear list of those Defendants (to be contained in a Schedule to it) to whom it, and those to whom it does not apply (whether because they have entered into undertakings, or for any other reason).
8. The Application Notice seeks an interim injunction (‘... Interim injunctive relief against the Defendants at Cash's Pit, and the HS2 Land ...'). However, Mr Kimblin KC, as I understood him, said that what he was seeking was a final injunction.
9. I note the discussion in *London Borough of Barking and Dagenham v Persons Unknown* [2022] 2 WLR 946, [89], that there may be little difference between the two sorts of injunction in the unknown protester context. However, in this case there are named Defendants. Some of them may wish to dispute the case against them. Mr Moloney on behalf of D6 (who has filed a Defence) objected to a final injunction. I cannot, in these circumstances, grant a final injunction. There may have to be a trial. Any injunction that I grant must therefore be an interim injunction. The Claimant’s draft injunction provides for a long-stop date of 31 May 2023 and also provides for annual reviews in May.

10. The papers in this case are extremely voluminous and run to many thousands of pages. D36, Mark Keir, alone filed circa 3000 pages of evidence. There are a number of witness statements and exhibits on behalf of the Claimants. The Claimants provided me with an Administrative Note shortly before the hearing. I also had two Skeleton Arguments from the Claimants (one on legal principles, and one on the merits of their application); and a Skeleton Argument from Mr Moloney KC and Mr Greenhall on behalf of D6, James Knaggs. There were then post-hearing written submissions from the Claimants and on behalf of Mr Knaggs. There are also written submissions from a large number of defendants and also others. These are summarised in Appendix 2 to this judgment. A considerable bundle of authorities was filed. All of this has taken time to consider.
11. The suggested application on behalf of D6 to cross-examine two of the Claimants' witnesses was not, in the end, pursued. I grant any necessary permission to rely on documents and evidence, even if served out of time.
12. The land over which the injunction is sought is very extensive. In effect, the Claimants seek an injunction over the whole of the proposed HS2 route, and other land which I will describe later. I will refer to the land collectively as the HS2 Land. The injunction would prevent the defendants from: entering or remaining upon HS2 Land; obstructing or otherwise interfering with vehicles accessing it or leaving it; interfering with any fence or gate at its perimeter.
13. The Application Notice also related to a discrete parcel of land known as Cash's Pit, in Staffordshire. Cotter J granted a possession order and an injunction in respect of that land on 11 April 2022, on the Claimants' application, and adjourned off the other application, which is now before me.

Democracy and opposition to HS2

14. It must be understood at the outset that I am not concerned with the rights or wrongs of HS2. I am not holding a public inquiry. It is obviously a project about which people hold sincere views. It is not for me to agree or disagree with these. But I should make clear that I am not being 'weaponised' against protest, as at least one person said at the hearing. My task is solely to decide whether the Claimants are properly entitled to the injunction they seek, in accordance with the law, the evidence, and the submissions which were made to me.
15. It should also be understood that the injunction that is sought will not prohibit lawful protest. That is made clear in the recitals in the draft injunction:

“UPON the Claimants’ application by an Application Notice
dated 25 March 2022

...

AND UPON the Claimants confirming that this Order is not intended to prohibit lawful protest which does not involve trespass upon the HS2 Land and does not block, slow down, obstruct or otherwise interfere with the Claimants’ access to or egress from the HS2 Land.”

16. HS2 is the culmination of a democratic process. In other words, it is being built under specific powers granted by Parliament. As would be expected in relation to such a major national infrastructure project, the scheme was preceded by extensive consultation, and it then received detailed consideration in Parliament. As early as 2009, the Government published a paper, ‘Britain’s Transport Infrastructure: High Speed Two’. The process which followed thereafter is described in the first witness statement of Julie Dilcock (Dilcock 1), [11] et seq. She is the First Claimant’s Litigation Counsel (Land and Property). She has made four witness statements (Dilcock 1, 2, 3 and 4.)
17. The HS2 Bills which Parliament passed into law were hybrid Bills. These are proposed laws which affect the public in general, but particularly affect certain groups of people. Hybrid Bills go through a longer Parliamentary process than purely Public Bills (ie, in simple terms, Bills which affect all of the public equally). Those particularly affected by hybrid Bills may submit petitions to Parliament, and may state their case before a Parliamentary Select Committee as part of the legislative process.
18. HS2 is in two parts: Phase 1, from London to the West Midlands, and Phase 2a, from the West Midlands – Crewe.
19. Parliament voted to proceed with HS2 via, in particular, the High Speed Rail (London - West Midlands) Act 2017 (the Phase One Act) and the High Speed Rail (West Midlands - Crewe) Act 2021 (the Phase 2a Act) (together, the HS2 Acts). There is also a lot of subordinate legislation.
20. Many petitions were submitted in relation to HS2 during the legislative process. For example, in *Secretary of State for Transport and High Speed Two (HS2) Limited v Persons Unknown (Harvil Road)* [2019] EWHC 1437 (Ch), [16]-[18], the evidence filed on behalf of the Claimants in relation to the Phase One Act was that:

“... the Bill which became the Act was a hybrid Bill and, as such, subject to a petitioning process following its deposit with Parliament. In total [the Claimants’ witness] says 3,408 petitions were lodged against the Bill and its additional provisions, 2,586 in the Commons and 822 in the Lords and select committees were established in each House to consider these petitions.

17. She says the government was able to satisfy a significant number of petitioners without the need for a hearing before the committees. In some cases in the Commons this involved making changes to the project to reduce impacts or enhance local mitigation measures and many of these were included in one of the additional provisions to the Bill deposited during the Commons select committee stage.

18. Of the 822 petitions submitted to the House of Lords select committee, the locus of 278 petitions was successfully challenged. Of the remaining 544 petitions, the select committee heard 314 petitions in formal session with the remainder withdrawing, or choosing not to appear before the select committee, mainly as a result of successful prior negotiation with the Claimants.”

21. In his submissions of 16 May 2022, Mr Keir said at [5] that HS2 was a project which ‘the people of the country do not want but over which we have been roundly ignored by Parliament’. In light of the above, I cannot agree. ‘What the public wants’, is reflected in what Parliament decided. That is democracy. Those who were against HS2 were not ignored during the legislative process. People could petition directly to express their views, and thousands did so. Their views were considered. Parliament then took its decision to approve HS2 knowing that many would disagree with it. It follows, it seems to me, that the primary remedy for those who do not want HS2 is to elect MPs who will cancel it. (In fact, whilst not directly relevant to the matter before me, I understand that the original planned leg of the route towards Leeds/York from the Midlands has now been abandoned).
22. All of this is, I hope, consistent with what the Divisional Court said in *DPP v Cuciurean* [2022] EWHC 736 (Admin). That concerned a criminal conviction under s 68 of the Criminal Justice and Public Order Act 1994 (aggravated trespass) arising out of a protest against HS2. Lord Burnett of Maldon CJ said at [84]:

“... Those lawful activities in this case [viz, the building of HS2] had been authorised by Parliament through the 2017 Act after lengthy consideration of both the merits of the project and objections to it. The legislature has accepted that the HS2 project is in the national interest. One object of section 68 is to discourage disruption of the kind committed by the respondent, which, according to the will of Parliament, is against the public interest ... The Strasbourg Court has often observed that the Convention is concerned with the fair balance of competing rights. The rights enshrined in articles 10 and 11, long recognised by the Common Law, protect the expression of opinions, the right to persuade and protest and to convey strongly held views. They do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament.”

23. The Government’s website on HS2 says this:

“Our vision is for HS2 to be a catalyst for growth across Britain. HS2 will be the backbone of Britain’s rail network. It will better connect the country’s major cities and economic hubs. It will help deliver a stronger, more balanced economy better able to compete on the global stage. It will open up local and regional markets. It will attract investment and improve job opportunities for hundreds of thousands of people across the whole country.”

See: <https://www.gov.uk/government/organisations/high-speed-two-limited/about>

24. As I have said, many people do not agree, and think that HS2 will cause irremediable damage to swathes of the countryside – including many areas of natural beauty and ancient woodlands - and that it will be bad for the environment in general. There have been many protests against it, and it has generated much litigation in the form, in particular, of applications by the Claimants and others for injunctions to restrain groups of persons (many of whom are unknown) from engaging in activities which were

interfering with HS2's construction: see eg, *Secretary of State for Transport and High Speed Two (HS2) Limited v Persons Unknown (Harvil Road)* [2019] EWHC 1437 (Ch); *Secretary of State for Transport and High Speed Two (HS2) Limited v Persons Unknown (Cubbington and Crackley)* [2020] EWHC 671 (Ch); *Ackroyd and others v High Speed (HS2) Limited and another* [2020] EWHC 1460 (QB); *London Borough of Hillingdon v Persons Unknown* [2020] EWHC 2153 (QB); *R (Maxey) v High Speed 2 (HS2) Limited and others* [2021] EWHC 246 (Admin).

25. These earlier decisions contain a great deal of information about HS2 and the protests against it. I do not need to repeat all of the detail in this judgment: the reader is referred to them. As I have said, the Claimants' draft order proposes the discharge of these earlier injunctions as they will be otiose if the present application is granted as it will encompass the relevant areas of land.
26. Richard Jordan is the First Claimant's Interim Quality and Assurance Director and was formerly its Chief Security and Resilience Officer. In that role, he was responsible for the delivery of corporate security support to the First Claimant in line with its security strategy, and the provision of advice on all security related matters. In his witness statement of 23 March 2022 (Jordan 1) he described the nature of the protests against HS2. I will return to his evidence later.

The Claimants' land rights

27. Parliament has given the Claimants a number of powers over land for the purposes of constructing HS2.
28. Dilcock 1, [14]-[16], explains that on 24 February 2017 the First Claimant was appointed as nominated undertaker pursuant to s 45 of the Phase One Act by way of the High Speed Rail (London-West Midlands) (Nomination) Order 2017 (SI 2017/184).
29. 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 rights over land by way of General Vesting Declaration (GVD) or the Notice to Treat (NTT) or Notice of Entry (NoE) procedures.
30. Section 15 and Sch 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. So, for example, [1] of Sch 16 provides:

“(1) The nominated undertaker may enter upon and take possession of the land specified in the table in Part 4 of this Schedule -

- (a) for the purpose specified in relation to the land in column (3) of the table in connection with the authorised works specified in column (4) of the table,
- (b) for the purpose of constructing such works as are mentioned in column (5) of the table in relation to the land, or
- (c) otherwise for Phase One purposes.

- (2) The nominated undertaker may (subject to paragraph 2(1)) enter upon and take possession of any other land within the Act limits for Phase One purposes.
- (3) The reference in sub-paragraph (1)(a) to the authorised works specified in column (4) of the table includes a reference to any works which are necessary or expedient for the purposes of or in connection with those works.”
31. ‘Phase One purposes’ is defined in s 67 and ‘Act limits’ is defined in s 68. The table mentioned in [1(1)(a)] is very detailed and specifies precisely the land affected, and the works that are permitted.
32. In relation to Phase 2a, on 12 February 2021 the First Claimant was appointed as nominated undertaker pursuant to s 42 of the Phase 2a Act by way of the High Speed Rail (West Midlands - Crewe) (Nomination) Order 2021 (SI 2021/148).
33. 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. Again, the First Claimant may acquire land rights by way of the GVD, NTT and NoE procedures.
34. Section 13 and Sch 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. Paragraph 1 of Sch 15 is broadly analogous to [1] of Sch 16 to the Phase One Act that I set out earlier.
35. It is not necessary for me to go much further into all the technicalities surrounding these provisions. Suffice it to say that the Claimants have been given extremely wide powers to obtain land, or take possession of it, or the right to immediate possession, even where they do not acquire freehold or leasehold title to the land in question. In short, if they need access to land in order to construct or maintain HS2 as provided for in the HS2 Acts then, one way or another, they have the powers to do so providing that they follow the prescribed procedures.
36. So for example, [4(1) and (2)] of Sch 16 to the Phase 1 Act provide:
- “(1) Not less than 28 days before entering upon and taking possession of land under paragraph 1(1) or (2), the nominated undertaker must give notice to the owners and occupiers of the land of its intention to do so.
- (2) The nominated undertaker may not, without the agreement of the owners of the land, remain in possession of land under paragraph 1(1) or (2) after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken.”
37. The Claimants have produced plans showing the HS2 Land coloured pink and green. These span several hundred pages and can be viewed electronically on the Website. There have been two versions: the HS2 Land Plans, and the Revised HS2 Land Plans.

38. In their original form, the HS2 Land Plans were exhibited as Ex JAD1 to Dilcock 1 and explained at [29]-[33] of that statement. In simple terms, the (then) colours reflected the various forms of title or right to possession which the First Claimant has in respect of the land in question:

“29. The First or the Second Claimant are the owner of the land coloured pink on the HS2 Land Plans, with either freehold or leasehold title (the “Pink Land”). The Claimants’ ownership of much of the Pink Land is registered at HM Land Registry, but the registration of some acquisitions has yet to be completed. The basis of the Claimants’ title is explained in the spreadsheets named “Table 1” and “Table 3” at JAD2. Table 1 reflects land that has been acquired by the GVD process and Table 3 reflects land that has been acquired by other means. A further table (“Table 2”) has been included to assist with cross referencing GVD numbers with title numbers. Where the Claimants’ acquisition has not yet been registered with the Land Registry, the most common basis of the Claimants’ title is by way of executed GVDs under Section 4 of the HS2 Acts, with the vesting date having passed.

30. Some of the land included in the Pink Land comprises property that the Claimants have let or underlet to third parties. At the present time, the constraints of the First Claimant’s GIS data do not allow for that land to be extracted from the overall landholding. The Claimants are of the view that this should not present an issue for the present application as the tenants of that land (and their invitees) are persons on the land with the consent of the Claimants.

31. The Claimants’ interest in the Pink Land excludes any rights of the public that remain over public highways and other public rights of way and the proposed draft order deals with this point. The Claimant’s interest in the Pink Land also excludes the rights of statutory undertakers over the land and the proposed draft order also deals with this point.

32. The First Claimant is the owner of leasehold title to the land coloured blue on the HS2 Land Plans (the “Blue Land”), which has been acquired by entering into leases voluntarily, mostly for land outside of the limits of the land over which compulsory powers of acquisition extend under the HS2 Acts. The details of the leases under which the Blue Land is held are in Table 3.

33. The First Claimant has served the requisite notices under the HS2 Acts and is entitled to temporary possession of that part of the HS2 Land coloured green on the HS2 Land Plans (“the Green Land”) pursuant to section 15 and Schedule 16 of the Phase One Act and section 13 and Schedule 15 of the Phase 2a Act. A

spreadsheet setting out the details of the notices served and the dates on which the First Claimant was entitled to take possession pursuant to those notices is at Table 4 of JAD2.”

39. The plans were then revised, as Ms Dilcock explains in Dilcock 3 at [39]. Hence, my calling them the Revised HS2 Land Plans. There is now just pink and green land.
40. The land coloured pink is owned by the First or Second Claimants with either freehold or leasehold title. The land coloured green is land over which they have temporary possession (or the immediate right to possession) under the statutory powers I have mentioned. Land which has been let to third parties has been removed from the scope of the pink land (see Dilcock 3, [39]).
41. Ms Dilcock has produced voluminous spreadsheets as Ex JAD2 setting out the bases of the Claimants' right to possession of the HS2 Land.
42. Ms Dilcock gives some further helpful detail about the statutory provisions in Dilcock 3, [28] et seq. At [31]-[34] she said:

“31. As explained by Mr Justice Holland QC at paragraphs 30 to 32 of the 2019 *Harvil Rd Judgment (SSfT and High Speed Two (HS2) Limited -v- Persons Unknown* [2019] EWHC 1437 (Ch)), the First Claimant is entitled to possession of land under these provisions provided that it has followed the process set down in Schedules 15 and 16 respectively, which requires the First Claimant to serve not less than 28 days' notice to the owners and occupiers of the land. As was found in all of the above cases, this gives the First Claimant the right to bring possession proceedings and trespass proceedings in respect of the land and to seek an injunction protecting its right to possession against those who would trespass on the land.

32. For completeness and as it was raised for discussion at the hearing on 11.04.2022, the HS2 Acts import the provisions of section 13 of the Compulsory Purchase Act 1965 on confer the right on the First Claimant to issue a warrant to a High Court Enforcement Officer empowering the Officer to deliver possession of land the First Claimant in circumstances where, having served the requisite notice there is a refusal to give up possession of the land or such a refusal is apprehended. That procedure is limited to the point at which the First Claimant first goes to take possession of the land in question (it is not available in circumstances where possession has been secured by the First Claimant and trespassers subsequently enter onto the land). The process does not require the involvement of the Court. The availability of that process to the First Claimant does not preclude the First Claimant from seeking an order for possession from the Court, as has been found in all of the above mentioned cases.

33. Invoking the temporary possession procedure gives the First Claimant a better right to possession of the land than anyone else – even the landowner. The First Claimant does not take ownership of the land under this process, nor does it step into the shoes of the landowner. It does not become bound by any contractual arrangements that the landowner may have entered into in respect of the land and is entitled to possession as against everyone. The HS2 Acts contain provisions for the payment of compensation by the First Claimant for the exercise of this power.

34. The power to take temporary possession is not unique to the HS2 Acts and is found across compulsory purchase - see for example the Crossrail Act 2008, Transport and Works Act Orders and Development Consent Orders. It is also set to be even more widely applicable when Chapter 1 of the Neighbourhood Planning Act 2017 is brought into force.”

43. Ms Dilcock goes on to explain that:

“35. ...the First Claimant is entitled to take possession of temporary possession land following the above procedure and in doing so to exclude the landowner from that land until such time as the First Claimant is ready to or obliged under the provisions of the HS2 Acts to hand it back. If a landowner were to enter onto land held by the First Claimant under temporary possession without the First Claimant’s consent, that landowner would be trespassing.”

44. 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 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.
45. Further parts of the HS2 Land have been acquired from landowners by consent and without the need to exercise powers. There are no limits on the interests in land which the First Claimant may acquire by agreement. Among the land held by the First Claimant under a lease are its registered offices in Birmingham and London (at Euston), both of which it says have been subject to trespass and (in the case of Euston) criminal damage by activists opposed to the HS2 Scheme.. The incident of trespass and criminal damage at Euston on 6 May 2021 is described in more detail in Jordan 1, [29.3.2].
46. I am satisfied, as previous judges have been satisfied, that the Claimants do have the powers they assert they have over the land in question, and that are either in lawful occupation or possession of that land, or have the immediate right to possession (without more, the appropriate statutory notices having been served). I reject any submissions to the contrary.
47. One of the points taken by D6 is that because the Claimants are not in actual possession of some of the green land, they are not entitled to a precautionary injunction in relation

to that land, and this application is therefore, in effect, premature. I will return to this later.

The Claimants' case

48. The Claimants' action is for trespass and nuisance. They say that pursuant to their statutory powers they have possession of, or the right to immediate possession of, the HS2 Land and therefore have better title than the protesters. Their case is that the protests against HS2 involve unlawful trespass on the HS2 Land; disruption of 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. They say all of this amounts to trespass and nuisance.
49. Mr Kimblin on behalf of the Claimants accepted that he had to demonstrate trespass and nuisance, and a real and imminent risk of recurrence. He said, in particular, that the protests have: on numerous occasions put at risk protesters' lives and those of others (including the Claimants' contractors); caused disruption, delay and nuisance to works on the HS2 Land; prevented the Claimants and their contractors and others (including members of the public) from exercising their ordinary rights to use the public highway or inconvenienced them in so doing, eg by blocking access gates. Further, he said that the Defendants' actions amount to a public nuisance which have caused the Claimants particular damage over and above the general inconvenience and injury suffered by the public, including costs incurred in additional managerial and staffing time in order to deal with the protest action, and costs and losses incurred as a result of delays to the HS2 construction programme; and other costs incurred in remedying the alleged wrongs and seeking to prevent further wrongs.
50. Based on previous experience, and on statements made by protesters as to their intentions, the Claimants say they reasonably fear that the Defendants will continue to interfere with the HS2 Scheme along the whole of the route by trespassing, interfering with works, and interfering with the fencing or gates at the perimeter of the HS2 Land and so hinder access to the public highway.
51. They argue, by reference in particular to the evidence in Mr Jordan's and Ms Dilcock's statements and exhibits, that there is a real and imminent risk of trespass and nuisance in relation to the whole of the HS2 Land, thus justifying an anticipatory injunction.
52. They say that Defendants, or some of them, have stated an intention to continue to take part in direct action protests against HS2, moving from one parcel of land to another in order to cause maximum disruption.
53. Thus, the Claimants say they are entitled to a route wide injunction, extensive though this is. They draw an analogy with the injunctions granted over thousands of miles of roads in relation to continuing and moving road protests by a group loosely known as 'Insulate Britain': see, in particular, *National Highways Limited v Persons Unknown and others* [2021] EWHC 3081 (QB) (Lavender J); *National Highways Limited v Persons Unknown and others* [2022] EWHC 1105 (QB) (Bennathan J).
54. I have the Revised HS2 Land Plans in hard copy form. I have studied them. They are clear, detailed and precise. I reject any suggestion that they are unclear. They clearly

show the land to which the injunction, if granted, will apply. Whether it should be granted is a different question.

The Defendants' cases

55. Mr Moloney addressed me on behalf of Mr Knaggs (D6), and I was also addressed by a number of unrepresented defendants (and others). I thought it appropriate to allow anyone present in court to address me, in recognition of the strength of feeling which HS2 generates. I exercised my case management powers to ensure these were kept within proper bounds. I had in mind an approach analogous to that set out by the Court of Appeal in *The Mayor Commonalty and Citizens of London v Samede* [2012] EWCA Civ 160, [63]. Mr Kimblin did not object to this course.
56. I have considered all of the points which were made, whether orally or in writing. The failure to mention a particular point in this judgment does not mean that it has been overlooked. I am satisfied that everyone had the opportunity to make any point they wanted.
57. D6's case can be summarised as follows. Mr Moloney submitted that the Claimants are not entitled to the relief which they seek because (Skeleton Argument, [2]]): (a) they are seeking to restrain trespass in relation to land to which there is no demonstrated immediate right of possession; (b) they are seeking to restrain lawful protest on the highway; (c) the test for a precautionary injunction is not met because of a lack of real and imminent risk, which is the necessary test for which a 'strong case' is required; (d) it is wrong in principle to make a final injunction in the present case (I have dealt with that); (e) the definition of 'Persons Unknown' is overly broad and does not comply with the *Canada Goose* requirements (see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, [82]); (f) the service provisions are inadequate; (g) the terms of the injunction are overly broad and vague; (h) discretionary relief should not be granted; and (i) the proposed order would have a disproportionate chilling effect.
58. Developing these arguments, Mr Moloney said that the Claimants have not yet taken possession of much of the HS2 Land – which can only arise in the statutorily prescribed circumstances - and so its possessory right needed to found an action in trespass had not yet crystallised and its application was premature. There is hence a fundamental difference between land where works are currently ongoing or due to commence imminently (for which, subject to notification requirements, the Claimants have a cause of action in trespass at the present date) and land where works are not due to commence for a considerable period (for which no cause of action in trespass currently arises for the Claimants). He distinguished the earlier injunctions in relation to land where work had commenced on that basis.
59. Notwithstanding the decision of the Court of Appeal in *Barking and Dagenham* to the effect that final injunctions may in principle be made against persons unknown, they remain inappropriate in protest cases in which the Article 10 and 11 rights of the individual must be finely balanced against the rights of the Claimants.
60. Next, Mr Moloney submitted that there was not the necessary strong case of a real and imminent danger to justify the grant of a precautionary injunction. He said the Claimant had to establish that there is a risk of actual damage occurring on the HS2 Land subject

to the injunction that is imminent and real. Mr Moloney said this was not borne out on the evidence, given no work or protests were ongoing over much of the HS2 Land.

61. The next point is that D6 says the categories of unknown Defendant are too broad and will catch, for example, persons on the public highway that fall within the scope of HS2 Land. The second category of Unknown Defendant (ie, D2) (as set out in the APOC and in Appendix 1 below) is:

“(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 ON THE
HS2 LAND PLANS AT
<https://www.gov.uk/government/publications/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”

62. Paragraph 54(i) of D6’s Skeleton Argument asserts that D2 will catch:

“It includes those present on HS2 land on public highways. A person who walks over HS2 land on a public footpath is covered by the definition (subject to the consent of the Claimants). A demonstration on a public footpath which had the effect (intended or not) of hindering those connected to the Claimants (for any degree) would be caught within the definition.”

63. I can deal with this submission now. I think it is unmeritorious. Paragraph 3 of the draft injunction prohibits various activities eg, [3(b)], ‘obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the HS2 Land ...’. However, [4(a)] provides that nothing in [3], ‘shall prevent any person from exercising their rights over any open public right of way over the HS2 Land’. Paragraph 4(c) provides that nothing in [3], ‘shall prevent any person from exercising their lawful rights over any public highway’. Contrary to the submission, such people therefore do not fall within [3] and do not need the First Claimant’s consent. I also find it difficult to envisage that a walk or protest on a public footpath would infringe [3(a)]. As I have already said, the proposed order does not prevent lawful protest.
64. In [54(ii)] D6 also argued that the injunction would include those present on HS2 land which has been sublet. It was argued that a person present on sublet HS2 land with the permission of the sub-lettor, but without the consent of HS2, is covered by the definition of D2.
65. Again, I can deal with that point now. As I have set out, the Revised HS2 Land Plans produced by Ms Dilcock exclude let land; the original version of the Plans did not

because of lack of data when those plans were drawn up, but that has now been corrected ([Dilcock 3, [39]). Two of the Recitals to the order put the matter beyond doubt:

“AND UPON the Claimants confirming that they do not intend for any freeholder or leaseholder with a lawful interest in the HS2 Land to fall within the Defendants to this Order, and undertaking not to make any committal application in respect of a breach of this Order, where the breach is carried out by a freeholder or leaseholder with a lawful interest in the HS2 Land on the land upon which that person has an interest.

AND UPON the Claimants confirming that this Order is not intended to act against any guests or invitees of any freeholder or leaseholder with a lawful interest in the HS2 Land unless that guest or invitee undertakes actions with the effect of damaging, delaying or otherwise hindering the HS2 Scheme on the land held by the freeholder or leaseholder with a lawful interest in the HS2 Land.”

66. Mr Moloney then went on to criticise the proposed methods of service in the draft injunction at [8]-[11] as being inadequate. The fundamental submission is that the steps for alternative service cannot reasonably be expected to bring the proceedings to the attention of someone proposing to protest against HS2 (Skeleton Argument, [98]).
67. Various points about the wording of the injunction were then made to the effect, for example, that it was too vague (Skeleton Argument, [105] et seq).
68. Turning to the points made by those who addressed me in court, I can summarise these (briefly, but I hope fairly) as follows. There were complaints about poor service of the injunction application. However, given those people were able to attend the hearing, service was obviously effective. It was said that HS2 would ‘hammer another nail into the coffin of the climate crisis’, and that land and trees should be nurtured. It was then said that there was no need for another railway line. It was in the public interest to protest against HS2 which is a ‘classist project’. It was said that there had been violence, and racist and homophobic abuse of protesters by HS2 security guards, who had acted in a disproportionate manner. Many of the written submissions also complained about the behaviour of HS2’s security guards. The injunction would condone that behaviour. Some named defendants said that there was insufficient evidence against them. The injunction was intended to ‘terrorise’ and ‘coerce’, and the judiciary was being ‘weaponised’ against protest (a point I have already rejected). It was a ‘fantasy’ to say that HS2 would benefit the environment; there had been environmental damage and the First Claimant had failed to honour the environmental obligations it said it would fulfil. It was said that the First Claimant was committing ‘wildlife crimes’ on a daily basis. Several people indicated they had signed undertakings and so should not be injuncted (as I have said, any such persons who have entered into appropriate undertakings will be exempted from the scope of any injunction). There had been an impact on journalistic freedom to report on HS2. The maps showing HS2 Land are hard to make out and/or are unclear.

69. In reply, Mr Kimblin said there was nothing about the application which was novel. The grant of injunctions against groups of unknown protesters to prevent trespass and nuisance had become common in recent times. He accepted the land affected was extensive, but pointed to injunctions over the country's road networks granted in recent years which are even more extensive. He said, specifically in relation to the green land and in response to the First Claimant's right of possession not having 'crystallised', that all of the relevant statutory notices had been served, and the First Claimant therefore had the right to take immediate possession of that land at a time of its choosing where it was not already in actual possession. That was sufficient. He also said that there is a system for receiving complaints, and that complaints were frequent and were always investigated. There was always scope to amend the order if necessary, and Mr Kimblin ended by emphasising that the injunction would have no effect on, and would not prevent, lawful protest.
70. Turning to the material filed by Mr Keir, I reiterate I am not concerned with the merits of HS2. Parliament has decided that question. The grounds advanced by Mr Keir are that: (a) the area of land subject to this claim is incorrect in a number of respects; (b) the protest activity is proportionate and valid and necessary to stop crimes being committed by HS2; (c) the allegations of violence and intimidation are false. The violence and intimidation emanates from HS2; (d) the project is harmful and should not have been consented to, or has not been properly consented to, by Parliament.
71. Appendix 2 to this judgment sets out in summary form points made by those who filed written submissions. I have considered these points.

Discussion

Legal principles

72. The first part of this section of my judgment addresses the relevant legal principles. Many of these have emerged recently in cases concerned with large scale protests akin to those involved in this matter.
- (i) *Trespass and nuisance*
73. I begin with trespass and nuisance, the Claimants' causes of action.
74. A landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on his land: Snell's Equity (34th Edn) at [18-012].
75. It has already been established that even the temporary possession powers in the HS2 Acts give the Claimants sufficient title to sue for trespass. The question of trespass on HS2 Land was considered in *Secretary of State for Transport and another v Persons Unknown (Harvil Road)* [2019] EWHC 1437 (Ch) at [7]. [30]-[32]. The judge said:

"7. There are subject to the order three different categories of land. First of all, there is land within the freehold ownership of the First Claimant that is coloured blue on both sets of plans, and is referred to as "the blue land". Secondly, there is land acquired by the First Claimant pursuant to its compulsory purchase powers

in the High Speed Rail (London - West Midlands) Act 2017 (to which I shall refer as "the 2017 Act"). That land is coloured pink on the various plans and is referred to as "the pink land". Thirdly, there is land in the temporary possession of the Second Claimant by reason of the exercise of its powers pursuant to section 15 and Schedule 16 of the 2017 Act, that land is coloured green on the plans

....

30. The first cause of action is trespass. The Claimants are entitled, as a matter of law, to bring a claim in trespass in respect of all three categories of land and, as I have said, it was not seriously suggested that they could not. In particular, I was referred to section 15 and paragraphs 1, 3 and 4 of Schedule 16 to the 2017 Act ...

31. Thus, the procedure is simply this: if the Second Claimant wishes to take temporary possession of land within a defined geographical limit, it serves 28 days' notice pursuant to paragraph 4. Thereafter, it is entitled to enter on the land and 'take possession'. That, to my mind, and it was not seriously argued otherwise, gives it a right to bring possession proceedings and trespass proceedings in respect of that land.

32. In paragraph 40 of his judgment in *Ineos* at first instance [*Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch)], Mr. Justice Morgan says this:

"The cause of action for trespass on private land needs no further exposition in this case."

Exactly the same is the case here, it seems to me, and it is the First Defendant, the definition of which persons I have described above, who is, or are, subject to such a claim in trespass."

76. Mr Moloney for D6 sought to distinguish this and other HS2 cases on the basis that work was ongoing on the sites in question, and so the First Claimant was in possession, whereas the present application related to green land which the First Claimant was not currently in possession of.
77. In relation to trespass, all that needs to be demonstrated by the claimant is a better right to possession than the occupiers: *Manchester Airport plc v Dutton* [2000] QB 133, 147. In that case the Airport was granted an order for possession over land for which it had been granted a licence in order to construct a second runway, but which it was not yet in actual possession of.
78. I can therefore, at this point, deal with D6's 'prematurity' point. As I have said, Mr Kimblin was quite explicit that the Claimants do, as of now, have the right to immediate possession over the green land because the relevant statutory notices have been served, albeit (to speak colloquially) the diggers have not yet moved in. That does not matter, in

my judgment. I am satisfied that the Claimants do, as a consequence, have a better title to possession than the current occupiers – and certainly any protesters who might wish to come on site. Actual occupation or possession of land is not required, as *Dutton* shows (see in particular Laws LJ’s judgment at p151; the legal right to occupy or possess land, without more, is sufficient to maintain an action for trespass against those not so entitled. That is what the First Claimant has in relation to the green land.

79. This conclusion is supported by what Warby LJ said in *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, [9(1)]-[9(2)] (emphasis added):

“9. The following general principles are well-settled, and uncontroversial on this appeal.

(1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in Articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 [43] (Laws LJ) and *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039, reflecting the Strasbourg jurisprudence.

(2) But the right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Article 10 and 11. Trespass is an interference with A1P1 rights, which in turn requires justification. In a democratic society, Articles 10 and 11 cannot normally justify a person in trespassing on land of which another has *the right to possession*, just because the defendant wishes to do so for the purposes of protest against government policy. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to make such a protest.”

80. In relation to defences to trespass, genuine and *bona fide* concerns on the part of the protestors about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede*, [63].
81. A protestor’s rights under Articles 10 and 11 of the ECHR, even if engaged in a case like this, will not justify continued trespass onto private land or public land to which the public generally does not have a right of access: see the passage from Warby LJ’s judgment in *Cuciurean* I quoted earlier, *Harvil Road*, [136]; and *DPP v Cuciurean* at [45]-[49] and [73]-[77]. There is no right to undertake direct action protest on private land: *Crackley and Cubbington*, [35], [42]. In the most recent of these decisions, *DPP v Cuciurean*, the Lord Chief Justice said:

“45. We conclude that there is no basis in the Strasbourg jurisprudence to support the respondent's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg Court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of *destroying* the *essence* of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.

46. The approach taken by the Strasbourg Court should not come as any surprise. articles 10, 11 and A1P1 are all qualified rights. The Convention does not give priority to any one of those provisions. We would expect the Convention to be read as a whole and harmoniously. Articles 10 and 11 are subject to limitations or restrictions which are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the 1994 Act. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms.

47. We now return to *Richardson [v Director of Public Prosecutions [2014] AC 635]* and the important statement made by Lord Hughes JSC at [3]:

‘By definition, trespass is unlawful independently of the 1994 Act. It is a tort and committing it exposes the trespasser to a civil action for an injunction and/or damages. The trespasser has no right to be where he is. Section 68 is not concerned with the rights of the trespasser, whether protester or otherwise. References in the course of argument to the rights of free expression conferred by article 10 of the European Convention on Human Rights

were misplaced. Of course a person minded to protest about something has such rights. But the ordinary civil law of trespass constitutes a limitation on the exercise of this right which is according to law and unchallengeably proportionate. Put shortly, article 10 does not confer a licence to trespass on other people's property in order to give voice to one's views. Like adjoining sections in Part V of the 1994 Act, section 68 is concerned with a limited class of trespass where the additional sanction of the criminal law has been held by Parliament to be justified. The issue in this case concerns its reach. It must be construed in accordance with normal rules relating to statutes creating criminal offences.'

48. *Richardson* was a case concerned with the meaning of 'lawful activity', the second of the four ingredients of section 68 identified by Lord Hughes (see [12] above). Accordingly, it is common ground between the parties (and we accept) that the statement was *obiter*. Nonetheless, all members of the Supreme Court agreed with the judgment of Lord Hughes. The *dictum* should be accorded very great respect. In our judgment it is consistent with the law on articles 10 and 11 and A1P1 as summarised above.

48. The proposition which the respondent has urged this court to accept is an attempt to establish new principles of Convention law which go beyond the "clear and constant jurisprudence of the Strasbourg Court". It is clear from the line of authority which begins with *R (Ullah) v. Special Adjudicator* [2004] 2 AC 323 at [20] and has recently been summarised by Lord Reed PSC in *R (AB) v. Secretary of State for Justice* [2021] 3 WLR 494 at [54] to [59], that this is not the function of a domestic court.

49. For the reasons we gave in para. [8] above, we do not determine Ground 1 advanced by the prosecution in this appeal. It is sufficient to note that in light of the jurisprudence of the Strasbourg Court it is highly arguable that articles 10 and 11 are not engaged at all on the facts of this case.

...

73. The question becomes, is it necessary to read a proportionality test into section 68 of the 1994 Act to render it compatible with articles 10 and 11? In our judgment there are several considerations which, taken together, lead to the conclusion that proof of the ingredients set out in section 68 of the 1994 Act ensures that a conviction is proportionate to any article 10 and 11 rights that may be engaged.

74. First, section 68 has the legitimate aim of protecting property rights in accordance with A1P1. Indeed, interference by an individual with the right to peaceful enjoyment of possessions can give rise to a positive obligation on the part of the State to ensure sufficient protection for such rights in its legal system (*Blumberga v. Latvia* No.70930/01, 14 October 2008).

75. Secondly, section 68 goes beyond simply protecting a landowner's right to possession of land. It only applies where a defendant not merely trespasses on the land, but also carries out an additional act with the intention of intimidating someone performing, or about to perform, a lawful activity from carrying on with, or obstructing or disrupting, that activity. Section 68 protects the use of land by a landowner or occupier for lawful activities.

76. Thirdly, a protest which is carried out for the purposes of disrupting or obstructing the lawful activities of other parties, does not lie at the core of articles 10 and 11, even if carried out on a highway or other publicly accessible land. Furthermore, it is established that serious disruption may amount to reprehensible conduct, so that articles 10 and 11 are not violated. The intimidation, obstruction or disruption to which section 68 applies is not criminalised unless it also involves a trespass and interference with A1P1. On this ground alone, any reliance upon articles 10 and 11 (assuming they are engaged) must be towards the periphery of those freedoms.

77. Fourthly, articles 10 and 11 do not bestow any "freedom of forum" to justify trespass on private land or publicly owned land which is not accessible by the public. There is no basis for supposing that section 68 has had the effect of preventing the effective exercise of freedoms of expression and assembly."

82. I will return to the issue of Convention rights later.
83. The second cause of action pleaded by the Claimants in the APOC is nuisance. Nuisances may either be public or private.
84. A public nuisance is one which inflicts damage, injury or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of its operation. It may, however, affect some to a greater extent than others: *Soltau v De Held* (1851) 2 Sim NS 133, 142.
85. Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land: *Bamford v Turnley* (1862) 3 B & S; *West v Sharp* [1999] 79 P&CR 327, 332:

"Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. There is no actionable interference with a right

of way if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him".

86. The unlawful interference with the claimant's right of access to its land via the public highway, where a claimant's land adjoins a public highway, can be a private nuisance: *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, [13]; and can be an unlawful interference with one or more of the claimant's rights of way over land privately owned by a third party: *Gale on Easements*, 13-01.

87. In *Cuadrilla*, [13], the Court said:

"13 The second type of wrong which the Injunction sought to prevent was unlawful interference with the claimants' freedom to come and go to and from their land. An owner of land adjoining a public highway has a right of access to the highway and a person who interferes with this right commits the tort of private nuisance. In addition, it is a public nuisance to obstruct or hinder free passage along a public highway and an owner of land specially affected by such a nuisance can sue in respect of it, if the obstruction of the highway causes them inconvenience, delay or other damage which is substantial and appreciably greater in degree than any suffered by the general public: see *Clerk & Lindsell on Torts*, 22nd ed (2017), para 20–181."

88. The position in relation to actions which amount to an obstruction of the highway, for the purposes of public nuisance, is described in *Halsbury's Laws*, 5th ed. (2012). [325], where it is said (in a passage cited in *Ineos*, [44], (Morgan J)): (a) whether an obstruction amounts to a nuisance is a question of fact; (b) an obstruction may be so inappreciable or so temporary as not to amount to a nuisance; (c) generally, it is a nuisance to interfere with any part of the highway; and (d) it is not a defence to show that although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public.

89. In *Harper v G N Haden & Sons* [1933] Ch 298, 320, Romer LJ said:

"The law relating to the user of highways is in truth the law of give and take. Those who use them must in doing so have reasonable regard to the convenience and comfort of others, and must not themselves expect a degree of convenience and comfort only obtainable by disregarding that of other people. They must expect to be obstructed occasionally. It is the price they pay for the privilege of obstructing others."

90. A member of the public has a right to sue for a public nuisance if he has suffered particular damage over and above the ordinary damage suffered by the public at large: *R v Rimmington* [2006] AC 459, [7], [44]:

“44. The law of nuisance and of public nuisance can be traced back for centuries, but the answers to the questions confronting the House are not to be found in the details of that history. What may, perhaps, be worth noticing is that in 2 Institutes 406 Coke adopts a threefold classification of nuisance: public or general, common, private or special. Common nuisances are public nuisances which, for some reason, are not prosecutable. See *Ibbetson, A Historical Introduction to the Law of Obligations*, p 106 nn 62 and 65. So for Coke, while all public nuisances are common, not all common nuisances are public. Later writers tend to elide the distinction between common and public nuisances but, throughout, it has remained an essential characteristic of a public nuisance that it affects the community, members of the public as a whole, rather than merely individuals. For that reason, the appropriate remedy is prosecution in the public interest or, in more recent times, a relator action brought by the Attorney General. A private individual can sue only if he can show that the public nuisance has caused him special injury over and above that suffered by the public in general. These procedural specialties derive from the effect of the public nuisance on the community, rather than the other way round.

(ii) *The test for the grant of an injunction*

91. In relation to remedy, the starting point, if not the primary remedy in most cases, will be an injunction to bring the nuisance to an end: *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287, 322-323, per A L Smith LJ; *Hunter v Canary Wharf Ltd* [1997] AC 655, 692 per Lord Goff; *Lawrence v Fen Tigers Ltd and others* [2014] AC 822, [120]-[124] per Lord Neuberger. In that case his Lordship said at [121] (discussing when and whether damages rather than an injunction for nuisance should be granted):

“I would accept that the *prima facie* position is that an injunction should be granted, so the legal burden is on the defendant to show why it should not.”

92. The High Court may grant an injunction (whether interlocutory or final) in all cases in which it appears to the court to be just and convenient: s 37(1) of the Senior Courts Act 1981 (the SCA 1981).
93. The general function of an interim injunction is to ‘hold the ring’ pending final determination of a claim (*United States of America v Abacha* [2015] 1 WLR 1917). The basic underlying principle of that function is that the court should take whatever course seems likely to cause the least irretrievable prejudice to one party or another: *National Commercial Bank Jamaica Limited v Olint Corp Ltd (Practice note)* [2009] 1 WLR 105 at [17].

94. The general test for the grant of an interim injunction requires that there be at least a serious question to be tried and then refers to the adequacy of damages for either party and the balance of justice (or convenience): *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
95. The threshold for obtaining an injunction is normally lower where wrongs have already been committed by the defendant: *Secretary of State for Transport and HS2 Limited v Persons Unknown* [2019] EWHC 1437 (Ch) at [122] to [124]. Snell's Equity states at [18-028]:
- “In cases where the defendant has already infringed the claimant’s rights, it will normally be appropriate to infer that the infringement will continue unless restrained: a defendant will not avoid an injunction merely by denying any intention of repeating wrongful acts.”
96. This, it seems to me, is not a rule of law but one of evidence which broadly reflects common sense. Where a defendant can be shown to have already infringed the claimant’s rights (eg, by committing trespass and/or nuisance), then the court *may* decide that that weighs in the claimant’s favour as tending to show the risk of a further breach, alongside other evidence, if the claimant seeks an anticipatory injunction to restrain further such acts by the defendant.
97. However, *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, [44]-[48] (CA) makes clear, in light of s 12(3) of the Human Rights Act 1998, that the Court must be satisfied that the Claimants would be likely to obtain an injunction preventing future trespass at trial; not just that there is a serious question to be tried (see also *Crackley and Cubbington*, [35]). ‘Likely’ in this context usually means more likely than not: *Cream Holdings Limited v Banerjee* [2005] 1 AC 253, [22].
98. This is accepted by the Claimants (Principles Skeleton Argument, [19]), and it is the test that I will apply. The draft injunction has a long stop date and will be subject to regular review by the court, as I have said. There is the usual provision allowing for applications to vary or discharge it.
99. Where the relief sought is a precautionary injunction (formerly called a *quia timet* injunction, however Latin is no longer to be used in this area of the law, per *Barking and Dagenham*, [8]), the question is whether there is an *imminent* and *real* risk of harm: *Ineos* at [34(1)] (Court of Appeal) and the first instance decision of Morgan J ([2017] EWHC 2945 (Ch)), [88].
100. ‘Imminent’ means that the circumstances must be such that the remedy sought is not premature. In *Hooper v Rogers* [1975] Ch 43, 49-50, Russell LJ said:

“I do not regard the use of the word ‘imminent’ in those passages as negativing a power to grant a mandatory injunction in the present case: I take the use of the word to indicate that the injunction must not be granted prematurely.

...

In different cases differing phrases have been used in describing circumstances in which mandatory injunctions and *quia timet* injunctions will be granted. In truth it seems to me that the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant circumstances.”

101. In *Canada Goose*, [82(3)] the Court said:

“(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.”

102. As I have already said, one of the points made by Mr Moloney is that the ‘imminent and real’ test is not satisfied over the whole of the HS2 route because over much of it, work has not started and there have been no protests.

(iii) *The Canada Goose requirements*

103. I turn to the requirements governing the sort of injunction which the Claimants seek in this case against unknown persons (ie, D1-D4). So, for example, I set out the definition of D2 earlier.

104. The guidelines set out by the Court of Appeal in *Canada Goose*, [82], are as follows:

“(1) The ‘persons unknown’ defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The ‘persons unknown’ defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the ‘persons unknown’.

(2) The ‘persons unknown’ must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as ‘persons

unknown', must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

105. In *National Highways Limited*, [41], Bennathan J said this:

"41. Injunctions against unidentified defendants were considered by the Court of Appeal in the cases of *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 ["*Ineos*"] and *Canada Goose Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 ['*Canada Goose*']. I summarise their combined effect as being:

(1) The Courts need to be cautious before making orders that will render future protests by unknown people a contempt of court [*Ineos*].

(2) The terms must be sufficiently clear and precise to enable persons potentially effected to know what they must not do [*Ineos* and *Canada Goose*].

(3) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights [*Canada Goose*]."

106. The authorities in this area, including in particular, *Canada Goose*, were reviewed by the Court of Appeal in *Barking and Dagenham*. Although some parts of the decision in

Canada Goose were not followed, the guidelines in [82], were approved (at [56]) and I will apply them.

107. The parts of *Canada Goose* which the Court of Appeal in *Barking and Dagenham* disagreed with were the following paragraphs (see at [78] of the latter decision), where the Court also made clear they were not part of its *ratio*:

“89. A final injunction cannot be granted in a protester case against ‘persons unknown’ who are not parties at the date of the final order, that is to say newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the ‘persons unknown’ and who have not been served with the claim form. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* (at para 17) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.”

91. That does not mean to say that there is no scope for making ‘persons unknown’ subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption’s category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at para 159) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB) at [132].

92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against ‘persons unknown’, it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption’s category 1. Subject

to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also ‘persons unknown’ who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.”

108. Some points emerging from the discussion of these paragraphs in *Barking and Dagenham* are as follows:

- a. the Court undoubtedly has the power under s 37 of the SCA 1981 to grant final injunctions that bind non-parties to the proceedings ([71]).
 - b. the remedy can be fairly described as ‘exceptional’, albeit that formulation should not be used to lay down limitations on the Court’s broad discretion. The categories in which such injunctions can be granted are not closed and they may be appropriate in protest cases ([120]);
 - c. there is no real distinction between interim and final injunctions in the context of injunctions granted against persons unknown ([89] and [93]). While the guidance regarding identification of persons unknown in *Canada Goose* was given in the context of an application for an interim injunction, the same principles apply in relation to the grant of final injunctions ([89]; see also [102] and [117]);
 - d. as to the position of a non-party who behaves so as satisfy the definition of persons unknown only after the injunction has been granted (ie, a ‘newcomer’), such a person becomes a party on knowingly committing an act that brings them within the description of persons unknown set out in the injunction: *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, [32]. There is no need for a claimant to apply to join newcomers as defendants. There is ‘no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort’: *Boyd*, [30];
 - e. procedural protections available to ensure a permanent injunction against persons unknown is just and proportionate include the provision of a mechanism for review by the Court: ‘Orders need to be kept under review. ‘For as long as the court is concerned with the enforcement of an order, the action is not at end’ ([89]); ‘... all persons unknown injunctions ought normally to have a fixed end point for review as the injunctions granted to these local authorities actually had in some cases’ ([91]); ‘It is good practice to provide for a periodic review, even when a final order is made’ ([108]);
 - f. in the unauthorised encampment cases, the Court of Appeal has suggested that borough-wide injunctions should be limited to one year at a time before a review: *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, [106].
109. So far as keeping the injunction in this case under review is concerned, the draft order provides for a long stop date of 31 May 2023, when it will expire unless renewed (at [3]). It also provides for yearly reviews around May time (ie roughly the anniversary of the

hearing before me) in order ‘to determine whether there is a continued threat which justifies continuation of this Order’ (at [15]), and there are the usual provisions allowing for persons affected to apply to vary or discharge it (at [16] and [18]).

(iv) *Geographical scope of the order sought*

110. I turn to the question of the geographical scope of the injunction sought. As I have said, the proposed injunction stretches along the whole of the HS2 route. Massive tracts of land are potentially affected. The Claimants say that of itself is not a bar to injunctive relief, to which there is no geographical limit (at least as a matter of law).
111. Specifically in relation to trespass and nuisance, the Claimants said that this Court (Lavender J) was not troubled by a 4,300 mile injunction against environmental protesters along most of the Strategic Roads Network (namely motorways and major A roads) in *National Highways Limited v Persons Unknown and others* [2021] EWHC 3081 (QB), [24(7)]:

“... the geographical extent is considerable, since it covers 4,300 miles of roads, but this is in response to the unpredictable and itinerant nature of the Insulate Britain protests”.

112. See also his judgment at [15], and also Bennathan J’s judgment at [2022] EWHC 1105 (QB), [3], where they referenced other geographically wide-ranging injunctions against environmental road protesters. For example, on 24 September 2021 Cavanagh J granted an interim injunction which applied to the A2, A20, A2070, M2 and M20 in Claim No QB-2021-003626.
113. Lavender J at [24(7)(c)] found additionally that if a claimant is entitled to an injunction, it would not be appropriate to require it to apply for separate injunctions for separate roads, requiring the claimant in effect to ‘chase’ protestors around the country from location to location, not knowing where they will go next:
114. For these reasons, the Claimants 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.
115. The Claimants also submitted that although an individual protest may appear small in the context of HS2 as a whole, that was not a reason to overlook its impact. They relied on *DPP v Cuciurean*, [87], where the Lord Chief Justice said:

“87. It was also immaterial in this case that the Land formed only a small part of the HS2 project, that the costs incurred by the project came to ‘only’ £195,000 and the delay was 2½ days, whereas the project as a whole will take 20 years and cost billions. 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. Indeed, we would go so far as to suggest that such an interpretation of a Human Rights instrument would bring it into disrespect.”

(v) European Convention on Human Rights

116. I turn next to the important issue of the European Convention on Human Rights (the ECHR). The ECHR is given effect in domestic law by the Human Rights Act 1998 (the HRA 1998). Section 6(1) of the HRA 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The Court is a public authority: s 6(3)(a).
117. The key provisions for these purposes are Article 10 (freedom of expression); Article 11 (freedom of assembly); and Article 1 of Protocol 1 (A1P1) (right to peaceful enjoyment of property).
118. Articles 10 and 11 provide:

“Article 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

119. A1P1 provides:

“Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

120. Articles 10 and 11 potentially pull in one direction (that of the Defendants) whilst A1P1 pulls in the Claimants’ favour. That tension was one of the matters discussed in *DPP v Cuciurean*, [84]:

“84. The judge was not given the assistance she might have been with the result that a few important factors were overlooked. She did not address A1P1 and its significance. Articles 10 and 11 were not the only Convention rights involved. A1P1 pulled in the opposite direction to articles 10 and 11. At the heart of A1P1 and section 68 is protection of the owner and occupier of the Land against interference with the right to possession and to make use of that land for lawful activities without disruption or obstruction. Those lawful activities in this case had been authorised by Parliament through the 2017 Act after lengthy consideration of both the merits of the project and objections to it. The legislature has accepted that the HS2 project is in the national interest. One object of section 68 is to discourage disruption of the kind committed by the respondent, which, according to the will of Parliament, is against the public interest. The respondent (and others who hold similar views) have other methods available to them for protesting against the HS2 project which do not involve committing any offence under section 68, or indeed any offence. The Strasbourg Court has often observed that the Convention is concerned with the fair balance of competing rights. The rights enshrined in articles 10 and 11, long recognised by the Common Law, protect the expression of opinions, the right to persuade and protest and to convey strongly held views. They do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament.”

121. Section 12 provides:

“12. - Freedom of expression.

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ('the respondent') is neither present nor represented, no such relief is to be granted unless the court is satisfied -

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the

court is satisfied that the applicant is likely to establish that publication should not be allowed."

122. 'Publication' in s 12(3) has been interpreted by the courts as extending beyond the literal meaning of the word to encompass 'any application for prior restraint of any form of communication that falls within Article 10 of the Convention': *Birmingham City Council v Afsar* [2019] ELR 373, [60]-[61].

123. It is convenient here to deal with a point raised in particular by D6 about whether the First Claimant, as (at least) a hybrid public authority, can rely on A1P1. He flagged up this point in his Skeleton Argument and Mr Moloney also addressed me on it. After the hearing Mr Moloney and Mr Greenhall filed further submissions arguing, in summary, that: (a) the First Claimant is a core public authority, alternatively a hybrid public authority and a governmental organisation, being wholly owned by the Secretary of State and publicly funded: see *Aston Cantlow* [2004] 1 AC 546; (b) the burden lies on the First Claimant to establish in law and in fact that it may rely on its A1P1 rights; (c) so far as previous cases say otherwise, they are wrongly decided or distinguishable; (d) the exercise of compulsory purchase powers falls within 'functions of a public nature'; (e) thus, the First Claimant may not rely on A1P1 rights in support of the application.

124. The Claimants filed submissions in response.

125. I am satisfied that the First Claimant can pray in aid A1P1, and the common law values they reflect, and that the approach set out in *DPP v Cuciurean* and other cases is binding upon me. The point raised by D6 was specifically dealt with by the Court of Appeal in *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661, [28]:

"28. As is so often the case, there are rights that pull in different directions. It has also been authoritatively decided that there is no hierarchy as between the various rights in play. On the one hand, then, there are Mr Cuciurean's rights to freedom of expression and freedom of peaceful assembly contained in articles 10 (1) and 11 (1) of the ECHR. On the other, there are the claimants' rights to the peaceful enjoyment of their property. There was some debate about whether these were themselves convention rights (given that the Secretary of State for Transport is himself a public authority and cannot therefore be a "victim" for the purposes of the Convention, and HS2 Ltd may not be regarded as a 'non-

governmental' organisation for that purpose). But whether or not they are convention rights, they are clearly legal rights (either proprietary or possessory) recognised by national law ...”

126. D6's submissions are also inconsistent with Warby LJ's judgment in *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, [9(1)]-[9(2)], which I quoted earlier.
127. D6's submissions are also inconsistent with the approach of Arnold J (as he then was) in *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1012 (Ch). The judge accepted the submission that the Authority had A1P1 rights which went into the balance against the protesters' Article 10/11 rights, at [22]:

“22. In those circumstances, it seems to me that the approach laid down by Lord Steyn where both Article 8 and Article 10 ECHR rights are involved in *Re S* [2004] UKHL 47, [2005] 1 AC 593 at [17] is applicable in the present case. Here we are concerned with a conflict between the ODA's rights under Article 1 of the First Protocol, and the protesters' rights under Articles 10 and 11. The correct approach, therefore, is as follows. First, neither the ODA's rights under Article 1 of the First Protocol, nor the protesters' rights under Articles 10 and 11 have precedence over each other. Secondly, where the values under the respective Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test, or ultimate balancing test, must be applied to each.”

128. The Olympic Authority was unquestionably a public body. The judge described it at [2] as:

“... an executive non-departmental public body and statutory corporation established by section 3 of the London Olympic Games and Paralympic Games Act 2006 to be responsible for the planning and delivery of the Olympic Games 2012, including the development and building of Games venues.”

129. In a later judgment in the same case ([2012] EWHC 1114 (Ch)), the judge said:

“23. The protestors who have addressed me have made the point that they have sought to engage with the planning process in the normal way, and they have considered the possibility of seeking judicial review. As is so often the case, they say that they are handicapped by the lack of professional legal representation and the lack of finances to instruct lawyers of the calibre instructed by the ODA. They have also sought to engage normal democratic processes in order to make their points. It is because those processes have failed, as the protestors see it, that they have engaged in their protests.

24. That is all very understandable, but it does not, in my judgment, detract from the basic position which confronts the court. The ODA has rights as exclusive licensee of the land in question under Article 1 of the First Protocol to the Convention. As I observed in my judgment on 4 April 2012, the protestors' rights under Articles 10 and 11 are not unqualified rights. They must give way, where it is necessary and proportionate to do so, to the Convention rights of others, and specifically in the present case, of the ODA. The form of injunction sought by the ODA and which I granted on the last occasion does not, in and of itself, prevent or inhibit lawful and peaceful protest. It does not prevent or inhibit the protestors who wish to protest about the matters I have described from doing so in ways which do not interfere with the ODA's enjoyment of its rights in respect of the land

130. Articles 10 and 11 were considered in respect of protest on the highway in *Samede* at [38] – [41]. The Court said:

“38. This argument raises the question which the Judge identified at the start of his judgment, namely ‘the limits to the right of lawful assembly and protest on the highway’, using the word ‘protest’ in its broad sense of meaning the expression and dissemination of opinions. In that connection, as the Judge observed at [2012] EWHC 34 (QB), para 100, it is clear that, unless the law is that ‘assembly on the public highway *may* be lawful, the right contained in article 11(1) of the Convention is denied’ – quoting Lord Irvine LC in *DPP v Jones* [1999] 2 AC 240, 259E. However, as the Judge also went on to say at [2012] EWHC 34 (QB), para 145:

‘To camp on the highway as a means of protest was not held lawful in *DPP v Jones*. Limitations on the public right of assembly on the highway were noticed, both at common law and under Article 11 of the Convention (see Lord Irvine at p 259A-G, Lord Slynn at p 265C-G, Lord Hope of Craighead at p 277D-p 278D, and Lord Clyde at p 280F). In a passage of his speech that I have quoted above Lord Clyde expressed his view that the public's right did not extend to camping.’

39. As the Judge recognised, the answer to the question which he identified at the start of his judgment is inevitably fact-sensitive, and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public.

40. The defendants argue that the importance of the issues with which the Occupy Movement is concerned is also of considerable relevance. That raises a potentially controversial point, because, as the Judge said at [2012] EWHC 34 (QB), para 155:

‘[I]t is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors' views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command. ... [T]he court cannot – indeed, must not – attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of Articles 10 and 11 of the Convention. ... [T]he right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous.’

41. Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom. In this case, the Judge accepted that the topics of concern to the Occupy Movement were ‘of very great political importance’ - [2012] EWHC 34 (QB), para 155. In our view, that was something which could fairly be taken into account. However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important, or with which they agree. As the Strasbourg court said in *Kuznetsov* [2008] ECHR 1170, para 45:

‘Any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means’.

The Judge took into account the fact that the defendants were expressing views on very important issues, views which many would see as being of considerable breadth, depth and relevance, and that the defendants strongly believed in the views they were expressing. Any further analysis of those views and issues would have been unhelpful, indeed inappropriate.”

131. However, there is a more restrictive approach (ie, more restrictive against protest) where the protest takes place on private land. This approach was explained by the Strasbourg Court in *Appleby v United Kingdom* [2003] 27 EHRR 38, [43], [47]. The applicants had been prevented from collecting signatures in a private shopping centre for a petition against proposed building work to which they objected. They said this violated their rights under Articles 10 and 11. The Court disagreed:

“43. The Court recalls that the applicants wished to draw attention of fellow citizens to their opposition to the plans of their locally elected representatives to develop playing fields and to deprive their children of green areas to play in. This was a topic of public interest and contributed to debate about the exercise of local government powers. However, while freedom of expression is an important right, it is not unlimited. Nor is it the only Convention right at stake. Regard must also be had to the property rights of the owner of the shopping centre under Art.1 of Protocol No.1.

...

47. That provision, notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property (Government offices and ministries, for instance). Where however the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The corporate town, where the entire municipality was controlled by a private body, might be an example.“

132. The passage from *Samede* I set out earlier was cited with approval by the Supreme Court in *DPP v Ziegler* [2022] AC 408 at [17], [72], [74] to [77], [80] and [152]. In that case, the defendants were charged with obstructing the highway, contrary to s 137 of the Highways Act 1980, by causing a road to be closed during a protest against an arms fair that was taking place at a conference centre nearby. The defendants had obstructed the highway for approximately 90 minutes by lying in the road and making it difficult for police to remove them by locking themselves to structures.

133. The defendants accepted that their actions had caused an obstruction on the highway, but contended that they had not acted ‘without lawful ... excuse’ within the meaning of s 137(1), particularly in the light of their rights to freedom of expression and peaceful assembly under Articles 10 and 11 of the ECHR. The district judge acquitted the defendants of all charges, finding that the prosecution had failed to prove that the defendants’ actions had been unreasonable and therefore without lawful excuse. The

prosecution appealed by way of case stated, pursuant to s 111 of the Magistrates Courts Act 1980.

134. The Divisional Court allowed the prosecution's appeal, holding that the district judge's assessment of proportionality had been wrong. The defendant appealed to the Supreme Court. It was common ground on the appeal that the availability of the defence of lawful excuse depended on the proportionality of any interference with the defendants' rights under Articles 10 or 11 by reason of the prosecution.
135. The Supreme Court allowed the defendants' appeal. It highlighted the features that should be taken into account in determining the issue of proportionality, as including: (a) the place where the obstruction occurred; (b) the extent of the actual interference the protest caused to the rights of others, including the availability of alternative thoroughfares; (c) whether the protest had been aimed directly at an activity of which protestors disapproved, or another activity which had no direct connection with the object of the protest; (d) the importance of the precise location to the protestors; and (e) the extent to which continuation of the protest breaches domestic law.
136. At [16] and [58], the Supreme Court endorsed what have become known as the '*Ziegler* questions', which must be considered where Articles 10 and 11 are engaged:
 - a. Is what the defendant did in exercise of one of the rights in Articles 10 or 11?
 - b. If so, is there an interference by a public authority with that right?
 - c. If there is an interference, is it 'prescribed by law'?
 - d. If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Articles 10 and 11, for example the protection of the rights of others?
 - e. If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?
137. This last question can be sub-divided into a number of further questions, as follows:
 - a. Is the aim sufficiently important to justify interference with a fundamental right?
 - b. Is there a rational connection between the means chosen and the aim in view?
 - c. Are there less restrictive alternative means available to achieve that aim?
 - d. Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?
138. Also, in *Ziegler*, [57], the Supreme Court said:

"57. Article 11(2) states that 'No restrictions shall be placed' except 'such as are prescribed by law and are necessary in a democratic society'. In *Kudrevicius v Lithuania* (2015) 62 EHRR 34, para 100 the European Court of Human Rights ("ECtHR") stated that 'The term 'restrictions' in article 11(2) must be interpreted as including both measures taken before or during a

gathering and those, such as punitive measures, taken afterwards' so that it accepted at para 101 'that the applicants' conviction for their participation in the demonstrations at issue amounted to an interference with their right to freedom of peaceful assembly. Arrest, prosecution, conviction, and sentence are all "restrictions" within both articles."

139. The structured approach provided by the *Ziegler* questions is one which the Court of Appeal has said courts would be 'well-advised' to follow at each stage of a process which might restrict Article 10 or 11 rights: *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661, [13]. Also in that case, at [28]-[34], the Court summarised the relevant Convention principles:

"28. As is so often the case, there are rights that pull in different directions. It has also been authoritatively decided that there is no hierarchy as between the various rights in play. On the one hand, then, there are Mr Cuciurean's rights to freedom of expression and freedom of peaceful assembly contained in articles 10 (1) and 11 (1) of the ECHR. On the other, there are the claimants' rights to the peaceful enjoyment of their property. There was some debate about whether these were themselves convention rights (given that the Secretary of State for Transport is himself a public authority and cannot therefore be a "victim" for the purposes of the Convention, and HS2 Ltd may not be regarded as a 'non-governmental' organisation for that purpose). But whether or not they are convention rights, they are clearly legal rights (either proprietary or possessory) recognised by national law. Articles 10 (2) and 11 (2) of the ECHR qualify the rights created by articles 10 (1) and 11 (1) respectively. Article 10 (2) relevantly provides that:

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of health or morals, for the protection of the reputation or rights of others... or for maintaining the authority... of the judiciary."

29. Article 11 (2) relevantly provides:

"No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the protection of the rights and freedoms of others."

30. There is no doubt that the right to freedom of expression and the right of peaceful assembly both extend to protesters. In *Hashman v United Kingdom* (2000) EHHR 241, for example, the European Court of Human Rights held that the activity of hunt

saboteurs in disrupting a hunt by the blowing of hunting horns fell within the ambit of article 10 of the ECHR. In *City of London Corporation v Samede* [2012] EWCA Civ 160, [2012] PTSR 1624 protesters who were part of the 'Occupy London' movement set up a protest camp in the churchyard of St Paul's Cathedral. This court held that their activities fell within the ambit of both article 10 and also article 11.

31. On the other hand, articles 10 and 11 do not entitle a protester to protest on any land of his choice. They do not, for example, entitle a protester to protest on private land: *Appleby v United Kingdom* (2003) 37 EHRR 38; *Samede* at [26]. The Divisional Court so held in another HS2 protest case, involving Mr Cuciurean himself who at that time was living in a tunnel for the purpose of disrupting HS2: *DPP v Cuciurean* [2022] EWHC 736 (Admin). In that case the court (Lord Burnett CJ and Holgate J) said at [45]:

"We conclude that there is no basis in the Strasbourg jurisprudence to support the respondent's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg Court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of *destroying* the essence of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights."

32. Even the right to protest on a public highway has its limits. In *DPP v Ziegler* protesters were charged with obstructing the highway without lawful excuse. The Supreme Court held that whether there was a 'lawful excuse' depended on the proportionality of any interference with the protesters' rights under articles 10 and 11. Lords Hamblen and Stephens said at [70]:

'It is clear from those authorities that intentional action by protesters to disrupt by obstructing others enjoys the guarantees of articles 10 and 11, but both disruption and whether it is intentional are relevant factors in relation to an evaluation of proportionality. Accordingly, intentional

action even with an effect that is more than *de minimis* does not automatically lead to the conclusion that any interference with the protesters' articles 10 and 11 rights is proportionate. Rather, there must be an assessment of the facts in each individual case to determine whether the interference with article 10 or article 11 rights was 'necessary in a democratic society'.

33. But that proportionality exercise does not apply in a case in which the protest takes place on private land. In *DPP v Cuciurean* the court said:

"66. Likewise, *Ziegler* was only concerned with protests obstructing a highway where it is well-established that articles 10 and 11 are engaged. The Supreme Court had no need to consider, and did not address in their judgments, the issue of whether articles 10 and 11 are engaged where a person trespasses on private land, or on publicly owned land to which the public has no access. Accordingly, no consideration was given to the statement in *Richardson* at [3] or to cases such as *Appleby*.

67. For these reasons, it is impossible to read the judgments in *Ziegler* as deciding that there is a general principle in our criminal law that where a person is being tried for an offence which does engage articles 10 and 11, the prosecution, in addition to satisfying the ingredients of the offence, must also prove that a conviction would be a proportionate interference with those rights."

34. Where a land owner, such as the claimants in the present case, seeks an injunction restraining action which is carried on in the exercise of the right of freedom of expression or the right of peaceful assembly (or both) on private land, the time for the proportionality assessment (to the extent that it arises at all) is at the stage when the injunction is granted. Any 'chilling effect' will also be taken into account at that stage: see for example the decision of Mr John Male QC in *UK Oil and Gas Investments plc v Persons Unknown* [2018] EWHC 2252 (Ch), especially at [104] to [121], [158] to [167] and [176] (another case of protest predominantly on the highway); and the decision of Lavender J in *National Highways Ltd v Heyatawin* [2021] EWHC 3081 (QB) (also a case of protest on the highway). Once the injunction has been granted then, absent any appeal or application to vary, the balance between the competing rights has been struck: see *National Highways Ltd v Heyatawin* [2021] EWHC 3078 (QB) at [44]; *National Highways Ltd v Buse* [2021] EWHC 3404 (QB) at [30]."

140. The Claimants say that, in having regard to the balance of convenience and the appropriate weight to be had to the Defendants' Convention rights, there is no right to protest on private land (*Appleby*, [43] and *Samede*, [26]) and therefore Articles 10 and 11 rights are not engaged in relation to those protests (see *Ineos* at [36], and *DPP v Cuciurean*, [46], [50] and [77]). In other words, there is no 'freedom of forum' for protest (*Ibid*, [45]). A protest which involves serious disruption or obstruction to the lawful activities of other parties may amount to 'reprehensible conduct', so that Articles 10 and 11 are not violated: *Ibid*, [76].
141. The Claimants say that constant direct action protest and trespass to the HS2 Land is against the public interest and rely on *DPP v Cuciurean*, [84], which I quoted earlier. They placed special weight on the Lord Chief Justice's condemnation of endless 'guerrilla tactics'.
142. To the extent that protest is on public land (eg by blocking gates from the highway), to which Articles 10 and 11 do apply, the Claimants say that the interference with that right represented by the injunction is modest and proportionate.

(vi) *Service*

143. I turn to the question of service. This was something which I canvassed with counsel at the preliminary hearing in April. It is a fundamental principle of justice that a person cannot be subject to the court's jurisdiction without having notice of the proceedings: *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471, [14].
144. The essential requirement for any form of alternative service is that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant: *Cameron*, [21], and *Cuciurean v Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 357, [14] – [15], [25] – 26], [60] and [70]; *Canada Goose*, [82]. Posting on social media and attaching copies at nearby premises would have a greater likelihood of bringing notice of the proceedings to the attention of defendants: *Canada Goose*, [50]:

"50. Furthermore, it would have been open to Canada Goose at any time since the commencement of the proceedings to obtain an order for alternative service which would have a greater likelihood of bringing notice of the proceedings to the attention of protestors at the shop premises, such as by posting the order, the claim form and the particulars of claim on social media coverage to reach a wide audience of potential protestors and by attaching or otherwise exhibiting copies of the order and of the claim form at or nearby those premises. There is no reason why the court's power to dispense with service of the claim in exceptional circumstances should be used to overcome that failure."

145. There is a difference between service of proceedings, and service of an injunction order. A person unknown is a newcomer, and is served and made a party to proceedings, when they violate an order of which they have knowledge; it is not necessary for them to be personally served with it: *Barking and Dagenham*, [84]-[85], [91], approving *South*

Cambridgeshire District Conucil v Gammell [2005] EWCA Civ 1429, [34]. In the former case, the Court of Appeal said:

“84. In the first two sentences of para 91, *Canada Goose* seeks to limit persons unknown subject to final injunctions to those “within Lord Sumption’s category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to [that] date”. This holding ignores the fact that *Canada Goose* had already held that Lord Sumption’s categories did not deal with newcomers, which were, of course, not relevant to the facts in *Cameron*.

85. The point in *Cameron* was that the proceedings had to be served so that, before enforcement, the defendant had knowledge of the order and could contest it. As already explained, *Gammell* held that persons unknown were served and made parties by violating an order of which they had knowledge. Accordingly, the first two sentences of para 91 are wrong and inconsistent both with the court’s own reasoning in *Canada Goose* and with a proper understanding of *Gammell*, *Ineos* and *Cameron*.

...

91. The reasoning in para 92 is all based upon the supposed objection (raised in written submissions following the conclusion of the oral hearing of the appeal) to making a final order against persons unknown, because interim relief is temporary and intended to “enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption’s category 1”. Again, this reasoning ignores the holding in *Gammell*, *Ineos* and *Canada Goose* itself that an unknown and unidentified person knowingly violating an injunction makes themselves parties to the action. Where an injunction is granted, whether on an interim or a final basis for a fixed period, the court retains the right to supervise and enforce it, including bringing before it parties violating it and thereby making themselves parties to the action. That is envisaged specifically by point 7 of the guidelines in *Canada Goose*, which said expressly that a persons unknown injunction should have “clear geographical and temporal limits”. It was suggested that it must be time limited because it was an interim and not a final injunction, but in fact all persons unknown injunctions ought normally to have a fixed end point for review as the injunctions granted to these local authorities actually had in some cases.”

146. Service provisions must deal with the question of notice to an unknown and fluctuating body of potential defendants. There may be cases where the service provisions in an order

have been complied with, but the person subject to the order can show that the service provisions have operated unjustly against him or her. In such a case, service might be challengeable: *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357, [60].

147. In *National Highways Limited*, [50]-[52], Bennathan J adopted the following solution in relation to an injunction affecting a large part of the road network:

“50. Service on the named Defendants poses no difficulty but warning persons unknown of the order is far harder. In the first instance judgment in *Barking and Dagenham v People Unknown* [2021] EWHC 1201 (QB) Nicklin J [at 45-48, passages that were not the subject of criticism in the later appeal] stated that the Court should not grant an injunction against people unknown unless and until there was a satisfactory method of ensuring those who might breach its terms would be made aware of the order's existence.

51. In other cases, it has been possible to create a viable alternative method of service by posting notices at regular intervals around the area that is the subject of the injunctions; this has been done, for example, in injunctions granted recently by the Court in protests against oil companies. That solution, however, is completely impracticable when dealing with a vast road network. Ms Stacey QC suggested an enhanced list of websites and email addresses associated with IB [Insulate Britain] and other groups with overlapping aims, and that the solution could also be that protestors accused of contempt of court for breaching the injunction could raise their ignorance of its terms as a defence. I do not find either solution adequate. There is no way of knowing that groups of people deciding to join a protest in many months' time would necessarily be familiar with any particular website. Nor would it be right to permit people completely unaware of an injunction to be caught up with the stress, cost and worry of being accused of contempt of court before they would get to the stage of proceedings where they could try to prove their innocence.

52. In the absence of any practical and effective method to warn future participants about the existence of the injunction, I adopt the formula used by Lavender J [in *National Highways Limited v Persons Unknown and others* [2021] EWHC 3081 (QB)], that those who had not been served would not be bound by the terms of the injunction and the fact the order had been sent to the IB website did not constitute service. The effect of this will be that anyone arrested can be served and, thus, will risk imprisonment if they thereafter breach the terms of the injunction.”

Merits

148. The second part of this section of the judgment addresses the merits of the Claimants' application in light of these principles.

149. I plan to deal with the following topics: (a) trespass and nuisance; (b) whether there is a real and imminent risk of unlawfulness; (c) whether there are sufficient reasons to grant the order against known defendants; (d) whether are sufficient reasons to grant the order against unknown defendants; (e) scope of the order; (f) service and knowledge.

150. At [6] and [7] of their Merits Skeleton Argument the Claimants said this:

“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.

7. That is not lawful, and it is not lawful protest.”

(i) Trespass and nuisance

151. I begin with the question of title over the HS2 Land. I am satisfied, as other judges have been on previous occasions, that HS2 has sufficient title over the HS2 Land to bring an action in trespass against trespassers. I set out the statutory scheme earlier, and it is described in Dilcock 1, [10] eq seq and Dilcock 4, [21], et seq.

152. I am therefore satisfied that the Claimants are entitled to possession of all of the land comprising the HS2 Land. The fact they are not actually in possession (yet) of all of it does not matter, for the reasons I have already explained. The statutory notices have been served and they are entitled to immediate possession. That is all that is required.

153. I note D36’s (Mark Keir’s submissions) about the Revised HS2 Land Plans produced by Ms Dilcock. I am satisfied that the points he made are fully answered by Ms Dilcock, in particular, in Dilcock 4, [21] et seq.

154. Turning to the evidence of trespass relied on by the Claimants, I am satisfied that the evidence is plentiful. Jordan 1 is lengthy and contains much detail. It is accompanied by many pages of exhibits containing further specifics. I am satisfied that this evidence shows there has been many episodes of trespass by (primarily) persons unknown – but also by known persons - both on Cash’s Pit, and elsewhere along the HS2 Scheme route. Mr Jordan’s evidence is that trespassing activities have ranged widely across the HS2 Land as protesters carry out their direct-action activities:

“10. Those engaged in protest action opposed to the HS2 Scheme are made up of a broad cross-section of society, including concerned local residents, committed environmentalists, academics and also numerous multi-cause transient protestors whom have been resident at a number of protest camps associated with a number of different ‘causes’. Groups such as Extinction Rebellion (often known as ‘XR’) often garner much of the

mainstream media attention and widely publicise their actions. They often only travel into an area for a short period (specific ‘days of action’ or ‘weeks of action’), however once present they are able to execute comprehensive and highly disruptive direct action campaigns, whipping up an almost religious fervour amongst those present. Their campaigns often include direct action training, logistical and welfare support and complimentary media submissions, guaranteeing national media exposure. Such incidents have a significant impact on the HS2 Scheme but make up only a proportion of overall direct action protest against the HS2 Scheme, which occurs on an almost daily basis.

11. By way of explanation of a term that will be found in the evidence exhibited to this statement, activists often seek to anonymise themselves during direct action by referring to themselves and each other as “Bradley”. Activists also often go by pseudonyms, in part to avoid revealing their real identities. A number of the Defendants’ pseudonyms are provided in the schedule of Named Defendants and those working in security on the HS2 Scheme are very familiar with the individuals involved and the pseudonyms they use.

12. On a day to day basis direct action protest is orchestrated and conducted by both choate groups dedicated to disruption of the HS2 Scheme (such as HS2 Rebellion and Stop HS2) and inchoate groups of individuals who can comprise local activists and more seasoned ‘core’ activists with experience of conducting direct action campaigns against numerous “causes”. The aims of this type of action are made very explicitly clear by those engaged in it, as can be seen in the exhibits to this statement. It is less about expressing the activists’ views about the HS2 Scheme and more about causing direct and repeated harm to the HS2 Scheme in the form of delays to works, sabotage of works, damage to equipment, psychological and physical injury to those working on the HS2 Scheme and financial cost, with the overall aim of ‘stopping’ or ‘cancelling’ the HS2 Scheme.

13. In general, the Claimants and their contractors and sub-contractors have been subject to a near constant level of disruption to works on the HS2 Scheme, including trespass on and obstruction of access to the HS2 Land, since October 2017. The Defendants have clearly stated - both to contractors and via mainstream and social media - their intention to significantly slow down or stop work on the HS2 Scheme because they are opposed to it. They have trespassed on HS2 Land on multiple occasions and have issued encouragement via social media to others to come and trespass on HS2 Land. Their activities have impeded the First Claimant’s staff, contractors and sub-contractors going about their lawful business on the HS2 Land and hampered the work on the HS2 Scheme, causing delays and extremely significant costs

to the taxpayer and creating an unreasonably difficult and stressful working environment for those who work on the HS2 Land.”

155. At [14]-[15] Mr Jordan wrote:

“At page 1 [of Ex RJ1] is a graphic illustration of the number of incidents experienced by the Claimants on Phase One of the HS2 Scheme that have impacted on operational activity and the costs to the Claimant of dealing with those incidents. That shows a total of 1007 incidents that have had an impact on operational activity between the last quarter of 2017 and December 2021. Our incident reporting systems have improved over time and refined since we first began experiencing incidents of direct action protest in October 2017 and it is therefore considered that the total number of incidents shown within our overall reporting is likely fewer than the true total.

15. The illustration also shows the costs incurred in dealing with the incidents. These costs comprise the costs of the First Claimant’s security; contractor security and other contractor costs such as damage and repairs; and prolongation costs (delays to the programme) and show that a total of £121.62 million has been incurred in dealing with direct action protest up to the end of December 2021. The HS2 Scheme is a publicly funded project and accordingly the costs incurred are a cost to the tax-payer and come from the public purse. The illustration at page 2 shows the amount of the total costs that are attributable to security provision.”

156. At [29.1] under the heading ‘Trespass’ Mr Jordan said:

“Put simply, activists enter onto HS2 Land without consent. The objective of such action is to delay and disrupt works on the HS2 Scheme. All forms of trespass cause disruption to the HS2 Scheme and have financial implications for the Claimants. Some of the more extreme forms of trespass, such as tunnelling (described in detail in the sections on Euston Square Gardens and Small Dean below) cause significant damage and health and safety risks and the losses suffered by the Claimants via the costs of removal and programme delay run into the millions of pounds. In entering onto work sites, the activists create a significant health and safety hazard, thus staff are compelled to stop work in order to ensure the safety of staff and those trespassing (see, for example, the social media posts at pages 38 to 39 about trespassers at the HS2 Scheme Capper’s Lane compound in Lichfield where there have been repeated incursions onto an active site where heavy plant and machinery and large vehicles are in operation, forcing works to cease for safety and security reasons. A video taken by a trespasser during an incursion on 16

March 2022 and uploaded to social media is at Video (7). Worryingly, such actions are often committed by activists in ignorance of the site operations and or equipment functionality, which could potentially result in severe unintended consequences. For example, heavy plant being operated upon the worksite may not afford the operator clear sight of trespassers at ground level. Safety is at the heart of the Claimants' activities on the HS2 Scheme and staff, contractors and sub-contractors working on the HS2 Land are provided with intensive training and inductions and appropriate personal protective equipment. The First Claimant's staff, contractors and sub-contractors will always prioritise safety thus compounding the trespassers' objective of causing disruption and delay. Much of the HS2 Land is or will be construction sites and even in the early phases of survey and clearance works there are multiple hazards that present a risk to those entering onto the land without permission. The Claimants have very serious concerns that if incidents of trespass and obstruction of access continue, there is a high likelihood that activists will be seriously injured.”

157. Mr Jordan went on to describe (at [29.1.1] et seq) some of the activities which protesters against HS2 have undertaken since works began. As well as trespass these include: breaching fencing and damaging equipment; climbing and occupying trees on trespassed land; climbing onto vehicles (aka, ‘surfing’); climbing under vehicles; climbing onto equipment, eg, cranes; using lock-on devices; theft, property damage and abuse of staff, including staff being slapped, punched, spat at, and having human waste thrown at them; obstruction; (somewhat ironically) ecological and environmental damage, such as spiking trees to obstruct the felling of them; waste and fly tipping, which has required, for example, the removal of human waste from encampments; protest at height (which requires specialist removal teams); and tunnelling.
158. Mr Jordan said that some protesters will often deliberately put themselves and others in danger (eg, by occupying tunnels with potentially lethal levels of carbon dioxide, and protesting at height) because they know that the process of removing them from these situations will be difficult and time-consuming, often requiring specialist teams, thereby maximising the hindrance to the construction works.
159. I am also satisfied that the Claimants have made out to the requisite standard at this stage their claim in nuisance, for essentially the same reasons.
160. The HS2 Scheme is specifically authorised by the HS2 Acts, as I have said. Whilst mindful of the strong opposition against it in some quarters, Parliament decided that the project was in the public interest.
161. I am satisfied that there has been significant violence, criminality and sometimes risk to the life of the activists, HS2 staff and contractors. As Mr Jordan set out in Jordan 1, [14] and [23], 129 individuals were arrested for 407 offences from November 2019 - October 2020.
162. I accept Mr Jordan’s evidence at [12] of Jordan 1, which I set out earlier, that much of the direct action seems to have been less about expressing the activists’ views about the HS2

Scheme, and more about trying to cause as much nuisance as possible, with the overall aim of delaying, stopping or cancelling it via, in effect, a war of attrition.

163. At [21.2] of Jordan 1, he wrote:

“21.2 Interviews with the BBC on 19.05.2020 and posted on the Wendover Active Resistance Camp Facebook page. D5 (Report Map at page 32) was interviewed and said: ‘The longevity is that we will defend this woodland as long as we can. If they cut this woodland down, there will still be activists and community members and protectors on the ground. We’re not just going to let HS2 build here free will. As long as HS2 are here and they continue in the vein they have been doing, I think you’ll find there will be legal resistance, there’ll be on the ground resistance and there will be community resistance.’ In the same interview, another individual said: ‘We are holding it to account as they go along which is causing delays, but also those delays mean that more and more people can come into action. In a way, the more we can get our protectors to help us to stall it, to hold it back now, the more we can try and use that leverage with how out of control it is, how much it is costing the economy, to try to bring it to account and get it halted.’ A copy of the video is at Video 1.”

164. I am entirely satisfied that the activities which Mr Jordan describes, in particular in [29] et seq of Jordan 1, and the other matters he deals with, constitute a nuisance. I additionally note that even following the order made in relation to Cash’s Pit by Cotter J on 11 April 2022, resistance to removal in the form of digging tunnels has continued: Dilcock 4, [33]-[43].
165. It is perhaps convenient here to mention a point which emerged at the hearing when we were watching some of the video footage, and about which I expressed concern at the time. There was some footage of a confrontation between HS2 security staff and protesters. One clip appeared to show a member of staff kneeling on the neck of a protester in order to restrain them. One does not need to think of George Floyd to know that that is an incredibly dangerous thing to do. I acknowledge that I only saw a clip, and that I do not know the full context of what occurred. I also acknowledge that there is evidence that some protesters have also been guilty of anti-social behaviour towards security staff. But I hope that those responsible on the part of the Claimants took note of my concerns, and will take steps to ensure that dangerous restraint techniques are not used in the future.
166. I also take seriously the numerous complaints made before me orally and in writing about the behaviour of some security staff. I deplore any homophobic, racist or sexist, etc, abuse of protesters by security guards (or indeed by anyone, in any walk of life). I can do no more than emphasise that such allegations must be taken seriously, investigated, and if found proved, dealt with appropriately.
167. Equally, however, those protesting must also understand that their right to do so lawfully – which, as I have said, any order I make will clearly state - comes with responsibilities, including not to behave unpleasantly towards men and women who are

just trying to do their jobs.

(ii) *Whether there is a real and imminent risk of continued unlawfulness so as to justify an anticipatory injunction*

168. I am satisfied that the trespass and nuisance will continue, unless restrained, and that the risk is both real and imminent. My reasons, in summary, are: the number of incidents that have been recorded; the protesters' expressed intentions; the repeated unlawful protests to date that have led to injunctions being granted; and the fact that the construction of HS2 is set to continue for many years.
169. The principal evidence is set out in Jordan 1, [20], et seq. Mr Jordan said at [20]:

“20. There are a number of reasons for the Claimants’ belief that unlawful action against the HS2 Scheme will continue if unchecked by the Court. A large number of threats have been made by a number of the Defendants and general threats by groups opposed to the HS2 Scheme to continue direct action against the HS2 Scheme until the HS2 Scheme is “stopped”. These threats have been made on a near daily basis - often numerous times a day - since 2017 and have been made in person (at activist meetings and to staff and contractors); to mainstream media; and across social media. They are so numerous that it has only been possible to put a small selection of examples into evidence in this application to illustrate the position to the Court. I have also included maps for some individuals who have made threats against the HS2 Scheme and who have repeatedly engaged in unlawful activity that show where those individuals have been reported by security teams along the HS2 Scheme route (“Report Map”). These maps clearly demonstrate that a number of the Defendants have engaged in unlawful activity at multiple locations along the route and the Claimants reasonably fear that they will continue to target the length of the route unless restrained by the Court.”

170. In *Harvil Road*, [79]-[81], the judge recorded statements by protesters in the evidence in that case which I think are a broad reflection of the mind-set of many protesters against HS2:

“79. ‘Two arrested. Still need people here. Need to hold them up at every opportunity.’

...

‘No, Lainey, these trees are alongside the road so they needed a road closure to do so. They can't have another road closure for 20 days. Meanwhile they have to worry BIG time about being targeted by extinction rebellion and, what's more, they're going to see more from us at other places on the route VERY soon. Tremble HS2, tremble.

...

“We have no route open to us but to protest. And however much we have sat in camp waving flags, and waving at passersby tooting their support, that was never and will never be the protest that gets our voices heard. We are ordinary people fighting with absolute integrity for truth that is simple and stark. We are ordinary people fighting an overwhelming vast government project. But we will be heard. We must be heard.”

81. I fully accept that this expresses the passion with which the Fourth Defendant opposes the HS2 scheme and while they may not indicate that the Fourth Defendant will personally breach any order or be guilty of any future trespass, I think there is, I frankly find, a faintly sinister ring to these comments which in light of all that has gone before causes me to agree with Mr. Roscoe and the Claimants that there is a distinct risk of further objectionable activity should an injunction not be granted.”

171. Other salient points on the same theme include the following (paragraph numbers refer to Jordan 1):

- a. Interview with *The Guardian* on 13 February 2021 given by D27 after he was removed from the tunnels dug and occupied by activists under HS2 Land at Euston Square Gardens, in which he said: ‘As you can see from the recent Highbury Corner eviction, this tunnel is just a start. There are countless people I know who will do what it takes to stop HS2.’ In the same article he also said: ‘I can’t divulge any of my future plans for tactical reasons, but I’m nowhere near finished with protesting.’
- b. In March 2021 D32 obstructed the First Claimant’s works at Wormwood Scrubs and put a call out on Twitter on 24 March 2021 asking for support to prevent HS2 route-wide. He also suggested targeting the First Claimant’s supply chain.
- c. On 23 February 2022 D6 stated 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’ ([21.12]).
- d. D6 on 24 February 2022 stated if the Cash’s Pit camp is evicted, ‘we’ll just move on. And we’ll just do it again and again and again’ ([21.13]).
- e. As set out in [21.14] on 10 March 2022 D17, D18, D19, D31, D63 and a number of persons unknown spent the morning trespassing on HS2 Land adjacent to Cash’s Pit Land, where works were being carried out for a gas diversion by Cadent Gas and land on which archaeological works for the HS2 Scheme were taking place. This incident is described in detail at [78] of Jordan 1. In a video posted on Facebook after the morning’s incidents, D17 said:

“Hey everyone! So, just bringing you a final update from down in Swynnerton. Today has been a really – or this morning today - has been a really successful one. We’ve blocked the gates for several hours. We had the team block the gates down at the main compound that we usually block and we had – yeah, we’ve had people running around a field over here and grabbing stuff and getting on grabbers and diggers (or attempting to), but in the meantime, completely slowing down all the works. There are still people blocking the gates down here as you can see and we’ve still got loads of security about. You can see there’s two juicy diggers over there, just waiting to be surfed and there’s plenty of opportunities disrupt – and another one over there as well. It’s a huge, huge area so it takes a lot of them to, kind of, keep us all under control, particularly when we spread out. So yeah. If you wanna get involved with direct action in the very near future, then please get in touch with us at Bluebell or send me a message and we’ll let you know where we are, where we’re gonna be, what we’re gonna be doing and how you can get involved and stuff like that. Loads of different roles, you’ve not just, people don’t have to run around fields and get arrested or be jumping on top of stuff or anything like that, there’s lots of gate blocking to do and stuff as well, yeah so you don’t necessarily have to be arrested to cause a lot of disruption down here and we all work together to cause maximum disruption. So yeah, that’s that. Keep checking in to Bluebell’s page, go on the events and you’ll see that we’ve got loads of stuff going on, and as I say pretty much most days we’re doing direct action now down in Swynnerton, there’s loads going on at the camp, so come and get involved and get in touch with us and we’ll let you know what’s happening the next day. Ok, lots of love. Share this video, let’s get it out there and let’s keep fucking up HS2’s day and causing as much disruption and cost as possible. Coming to land near you.”

Hence, comments Mr Jordan, D17 was here making explicit threats to continue to trespass on HS2 Land and to try to climb onto vehicles and machinery and encourages others to engage in similar unlawful activity.

- f. 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] and Dilcock 4, [33], et seq.
- 172. These matters and all of the other examples quoted by Mr Jordan and Ms Dilcock, to my mind, evidence an intention to continue committing trespass and nuisance along the whole of the HS2 route.
- 173. I also take into account material supplied by the Claimants following the hearing that occupation of Cash’s Pit has continued even in the face of Cotter J’s order of 11 April 2022 and that committal proceedings have been necessary.

174. The Claimants reasonably anticipate that the activists will move their activities from location to location along the route of the HS2 Scheme. Given the size of the HS2 Scheme, the Claimants say that it is impossible for them to reasonably protect the entirety of the HS2 Land by active security patrol or even fencing.
175. I have carefully considered D6's argument that the Claimants must prove that there is an imminent danger of very substantial damage, and (per Skeleton, [48]):
- “The Claimant must establish that there is a risk of actual damage occurring on the HS2 Land subject to the injunction that is imminent and real. This is not borne out on the evidence. In relation to land where there is no currently scheduled HS2 works to be carried out imminently there is no risk of disruptive activity on the land and therefore no basis for a precautionary injunction.”
176. I do not find this a persuasive argument, and I reject it. Given the evidence that the protesters' stated intention is to protest wherever, and whenever, along HS2's route, I am satisfied there is the relevant imminent risk of very substantial damage. To my mind, it is not an attractive argument for the protesters to say: ‘Because you have not started work on a particular piece of land, and even though when you do we will commit trespass and nuisance, as we have said we will, you are not entitled to a precautionary injunction to prevent us from doing so until you start work and we actually start doing so.’ As the authorities make clear, the terms ‘real’ and ‘imminent’ are to be judged in context and the court’s overall task is to do justice between the parties and to guard against prematurity. I consider therefore that the relevant point to consider is not now, as I write this judgment, but at the point something occurs which would trigger unlawful protests. That may be now, or it may be later. Furthermore, protesters do not always wait for the diggers to arrive before they begin to trespass. The fact that the route of HS2 is now publicly available means that protesters have the means and ability to decide where they are going to interfere next, even in advance of work starting.
177. In other words, adopting the *Hooper v Rogers* approach that the degree of probability of future injury is not an absolute standard, and that what is to be aimed at is justice between the parties, having regard to all the relevant circumstances, I am satisfied that (all other things being equal) a precautionary injunction is appropriate given the protesters' expressed intentions. To accede to D6's submission would, it seems to me, be to licence the sort of ‘guerrilla tactics’ which the Lord Chief Justice deprecated in *DPP v Cucicirean*.
178. Here I think it is helpful to quote Morgan J's judgment in *Ineos*, [87]-[95] (and especially [94]-[95]), where he considered an application for a precautionary injunction against protests at fracking sites where work had not actually begun:

“87. The interim injunctions which are sought are mostly, but not exclusively, claimed on a *quia timet* basis. There are respects in which the Claimants can argue that there have already been interferences with their rights and so the injunctions are to prevent repetitions of those interferences and are not therefore claimed on a *quia timet* basis. Examples of interferences in the past are said to be acts on trespass on Site 1, theft of, and criminal damage to,

seismic testing equipment and various acts of harassment. However, the greater part of the relief is claimed on the basis that the Claimants reasonably apprehend the commission of unlawful acts in the future and they wish to have the protection of orders from the court at this stage to prevent those acts being committed. Accordingly, I will approach the present applications as if they are made solely on the *quia timet* basis.

88. The general test to be applied by a court faced with an application for a *quia timet* injunction at trial is quite clear. The court must be satisfied that the risk of an infringement of the claimant's rights causing loss and damage is both imminent and real. The position was described in *London Borough of Islington v Elliott* [2012] EWCA Civ 56, per Patten LJ at 29, as follows:

‘29 The court has an undoubted jurisdiction to grant injunctive relief on a *quia timet* basis when that is necessary in order to prevent a threatened or apprehended act of nuisance. But because this kind of relief ordinarily involves an interference with the rights and property of the defendant and may (as in this case) take a mandatory form requiring positive action and expenditure, the practice of the court has necessarily been to proceed with caution and to require to be satisfied that the risk of actual damage occurring is both imminent and real. That is particularly so when, as in this case, the injunction sought is a permanent injunction at trial rather than an interlocutory order granted on *American Cyanamid* principles having regard to the balance of convenience. A permanent injunction can only be granted if the claimant has proved at the trial that there will be an actual infringement of his rights unless the injunction is granted.’"

89. In *London Borough of Islington v Elliott*, the court considered a number of earlier authorities. The authorities concerned claims to *quia timet* injunctions at the trial of the action. In such cases, particularly where the injunction claimed is a mandatory injunction, the court acts with caution in view of the possibility that the contemplated unlawful act, or the contemplated damage from it, might not occur and a mandatory order, or the full extent of the mandatory order, might not be necessary. Even where the injunction claimed is a prohibitory injunction, it is not enough for the claimant to say that the injunction only restrains the defendant from doing something which he is not entitled to do and causes him no harm: see *Paul (KS) (Printing Machinery) v Southern Instruments (Communications)* [1964] RPC 118 at 122; there must still be a real risk of the unlawful act being committed. As to whether the contemplated harm is ‘imminent’, this word is used

in the sense that the circumstances must be such that the remedy sought is not premature: see *Hooper v Rogers* [1975] Ch 43 at 49-50. Further, there is the general consideration that ‘Preventing justice excelleth punishing justice’: see *Graigola Merthyr Co Ltd v Swansea Corporation* [1928] Ch 235 at 242, quoting the Second Institute of Sir Edward Coke at page 299.

90. In the present case, the Claimants are applying for *quia timet* injunctions on an interim basis, rather than at trial. The passage quoted above from *London Borough of Islington v Elliott* indicated that different considerations might arise on an interim application. The passage might be read as suggesting that it might be easier to obtain a *quia timet* injunction on an interim basis. That might be so in a case where the court applies the test in *American Cyanamid* where all that has to be shown is a serious issue to be tried and then the court considers the adequacy of damages and the balance of justice. Conversely, on an interim application, the court is concerned to deal with the position prior to a trial and at a time when it does not know who will be held to be ultimately right as to the underlying dispute. That might lead the court to be less ready to grant quia timet relief particularly of a mandatory character on an interim basis.

91. I consider that the correct approach to a claim to a *quia timet* injunction on an interim basis is, normally, to apply the test in *American Cyanamid*. The parts of the test dealing with the adequacy of damages and the balance of justice, applied to the relevant time period, will deal with most if not all cases where there is argument about whether a claimant needs the protection of the court. However, in the present case, I do have to apply section 12(3) of the Human Rights Act 1998 and ask what order the court is likely to make at a trial of the claim.

92. I have dealt with the question of *quia timet* relief in a little detail because it was the subject of extensive argument. However, that should not obscure the fact that the decision in this case as to the grant of *quia timet* relief on an interim basis is not an unduly difficult one.

93. What is the situation here? On the assumption that the evidence does not yet show that protestors have sought to subject Ineos to their direct action protests, I consider that the evidence makes it plain that (in the absence of injunctions) the protestors will seek to do so. The protestors have taken direct action against other fracking operators and there is no reason why they would not include Ineos in the future. The only reason that other operators have been the subject of protests in the past and Ineos has not been (if it has not been) is that Ineos is a more recent entrant into the industry. There is no reason to think that (absent injunctions) Ineos will be treated any differently in the future

from the way in which the other fracking operators have been treated in the past. I therefore consider that the risk of the infringement of Ineos' rights is real.

94. The next question is whether the risk of infringement of Ineos' rights is imminent. I have described earlier the sites where Ineos wish to carry out seismic testing and drilling. It seems likely that drilling will not commence in a matter of weeks or even months. However, there have been acts of trespass in other cases on land intended to be used for fracking even before planning permission for fracking had been granted and fracking had begun. I consider that the risk of trespass on Ineos' land by protestors is sufficiently imminent to justify appropriate intervention by the court. Further, there have already been extensive protests outside the depots of third party contractors providing services to fracking operators. One of those contractors is P R Marriott. Ineos uses and intends to use the services of P R Marriott. Accordingly, absent injunctions, there is a continuing risk of obstruction of the highway outside P R Marriott's depot and when that contractor is engaged to provide services to Ineos, those obstructions will harm Ineos.

95. To hold that the risk of an infringement of the rights of Ineos is not imminent with the result that the court did not intervene with injunctions at this stage would leave Ineos in a position where the time at which the protestors might take action against it would be left to the free choice of the protestors without Ineos having any protection from an order of the court. I do not consider that Ineos should be told to wait until it suffers harm from unlawful actions and then react at that time. This particularly applies to the injunctions to restrain trespass on land. If protestors were to set up a protest camp on Ineos land, the evidence shows that it will take a considerable amount of time before Ineos will be able to recover possession of such land. In addition, Ineos has stated in its evidence on its application that it wishes to have clarity as to what is permitted by way of protest and what is not. That seems to me to be a reasonable request and if the court is able to give that clarity that would seem to be helpful to the Claimants and it ought to have been considered to be helpful by the Defendants. A clear injunction would allow the protestors to know what is permitted and what is not."

179. This part of the judgment was not challenged on appeal: see at [35] of the Court of Appeal's judgment: [2019] 4 WLR 100.
180. I think my conclusion is consistent with this approach, and also to that taken by the judges in the *National Highways* cases, where the claimants could not specifically say where the next road protests were going to occur, but could only say that there was a risk they could arise anywhere, at any time because of the protesters' previous behaviour. That uncertainty did not defeat the injunctions.

181. I find further support for my conclusion on this aspect of the Claimants' case in the history of injunctive relief sought by the Claimants over various discrete parcels of land within the HS2 Land. These earlier injunctions are primarily described in Dilcock 1 at [37] – [41]. They show a repeat and continued pattern of behaviour.

(iii) Whether an injunction should be granted against the named Defendants

182. I set out the *Canada Goose* requirements earlier. One of them is that in applications such as this, defendants whose names are known should be named. The basis upon which the named Defendants have been sued in this case is explained in Dilcock 1 at [42]-[46]:

“42. The Claimants have named as Defendants to this application individuals known to the Claimants (sometimes only by pseudonyms) the following categories of individuals:

42.1 Individuals identified as believed to be in occupation of the Cash's Pit Land whether permanently or from time to time (D5 to D20, D22, D31 and D63);

42.2 the named defendants in the Harvil Road Injunction (D28; D32 to D34; and D36 to D59);

42.3 The named defendants in the Cubbington and Crackley Injunction (D32 to D35); and

42.4 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 above categories.

43. It is, of course open to other individuals who wish to defend the proceedings and/or the application for an injunction to seek to be joined as named defendants. Further, if any of the individuals identified wish to be removed as defendants, the Claimants will agree to their removal upon the giving of an undertaking to the Court in the terms of the injunction sought. Specifically, in the case of D32, who (as described in Jordan 1) has already given a wide-ranging undertaking not to interfere with the HS2 Scheme, the Claimants have only named him because he is a named defendant to the proceedings for both pre-existing injunctions. If D32 wishes to provide his consent to the application made in these proceedings, in view of the undertaking he has already given, the Claimants will consent to him being removed as a named defendant.

44. This statement is also given in support of the First Claimant's possession claim in respect of the Cash's Pit Land and which the Cash's Pit Defendants have dubbed: “Bluebell Wood”. The

unauthorised encampment and trespass on the Cash's Pit Land is the latest in a series of unauthorised encampments established and occupied by various of the Defendants on HS2 Land (more details of which are set out in Jordan 1).

45. The possession proceedings concern a wooded area of land and a section of roadside verge, which is shown coloured orange on the plan at Annex A of the Particulars of Claim ("Plan A"). The HS2 Scheme railway line will pass through the Cash's Pit Land, which is required for Phase 2a purposes and is within the Phase 2a Act limits.

46. The First Claimant is entitled to possession of the Cash's Pit Land having exercised its powers pursuant to section 13 and Schedule 15 of the Phase 2a Act. Copies of the notices served pursuant to paragraph 4(1) of Schedule 15 of the Phase 2a Act are at pages 30 to 97 of JAD3. For the avoidance of doubt, these notices were also served on the Cash's Pit Land addressed to "the unknown occupiers". Notices requiring the Defendants to vacate the Cash's Pit Land and warning that Court proceedings may be commenced in the event that they did not vacate were also served on the Cash's Pit Land. A statement from the process server that effected service of the notices addressed to "the unknown occupiers" and the Notice to Vacate is at pages 98 to 112 of JAD3 and copies of the temporary possession notice addressed to the occupiers of the Cash's Pit Land and the notice to Vacate are exhibited to that statement."

183. Appendix 2, to which I have already referred, summarises the defences which have been filed, and the representations received from non-Defendants. The main points made are (with my responses), in summary, as follows:

- a. The actions complained of are justifiable because the HS2 Scheme causes environmental damage. That is not a matter for me. Parliament approved HS2.
- b. The order would interfere with protesters' rights under Articles 10 and 11. I deal with the Convention later.
- c. Lawful protest would be prevented. As I have made clear, it would not and the draft order so provides.
- d. The order would restrict rights to use the public highway and public rights of way. These are specifically carved out in the order (paragraph 4).
- e. Concern about those who occupy or use HS2 Land pursuant to a lease or licence with the First Claimant. That has now been addressed in the Revised Land Plans.
- f. Complaints about HS2's security guards. I have dealt with that.

(iv) *Whether there are reasons to grant the order against persons unknown*

184. I am satisfied that the Defendants have all been properly identified either generally, where they are unknown, or specifically where their identities are known. Those who have been identified and joined individually as Defendants to these proceedings are the ‘named Defendants’ and are listed in the Schedule on the RWI website. 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 largely still not known). That is why different categories of ‘persons unknown’ are generically identified in the relevant Schedule. That is an appropriate means of seeking relief against unknown categories of people in these circumstances: see *Boyd and another v Ineos Upstream Ltd and others* [2019] EWCA Civ 515 at [18]-[34], summarised in *Canada Goose*, [82], which I set out earlier.
185. I am satisfied that this is one of those cases (as in other HS2 and non-HS2 protest cases) in which it is appropriate to make an order against groups of unknown persons, who are generically described by reference to different forms of activity to be restrained. I quoted the principles contained in *Canada Goose*, [82] earlier. I am satisfied the order meets those requirements, in particular [82(1) and (2)].
186. I am satisfied that the definitions of ‘persons unknown’ set in Appendix 1 are apt and appropriately narrow in scope in accordance with the *Canada Goose* principles. The definitions would not capture innocent or inadvertent trespass.
187. I accept (and as is clear from the evidence I have set out) that the activists involved in this case are a rolling and evolving group. The ‘call to arms’ from D17 that I set out earlier was a clear invitation to others, who had not yet become involved in protests – and hence by definition were not known - to do so. The group is an unknown and fluctuating body of potential defendants. It is not effective to simply 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.

(v) *Scope*

188. Paragraphs 3-6 provide for what is prohibited:

“3. With immediate effect until 23:59hrs on 31 May 2023 unless varied, discharged or extended by further order, the Defendants and each of them are forbidden from doing the following:

- a. entering or remaining upon the HS2 Land;
- b. obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the HS2 Land; or
- c. interfering with any fence or gate on or at the perimeter of the HS2 Land.

4. Nothing in paragraph 3 of this Order:

a. Shall prevent any person from exercising their rights over any open public right of way over the HS2 Land.

b. Shall affect any private rights of access over the HS2 Land.

c. Shall prevent any person from exercising their lawful rights over any public highway.

d. Shall extend to any person holding a lawful freehold or leasehold interest in land over which the Claimants have taken temporary possession.

e. Shall extend to any interest in land held by statutory undertakers.

5. For the purposes of paragraph 3(b) prohibited acts of obstruction and interference shall include (but not be limited to):

a. standing, kneeling, sitting or lying or otherwise remaining present on the carriageway when any vehicle is attempting to turn into the HS2 Land or attempting to turn out of the HS2 Land in a manner which impedes the free passage of the vehicle;

b. digging, erecting any structure or otherwise placing or leaving any object or thing on the carriageway which may slow or impede the safe and uninterrupted passage of vehicles or persons onto or from the HS2 Land;

c. affixing or attaching their person to the surface of the carriageway where it may slow or impede the safe and uninterrupted passage of vehicles onto or from the HS2 Land;

d. affixing any other object to the HS2 Land which may delay or impede the free passage of any vehicle or person to or from the HS2 Land;

e. climbing on to or affixing any object or person to any vehicle in the vicinity of the HS2 Land; and

f. slow walking in front of vehicles in the vicinity of the HS2 Land.

6. For the purposes of paragraph 3(c) prohibited acts of interference shall include (but not be limited to):

a. cutting, damaging, moving, climbing on or over, digging beneath, or removing any items affixed to, any temporary or permanent fencing or gate on or on the perimeter of the HS2 Land;

- b. the prohibition includes carrying out the aforementioned acts in respect of the fences and gates; and
 - c. interference with a gate includes drilling the lock, gluing the lock or any other activities which may prevent the use of the gate.”
189. Subject to two points, I consider these provisions comply with *Canada Goose*, [82], in that the prohibited acts correspond as closely as is reasonably possible to the allegedly tortious acts which the Claimants seeks to prevent. I also consider that the terms of the injunction are sufficiently clear and precise to enable persons potentially affected to know what they must not do. The ‘carve-outs’ in [4] make clear that ordinary lawful use of the highway is not prohibited. I do not agree with D6’s submission (Skeleton Argument, [52], et seq).
190. The two changes I require are as follows. The first, per *National Highways*, Lavender J, at [22] and [24(6)], a case in which Mr Greenhall was involved, is to insert the word ‘deliberately’ in [3(b)] so that it reads:
- “3. With immediate effect until 23:59hrs on 31 May 2023 unless varied, discharged or extended by further order, the Defendants and each of them are forbidden from doing the following:
- ...
- b. *deliberately* obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the HS2 Land; or
191. The second, similarly, is to insert the word, ‘deliberate’ in [5(f)] so that it reads, ‘*deliberate slow walking ...*’
192. I have also considered the point made by D6 that ‘vicinity’ in [5(f)] is unduly vague. I note that in at least two cases that term has been used in protester injunctions without objection. In *Canada Goose*, [12(14)], it was used to prevent the use of a loudhailer ‘within the vicinity of’ Canada Goose’s store in Regent Street. There was no complaint about it, and although the application failed ultimately, that was for other reasons. Also, in *National Highways Limited v Springorum* [2022] EWHC 205 (QB), [8(5)], climate protesters were injunctioned from blocking, obstructing, etc, the M25, which was given an extensive definition in the order. One of the terms prevented the protesters from ‘tunnelling in the vicinity of the M25’. No objection was taken to the use of that term. Overall, I am satisfied that in the circumstances, use of this term is sufficiently clear and precise.
193. As to the wide geographical scope of the order, I satisfied, for reasons already given, that the itinerant nature of the protests, as in the *National Highways* cases, justifies such an extensive order.

(vi) *Convention rights*

194. This, as I have said, is an important part of the case. The right to peaceful and lawful protest has long been cherished by the common law, and is guaranteed by Articles 10 and 11 of the ECHR and the HRA 1998. However, these rights are not unlimited, as I explained earlier.
195. I begin by emphasising, again, that nothing in the proposed order will prevent the right to conduct peaceful and lawful protest against HS2. I set out the recitals in the order at the beginning of this judgment.
196. I am satisfied there would be no unlawful interference with Article 10 and 11 rights because, in summary: (a) there is no right of protest on private land, and much, although not all, or what protesters have been doing has taken place on such land; and (b) there is no right to cause the type and level of disruption which would be restrained by the order; (c) to the extent that protest takes place on the public highway, or other public land, the interference represented by the injunction is proportionate.
197. Turning, as I must in accordance with the Court of Appeal's guidance, to the *Zeigler* questions, I will set them out again for convenience (adapted to the present context), and answer them in the following way:

Would what the defendants are proposing to do be exercise of one of the rights in Articles 10 or 11?

198. I am prepared to accept in the Defendants' favour that further continued protests of the type they have engaged in in the past potentially engages their rights under these Articles. In line with the principles set out earlier, I acknowledge that Articles 10 and 11 do not confer a right of protest on private land, per *Appleby*, and much of what the Claimants seeks the injunction to restrain relates to activity on private land (in particular, by the unknown groups D1, D2 and D4). But I accept - as I think the Claimants eventually accepted in post-hearing submissions at least – that some protests may on occasion spill over onto the public highway (per *Jordan* 1, [29.2] in relation to eg, blocking gates), and that such protests do engage Articles 10 and 11.

If so, would there be an interference by a public authority with those rights?

199. Yes. The application for, and the grant of, an injunction to prevent the Defendants interfering with HS2's construction in the ways provided for in the injunction is an interference with their rights by a public authority so far as it touches on protest on public land, such as the highway, where Articles 10 and 11 are engaged.

If there is an interference, is it 'prescribed by law'?

200. Yes. The law in question is s 37 of the SCA 1981 and the cases which have decided how the court's discretion to grant an anticipatory injunction should be exercised: see *National Highways Ltd*, [31(2)] (Lavender J).

If so, would the interference be in pursuit of a legitimate aim as set out in paragraph (2) of Articles 10 and 11, for example the protection of the rights of others?

201. Yes. It would be for the protection the Claimants' rights and freedoms, and those of their contractors and others, to access and work upon HS2 Land unhindered, in accordance with the powers granted to them by Parliament which, as I have said already, determined HS2 to be in the public interest. The Claimants' have common law and A1P1 rights over the HS2 Land, as I have explained. The interference in question pursues the legitimate aims: of preventing violence and intimidation; reducing the large expenditure of public money on countering protests; reducing property damage; and reducing health and safety risks to protesters and others arising from the nature of some of the protests.

If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim? This involves considering the following: Is the aim sufficiently important to justify interference with a fundamental right? Is there a rational connection between the means chosen and the aim in view? Are there less restrictive alternative means available to achieve that aim? Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others ?

202. These are the key questions on this aspect of the case, it seems to me.
203. The question whether an interference with a Convention right is ‘necessary in a democratic society’ can also be expressed as the question whether the interference is proportionate: *National Highways Limited*, [33] (Lavender J).
204. In *Ziegler*, Lords Hamblen and Stephens stated in [59] of their judgment that:

“Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case.”

205. Lords Hamblen and Stephens also quoted, *inter alia*, [39] to [41] of Lord Neuberger MR’s judgment in *Samede*

“39. As the judge recognised, the answer to the question which he identified at the start of his judgment [the limits to the right of lawful assembly and protest on the highway] is inevitably fact sensitive, and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public.

40. The defendants argue that the importance of the issues with which the Occupy Movement is concerned is also of considerable relevance. That raises a potentially controversial point, because as the judge said, at para 155: ‘it is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors’ views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself

or by the level of support it seems to command ... the court cannot—indeed, must not—attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention ... the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous.'

41. Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom. In this case the judge accepted that the topics of concern to the Occupy Movement were 'of very great political importance': para 155. In our view, that was something which could fairly be taken into account. However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important, or with which they agree. As the Strasbourg court said in *Kuznetsov v Russia*, para 45: 'any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or words used may appear to the authorities—do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means ...' The judge took into account the fact that the defendants were expressing views on very important issues, views which many would see as being of considerable breadth, depth and relevance, and that the defendants strongly believed in the views they were expressing. Any further analysis of those views and issues would have been unhelpful, indeed inappropriate."

206. I have set out this passage, as Lavender J did in *National Highways Limited*, [35], because, given the nature of some of the submissions made to me, I want to underscore the point I made at the outset that I am not concerned with the merits of HS2, or whether it will or will not cause the environmental damage which the protesters fear it will. I readily acknowledge that many of them hold sincere and strongly held views on very important issues. However, it would be wrong for me to express either agreement or disagreement with those views, even if I had the institutional competence to do so, which I do not. Many of the submissions made to me consisted of an invitation to me to agree with the Defendants' views and to decide the case on that basis. But just like Lavender J said in relation to road protests, that is something which I cannot do, just as I could not decide this case on the basis of disagreement with protesters' views.

207. Lords Hamblen and Stephens reviewed in [71] to [86] of their judgment in *Ziegler* the factors which may be relevant to the assessment of the proportionality of an interference with the Article 10 and 11 rights of protestors blocking traffic on a road.
208. Disagreeing with the Divisional Court, they held that each of the eight factors relied on by the district judge in that case were relevant. Those factors were, in summary: (a) the peaceful nature of the protest; (b) the fact that the defendants' action did not give rise, either directly or indirectly, to any form of disorder; (c) the fact that the defendants did not commit any criminal offences other than obstructing the highway; (d) the fact that the defendants' actions were carefully targeted and were aimed only at obstructing vehicles heading to the arms fair; (e) the fact that the protest related to a 'matter of general concern'; (f) the limited duration of the protest; (g) the absence of any complaint about the defendants' conduct; and (h) the defendants' longstanding commitment to opposing the arms trade.
209. As Lavender J said in his case at [39], this list of factors is not definitive, but it serves as a useful checklist. I propose now to discuss how they should be answered in this case.
210. The HS2 protests have in significant measure not been peaceful. There have been episodes, for example, of violence, intimidation, criminal damage, and assault, as described by Mr Jordan. There have been many arrests. Even where injunctions have been obtained, protesters have resisted being removed (most recently at Cash's Pit, as described in Dilcock 4 and in other material). It follows that the protests have given rise to considerable disorder. The protesters are specifically targeting HS2, and in that sense are in a somewhat different position to the protesters in the *National Highways Ltd* case, whose protests were aimed at the public as a means of trying to influence government policy. But the HS2 protests do also affect others, such as contractors employed to work on the project (for example Balfour Beatty), those in HS2's supply chain, security staff, etc. I accept that the HS2 protests relate to a matter of general concern, but on the other hand, at the risk of repeating myself, the many and complicated issues involved – including in particular environmental concerns – have been debated in Parliament and the HS2 Acts were passed. The HS2 protests are many in number, continuing, and are threatened to be carried on in the future along the whole of the HS2 route without limit of time. The disruption, expense and inconvenience which they have caused is obvious from the evidence. I do not think that I am in any position to assess the public mood about HS2 protests. No doubt some members of the public are in favour and no doubt some are against. As I have already said, I accept that the defendants are expressing genuine and strongly held views.
211. Turning to the four questions into which the fifth *Ziegler* proportionality question breaks down, I conclude as follows.
212. Firstly, by committing trespass and nuisance, the Defendants are obstructing a large strategic infrastructure project which is important both for very many individuals and for the economy of the UK, and are causing the unnecessary expenditure of large sums of public money. In that context, I conclude that the aim pursued by the Claimants in making this application is sufficiently important to justify interference with the Defendants' rights under Articles 10 and 11, especially as that interference will be limited to what occurs on public land, where lawful protest will still be permitted. Even if the interference were more extensive, I would still reach the same conclusion. I base that

conclusion primarily on the considerable disruption caused by protests to date and the repeated need for injunctive relief for specific pockets of land.

213. Second, I also accept that there is a rational connection between the means chosen by the claimant and the aim in view. The aim is to allow for the unhindered completion of HS2 by the Claimants over land which they are in possession of by law (or have the right to be). Prohibiting activities which interfere with that work is directly connected to that aim.
214. Third, there are no less restrictive alternative means available to achieve that aim. As to this, an action for damages would not prevent the disruption caused by the protests. The protesters are unlikely to have the means to pay damages for losses caused by further years of disruption, given the sums which the Claimants have had to pay to date. Criminal prosecutions are unlikely to be a deterrent, and all the more so since many defendants are unknown. By contrast, there is some evidence that injunctions and allied committal proceedings have had some effect: see APOC, [7].
215. I have anxiously considered the geographical extent of the injunction along the whole of the HS2 route, and whether it should be more limited. I have concluded, however, given the plain evidence of the protesters' intentions to continue to protest and disrupt without limit – 'let's keep fucking up HS2's day and causing as much disruption and cost as possible. Coming to land near you' – such an extensive injunction is appropriate. The risks are real and imminent for the reasons I have already given. I accept that the Claimants have shown that the direct action protests are ongoing and simply move from one location to another, and that the protesters have been and will continue to cause maximum disruption across a large geographical extent. As the Claimants put it, 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. 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.
216. Fourth, taking account of all of the factors which I have identified in this judgment, I consider that the injunction sought strikes a fair balance between the rights of the individual protestors and the general right and interests of the Claimants and others who are being affected by the protests, including the national economy. As to this: (a) on the one hand, the injunction only prohibits the defendants from protesting in ways that are unlawful. Lawful protest is expressly not prohibited. They can protest in other ways, and the injunction expressly allows this. Moreover, unlike the protest in *Ziegler*, the HS2 protests are not directed at a specific location which is the subject of the protests. They have caused repeated, prolonged and significant disruption to the activities of many individuals and businesses and have done so on a project which is important to the economy of this country. Finally on this, the injunction is to be kept under review by the Court, it is not without limit of time, and can and no doubt will be discharged should the need for it disappear.
217. Finally, drawing matters together and looking at the same matters in terms of the general principles relating to injunctions:
 - a. 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.

- b. Damages would not be an adequate remedy for the Claimants. They have given the usual undertakings as to damages.
- c. The balance of convenience strongly favours the making of the injunction.

(vii) *Service*

- 218. Finally, I turn to the question of service and whether the service provisions in the injunction are sufficient.
- 219. The passages from [82] of *Canada Goose* I quoted earlier show that the method of alternative service against persons unknown must be such as can reasonably be expected to bring the proceedings (ie, the application) to their attention.
- 220. I considered service of the application at a directions hearing on 28 April 2022. At that hearing, I made certain suggestions recorded in my order at [2] as to how the application for the injunction was to be served:

“Pursuant to CPR r. 6.27 and r. 81.4 as regards service of the Claimants’ Application dated 25 March 2022:

- a. The Court is satisfied that at the date of the certificates of service, good and sufficient service of the Application has been effected on the named defendants and each of them and personal service is dispensed with subject to the Claimants’ carrying out the following additional methods within 14 days of the date of this order:
 - i. advertising the existence of these proceedings in the Times and Guardian newspapers, and in particular advertising the web address of the HS2 Proceedings website.
 - ii. where permission is granted by the relevant authority, by placing an advertisement and/or a hard copy of the papers in the proceedings within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place advertisements on local parish notice boards in the same approximate location.
 - iii. making social media posts on the HS2 twitter and Facebook pages advertising the existence of these proceedings and the web address of the HS2 Proceedings website.
- b. Compliance with 2 (a)(i), (ii) and (iii) above will be good and sufficient service on “persons unknown”

221. The injunction at [7]-[11] provides under the heading ‘Service by Alternative Method – This Order’

“7. The Court will provide sealed copies of this Order to the Claimant’s solicitors for service (whose details are set out below).

8. Pursuant to CPR r.6.27 and r.81.4:

a. The Claimant shall serve this Order upon the Cash’s Pit Defendants by affixing 6 copies of this Order in prominent positions on the perimeter of the Cash’s Pit Land.

b. Further, the Claimant shall serve this Order upon the Second, Third and Fourth Defendants by:

i. Affixing 6 copies in prominent positions on the perimeter each of the Cash’s Pit Land (which may be the same copies identified in paragraph 8(a) above), the Harvil Road Land and the Cubbington and Crackley Land.

ii. Advertising the existence of this Order in the Times and Guardian newspapers, and in particular advertising the web address of the HS2 Proceedings website, and direct link to this Order.

iii. Where permission is granted by the relevant authority, by placing an advertisement and/or a hard copy of the Order within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place advertisements on local parish council notice boards in the same approximate locations.

iv. Publishing social media posts on the HS2 twitter and Facebook platforms advertising the existence of this Order and providing a link to the HS2 Proceedings website.

c. Service of this Order on Named Defendants may be effected by personal service where practicable and/or posting a copy of this Order through the letterbox of each Named Defendant (or leaving in a separate mailbox), with a notice drawing the recipient’s attention to the fact the package contains a court order. If the premises do not have a letterbox, or mailbox, a package containing this Order may be affixed to or left at the front door or other prominent feature marked with a notice drawing the recipient’s attention to the fact that the package contains a court order and should be read urgently. The notices shall be given in prominent lettering in the form set out in Annex B. It is open to any Defendant to contact the Claimants to identify an alternative

place for service and, if they do so, it is not necessary for a notice or packages to be affixed to or left at the front door or other prominent feature.

d. The Claimants shall further advertise the existence of this Order in a prominent location on the HS2 Proceedings website, together with a link to download an electronic copy of this Order.

e. The Claimants shall email a copy of this Order to solicitors for D6 and any other party who has as at the date hereof provided an email address to the Claimants to the email address: HS2Injunction@governmentlegal.gov.uk

9. Service in accordance with paragraph 8 above shall:

a. be verified by certificates of service to be filed with Court;

b. be deemed effective as at the date of the certificates of service; and

c. be good and sufficient service of this Order on the Defendants and each of them and the need for personal service be dispensed with.

10. Although not expressed as a mandatory obligation due to the transient nature of the task, the Claimants will seek to maintain copies of this Order on areas of HS2 Land in proximity to potential Defendants, such as on the gates of construction compounds or areas of the HS2 Land known to be targeted by objectors to the HS2 Scheme.

11. Further, without prejudice to paragraph 9, while this Order is in force, the Claimants shall take all reasonably practicable steps to effect personal service of the Order upon any Defendant of whom they become aware is, or has been on, the HS2 Land without consent and shall verify any such service with further certificates of service (where possible if persons unknown can be identified) to be filed with Court.”

222. Further evidence about service is contained in Dilcock 3, [7], et seq, and Dilcock 4, [7] et seq. I can summarise this as follows.

223. Before I made my order, Ms Dilcock explained that the methods of service used by the Claimants as at that date had been based on those which had been endorsed and approved by the High Court in other cases where injunctions were sought in similar terms to those in this application. She said the methods of service to that date had been effective in publicising the application.

224. She said that there had been 1,371 views (at 24 April 2022) of the Website: Dilcock 3, [11]; By 17 May 2022 (a week or so before the main hearing, and after my directions

had come into effect) there had been 2,315 page views, of which 1,469 were from unique users: Dilcock 4, [17]. So, in round terms, there were an additional 1,000 views after the directions hearing.

225. Twitter accounts have shared information about the injunction application and/or the fundraiser to their followers. The number of followers of those accounts is 265,268: Dilcock 3, [16].
226. A non-exhaustive review of Facebook shows that information about the injunction and/or the link to a 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].
227. Dilcock 4, [7] – [17], sets out how the Claimants complied with the additional service requirements pursuant to my directions of 28 April 2022. Those measures are not reliant on either notice via website or social media. The Claimants say that they complement and add to the very wide broadcasting of the fact of the proceedings.
228. The Claimants submitted that the totality of notice, publication and broadcasting had been very extensive and effective in relation to the application. They submitted that service of an order by the same means would be similarly effective, and that is what the First Claimant proposes to do should an injunction be granted.
229. I agree. The extensive and inventive methods of proposed service in the injunction, in my judgment, satisfy the *Canada Goose* test, [82(1)], that I set out earlier. That this is the test for the service an order, as well as proceedings, is clear from *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357, [14]-[15], [24]-[26], [60], [75].

Final points

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.

Conclusion

231. I will therefore grant the injunction in the terms sought in the draft order of 6 May 2022 in Bundle B at B049 (subject to any necessary and consequential amendments to reflect post-hearing matters and in light of this judgment).

APPENDIX 1

UNNAMED DEFENDANTS **(TAKEN FROM THE AMENDED PARTICULARS OF CLAIM** **DATED 28 APRIL 2022 – WITH TRACKED CHANGED REMOVED)**

(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”)

(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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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

APPENDIX 2

SUMMARY OF DEFENDANTS' RESPONSES

Name	Received and reference in the papers	Summary
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 not demonstrated 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 th 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 – N244 (04.04.22)	Says he wishes to challenge HS2 on various points of working practices, queries why he is on paperwork for court but feels he 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 – dispute 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 Cublington and Crackley now since clearance of natural habitats. Complains Dilcock 2 [8.11] is wrong about service of proceedings at Cublington & 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) [D/27]	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) [D/28]	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) [D/29]	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) [D/30]	Email attachment of statement which will not open, plus article by Lord Berkeley, plus news story
Swynnerton Estates	Email (05.05.22) [D/31]	Email re whether Cash's Pit objectors had licence to occupy.
Steve and Ros Colclough	Letter (04.05.22) [D/32]	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) [D/33]	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) [D/34]	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) [D/35]	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.
The below statements are contained within the submission of D36 (Mark Keir)		

Val Saunders “statement in support of the defence against the Claim QB-2022-BHM-00044”	Undated [D/37/2493] (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 [D/37/2509-2520] (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 [D/37/2674-2691] (bundle D, vol G)	Complaints about merits of scheme and conduct of HS2 security contractors against protesters.
Misc statement – “Seven arguments against HS2”	Undated 2692-2697	Merits of scheme. Argues for scrapping.
Brenda Bateman – “statement in support of the defence...”	Undated 2698-2699	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 2700-2701	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 2702-2703	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 2704	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 2705-2710	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 2711-2714	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 2715-2716	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 2717-2718	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 2719	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 2724-2731	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 2735	Complaint about Buckinghamshire HS2 security van monitoring ramblers near HS2 site. Concerns about privacy.
Mr & Mrs Phil Wall – “Statement”	Undated 2737-2740	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 2742	Merits of scheme. Protests are therefore valid.
Ann Hayward – Letter regarding RWI	6.05.22 2743-2744	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 2745-2746	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 2747-2751	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 2752-2753	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 2754-2755	Criticism of merits of Scheme, argument re right to protest.



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2022-001952



Knaggs -v- SoS for Transport & HS2 Ltd

CA-2022-001952

ORDER made by the Rt. Hon. Lord Justice Coulson

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision:

Permission to appeal against the Order of Julian Knowles J dated 20.9.22: **REFUSED**

Reasons

Please see the Ruling Document attached.

Information for or directions to the parties**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- time estimate (excluding judgment)
- any expedition

Signed:

Date: 9 December 2022

BY THE COURT

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - the Court considers that the appeal would have a real prospect of success; or
 - there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

CORE-A-98

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
THE HIGH COURT OF JUSTICE (KBD)
BIRMINGHAM DISTRICT REGISTRY

Mr Justice Julian Knowles
[2022] EWHC 2360 (KB)

B E T W E E N

MR JAMES KNAGGS

Appellant/Sixth Defendant
-and-

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

Respondents/Claimants

RULING ON APPLICATION FOR PERMISSION TO APPEAL

Background

1. This is an application for permission to appeal against a decision of Mr Justice Julian Knowles (“**the Judge**”) dated 20 September 2022. In short, the Judge made an Order providing the Respondents with injunctive relief restraining persons unknown and 59 named defendants from acts of protest in relation to the HS2 railway development (“**the Injunction**”).
2. The land subject to the Injunction covers the full length of the HS2 railway under construction from London to Cheshire. Two types of land are covered by the Injunction:
(i) **Pink Land**, which is land to which the Respondents have either freehold or leasehold title and (ii) **Green Land**, which is land to which the Respondents do not have freehold/leasehold title but do have statutory powers of temporary possession for the purposes of the HS2 project. It is the Green Land that matters for this application.

Grounds of Appeal

3. The Appellant seeks to advance five grounds of appeal:
 - a. First, the judge erred in concluding the Respondents had sufficient interest in the entirety of the land subject to the order capable of supporting injunctive relief founded on claims in trespass and private nuisance.
 - b. Second, the judge erred in concluding that the Respondents may rely on the rights under Article 1 Protocol 1 (“**A1P1**”) ECHR in support of the application for injunctive relief.
 - c. Third, the judge erred in law by defining the prohibited conduct by reference to:
 - i. legal terms and a legal cause of action,
 - ii. by reference to vague terms (such as ‘slow walking’) and,
 - iii. in a disproportionate manner.
 - d. Fourth, the judge erred in law by finding that the service provisions for the order are sufficient to bring proceedings to the attention of all those affected.
 - e. Fifth, there is some other compelling reason to grant permission to appeal, because of the wider public importance of both the HS2 project and the issues arising out of the terms of the injunction.
4. For the reasons set out below, I refuse permission to appeal. On a proper analysis, none of the five grounds have a real prospect of success.

Ground 1: HS2 Has Insufficient Interest In The Green Land

The Issue

5. The Judge accepted the Respondents’ submission that HS2 had the right to immediate possession over the Green Land because the relevant statutory notices had been served. It did not matter that “*the diggers have not yet moved in*” J[78]. The Judge found that the right to possession was sufficient to maintain an action for trespass.
6. The Respondents’ right to possession of the Green Land is contained in Schedule 15 of the High Speed Rail (West Midlands – Crewe) Act 2021 (“**the Phase 2a Act**”). Schedule 15 paragraph 1(1) sets out the conditions required for the Respondents to take possession of the Green Land:

“Schedule 15

Right to enter on and take possession of land

- 1(1) The nominated undertaker may enter on and take possession of the land specified in the table in Schedule 16—
- (a) for the purpose specified in relation to the land in column (3) of that table in connection with the authorised works specified in column (4) of the table,
 - (b) for the purpose of constructing such works as are mentioned in column (5) of that table in relation to the land, or
 - (c) otherwise for Phase 2a purposes.
- (2) The nominated undertaker may (subject to paragraph 2(1)) enter on and take possession of any other land within the Act limits for Phase 2a purposes.
- (3) The reference in sub-paragraph (1)(a) to the authorised works specified in column (4) of the table in Schedule 16 includes a reference to any works which are necessary or expedient for the purposes of or in connection with those works.”

7. “Phase 2a purposes” is defined at section 61 of the Phase 2a Act:

- “References in this Act to anything being done or required for “Phase 2a purposes” are to the thing being done or required—
- (a) for the purposes of or in connection with the works authorised by this Act,
 - (b) for the purposes of or in connection with trains all or part of whose journey is on Phase 2a of High Speed 2, or
 - (c) otherwise for the purposes of or in connection with Phase 2a of High Speed 2 or any high speed railway transport system of which Phase 2a of High Speed 2 forms or is to form part.”

8. The Schedule 16 table includes specific purposes for which access to each piece of land is required (e.g. for diversion of utilities, access to utilities, for environmental mitigation works etc). Paragraph 4(1) requires that the Respondent must give 28 days notice of their intention to take possession of the land to the owners and occupiers of the land. Paragraph 4(4) entitles the landowners and occupiers of the land to compensation for any loss they may suffer by the Respondent’s exercise of the possession power.
9. The Appellant submits that on the construction of the Phase 2a Act, the Respondents only have a legal right to possession of the land where the Schedule 15 paragraph 1(1)

conditions are met. Therefore, the natural conclusion is that at any point in time where the conditions are not met, the Respondents will have no right to possession of the land and cannot found a claim in trespass. The Appellant goes on to submit that “*where works are not scheduled to take place on land imminently then the Respondents are not only not in actual possession but have no right to such possession either immediately or imminently*” ASA[29].

10. It was the Respondents’ case that all statutory notices under Schedule 15 paragraph 4(4) for the possession of the Green Land had been given (confirmed in the first witness statement of Julie Dilcock RSA[2]). Simply put, the Respondents have therefore exercised this statutory power and are entitled to immediate possession of all the Green Land. Moreover, this is land which is needed, and there is no statutory requirement for the land to be used ‘imminently’ RSA[6]. Further, they say that the definition of Phase 2a ‘purposes’ is very broad, for example it can include landscaping, advance planting and activities beyond the immediate construction of the railway RSA[3]. Finally, the Respondents said that the Appellant had conceded at an earlier stage of the proceedings that Schedule 15 and 16 were sufficient to found a potential trespass claim RSA[4].

Analysis

11. I agree with the judge (at J[78], SJ[18]): the Respondents plainly have sufficient interest in the Green Land to found an action in trespass and therefore to be granted injunctive relief. I consider that this was conceded by the Appellant in his written submissions of 5 April 2022. In any event, the Appellant’s proposition that Green Land can only be taken possession of where it is required ‘imminently’ is not arguable; it is simply not supported by a plain construction of the Phase 2a Act 2021.
12. Parliament has granted the Respondents the right to immediate possession of the Green Land through the Phase 2a Act. The Act has built-in procedural requirements (e.g. giving 28 days notice before taking possession) and safeguards (e.g. compensation provision and a long-stop of possession for no more than one year after the works are complete). This balances the competing interests of ensuring the land can be used for the railway construction on the one hand, and on the other, respecting the proprietary interest of the underlying leaseholder/freeholder.
13. There is no statutory wording to the effect that the exercise of the paragraph 1(1) immediate possession power (following a 28 day notice period) must be contingent on immediate action. There must be an identified purpose for possession of the Green Land

(and there is), but that purpose is not given a temporal dimension anywhere in the statute. In contrast, the Appellant's submissions seem to assume that "*for the purpose of*" necessarily implies an imminence to the fulfilment of that purpose. But that is just not what the statute says.

14. This unjustified leap of reasoning is revealed at paragraph 29 of the Appellant's skeleton argument:

“29. [...] At any point in time where this statutory condition is not met the Respondents have no right to possession of the land whatsoever. Where works are not scheduled to take place on land imminently then the Respondents are not only not in actual possession but have no right to such possession either immediately or imminently. It is therefore wrong to conclude in relation to such land that the Respondents “are entitled to immediate possession”.” (emphasis added).

15. The suggestion that the statute requires any works to be scheduled to take place ‘imminently’ is unjustified (and indeed there is no real attempt to justify it). There is no textual support for it; nor does it make practical sense. Moreover, there are all sorts of practical difficulties with it. First, there is nothing to say what could be defined as ‘imminently’: 2 weeks? 2 months? Or, for a project scheduled to take 10 years, might 2 years be considered ‘imminent’? Second, it must be for the contractor or relevant subcontractor to decide when to take possession of any given site, not to have his logistical planning taken over for him by the courts. Third, the qualification of ‘imminence’ would be impossible to patrol. Even if notice was given before works were about to ‘imminently’ start, if there was an unexpected delay to construction would this remove the Respondent’s right to possess the land? The only requirement is for the Respondent to identify the purpose for which the land is needed, provide 28 days notice, and then they are entitled to immediate possession of that land. That is the power Parliament granted.

16. I am further confirmed in that conclusion by reading Schedules 15, 16 and section 61 together. It is clear that Parliament intended the ‘purpose’ condition to be interpreted broadly. That explains the inclusion of paragraph 1(1)(c) in addition to 1(1)(a) and (b) in Schedule 15 to work as a fall-back provision to catch any broader purposes that may not align with the originally stated aims of each parcel of land detailed in Schedule 16.

17. Finally, the plain meaning of the word “purposes” is not restricted to actual construction works. As is clear from Schedule 16, the purpose for which temporary possession of the land is required includes for the “*provision of access*” for construction, utility works or creation of new rights of way (see Schedule 16, Column 3). These purposes may not have a defined starting point in the same way that actual construction activities might do. This also reinforces my conclusion that the Act envisages that the land will be temporarily possessed even if there is no immediate construction activities on the land.

18. Accordingly, I consider that Ground 1 has no real prospect of success, and permission to appeal is refused.

Ground 2: The Respondents’ Rights under A1P1

The Issue

19. The Judge found that the Respondents could pray in aid A1P1 J[125]. He considered that he was bound by the case of *Secretary of State for Transport v Cuicurean* [2022] EWCA 661 where Lewison LJ held:

“There was some debate about whether these were themselves convention rights (given that the Secretary of State for Transport is himself a public authority and cannot therefore be a “victim” for the purposes of the Convention, and HS2 Ltd may not be regarded as a “non-governmental” organisation for that purpose). But whether or not they are convention rights, they are clearly legal rights (either proprietary or possessory) recognised by national law” (at [28], emphasis added)

20. The Appellant complains that the Judge erred in concluding that the Respondents, as a public body, may rely on A1P1 ECHR protection. The Appellant submits that the case law is clear that a ‘core public authority’, or a party exercising functions of a public nature, cannot rely on its own Convention Rights as a cause of action or as part of a EHCR proportionality assessment: see *Aston Cantlow v Wallbank* [2003] UKHL 37; *YL v Birmingham City Council and others* [2007] EWCA Civ 26. It cannot in law be ‘a victim’. This is derived from ECtHR case law which extends to ‘non-governmental organisations’.

21. The Respondents' simple response is that it is not and has never been part of their case that HS2 is a 'victim' under the ECHR. They also criticise the Appellant for developing this point in written submissions after the hearing.

Analysis

22. I do not consider that the Appellant's submissions have a real prospect of success. They are not aimed at a substantial or relevant target. A1P1 was only even potentially relevant as a counterbalancing factor to the protestors' rights under articles 10 and 11. The authorities make clear that, regardless of A1P1, ordinary proprietary or possessory rights provide an equivalent counter balance.

23. As noted above, the judge relied on paragraph 28 of *Cuciurean*. The final underlined sentence of the extract quoted at paragraph 19 above makes clear that Lewison LJ did not expressly decide whether HS2 could pray in aid A1P1 because he did not need to. That was because, however they arose, whether through A1P1 or the common law, the proprietary or possessory rights in question were on any view "*clearly legal rights*".

24. The same point has been made more recently by the Lord Chief Justice in *DPP v Cuciurean* [2022] EWHC 736 (Admin) at [84] when he said:

"84. The judge was not given the assistance she might have been with the result that a few important factors were overlooked. She did not address A1P1 and its significance. Articles 10 and 11 were not the only Convention rights involved. A1P1 pulled in the opposite direction to articles 10 and 11. At the heart of A1P1 and section 68 is protection of the owner and occupier of the Land against interference with the right to possession and to make use of that land for lawful activities without disruption or obstruction. Those lawful activities in this case had been authorised by Parliament through the 2017 Act after lengthy consideration of both the merits of the project and objections to it. The legislature has accepted that the HS2 project is in the national interest. One object of section 68 is to discourage disruption of the kind committed by the respondent, which, according to the will of Parliament, is against the public interest. The respondent (and others who hold similar views) have other methods available to them for protesting against the HS2 project which do not involve committing any offence under section 68, or indeed any offence. The Strasbourg Court has often observed that the Convention is concerned with the fair balance of competing rights. The rights enshrined in articles 10 and 11, long recognised by the Common Law, protect the expression of opinions, the right to persuade and protest and to convey strongly held views. They do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament."

25. The Judge had these issues well in mind in his judgment at [125] where he said:

“125. I am satisfied that the First Claimant can pray in aid A1P1, and the common law values they reflect, and that the approach set out in DPP v Cuciurean and other cases is binding upon me. The point raised by D6 was specifically dealt with by the Court of Appeal in *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661, [28]...” (My emphasis)

The judge then cited the passage set out at para 19 above.

26. For completeness, I do not consider that *Attorney General’s Reference Number 1 of 2022* (cited by the Appellant in their skeleton argument for permission to appeal) is authority that public authorities could not rely on A1P1 rights. The relevant passage states:

“102. That is unsurprising because in addition to the usual questions about the applicability of a Convention right and then proportionality the A1P1 rights of the non-state owner are in play. We find it difficult to imagine that the Convention could ever be used to avoid conviction for damaging private property, even if very rarely it might be when considering damage to public property which is not significant. For domestic purposes, in our view, that is the position.”

27. On this basis, Ground 2 tilts at a windmill. The Judge did not rely solely on A1P1 but recognised these rights were reflected in ordinary property rights at common law. The Judge’s findings as to trespass and nuisance were findings of proprietary or possessory rights which were enough to found the claim for the injunction, with or without A1P1.

Ground 3: The Terms Of The Injunction

The Issues

28. The Appellant submits that the Judge erred in law by defining the terms of the injunction (i) by reference to legal terms and a legal cause of action, (ii) by reference to vague terms (such as ‘slow walking’), and (iii) in a way which is disproportionate because they do not correspond with the definition of persons unknown.

i) Legal terms/Analysis

29. The Appellant takes issue with the reference to ‘legal terms’ such as “*public right of way*”, “*lawful rights over any public highway*” and “*a lawful freehold or leasehold interest*”. Moreover, the Appellant submits that the Injunction contains an internal

inconsistency: it prohibits conduct hindering the Respondents but allows for lawful rights over the public highway which may include deliberately and intentionally obstructive conduct on that highway. The Appellant concludes this leads to uncertainty about what conduct is covered by the Injunction.

30. I disagree with the Appellant that the Injunction contains ‘legal terms’ that make it hard or unclear to understand. Whilst the terms ‘freehold’ and ‘leasehold’ are legal vocabulary, they are also commonly used and widely understood by those without legal training or advice. Similarly, I consider reference to “lawful rights” over public highway is sufficiently clear. Moreover, even though the Appellant’s heading for this ground refer to “*references to a ... cause of action*”, the Appellant does not identify any cause of action used in the language of the Injunction. There is no inconsistency.

ii) ‘Slow Walking’/Analysis

31. The Appellant submits that ‘slow walking’ (at paragraph 5 of the Injunction) is too vague, and he relies on the comments by the Court of Appeal in *Ineos v Persons Unknown* [2019] EWCA Civ 515 (at [40]) to the effect that it is not clear what is sufficiently ‘slow’ to engage such conduct. The Judge, clearly alive to this fact, qualified this part of the Injunction with the word ‘deliberately’ (at paragraph 5(f) of the Injunction) but the Appellant contends this does not address the vagueness of this provision.
32. I do not accept that this argument is open to the Appellant, or that it has a real prospect of success.
33. It is not open to him because, before the Judge, the Appellant’s argument was that ‘slow walking’ was a recognised form of protest and should therefore not be prohibited by the Injunction. There was no question that it was too vague; on the contrary, its clarity meant that the Appellant wanted it excluded from the injunction altogether. The Appellant cannot credibly argue now that this recognised form of protest was unclear.
34. Furthermore, I do not consider that it was unclear. The word ‘deliberately’ qualifies the activity in a relevant way. Moreover, the comment in *Ineos*, which was decided before the latest raft of HS2 cases and did not include the word ‘deliberately’, could be said to be a summary of counsel’s criticisms of the injunction in that case, rather than a series of findings by the court.

35. In the later case of *National Highways*, cited below, although the express words “slow walking” were not used in the injunction, neither Lavender J (nor counsel for the protestors) raised any concerns with the wording: “*deliberately ... slowing down ... the flow of traffic*”. In my view, that also demonstrates both that this is now a well-recognised phenomenon and its inclusion is an important part of any effective injunction. I do not consider there is any material difference in the wording accepted in *National Highways* and the present injunction to found a realistic ground of appeal.

iii) Alleged Discrepancy: Analysis

36. The Appellant argues there is a discrepancy between the definition of persons unknown (which contains an ‘effect clause’) and the prohibited conduct (which does not require any such effect). The ‘effect clause’ captures individuals whose conduct has the effect of “*damaging and/or delaying and or hindering*” the HS2 works. The Appellant submits that the definition of persons unknown is narrower than the prohibited conduct because it requires it to have the effect of damaging/delaying the works. He contends that this discrepancy means an individual who ‘unintentionally’ delays the HS2 works will be caught by the Injunction, even where there is no work ongoing or disruption caused. This is said to be disproportionate.

37. I consider that the Appellant’s construction of the Injunction is untenable. In my view, the Injunction must be read as a whole. There is no inconsistency. A person reading the Injunction would have no difficulty in concluding that it prohibits them from entering the HS2 Land even where they do not cause any delay or disruption to the works. That is clearly contained in the definition of ‘persons unknown’ and cannot be ignored simply because the same detail is not repeated in the prohibited conduct section of the Injunction.

38. I therefore reject all three arguments about the terms of the Injunction. They are excessively legalistic and do not arise on a common sense view of the words used. They have no real prospect of success.

Ground 4: Service

The Issue

39. The Judge was satisfied that service of the Injunction complied with the guidance in *Canada Goose UK Retails Ltd v Persons Unknown* [2020] 1 WLR 2802 and that the terms were sufficiently clear to allow persons potentially affected to know what they must not do. The Judge repeated this finding at paragraph [26] of the Supplemental Judgment.
40. The Appellant asserts that the Judge erred in finding that the service provisions (at paragraphs 7-11 of the Injunction) were sufficient to bring the Injunction to the attention of all those affected. The Appellant points to the case of *National Highways v Person Unknown and others* [2021] EWHC 3081 (QB) where it was held to be impracticable to place notices on stakes in the ground. Instead, the broad scope of the injunction was tempered by requiring personal service on persons unknown. The Appellant suggests that the Injunction in the present case allows for the possibility that persons may fall within the definition of persons unknown and breach the terms of the Injunction without being aware of the Injunction itself (particularly as the Injunction is not restricted to protestors, but land users and land owners covered by the Injunction). The Appellant suggests that notice should be provided by post.
41. The Respondent states that the final service provisions at paragraph 2 of the Injunction were a product of the earlier debate about the service of the proceedings themselves which resulted in the order of 28 April 2022. They say that the proceedings were highly effective at bringing proceedings to the attention of those who wished to participate. The Respondent characterises this ground as an attempt to re-run earlier arguments that were never appealed. In any event, the Injunction does make a provision for personal service where this is practicable: see paragraph 11 of the Injunction.

Analysis

42. I consider that this complaint is not open to the Appellant. The service provisions in the Injunction mirrored those ordered in respect of the original proceedings in April 2022. The appellant said he was going to appeal those provisions but did not do so. Time to bring such an appeal expired in May 2022. It is too late to challenge those same service provisions now. It would be an abuse of the court process.
43. In any event, I consider that the service provisions in the Injunction were more than sufficient to comply with the guidance in *Canada Goose* and, made adequate provision for personal service. Any contrary argument has no real prospect of success.

44. Given the scope of the Injunction, it is clearly impractical for service to be effected along every piece of injuncted land. The Appellant takes issue with the failure to provide notice by ‘post’, but does not explain why this is necessary in addition to the current methods of service already proposed. Crucially, in my view, at paragraph 11 the Injunction does provide for personal service where this is reasonably practicable – for example when a person unknown becomes identified or a named defendant or where the Respondents become aware of a trespasser.

Ground 5: Some Other Compelling Reason?

45. For the reasons set out above, I do not accept that any of these grounds of appeal have a real prospect of success.

46. In those circumstances, it would be pointless to allow permission to appeal simply because this is a major project and there may be issues which may become relevant to other injunctions. There has been recent Court of Appeal guidance on service (*Canada Goose, Barking and Dagenham*) and recent Divisional Court and Court of Appeal guidance on the balancing of possessory and protestors’ rights (*DPP v Cuciurean* and *SoS for Transport v Cuciurean*). Both these last two arose out of HS2. It might be thought that that is sufficient guidance, at least for the moment, in this area, and that to grant permission in this case on this ground would, in the words of the Lord Chief Justice in *DPP v Cuciurean* (at [84]), be simply to sanction yet further delay and further increase the cost of a project which has been subjected to the most detailed public and Parliamentary scrutiny.

47. For all these reasons, I refuse permission to appeal.

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

HER HONOUR JUDGE EMMA KELLY

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")
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

DIRECTIONS ORDER



QB-2022-BHM-000044

BEFORE Her Honour Judge Emma Kelly, sitting as a Judge of the High Court, and considering the matter on paper on 15 March 2023

UPON the Order of Mr Justice Julian Knowles made on 20 September 2022 (“**Injunction Order**”) requiring at paragraph 15 reconsideration of the injunction on approximately a yearly basis.

AND UPON the Court noting the requirement in paragraph 15 of the Injunction Order that the Claimants are required to “place details of any such hearing on the HS2 Proceedings Website”

AND UPON the Court having listed a review hearing to take place on 16 May 2023 at the High Court in Birmingham at which the reconsideration of the Injunction Order will take place including any application made by parties to the proceedings (“**the Review**”)

AND UPON the Court reading the Certificate of Service dated 21 February 2023 filed by the Claimants confirming that the Notice of Review Hearing has been placed on the HS2 Proceedings Website

AND UPON the Claimants’ application for directions by Application Notice dated 10 March 2023.

AND UPON the Court noting that the HS2 Proceedings Website has reached capacity and is unable to hold further substantial documents relating to this case.

IT IS ORDERED THAT:

Definitions

1. In this Order, the following defined terms shall apply:
 - a. The “HS2 Proceedings Website” means the webpages at: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>.
 - b. The “RWI Updated Website” means the webpages at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>.
 - c. The term “Defendants” refers to all Defendants 1 – 63.
 - d. The term “Named Defendants” means D5 to D63 whose names appear in Annex A of the Injunction Order (and copied in full at Annex A of this Order for convenience).
 - e. The “HS2 Land” means all of the land acquired or held by the Claimants in connection with the High Speed 2 Railway Scheme shown coloured pink and green on the plans which are available electronically on the HS2 Proceedings Website.
 - f. The “Review Documents” means all the documents filed with the Court by the Claimants for the Review, including this Order and the Application Notice dated 10 March 2023.

The Websites

2. The Claimants shall forthwith place a notice on the HS2 Proceedings Website stating that in future documents will be uploaded to the RWI Updated Website and include a link to the RWI Updated Website.
3. The Claimants shall forthwith place copies of all documents already uploaded to the HS2 Proceedings Website onto the RWI Updated Website.
4. The Claimants shall retain the HS2 Proceedings Website unless and until the Court considers that at some future date it is no longer necessary to do so.

Service by Alternative Method – Review Documents

5. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below). The Claimants shall advertise the existence of this Order in a prominent location on the HS2 Proceedings Website and the RWI Updated Website, together with a link to download an electronic copy of this Order.
6. Pursuant to CPR r. 6.27 and r. 81.4, personal service is dispensed with and service of the Review Documents upon the Defendants shall be by:
 - a. placing the Review Documents on the RWI Updated Website.
 - b. causing an advertisement advertising the date of the Review in the *Times* and *Guardian* newspapers, and in particular advertising the web address of the RWI Updated Website.
 - c. where permission is granted by the relevant authority, by causing to be placed an advertisement and/or a hard copy of this Order within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place advertisements on local parish council notice boards in the same approximate locations.
 - d. causing to be made social media posts on the HS2 twitter and Facebook pages advertising the date of the Review and the web address of the HS2 RWI Updated Website.
7. Compliance with paragraphs 6(a), (b) and (c) above will be good and sufficient service on the Defendants and each of them.

8. The Claimants shall email a copy of the Order to the solicitors for D6 and any other party who has at the date hereof provided an email address to the Claimants to the email addresses: HS2Injunction@governmentlegal.gov.uk or HS2Injunction@dlapiper.com.

Further Case Management

9. The Review has been listed for one day at 10.30am on Tuesday 16 May 2023 in the High Court in Birmingham, The Priory Courts, 33 Bull Street, Birmingham B4 6DS.
10. Any person, other than a Named Defendant (D5 – D63), who wishes to address the Court at the Review must inform the Court and the Claimants of their intention to attend by 4pm on 12 May 2023 at the addresses listed in paragraphs 23 and 24 below.
11. By 4pm on 27 March 2023, the Claimants' must file and serve (in accordance with paragraph 6(a) above) any applications relevant to the Review, a draft order, and any evidence upon which they seek to rely.
12. By 4pm on 11 April 2023, any person seeking to amend (including discharge) the Injunction Order, or oppose any applications made by the Claimants, must file and serve a statement of case and any evidence upon which that person seeks to rely by emailing or posting it to the Court and the Claimants at the addresses listed below. At the same time and date, any party requiring any of the Claimants' witnesses to attend for cross-examination are to give notice of the name of the witness required together with the reasons why that person is required. For the avoidance of doubt, whether live evidence will be permitted will remain to be determined by the Court.
13. By 4pm on 17 April 2023, the Claimants' have permission to file and serve any evidence in response to any statement of case or evidence filed in accordance with paragraph 12 above if so advised.
14. By 4pm on 18 April 2023, the Claimants shall cause to be placed on the RWI Updated Website a draft hearing bundle index.
15. By 4pm on 21 April 2023, any person who wishes to comment on the draft hearing bundle must notify the Claimants of their comments by email to the address in paragraph 24 below. Any person may provide suggested documents for inclusion to the Claimants. Where there is disagreement between the Claimants and that person as to the relevance of any document, that disagreement will be noted in the hearing bundle index and the document shall be provided to

the Court in a separate bundle by the person seeking to rely upon it, with reasons provided as to the document's relevance.

16. By 4pm on 8 May 2023, the Claimants shall file and serve a properly paginated and indexed hearing bundle to the Court by email and in hard copy, and shall cause to be placed on the RWI Updated Website a copy of the same. The electronic copy of the bundle must be bookmarked and have a hyperlinked index.
17. By 4pm on 10 May 2023, the Claimants and any other person seeking to address the Court at the Review shall file and serve any skeleton argument or speaking note.
18. The Claimants otherwise have liberty to apply to extend or vary this Order or for further directions.
19. Costs reserved.

Documents in the Claim and Application

20. All documents relating to the underlying proceedings may be downloaded at: <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings>.
21. All documents relating to this application and the Review may be downloaded at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>.
22. A single hard copy of any document will be sent within 21 days of the receipt of a reasonable request for that document or documents via the Claimants' solicitors whose contact details are set out below so long as any requests include a postal address and the full name of the requestor.

Communications with Claimants and the Court

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

Birmingham District Registry
Birmingham Civil and Family Justice Centre
The Priory Courts
33 Bull Street
Birmingham
B4 6DS

E: kb.birmingham@justice.gov.uk
T: 0121 681 3033

DX: 701987 Birmingham 7

24. The Claimants' solicitors and their contact details are:

FAO: HS2 TEAM
DLA PIPER UK LLP
1 St Paul's Place
Sheffield
S1 2JX

E: HS2Injunction@dlapiper.com
T: 0114 283 3312
DX: 708580 Sheffield 10
Ref: RXS/380900/378

25. This order has been made by the Court pursuant to CPR 23.9 as the Court has disposed of an application without service of a copy of the application notice. Any person not served with a copy of the application notice before the order was made may apply to have the order set aside or varied, with any such application to be made within 7 days after the date on which this order was served on the person making the application.

BY THE COURT

15 MARCH 2023

ANNEX A – NAMED DEFENDANTS

PART 1

DEFENDANT NUMBER	UNNAMED DEFENDANTS
(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”)
(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 ON THE HS2 LAND PLANS AT https://www.gov.uk/government/publications/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, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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

For the avoidance of doubt, any person who has been a defendant in these proceedings, or who has given undertakings to HS2, may nevertheless become Defendant 1 – Defendant 4 as a person unknown if they commit any of the prohibited acts.

PART 2

DEFENDANT NUMBER	NAMED DEFENDANTS
(5)	Mr Ross Monaghan (aka Squirrel / Ash Tree)
(6)	Mr James Andrew Taylor (aka Jimmy Knaggs / James Knaggs / Run Away Jim)
(7)	Ms Leah Oldfield
(8)	Not Used
(9)	Not Used
(10)	Not Used
(11)	Mr Tony Carne
(12)	Ms Amy Lei
(13)	Mr Tom Holmes
(14)	Not Used
(15)	Not Used
(16)	Ms Karen Wildin (aka Karen Wilding / Karen Wilden / Karen Wilder)
(17)	Mr Andrew McMaster (aka Drew Robson)
(18)	Mr William Harewood (aka Satchel / Satchel Baggins)
(19)	Mr Harrison Radcliffe (aka Log / Bir_Ch / Sasha James)
(20)	Mr George Keeler (aka C Russ T Chav / Flem)
(21)	Mr William French (aka Will French / Took)
(22)	Mr Tristan Dixon (aka Tristan Dyson)
(23)	Mx Scarlett Rien (aka Leggs)
(24)	Not Used
(25)	Not Used
(26)	Not Used
(27)	Mr Lachlan Sandford (aka Laser / Lazer)
(28)	Mr Scott Breen (aka Scotty / Digger Down)
(29)	Not Used
(30)	Not Used
(31)	Mr Rory Hooper
(32)	Not Used
(33)	Mr Elliot Cuciurean (aka Jellytot)
(34)	Mr Paul Sandison
(35)	Not Used
(36)	Mr Mark Keir
(37)	Mr Thorn Ramsey (aka Virgo Ramsay)
(38)	Mr Vajda Robert Mordechaj

DEFENDANT NUMBER	NAMED DEFENDANTS
(39)	Mr Iain Oliver (aka Pirate)
(40)	Ms Jess Walker
(41)	Mr Matt Atkinson
(42)	Ms Hannah Bennett
(43)	Mr James Ruggles (aka Jimmy Ruggles)
(44)	Mr Nick Grant (aka Potts)
(45)	Mr Stuart Ackroyd
(46)	Ms Wiktoria Paulina Zieniuk
(47)	Not Used
(48)	Mr Conner Nichols
(49)	Mr Sebastian Roblyn Maxey
(50)	Ms Jessica Heathland-Smith
(51)	Ms Ella Dorton
(52)	Mr Karl Collins
(53)	Mr Sam Goggin
(54)	Not Used
(55)	Not Used
(56)	Not Used
(57)	Ms Samantha Smithson (aka Swan / Swan Lake)
(58)	Mr Jack Charles Oliver
(59)	Ms Charlie Inskip
(60)	Mr Xavier Gonzalez Trimmer
(61)	Mr David Buchan (aka David Holliday)
(62)	Ms Leanne Swateridge (aka Leayn / Flowery Zebra)
(63)	Mr Dino Misina (aka Hedge Hog)

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

BEFORE HER HONOUR JUDGE KELLY

ON 05 APRIL 2023



QB-2022-BHM-000044

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")
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/hs2-route-wideinjunction-proceedings> ("THE HS2 LAND") WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

ORDER

UPON considering the Claimant's application, dated 27 March 2023

IT IS ORDERED that:

1. The Claimant's application, dated 27 March 2023, shall be listed to be heard at the hearing already listed on 16 May 2023.

Dated 05 April 2023

SERVICE OF THE ORDER

The court has sent sealed copies of this order to:

DLA Piper UK LLP, 1 St Paul's Place, Sheffield, S1 2JX, DX: 708580 Sheffield-10,
Government Legal Department (GLD), 102 Petty France, Westminster, London
SW1H9GL
RXS/380900/378

Robert Lizar Solicitors, 101 Princess Rd, Moss Side, Manchester, M14 4RB, DX 14315
Manchester
QB-2022-BHM-000044

Claimant's solicitor to serve order on remaining Defendants

Application notice

For help in completing this form please read the notes for guidance form N244 Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form:
<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court High Court of Justice King's Bench Division Birmingham District Registry		Claim ref: QB-2022-BHM-000044 Date: 27 Mar 2023
Fee account no. (if applicable) PBA:0087960	Help with Fees – Ref. no. BIRMINGHAM QUEEN'S BENCH DIVISION QB-2022-BHM-000044	
Warrant no. (if applicable)	Sub Event ID: 834	
Claimant's name (including ref.) (1) High Speed Two (HS2) Limited (2) The Secretary of State for Transport (Ref: RXS/380900/401)		
Defendant's name (including ref.) (1)–(4) Four Categories of Persons Unknown (5) – Ross Monaghan and 60 other Named Defendants		
Date	27 March 2023	

1. What is your name or, if you are a legal representative, the name of your firm?

DLA Piper UK LLP

2. Are you a Claimant Defendant Legal Representative

Other (please specify)

If you are a legal representative whom do you represent?

Claimant

3. What order are you asking the court to make and why?

An order in the form of the draft order enclosed seeking, inter alia:

- 1) a continuation of the injunction imposed by the Order of Mr Justice Julian Knowles dated 20.09.2022 (the “Injunction”), for a further 12 months;
- 2) to amend the definition of HS2 Land to cover the land shown coloured pink and green on the “March 2023 HS2 Land Plans” (as defined in the draft order), to extend the protection afforded by the Injunction to land that has come into the Claimants’ possession for the purposes of the HS2 Scheme since the Claimants’ original application was made in March 2022; and
- 3) to prohibit the Defendants from obstructing, impeding, hindering or delaying works or activities authorised by the “HS2 Acts” (as defined in the draft order) by unlawful means, in express or implied agreement or in combination with another person with the intention of causing damage to the Claimants.

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing

6. How long do you think the hearing will last?

1 Day

Is this time estimate agreed by all parties?

Yes

No

7. Give details of any fixed trial date or period

16 May 2023

8. What level of Judge does your hearing need?

High Court Judge

9. Who should be served with this application?

(1)–(4) Four Categories of Persons Unknown
(5) – Ross Monaghan and 60 other Named Defendants

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

The Claimant will deal with effecting service of this Application on the Defendants in accordance with the Directions Order dated 15 March 2023.

10. What information will you be relying on, in support of your application?

- the attached witness statement
 the statement of case
 the evidence set out in the box below

If necessary, please continue on a separate sheet.

Please see the attached witness statements of James Dobson, Julie Dilcock and John Groves.

Statement of Truth

The applicant believes that the facts stated in this section (and any continuation sheets) are true. The applicant understands 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.

Signed
Applicant's legal representative

Dated 27 March 2023

Full name: **Robert Shaw**

Name of applicant's legal representative's firm: **DLA Piper UK LLP**

Position or office held: **Solicitor**
(if signing on behalf of firm or company)

11. Signature and address details

Signed
Applicant's legal representative

Dated 27 March 2023

Position or office held: **Solicitor**
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

DLA Piper UK LLP 1 St. Paul's Place Sheffield		If applicable									
		Phone no.	0114 283 3312								
		Fax no.									
		DX no.	DX 708580 Sheffield 10								
Postcode <table border="1"><tr><td></td><td></td><td>S</td><td>1</td><td>2</td><td>J</td><td>X</td><td></td></tr></table>				S	1	2	J	X		Ref no.	RXS/388900/401
		S	1	2	J	X					
E-mail address	rob.shaw@dlapiper.com / mary.barracough@dlapiper.com										

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

Before: [Mr/Mrs Justice]

On: 16 May 2023

Between:

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

Claimants/Applicants

-and-

(1) NOT USED

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT
OF THE CLAIMANTS ON, IN OR UNDER THE HS2 LAND WITH THE EFFECT
OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS,
THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, 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
THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-
CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR
EMPLOYEES 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 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/Respondents

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.

A Defendant who is an individual who is ordered not to do something must not do it himself/herself or in any other way. He/she must not do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

FURTHER TO the Orders made in these proceedings by Julian Knowles J on 20 September 2022 (the “**Injunction Order**”) and by HHJ Kelly on 16 March 2023 (the “**Directions Order**”)

AND UPON the Claimants’ application by Application Notice dated 27 March 2023 pursuant to the provisions at paragraphs 15 and 20 of the Injunction Order (“**March 2023 Application**”).

AND UPON the Court accepting the Claimants’ renewed undertaking that they 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 Claimants’ renewed confirmation that this Order is not intended to prohibit lawful protest which does not involve trespass upon the HS2 Land and does not block, slow down, obstruct or otherwise interfere with the Claimants’ access to or egress from the HS2 Land.

AND UPON the Claimants’ renewed confirmation that they do not intend for any freeholder or leaseholder with a lawful interest in the HS2 Land to fall within the Defendants to this Order, and undertaking not to make any committal application in respect of a breach of this Order, where the breach is carried out by a freeholder or leaseholder with a lawful interest in the HS2 Land on the land upon which that person has an interest.

AND UPON the Claimants’ renewed confirmation that this Order is not intended to act against any guests or invitees of any freeholders or leaseholders with a lawful interest in the HS2 Land unless that

guest or invitee undertakes actions with the effect of damaging, delaying or otherwise hindering the HS2 Scheme on the land held by the freeholder or leaseholder with a lawful interest in the HS2 Land.

AND UPON HEARING Counsel for the Claimants, Mr Richard Kimblin KC and Mr Michael Fry, [Counsel for a Defendant][the Defendants in person and various non-Defendants in person] (“Review Hearing”).

IT IS ORDERED THAT:

Definitions

1. In this Order, the following defined terms shall apply:
 - (a) The “RWI Updated Website” means the webpages at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>.
 - (b) The “Named Defendants” means D5 to D67 whose names appear in Annex A.
 - (c) The “Defendants” refers to all Defendants.
 - (d) The “March 2023 HS2 Land Plans” means the updated plans which illustrate the land of which the Claimants are entitled to possession.
 - (e) The “HS2 Land” means all of the land acquired or held by the Claimants in connection with the High Speed 2 Railway Scheme shown coloured pink and green on the March 2023 HS2 Land Plans which are available electronically on the RWI Updated Website.
 - (f) The “HS2 Acts” are the High Speed Rail (London – West Midlands) Act 2017 and the High Speed Rail (West Midlands – Crewe) Act 2021.

Amendments to the Claim

2. The Claimants have permission:
 - (a) To amend the description of the HS2 Land to refer to the land illustrated in the March 2023 HS2 Land Plans.
 - (b) To amend the description of D2 to refer to the HS2 Land.
 - (c) To remove Named Defendants to the Claim where expedient namely: D11 - 13, 18, 19, 21, 23, 31, 34, 37, 38, 40 – 46, 49 - 53, 60 – 62, and 65.
 - (d) To add D66 Caroline Thomson-Smith (aka Carl Woods) as a new defendant to the Claim
 - (e) To add D67 Christopher Paul Butcher (aka Rob) as a new defendant to the Claim
 - (f) To add D68 as a new defendant to the Claim: 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

- (g) To make consequential amendments to the Amended Particulars of Claim arising from the March 2023 Application including adding a further prohibition preventing the Defendants from obstructing, impeding, hindering, or delaying works or activities authorised by the HS2 Acts by unlawful means, in express or implied agreement or in combination with another person with the intention of causing damage to the Claimants and removing those paragraphs of the Amended Particulars of Claim which are no longer pertinent to the Claim.
- (h) To amend the Amended Particulars of Claim dated 26 April 2022 to give effect to 2(a) – (g) above.

Injunction in force

- 3. With immediate effect, and until 23.59 on 31 May 2024 unless varied, discharged or extended by further order, the Defendants and each of them are forbidden from doing the following:
 - (a) entering or remaining upon the HS2 Land;
 - (b) deliberately obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the HS2 Land;
 - (c) interfering with any fence or gate on or at the perimeter of the HS2 Land; or
 - (d) 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.
- 4. Nothing in paragraph 3 of this Order:
 - (a) Shall prevent any person from exercising their rights over any open public right of way over the HS2 Land.
 - (b) Shall affect any private rights of access over the HS2 Land.
 - (c) Shall prevent any person from exercising their lawful rights over any public highway.
 - (d) Shall extend to any person holding a lawful freehold or leasehold interest in land over which the Claimants have taken temporary possession.
 - (e) Shall extend to any interest in land held by statutory undertakers.
- 5. For the purposes of paragraph 3(b) prohibited acts of obstruction and interference shall include (but not be limited to):

- (a) standing, kneeling, sitting or lying or otherwise remaining present on the carriageway when any vehicle is attempting to turn into the HS2 Land or attempting to turn out of the HS2 Land in a manner which impedes the free passage of the vehicle;
 - (b) digging, erecting any structure or otherwise placing or leaving any object or thing on the carriageway which may slow or impede the safe and uninterrupted passage of vehicles or persons onto or from the HS2 Land;
 - (c) affixing or attaching their person to the surface of the carriageway where it may slow or impede the safe and uninterrupted passage of vehicles onto or from the HS2 Land;
 - (d) affixing any other object to the HS2 Land which may delay or impede the free passage of any vehicle or person to or from the HS2 Land;
 - (e) climbing on to or affixing any object or person to any vehicle in the vicinity of the HS2 Land; and
 - (f) deliberate slow walking in front of vehicles in the vicinity of the HS2 Land.
6. For the purposes of paragraph 3(c) prohibited acts of interference shall include (but not be limited to):
- (a) cutting, damaging, moving, climbing on or over, digging beneath, or removing any items affixed to, any temporary or permanent fencing or gate on or at the perimeter of the HS2 Land;
 - (b) the prohibition includes carrying out the aforementioned acts in respect of the fences and gates; and
 - (c) interference with a gate includes drilling the lock, gluing the lock or any other activities which may prevent the use of the gate.
- Service by Alternative Method – This Order**
7. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below).
8. Pursuant to CPR r.6.27 and r.81.4:
- (a) The Claimants shall serve this Order upon the Second, Third, Fourth, and Sixty Eighth Defendants by:

- i) Advertising the existence of this Order in the Times and Guardian newspapers, and in particular advertising the web address of the RWI Updated Website, and direct link to this Order.
 - ii) Where permission is granted by the relevant authority, by placing an advertisement and/or a hard copy of the Order within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place advertisements on local parish council notice boards in the same approximate locations.
 - iii) Publishing social media posts on the HS2 Twitter and Facebook platforms advertising the existence of this Order and providing a link to the RWI Updated Website.
 - (b) Service of this Order on Named Defendants may be effected by personal service where practicable and/or posting a copy of this Order through the letterbox of each Named Defendant (or leaving in a separate mailbox), with a notice drawing the recipient's attention to the fact the package contains a court order. If the premises do not have a letterbox, or mailbox, a package containing this Order may be affixed to or left at the front door or other prominent feature marked with a notice drawing the recipient's attention to the fact that the package contains a court order and should be read urgently. The notices shall be given in prominent lettering in the form set out in Annex B. It is open to any Defendant to contact the Claimants to identify an alternative place for service and, if they do so, it is not necessary for a notice or package to be affixed to or left at the front door or other prominent feature.
 - (c) The Claimants shall further advertise the existence of this Order in a prominent location on the RWI Updated Website, together with a link to download an electronic copy of this Order.
 - (d) The Claimants shall email a copy of this Order to solicitors for D6 and any other party who has as at the date hereof provided an email address to the Claimants to the email address: HS2Injunction@governmentlegal.gov.uk or hs2injunction@dlapiper.com.
9. Service in accordance with paragraph 8 above shall:
- (a) be verified by certificates of service to be filed with Court;

- (b) be deemed effective as at the date of the certificates of service; and
 - (c) be good and sufficient service of this Order on the Defendants and each of them and the need for personal service be dispensed with.
10. Although not expressed as a mandatory obligation due to the transient nature of the task, the Claimants will seek to maintain copies of this Order on areas of the HS2 Land in proximity to potential Defendants, such as on the gates of construction compounds or areas of the HS2 Land known to be targeted by objectors to the HS2 Scheme.
11. Further, without prejudice to paragraph 8, while this Order is in force, the Claimants shall take all reasonably practicable steps to effect personal service of the Order upon any Defendant of whom they become aware is, or has been, on the HS2 Land without consent and shall verify any such service with further certificates of service (where possible if persons unknown can be identified) to be filed with Court.

Further Case Management

12. This Order will be reconsidered at a hearing to be listed on approximately a yearly basis between 15 and 31 May to determine whether there is a continued threat which justifies continuation of this Order. It will be the Claimants' responsibility to arrange such a hearing and to place details of any such hearing on the RWI Updated Website.
13. Without prejudice to the foregoing, any 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) via the contact details set out below. Schedule A to this Order indicates the process which must be followed for any such application. Useful sources of support and information are listed in Schedule C.
14. 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 (unless they are already named as a defendant).
15. Any Named Defendant or other person who believes that they will or might bring themselves within the definition of the "persons unknown" by their conduct and who wishes to oppose these proceedings should file an Acknowledgment of Service pursuant to CPR Part 8.3 and serve a copy on the Claimants' solicitors via the email address set out in paragraph 25 below. Schedule B to this Order indicates the process which must be followed.

16. Any Defendant who fails to comply with paragraph 15 above shall not be permitted to defend these proceedings or take any further role in these proceedings without further order of the Court and shall be liable to have injunctive relief continued against them without trial pursuant to CPR r.3.5.
17. The Claimants otherwise 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. There be no order as to costs as between any of the parties to the Review Hearing.
20. If the Claimants intend to seek a costs order against any person in respect of any future applications in these proceedings or any future hearing, then they shall seek to give reasonable advance notice of that fact to that person.

Documents in the Claim and Application

21. All documents relating to these proceedings and this Order may be downloaded at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>.
22. A single hard copy of any document will be sent within 21 days of the receipt of a reasonable request for that document or documents via the Claimants' solicitors whose contact details are set out below so long as any requests include a postal address and the full name of the requestor.

Communications with Claimants and the Court

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

Birmingham District Registry
Civil Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DW

E: qb.birmingham@justice.gov.uk
T: 0121 681 4441
F: 01264 785 131
DX: 701987 Birmingham 7

24. Any person who wishes to view or download copies of the documents shall contact the Claimants' solicitors via the contact details below.
25. The Claimants' solicitors and their contact details are:

FAO: HS2 TEAM

DLA PIPER UK LLP

1 St Paul's Place

Sheffield

S1 2JX

E: HS2Injunction@dlapiper.com

T: 0114 283 3312

DX: 708580 Sheffield 10

Ref: RXS/380900/401

BY THE COURT

MADE ON [DATE]

ANNEX A – SCHEDULE OF DEFENDANTS

PART 1

DEFENDANT NUMBER	UNNAMED DEFENDANTS
(1)	Not used
(2)	PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER THE HS2 LAND WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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
(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

For the avoidance of doubt, any person who has been a defendant in these proceedings, or who has given undertakings to HS2, may nevertheless become Defendant 1 – Defendant 4 or Defendant 68 as a person unknown if they commit any of the prohibited acts.

PART 2

DEFENDANT NUMBER	NAMED DEFENDANTS
(5)	Mr Ross Monaghan (aka Squirrel / Ash Tree)
(6)	Mr James Andrew Taylor (aka Jimmy Knaggs / James Knaggs / Run Away Jim)
(7)	Ms Leah Oldfield
(8)	Not Used
(9)	Not Used
(10)	Not Used
(11)	Not Used
(12)	Not Used
(13)	Not Used
(14)	Not Used
(15)	Not Used
(16)	Ms Karen Wildin (aka Karen Wilding / Karen Wilden / Karen Wilder)
(17)	Mr Andrew McMaster (aka Drew Robson)
(18)	Not Used
(19)	Not Used
(20)	Mr George Keeler (aka C Russ T Chav / Flem)
(21)	Not Used
(22)	Mr Tristan Dixon (aka Tristan Dyson)
(23)	Not Used
(24)	Not Used
(25)	Not Used
(26)	Not Used
(27)	Mr Lachlan Sandford (aka Laser / Lazer)
(28)	Mr Scott Breen (aka Scotty / Digger Down)
(29)	Not Used
(30)	Not Used
(31)	Not Used
(32)	Not Used
(33)	Mr Elliot Cuciurean (aka Jellytot)
(34)	Not Used
(35)	Not Used
(36)	Mr Mark Keir
(37)	Not Used
(38)	Not Used
(39)	Mr Iain Oliver (aka Pirate)

DEFENDANT NUMBER	NAMED DEFENDANTS
(40)	Not Used
(41)	Not Used
(42)	Not Used
(43)	Not Used
(44)	Not Used
(45)	Not Used
(46)	Not Used
(47)	Not Used
(48)	Mr Conner Nichols
(49)	Not Used
(50)	Not Used
(51)	Not Used
(52)	Not Used
(53)	Not Used
(54)	Not Used
(55)	Not Used
(56)	Not Used
(57)	Ms Samantha Smithson (aka Swan / Swan Lake)
(58)	Mr Jack Charles Oliver
(59)	Ms Charlie Inskip
(60)	Not Used
(61)	Not Used
(62)	Not Used
(63)	Mr Dino Misina (aka Hedge Hog)
(64)	Stefan Wright (aka Albert Urtubia)
(65)	Not Used
(66)	Caroline Thompson-Smith (aka Carl Woods)
(67)	Christopher Paul Butcher (aka Rob)

ANNEX B – WORDING FOR NOTICES

[On the package containing the Order]

“VERY URGENT: THIS PACKAGE CONTAINS AN ORDER OF THE HIGH COURT AND YOU SHOULD READ IT IMMEDIATELY AND SEEK LEGAL ADVICE. IF YOU NEED ANOTHER COPY PLEASE CONTACT –

FAO: HS2 TEAM
DLA PIPER UK LLP
1 St Paul’s Place
Sheffield
S1 2JX

E: HS2Injunction@dlapiper.com
T: 0114 283 3038
DX: 708580 Sheffield 10
R: RXS/380900/401

All documents relating to these proceedings and this Order may be downloaded at:
<https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>”

SCHEDELE A – STEPS TO VARY OR DISCHARGE THIS ORDER

If, in accordance with paragraph 13 above, any Defendant or any other person affected by this Order wishes to apply to vary or discharge this Order, to ensure effective case management by the Court the following indicative steps must be followed:

1. Any person seeking to contest the Claimants' entitlement to interim relief should file with the court (i.e. send to the court) and serve (i.e. send to the Claimants):

- (a) An N244 application form¹;
- (b) Written grounds (which may be contained in within the N244 application form or a separate document) for:
 - i. permission to bring the application; and
 - ii. the application (i.e. reasons for the proposed variation / discharge of the Order).

Any applicant shall explain clearly within their written grounds the differences between their grounds and the issues which the Court has already adjudicated upon in the judgment of Mr Justice Julian Knowles of 20 September 2022 [or any judgment arising out of this Application]. A copy of the judgment[s] can be found on the RWI Updated Website; and

- (c) A witness statement(s) containing and/or appending all of the evidence to be relied upon in support of the application.

2. In order to file the above documents with the Court, the applicant should:

- (a) Send physical copies of the documents to the address at paragraph 23 of this Order; and/or
- (b) Speak to the Court to obtain an address to send electronic copies of the documents to.

3. In order to serve the above documents on the Claimants, the applicant should:

- (a) Send physical copies of the documents to the address at paragraph 25 of this Order; and/or
- (b) Send electronic copies of the documents to the e-mail address at paragraph 25 above.

4. The person making the application should indicate to the Court and Claimants whether they consider the matter requires a court hearing or can be dealt with by the judge reviewing the paper application and any response from the Claimants.

5. Thereafter the Claimants (i.e. HS2) shall have 14 days to file and serve evidence and submissions in response, including as to whether an oral hearing is required to determine the application.

6. Within 21 days, the Court shall decide:

- i. whether to grant permission for the application to proceed; and
- ii. if permission is granted, whether a hearing is necessary, and/or may request from the parties evidence on any further matters necessary to determine the application. If the

¹ See the following link which provides a digital version of the form, and guidance notes:
<https://www.gov.uk/government/publications/form-n244-application-notice>

Court decides that a hearing is necessary, it shall seek to schedule the hearing (accommodating availabilities of the parties) within 42 days (6 weeks).

7. If the Court decides that further evidence is needed from either party, it may set strict deadlines by which that evidence must be filed. Both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

SCHEDULE B – STEPS TO BRING MATTER TO TRIAL

If, in accordance with paragraph 15 above, any Defendant or other person affected by this Order wishes to apply to bring the Claimants' proceedings (whether as a whole or in part) to final trial, to ensure effective case management by the Court the following steps must be followed:

1. If not already so, the person must apply to become a named defendant to the claim. This can be done by filing with the court (i.e. send to the court) and serving (i.e. send to the Claimants)

- (a) An N244 Application form²; and
- (b) a short statement explaining the reason for applying to become a named defendant (i.e. in order to contest the Claimants' claim).

2. In order to file the above with the Court, the person who is applying should:

- (a) Send physical copies to the address at paragraph 23 of this Order; and/or
- (b) Speak to the Court to obtain an address to send electronic copies to.

3. In order to serve the above on the Claimants, the person applying should:

- (a) Send physical copies to the address at paragraph 25 of this Order; and/or
- (b) Send electronic copies to the to the e-mail address at paragraph 25 above.

4. The person seeking to contest the Order and bring the matter to trial must then file and serve (see above as to how this is to be done):

- (a) An Acknowledgement of Service using form N210,³ explaining the reasons for contesting the Order (whether as a whole or in part), which must include a postal address for service together with (if they wish to be served with documents electronically in these proceedings) an email address to which such service may be effected;
- (b) An application for permission to contest the Order and to bring the matter to trial, which explains clearly the differences between their grounds of defence relied upon and the issues which the Court has already adjudicated upon in the judgment of Mr Justice Julian Knowles of 20 September 2022 [or any judgment arising out of this Application]. A copy of the judgment[s] can be found on the RWI Updated Website;
- (c) A written Defence responding to the allegations set out in the Particulars of Claim (to the extent in the Defendant's knowledge); and
- (d) A witness statement(s) (verified by a statement of truth) containing and/or appending all the evidence to be relied upon in support of the application for permission and Defence (i.e. evidence explaining the basis for contesting the claim).

5. Thereafter the Claimants shall have 14 days after service of the Defence to file and serve any evidence in reply.

6. The Court shall then list a hearing date for a Case Management Conference, at which it will:

² See the following link which provides a digital version of the form, and guidance notes:
<https://www.gov.uk/government/publications/form-n244-application-notice>

³ <https://www.gov.uk/government/publications/form-n210-acknowledgment-of-serviceccpr-part-8>

- (a) determine the application for permission to contest the Order and to bring the matter to trial; and
- (b) should the application for permission be successful, give directions to parties for any further steps required prior to the final trial (such as filing further evidence). The Court may set strict deadlines by which the further steps must be taken and both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

7. Further:

- a. The Claimants shall prepare an electronic hearing bundle for the hearing and provide the Defendant(s) with access to the bundle not less than 14 days before the hearing.
- b. At the hearing, the Court shall consider whether injunctive relief shall be continued against any or all of the Defendants, whether on an interim or final basis.
- c. Any further application by the Claimants to add further named defendants, to have final relief granted against any Defendant(s) without trial pursuant to CPR r.3.5 and/or otherwise to amend its claim shall be determined at the hearing.
- d. The need for and form of any further case management directions through to trial or any further hearing shall be considered.

SCHEDULE C – USEFUL REFERENCES AND RESOURCES

The attention of all parties is drawn to the following references and resources:

Bar Pro Bono Unit – A possible avenue for obtaining free legal advice and/or representation:
<https://weareadvocate.org.uk/>

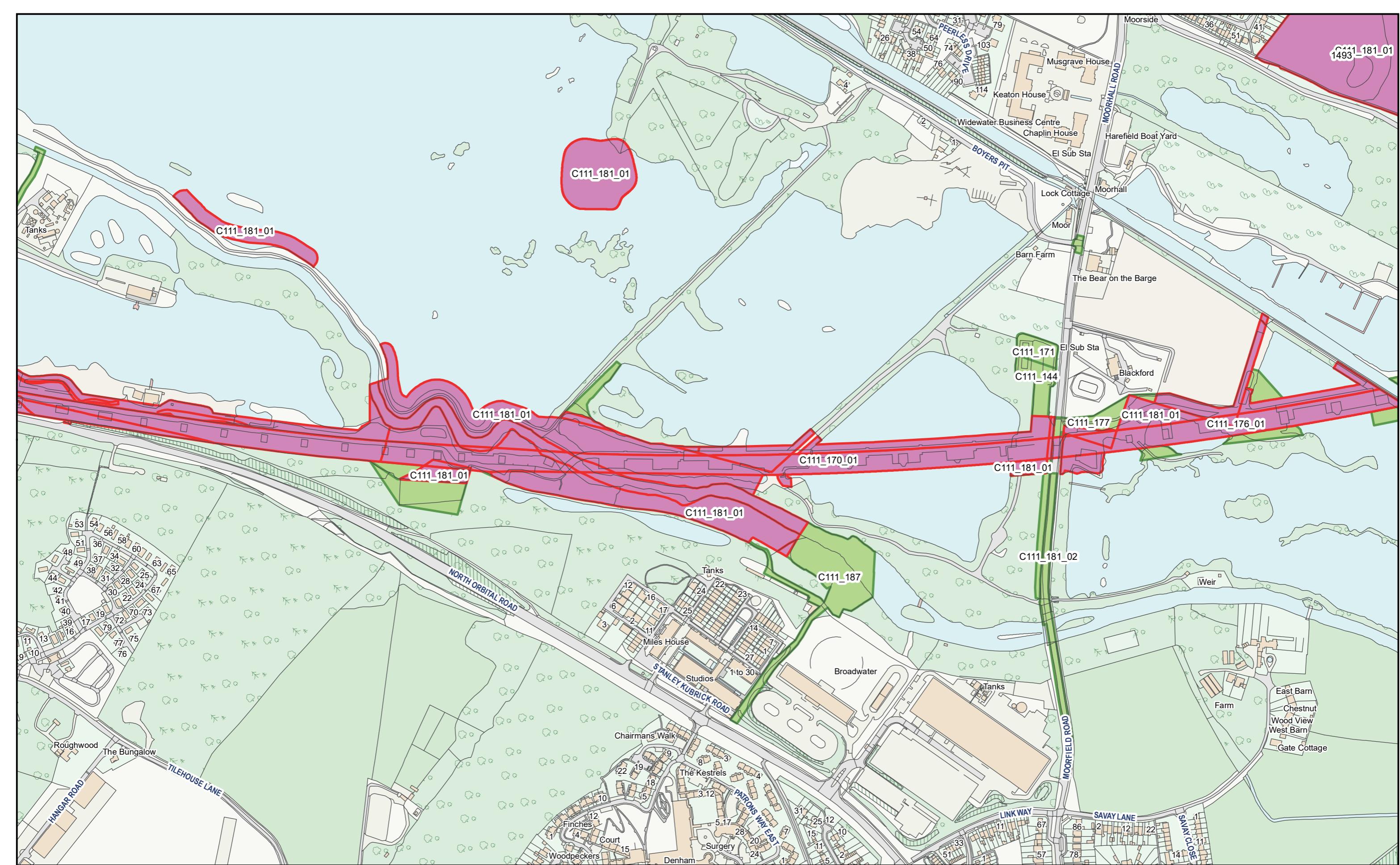
Support Through Court (formerly Personal Support Unit) – An organisation supporting litigants in person: <https://www.supportthroughcourt.org/>

Chancery Division Guide: <https://www.gov.uk/government/publications/chanceryguide>

Chancery Division Interim Applications Guide for Litigants in Person:
<https://www.judiciary.uk/publications/guide-litigants-person-chancery/>

Civil Procedure Rules Part 8: <https://www.justice.gov.uk/courts/procedurerules/civil/rules/part08>

Help with Court Fees website: <https://www.gov.uk/get-help-with-court-fees>



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Legend

- Acquired Land (Freehold and leasehold)
 - Temporary Possession Land S15/S16



High Speed Two Phase One/ Phase 2A Injunction Mapping

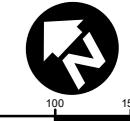
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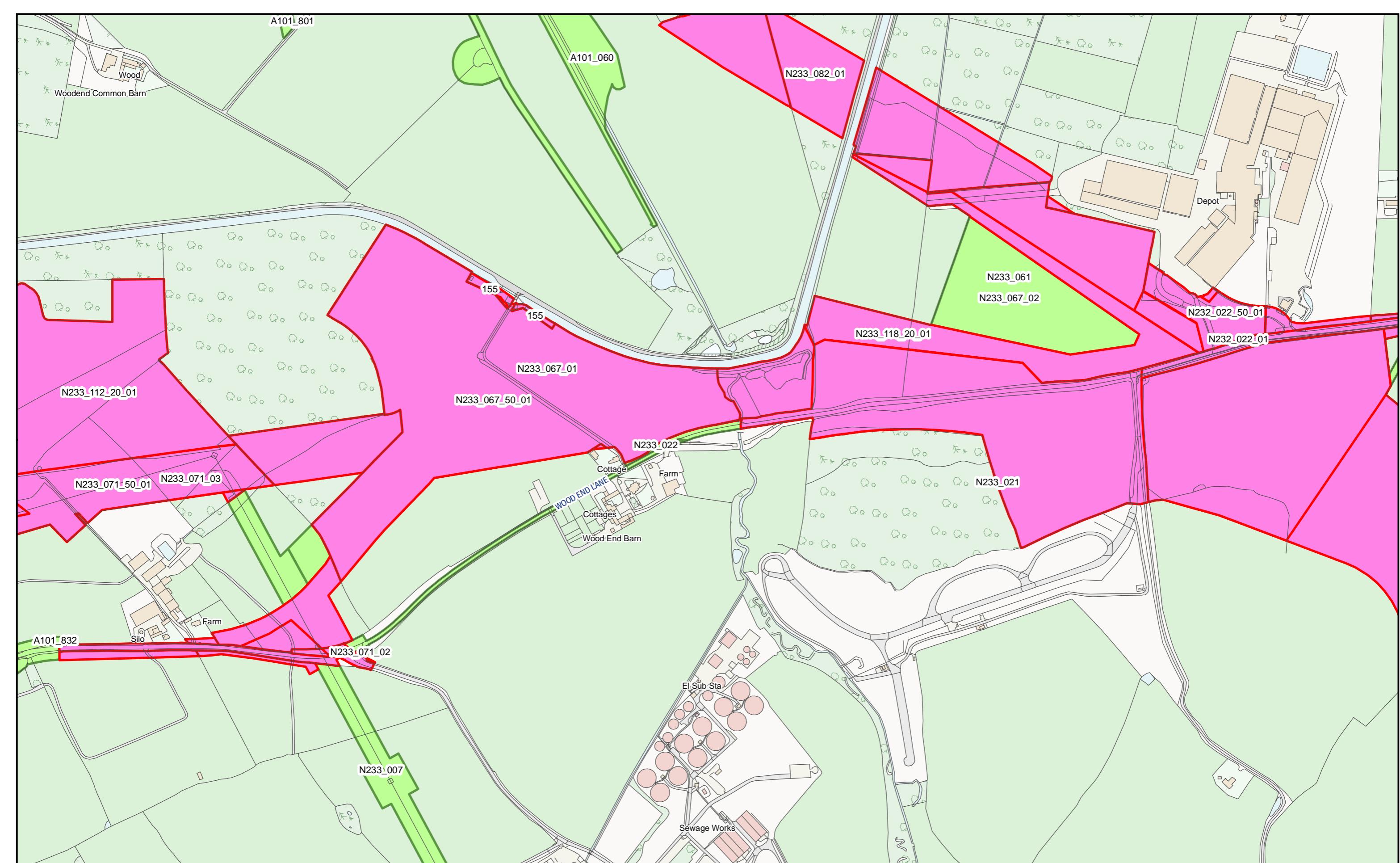
Page 40 of 268
Internal

HS2

Registered in England. Registration number 06791686.
Registered office: 2 Snowhill, Queensway, Birmingham B4 6GA

Scale at A3: 1:5,000





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Legend
 Acquired Land (Freehold and leasehold)
 Temporary Possession Land S15/S16



High Speed Two
 Phase One/Phase 2A
 Junction Mapping

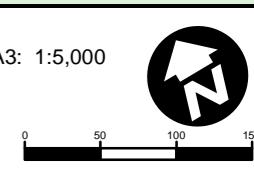
Map Number:
 136

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 Internal

HS2

Registered in England, Registration number 06791686.
 Registered office: 2 Snowhill, Queensway, Birmingham B4 6GA.

Scale at A3: 1:5,000



Doc Number: PH1-HS2-LP-MAP001001085 A02 CORE A 144 Date: 21/03/23

Amended Particulars of Claim by Order of Mr Justice Julian Knowles dated 28 April 2022

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, IMPEDED, 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

RE-AMENDED PARTICULARS OF CLAIM

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 (Cubbington and Crackley); CO/361/2021 (Euston, Steyn J) and PT-2021-000132 (Euston, Mann J). In respect of PT-2020-BHM-000017 (Cubbington 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,~~ ~~t~~The facts giving rise to the need for that eOrder 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 sub-paragraphs 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 Counsel (Land & Property)** Head Counsel – L&P Disputes HS2 ltd

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On behalf of: Applicants/Claimants
J.Dobson
1st statement of witness
Exhibits: JD5 and JD6
Date: 27 March 2023

Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
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")**
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

WITNESS STATEMENT OF JAMES DOBSON

I, JAMES DOBSON, Specialist Security Consultant and Advisor to the First Claimant, High Speed Two (HS2) Limited, Two Snowhill, Snow Hill Queensway, Birmingham, B4 6GA, **WILL SAY** as follows:

1. I am a Specialist Security Consultant and Advisor to the First Claimant. I advise the First Claimant on security matters, particularly matters involving activists. I have c.7 years of experience in advising clients on dealing with large scale evictions of activists and supporting infrastructure and other projects subjected to environmental activism, including the HS2 Scheme.
2. I make this statement in support of the Claimants' application to extend the injunction imposed by the Order of Mr Justice Knowles dated 20.09.2022 (the "**Injunction**").
3. This statement has been prepared with the Claimants' legal representatives.
4. This statement is made from matters that are within my own knowledge and/or (unless other sources of information are stated) knowledge gained from my review of the First Claimant's documents, incident reports logged on the First Claimant's HORACE and Trak Tik systems, reports by the First Claimant's security and legal teams and those of the First Claimant's contractors and material obtained and reviewed from open-source internet and social media platforms. In each case I believe them to be true. The contents of this statement are true to the best of my knowledge and belief. The HORACE and Trak Tik systems are online incident reporting systems used by the First Claimant to record details of health, safety, security, environmental and reputational incidents which occur as a result of, or in connection with the work of the First Claimant. However, because they are both online systems and contain information filled in by specialist security professionals, they are not resources which can be easily printed out or otherwise presented in a way that is easily understandable by a lay person. The accounts of the incidents set out below are therefore derived from those systems (and the other sources set out above) but explained in ordinary English.

5. Whilst this is my first witness statement in these proceedings, I gave two affidavits in support of the applications dated 08.06.2022 for committal brought by the Claimants in these proceedings (“**Cash’s Pit Contempt**”), to which there were exhibits numbered JD1 to JD4 and accordingly I have not re-used those exhibit numbers. There are now shown and produced to me marked **JD5** true copies of documents to which I shall refer in this statement and which can be found at <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>. Page numbers without qualification refer to that exhibit. In this statement I also refer to video evidence which has been collated as numbered videos and marked **JD6**. The videos can be viewed at: <https://vimeo.com/showcase/exhibit-JD6> and references in this statement to video numbers in bold are references to that exhibit.
6. In preparing this statement I have read the following witness statements filed previously in these proceedings:
 - (a) Witness Statement of Richard Jordan (“**Jordan 1**”)
 - (b) The first to tenth witness statements of Julie Dilcock (“**Dilcock 1**” to “**Dilcock 10**”)I have also reviewed the Witness Statement of John Groves (“**Groves 1**”) and the Eleventh Witness Statement of Julie Dilcock (“**Dilcock 11**”) in draft.

Defined terms used in this statement are the same as those defined in the Particulars of Claim and the above listed statements, unless separately defined in this statement.

Purpose and scope of this statement

7. In this statement I will:
 - 7.1. Explain how the Claimants have reached the decision to remove some of the Defendants to these proceedings and to add new Defendants.
 - 7.2. Describe the effect of the Injunction on unlawful activity directed against the HS2 Scheme.

- 7.3. Describe specific incidents of unlawful activity against the HS2 Scheme by activists from 16.03.2022 (being the end point for the narrative provided in Jordan 1) until 16.03.2023. I will make particular reference to events which have occurred following the making of the Injunction on 20.09.2022.
 - 7.4. Explain the continued risk of unlawful activity against the HS2 Scheme by activists and the need for extension and variation of the Injunction.
8. As indicated, I have described unlawful activity against the HS2 Scheme by activists up to 16.03.2023. I have had to draw the line at that date because it has proved very difficult to finalise a statement which tries to be precisely up to date as there continue to be incidents and developments.

Defendants to these proceedings

9. The rationale for who the Claimants originally named as Defendants to the proceedings was set out in Dilcock 1 (paragraphs 42 to 43). Several individuals were removed as named Defendants in the Injunction by agreement with the Claimants. The numbers originally used for those removed Defendants are now shown as “not used”. Those individuals remain bound by the terms of the Injunction that apply to persons unknown. As explained in Dilcock 11, further individuals were added as named Defendants to these proceedings as part of the Cash’s Pit Contempt proceedings.
10. The Claimants take seriously their obligation to review whether individuals ought to remain named as Defendants to these proceedings and whether any further individuals ought to be added as named Defendants.
11. The Claimants propose removing the following individuals as named Defendants to these proceedings for the reasons set out in the table below. Those removed will remain bound by any further Injunction made by the court in these proceedings against persons unknown.

Defendant Number	Name	Reason for removal
11	Mr Tony Carne	No evidence of continued involvement in unlawful direct action
12	Ms Amy Lei	No evidence of continued involvement in unlawful direct action
13	Mr Tom Holmes	No evidence of continued involvement in unlawful direct action
18	Mr William Harewood (aka Satchel / Satchel Baggins)	No evidence of continued involvement in unlawful direct action. Currently under a suspended sentence imposed in the Cash's Pit Contempt proceedings
19	Mr Harrison Radcliffe (aka Log / Bir_Ch / Sasha James)	No evidence of continued involvement in unlawful direct action
21	Mr William French (aka Will French / Took	No evidence of continued involvement in unlawful direct action
23	Mx Scarlett Rien (aka Leggs)	No evidence of continued involvement in unlawful direct action
31	Mr Rory Hooper	No evidence of continued involvement in unlawful direct action. Under an undertaking (copy at pages 1 to 3) given to the court about future behaviour following the Cash's Pit Contempt proceedings.
34	Mr Paul Sandison	No evidence of continued involvement in unlawful direct action
37	Mr Thorn Ramsey (aka Virgo Ramsay)	No evidence of continued involvement in unlawful direct action
38	Mr Vajda Robert Mordechaj	No evidence of continued involvement in unlawful direct action
40	Ms Jess Walker	No evidence of continued involvement in unlawful direct action

Defendant Number	Name	Reason for removal
41	Mr Matt Atkinson	No evidence of continued involvement in unlawful direct action
42	Ms Hannah Bennett	No evidence of continued involvement in unlawful direct action
43	Mr James Ruggles (aka Jimmy Ruggles)	No evidence of continued involvement in unlawful direct action
44	Mr Nick Grant (aka Potts)	No evidence of continued involvement in unlawful direct action
45	Mr Stuart Ackroyd	No evidence of continued involvement in unlawful direct action
46	Ms Wiktoria Paulina Zieniuk	No evidence of continued involvement in unlawful direct action
49	Mr Sebastian Roblyn Maxey	No evidence of continued involvement in unlawful direct action
50	Ms Jessica Heathland-Smith	No evidence of continued involvement in unlawful direct action
51	Ms Ella Dorton	No evidence of continued involvement in unlawful direct action
52	Mr Karl Collins	No evidence of continued involvement in unlawful direct action
53	Mr Sam Coggin	No evidence of continued involvement in unlawful direct action
60	Mr Xavier Gonzalez-Trimmer	Deceased
61	Mr David Buchan (aka David Holliday)	No evidence of continued involvement in unlawful direct action. Served a custodial sentence imposed in the Cash's Pit contempt proceedings and gave undertakings (copy at pages 4 to 5) about future behaviour when purging his contempt

Defendant Number	Name	Reason for removal
62	Ms Leanne Swateridge (aka Leayn / Flowery Zebra)	No evidence of continued involvement in unlawful direct action. Under an undertaking (copy at pages 6 to 8) given to the court about future behaviour following the Cash's Pit Contempt proceedings.
65	Mr Liam Walters	No evidence of continued involvement in unlawful direct action. Currently under a suspended sentence imposed in the Cash's Pit Contempt proceedings

12. It remains open to these individuals to object to the Claimants' proposal to remove them as named Defendants, in which case the Claimants will agree to them remaining as named Defendants.
13. The remaining named Defendants are all considered to still present a threat of unlawful action against the HS2 Scheme. They have continued to participate in anti-HS2 activity, or to issue threats against the HS2 Scheme or to participate in unlawful direction action against other targets. In the latter cases, it is clear that these individuals are still prepared to engage in unlawful behaviour, and it is considered that were it not for the Injunction, they would engage in that behaviour targeting the HS2 Scheme. Further information around this is set out in the following paragraphs.
- 13.1. D5 – Mr Ross Monaghan (aka Squirrel / Ash Tree). This individual has also more recently started to use the pseudonym: “Lock Pick”. D5 has been engaged in environmental activism since at least 2017. Prior to campaigning against the HS2 Scheme, he was actively campaigning against fracking, targeting Cuadrilla Resources at Preston New Road, Europa Oil and Gas at Leith Hill, Third Energy at Kirby Misperton, IGas Energy at Misson Springs and Tinker Lane and various suppliers to the onshore oil and gas sector including RTH Lubbers, Grampian Continental and Lyons transport. During the course of these campaigns D5 was convicted of assaulting a Police officer at Tinker Lane on 06.05.18 (**see pages 9 to**

- 11).** During the course of his campaigning against the HS2 Scheme, D5 was found guilty of assaulting 2 security guards and 4 counts of criminal damage on 26.07.2021 (see **pages 12 to 13**). D5 established the encampment on the Cash's Pit Land and participated in its fortification to hold out against eviction but left before the enforcement operation commenced. In December 2022 he attended the Stonehenge Heritage Action Group camp in Wiltshire (see **page 14**). Historically, D5 has left and returned to activism on multiple occasions and as one of the founders of the anti-HS2 camps at Small Dean, Jones' Hill Wood and the Cash's Pit Land and having actively scouted land yet to be possessed on Phase 2a and Phase 2b (Western Leg), the Claimants consider that he remains a threat and should remain as a named Defendant.
- 13.2. D6 – Mr James Andrew Taylor (aka Jim Knaggs / Run Away Jim). This individual has also used the pseudonym “Tim Blaggs”. D6 has engaged in direct action against the HS2 Scheme repeatedly over the last few years in multiple locations. D6 defended the Claimants’ possession claim in relation to the Cash’s Pit Land and the Claimants’ application for the Injunction. He applied for permission to appeal the Injunction, which was refused by the Court of Appeal. He was present in the vicinity of the Cash’s Pit Land during the eviction operation and assisted in setting up the camp on neighbouring land known as “**Closepit Plantation**” and another satellite camp under a large tree near to the Cash’s Pit Land, trespassing on third party land. He remained in the Swynnerton area until D18, D33, D64 and D65 left the Cash’s Pit Land. In view of D6’s participation in these proceedings to date and the level of his involvement in direct action against the HS2 Scheme, the Claimants consider it appropriate that he remains as a named Defendant.
- 13.3. D7 – Ms Leah Oldfield. This individual also goes by the pseudonym “Lou Pole”. D7 is in a long-term relationship with D6. She has been residing in a converted horsebox with D6 and is a former resident of the unauthorised encampment on the Cash’s Pit Land. In view of D7’s links to D6 and her level of involvement in direct action against the HS2 Scheme, the Claimants consider it appropriate that she remains as a named Defendant.

- 13.4. D16 - Ms Karen Wildin. D16 has been actively engaged in direct action campaigning against the HS2 Scheme for a number of years. More recently she has been involved in direct action campaigning with Palestine Action, Insulate Britain and Just Stop Oil (“JSO”) (see **pages 15 to 16** by way of example). The Claimants consider that she remains a threat and should remain as a named Defendant.
- 13.5. D17 – Mr Andrew McMaster (aka Drew Robson). D17 was a resident at the unauthorised encampment on the Cash’s Pit Land and instrumental in leading a series of direct actions targeting the HS2 Scheme from that encampment. He then relocated and founded the encampment at Closepit Plantation. D17 is a multi-cause activist and has been involved in direct action activism against the HS2 Scheme for a number of years. He has also been involved in direct action activism with the group Palestine Action (to which he has returned following the imposition of the Injunction) and also recently in the Kier Ends Here direct action against one of the First Claimant’s contractors that is constructing a prison at HMP Full Sutton. D17 has also made clear his intention to return to direct action campaigning against the HS2 Scheme on social media (screenshot at **page 17**) where he posted a memory of the action to block the access to the BBV compound at Swynnerton with the comment: “*Good Times, good people. What was it Arnold Schwarzenegger said? Well, we will*” which appears to be a reference to the catchphrase: “I’ll be back”. The Claimants consider that it is appropriate that he remains a named Defendant to these proceedings.
- 13.6. D20 – Mr George Keeler (aka C Russ T Chav / Flem). D20 has been engaged in direct action campaigning against the HS2 Scheme and with Palestine Action since 2021. D20 was one of the activists present in the tunnels at the HS2 Land at Small Dean (see Jordan 1). D20 was also present with D17 and D63 and 2 other former residents of the Closepit Plantation camp in a protest outside the Crown Court in Manchester on 17.01.23. On 31.01.23 D20 was pictured on top of a tripod during the Kier Ends Here protest outside of HMP Full Sutton (an image of this is at **page 18**). D20 therefore remains actively engaged in direct action campaigning and there remains a risk that he will return to engaging in such activity against the HS2

Scheme. The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.

- 13.7. D22 - Mr Tristan Dixon (aka Tristan Dyson). D22 was a resident at the unauthorised encampment at Small Dean. During the eviction of this camp (which is described in Jordan 1) he actively engaged in resisting eviction and placed himself in a lock-on device in the tower structure over the tunnels. Prior to that, in September 2021, D22 (along with D17) took part in a lock-on obstructing access to the HS2 Scheme site at Small Dean (also described in Jordan 1). Since the making of the Injunction D22 has most recently been engaged in direct action campaigning with Palestine Action (see paragraphs 65 to 68 of this statement). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.
- 13.8. D27 - Mr Lachlan Sandford (Laser / Lazer). D27 occupied the tunnels dug under Euston Square Gardens by activists opposed to the HS2 Scheme (this was described in Jordan 1). D27 left the tunnels prior to an injunction being imposed and was not therefore subject to contempt proceedings in respect of his activity at Euston and is not therefore under an undertaking in the terms given by his sister (D26) and others who were involved in that action. He remains to be tried on criminal charges for his part in the Euston Square Gardens action. D27 has also been seen in attendance at the Stonehenge Heritage Action Group Camp in February 2022 (see **page 19**) and appears to still be involved in direct action campaigning. The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.
- 13.9. D28 - Mr Scott Breen (aka Digger Down). D28 has been engaged in direct action campaigning since at least 2016. He started campaigning against the HS2 Scheme following the government moratorium on fracking (against which he had previously been campaigning along with conventional onshore oil and gas exploration) in 2019. He has been resident at a number of anti-HS2 camps including Jones' Hill Wood and the camp at Small Dean and he participated in digging and occupying the tunnels under Euston Square Gardens. D28 established the Fast Action Response Team (FART) which takes part in direct action

campaigns, the group describe themselves as (see screenshot from the group's Facebook page at **page 20**):

"F.A.R.T fast action response Team is available via private Request. This team comes with a huge Wealth of Experience and Diversity among our Skilled Personnel. we are basically a self contained mobile encampment , with a vast range of equipment and services supplied. From gathering evidence of environmental crimes to Full DA [sic. Direct Action] support and welfare. Every Request Format is Given Consideration"

Since the imposition of the Injunction D28 has been campaigning as part of JSO. He was committed to prison for contempt for breaching an injunction protecting the operations of Exxon Mobil in construction of an aviation fuel pipeline (see paragraph 70 of this statement). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.

13.10. D33 - Mr Elliot Cuciurean (aka Jellytot). D33 has been involved in direct action campaigning against the HS2 Scheme for a number of years and has received criminal convictions and been found to be in contempt for breaching injunctions in relation to the HS2 Scheme. Most recently, he was committed to prison for 268 days on 23.09.2022 for breaching the Cotter Order by occupying the tunnels located beneath the Cash's Pit Land for 46 days. D33 was released from prison on 03.02.2023. Prior to engaging in direct action campaigning against the HS2 Scheme, D33 was arrested and convicted in relation to direct action with Extinction Rebellion ("XR") and blocking the M32 in Bristol (see **pages 21 to 23**). Criminal convictions and previous findings of contempt have not deterred D33 from continuing to engage in direct action campaigning and the Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.

13.11. D36 - Mr Mark Keir. D36 is a long standing direct action campaigner against the HS2 Scheme and numerous incidents of direct action involving him and threats made by him are set out in Jordan 1. He continues to participate in direct action campaigning against the HS2 Scheme and to encourage others to do so. Most recently, he was present during the direct action targeting of Eversheds Sutherland on 22.11.2022 (see paragraphs 85 to 97 below). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.

- 13.12. D39 - Mr Iain Oliver (aka Pirate). D39 is a long standing direct action campaigner against the HS2 Scheme. Most recently he participated in the direct action targeting of Eversheds Sutherland on 22.11.2022 (see paragraphs 85 to 97 below). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.
- 13.13. D48 - Mr Conner Nichols. This individual also uses the pseudonym “Goldi Locks”. D48 was a long-standing direct action campaigner against the HS2 Scheme and a former resident at Poor’s Piece and Jones’ Hill Wood (see Jordan 1 for descriptions of the incidents at these locations). He is currently occupying the Stonehenge Heritage Action Group Camp (see [page 24](#)). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.
- 13.14. D57 - Ms Samantha Smithson. This individual also uses the pseudonyms “Swan Lake” and “Swan”. D57 who describes herself as a founder of the group HS2 Rebellion, is a former full time activist with XR and Insulate Britain who has taken part in direct action including shackling herself to the rails at Royal Ascot on 19.06.2021 as part of an Insulate Britain direct action campaign (see [page 25](#)) and in JSO action on the M25 (see paragraph 71 below). The Claimants therefore consider it appropriate that she remains a named Defendant to these proceedings.
- 13.15. D63 - Mr Dino Misina (aka Hedge Hog). This individual also uses the pseudonyms “Sascha James”, “Sasha James”, “Sascha the Hedgehog” and “Log”. D63 was an occupant of the tunnels under HS2 Land at Small Dean and he was a resident at Closepit Plantation in May 2022. D63 was also present with D17, D20 and other former residents of the Closepit Plantation camp in a protest outside the Crown Court in Manchester on 17.01.23. D63 has also been resident in the Stonehenge Heritage Action Group Camp (see [page 26](#) and paragraph 76 below). On 31.01.2023 D63 was pictured on top of a tripod during the Kier Ends Here direct action campaign outside of HMP Full Sutton (images of this are at [pages 27 to 28](#)). The Claimants therefore consider it appropriate that he remains a named Defendant to these proceedings.

13.16. D64 - Mr Stefan Wright (aka Albert Urtubia). D64 was found in contempt on 27.07.2022 in his absence for breaching the Cotter Order by occupying tunnels under the Cash's Pit Land for 46 days. D64 was committed to prison for 336 days and a warrant issued for his arrest. His current location remains unknown. The Claimants consider it appropriate that he remains a named Defendant to these proceedings.

14. The Claimants are also seeking to add two individuals as named Defendants to the proceedings: Ms Caroline Thomson-Smith (aka Carl Woods) as D66 (“**D66**”) and Mr Christopher Paul Butcher (aka Rob) as D67 (“**D67**”). As set out later in this statement, both of these individuals have breached the Injunction and have also engaged in unlawful action designed to disrupt and stop works on the HS2 Scheme and cause loss and damage to the Claimants and which is not currently prohibited by the Injunction.

15. Finally, the Claimants are proposing to:

- (a) remove D1- a category of persons unknown relating to the Cash's Pit Land and which has become obsolete as the land in question is now HS2 Land (as defined in the Injunction); and
- (b) add D68 – a further category of persons unknown, the rationale for which is set out in Dilcock 11.

Incidents and events since the making of the Injunction

16. As explained in Dilcock 11, the application that resulted in the making of the Injunction took approximately 6 months to proceed through the court process, from the issuing of the application to the making of the Injunction. During that time, three other injunctions already imposed over smaller areas of the HS2 Land remained in force, including one made in these proceedings over the Cash's Pit Land.

17. For completeness, I am providing a summary here of the events on the Cash's Pit Land and the neighbouring land known as Closepit Plantation and also a smaller satellite encampment under a large tree near to the Cash's Pit Land (together: the "**Swynnerton Camps**") following the substantive hearing in these proceedings in May 2022. In particular, it is notable that the events at and in the vicinity of the Swynnerton Camps were the last large scale unlawful direct action campaigns directly targeting the HS2 Scheme experienced by the Claimants. Matters as they stood in relation to the Swynnerton Camps as at 26.04.2022 are set out in Dilcock 3 and as at 19.05.2022 in Dilcock 4.
18. On 24.02.2022 the encampment on the Cash's Pit Land (referred to by the activists that occupied it as: "Bluebell Wood" or "Bluebell Camp") was served with notice to vacate. As described in Dilcock 2, in the knowledge that the First Claimant would seek to enforce upon the Cash's Pit Land, (see **page 29**) the residents, led by D17, established a second camp on 29.03.2022. This "support" camp was located approximately 800m to the east along the A51 on land known as Closepit Plantation, the location of which is shown on the plan at page 26 of Exhibit JAD 4 to Dilcock 2. Part of the land on which this camp was established is land within the LLAU and will be required to enable construction of the railway line as part of the main works. At the time that it was occupied by activists, the Claimants had not served any notices to obtain possession. Subsequently, the First Claimant reached an agreement with the landowner regarding removal of the trespassers and also exercised powers under Schedule 4 of the Phase 2a Act (the operation of which is explained in Dilcock 11) to temporarily stop up the road in front of Closepit Plantation to facilitate a safe removal operation. The occupation and subsequent clearance of this camp is discussed at paragraphs 23 to 26 below.
19. As described in Dilcock 4, 4 activists (now known to be: D18, D33, D63 and D64) entered tunnels that had been dug under the structure in the northeast corner of the Cash's Pit Land. D18, D33, D63 and D64 remained in the tunnels and refused to come out despite repeated warnings that they were in breach of a court order and the issuing of the Cash's Pit Contempt proceedings against them. Entry into the tunnels by the CST was deemed to present an unacceptable risk to the safety of members of the CST. The tunnels were dangerous and there was a significant risk

of collapse. The tunnel occupants were not trapped or in need of rescue and could have left at any time they chose.

20. On 18.06.2022 D65 voluntarily left the tunnels, having spent 39 days underground. D33, D64 and D18 remained in the tunnels until the early hours of the morning of 25.06.2022 before leaving the tunnels via an escape hole located on third party land. Later that day posts appeared on Facebook proclaiming the “Great Escape” but also referring to one more tunnel occupant (screenshots at **pages 30 to 31**). In addition, that day D65 took part in an interview on the Today Programme on Radio 4 where once again it was claimed one person remained in the tunnels. Considering these comments and with no response from the tunnels, the HCE and Mines Rescue teams were forced into conducting a search and rescue operation, placing the individuals involved at risk. The extended clearance and making safe of the tunnels extended the enforcement operation until 12.07.2022.
21. Had D18, D33, D64 and D65 not entered and remained in the tunnels on the Cash’s Pit Land, the enforcement of the writ of possession would have been completed on 10.05.2022 and the site secured and made safe significantly sooner. This would have vastly reduced the cost to the First Claimant and the taxpayer. In total the operation to recover possession of the Cash’s Pit Land ended up costing the taxpayer in the region of £8.5million.
22. At a hearing in July 2022, D18, D31, D33, D61, D62, D63 and D64 were found to be in contempt of court for breaching the Cotter Order. D33, D61 and D64 were committed to prison. D18 and D65 received significant suspended custodial sentences. D31 and D62, whose breaches were less severe, gave undertakings to the court as to their future behaviour with the agreement of the Claimants.
23. Like the Cash’s Pit Land, Closepit Plantation is a former quarry/sand pit located in Swynnerton, Staffordshire. It is now approximately a 5 acre block of deciduous woodland with a large pond at its centre. Whilst the majority of the land at Closepit Plantation is not directly required for work on the HS2 Scheme, it is bounded on all sides by land which falls within the LLAU. This land is required to enable the First Claimant to construct the HS2 Scheme. A map showing the location of the

camp established by activists on the Closepit Plantation land overlayed on the relevant part of the Parliamentary Plans for this area is at [page 32](#).

24. As described in Dilcock 2, a camp was established by activists at Closepit Plantation without the consent of the landowner on or around 23.03.2022. It was constructed in anticipation of the repossession of the Cash's Pit Land by the First Claimant. The Closepit Plantation camp was intended by the activists as a fall back - or continuity - position for after the repossession of the Cash's Pit Land. On 23.03.2022, D17 posted a livestream to Facebook (a copy of which is at [Video 1](#) and a screenshot of the post is at [page 33](#)) to introduce and explain the purpose of the Closepit Plantation camp. In it he said:

"Good afternoon everyone - it still morning? I'm not sure. It's still morning technically. So exciting, exciting, exciting we are at, we are at the new, er, location of HS2 camp. So, erm, er, about two hours ago some activists came into this beautiful woodland, erm, which is part threatened by HS2. Erm, we've been here, for – yeah, we came with a few activists came before, erm, we've been down here for the last two days, kind of, just, er, making preparations and staying in the camp and making sure what's what. Erm, but yeah this is new camp people. So everything you can see now is the new HS2 camp. Er, we got people to me right, erm, digging the vitals, the old, er, toilet an that, erm, and then look at this place its absolutely gorgeous as well. Erm, it's full of bluebells, so we are gonna continue with our Bluebell name. Erm, Bluebell lives on. Obviously, erm, we've got an eviction coming at our Bluebell camp, the original camp just up the road, erm, so we thought it was wise to start looking for new pastures, erm, affected by HS2, and we came across this. Erm and the exciting thing about this camp, erm is that it is directly on the edge of a woodland, er, sorry, of a compound. It's a huge, huge compound, HS2 compound, and its right through these trees at the back line there, I'm gonna go over an have a look in a sec. Erm, so we were served an eviction notice, erm, just under 4 weeks ago, er, 4 weeks ago at 12 o'clock tonight actually, erm to say that we must vacate Bluebell woods erm and we face prosecution and all the rest of it if we don't. Er, so people are hunkering down, we need activists to go to Bluebell, er, today, now, tonight, erm, we need butts in that camp, erm, there's lots of defences that people can go in and as I've said a million times, you don't

have to technically do an arrestable role or a role that you don't feel comfortable with, erm, even just being here, on the outside of the perimeter, erm, and between the two camps and stuff is a massive help. Erm, so yeah, we've got stuff going up [points camera at a tree house with a Palestinian flag flying] bet you can't guess who lives in this one? Erm and we've got a few friends up this tree at the back there, just getting some lines and stuff up and then as we go through here, erm, we're getting more things set up over here, erm carrying on carrying on, so we've got a structure going up in the back just on me left here, erm as you can see all the bits and pieces are out, er" [pointing the camera at an assortment of ropes and netting].

Later, at 00:3:00 in the video, D17 said "*I need to, er, I need to be really, erm, clear about this, we have not abandoned Bluebell Woods protection camp. Bluebell Woods protection camp is still up for eviction, still needs lots of bums in there. Erm, this is a camp so that we continue, can continue doing what we are doing, erm, and also offer support and somewhere to stay for people wanting to get involved with what might come during the eviction".*

Later, at 00:5:11, D17 showed the proximity of Closepit Plantation to active HS2 Scheme works and at 00:06:45 he said: "*we've got people now in the trees and putting platforms up and things like that, so we are gonna keep this, erm, this site, this is gonna be the new, er, HS2 site in Swynnerton, if Bluebell goes or if and when Bluebell does go. Er, so this is gonna be our new home, erm, it is under threat, there's a massive compound on the other side, erm, and yeah we can really, er; we can really do something here people. If you wanna disrupt HS2 this is gonna be a perfect spot to do that from. Erm, obviously, I'm not inciting any, er, any public nuisance or anythink like that, because I wouldn't do that. Erm, and then lower down here it goes down, look how nice it is. So yeah, there gonna take a big snippet off the sides and we are gonna be here to hold them accountable when they start doing what they do.*"

25. The activists dug tunnels and constructed treehouses on the Closepit Plantation land, many of which were on land within the LLAU and adjacent to areas where substantial groundworks will be undertaken and immediately adjacent to land on

which utility diversion works for the HS2 Scheme were being undertaken. The presence of the activists on the Closepit Plantation land presented a significant risk to the safe completion of works. As can be seen from D17's livestream, activity undertaken on the land by the activists was deliberately designed and intended to try to disrupt the HS2 Scheme. Some of the activity undertaken by the activists using the Closepit Plantation land as a base is described in Dilcock 2 and video footage exhibited.

26. Accordingly, the First Claimant exercised its powers under Schedule 4 of the Phase 2a Act and temporarily stopped up the roadside verge along the boundary of the Closepit Plantation land and prevented occupation of the land by additional activists and subsequently cleared the remaining trespassing activists from the land by agreement with the landowner.
27. Aside from the very significant issues experienced at the Cash's Pit Land and Closepit Plantation, the application for the Injunction and the fact that it was under consideration by the Court appears to have had a deterrent effect even before the Injunction was made. As set out in Groves 1, unlawful direct action activity by activists reduced dramatically across the rest of the HS2 Scheme. The Claimants and their specialist advisers, including myself, also consider that the sentences imposed on the Cash's Pit contemnors will have had a significant deterrent effect of themselves.
28. The deterrent effect continued following the making of the Injunction on 20.09.2022. There has been a significant reduction in the number of incidents of disruptive, unlawful direct action against the HS2 Scheme. It is difficult to be certain, because the activists involved do not often openly advertise the rationale for their shifting behaviour, but the Claimants and their specialist advisers, including myself, are of the opinion that the imposing of the Injunction has been a significant factor. However, there are other factors of which it is important to take note when considering the overall level of activity and assessing the threat of future activity. Those factors are discussed in more detail in Groves 1.

29. There have been 37 activist-related incidents targeting the HS2 Scheme or incidents that have breached the terms of the Injunction recorded by the Claimants since the Injunction was imposed. Brief details of the more notable incidents are set out in the following table. The location type of each incident is given using the following key:

Cat A = HS2 Land

Cat B = Land to which the Claimants are entitled to possession, but which is not currently included in the Injunction

Cat C = Non-possessed land within the LLAU

Location plans for each incident are at **pages 34 to 46**.

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
06.10.2022	Trespass upon HS2 Land	D66 and D67 trespassing at Aylesbury ecological mitigation area. The area has extensive HS2 signage. The trespassers were asked to leave and escorted from the site. Body Worn Video footage recorded Incident described in detail at paragraphs 31 to 45 below.	Cat A land. Aylesbury Ecological mitigation area	Mobile patrol diverted from route. Mobile patrol has a dual role to provide urgent medical response and therefore 1 patrol providing medical response was unavailable for approximately 45 minutes whilst dealing with this incident.
06.10.2022	Graffiti/signage	Stop HS2 posters bearing the threat “expect us” found in the area	Cat C land. Clifford’s Wood	Posters were removed by Specialist Safety and

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
		of Clifford's Wood, Swynnerton Images recorded (copies at pages 47 to 48)		Security Vehicle Patrol which had to be specially tasked at cost to the First Claimant.
07.11.2022	Interference with fencing or gates	At around 22:40hrs security reported hearing loud noises from Schedule 4 verge at Closepit Plantation opposite Long Compton Farm. They identified a grey VW transporter driving away north bound on the A51 towards Bottom Lane. 6 Heras fencing panels had been pulled over	Cat C Verge at northern limit of Closepit Plantation	IRT were called out to deal with the incident at cost to the First Claimant.
13.11.2022	Anti-Social Behaviour	Eggs thrown at security staff at Long Compton Farm	Cat C land Long Compton Farm, Swynnerton	Disruption to security staff doing their jobs. Enhanced patrolling of the location undertaken by the Specialist Safety and Security Vehicle patrols.
13.11.2022	Trespass on HS2 Land, Assault,	UID male trespassed upon the HS2 site at Old Oak	Cat A land Old Oak Common London	Police attended the site, access to the site was temporarily

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
	Criminal Damage	<p>Common, he then proceeded to assault a security officer by ripping his body worn camera from his chest and throwing it to the ground. Male was also threatening towards security staff and used sexually obscene language and gestures.</p> <p>Male has previously trespassed upon the site and assaulted staff.</p> <p>CCTV footage recorded</p> <p>Incident described in detail at paragraphs 47 to 49 below.</p>		<p>suspended due to altercation in bell mouth.</p> <p>Hostile working environment created for staff.</p>
15.11.2022	Interfering with fences and gates	At around 01:20hrs a male was recorded on the site CCTV attaching a padlock and chain to the front gates of the Balfour Beatty compound in Swynnerton Staffordshire.	Cat A land Verge at BB Swynnerton Compound	Specialist security tasked to attend site at 03:50 to cut the padlock and chain from the gates at cost to the First Claimant.

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
		CCTV and still images recorded. Incident described in detail at paragraph 50.		
20.11.2022	Trespass	Persons unknown entered HS2 Land and climbed trees attaching a Stop HS2 banner at a height of approximately 4m Images of banner in trees recorded (copies at pages 49 to 51)	Cat A land Junction of Stab Lane and A51 north of the Village of Swynnerton	IRT team was tasked to attend the incident at cost to the First Claimant.
20.11.2022	Criminal Damage	Several road signs including permanent highways and temporary contractor signage on the A51, A519 and local area were found graffitied and turned over Images recorded (copies at page 52 to 54)	Cat A land A51 and Cat C Land A519 and Bottom Lane	Signs had to be removed and replaced by traffic management contractors at cost to the First Claimant.
22.11.2022	Trespass	Riders and hounds from the Bicester Hunt entered HS2 Land to the South of the	Cat A land The Heave worksite just south of Oxford Canal	As a result of the incursion site operations were paused for approximately 40mins for a

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
		<p>Oxford Canal. Riders were recorded riding along the site access road and across the work site requiring the cessation of works for between 30 and 45 minutes. At least two riders and at least 20 hounds were filmed in the works area</p> <p>Video footage of incident recorded</p>		<p>safety stand down.</p> <p>Perimeters and fencing were then checked.</p> <p>The following day the area security manager and mobile patrols were tasked with identifying the access points and route taken across the site.</p>
04.12.2022	Assault/anti-social behaviour	<p>At approximately 19:50hrs a black pick-up truck driving past the Cash's Pit Land shone a red laser towards the security staff deployed along the fence line.</p> <p>The incident was reported to the Police</p>	Cat A land Cash's Pit Land Swynnerton	Necessitated increased security mobile patrolling in the area at cost to the First Claimant.
05.12.2022	Interference with fences, Assault	An agricultural contractor working upon the behalf of a neighbouring landowner rammed the site gates with their	Cat A land EKFB A421 (S) site	The site access was blocked for approximately 5 minutes duration. The barriers and fencing required

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
		<p>tractor, flipped safety barriers and then assaulted a security officer, knocking his mobile phone from his hands.</p> <p>CCTV and mobile phone footage recorded (stills at pages 55 to 56)</p>		<p>repositioning and replacement. Hostile working environment for staff.</p>
05.02.2023	Direct action at A418 - activists seeking to disrupt works by placing themselves in harm's way	<p>D66 and D67 repeatedly tried to place themselves in positions that prevented EKFB de-vegetation teams from removing trees</p> <p>Incident described in detail at paragraphs 111 to 142 below.</p>	Cat C land A418 site in Aylesbury	<p>Substantial delay prevented through the deployment of the IRT at cost to the First Claimant. Without intervention at least 1 day's delay to the works would have been encountered causing financial loss to the Claimants.</p>
13.03.2023	Interference with fencing	<p>On 13.03.2023 when arriving at worksite 328, it was discovered that a stretch of post and wire perimeter fencing had been removed from its original location. The timber posts and sheep netting</p>	Cat B land – near Madeley Staffordshire	<p>The re-installation or replacement of the fencing will take a dedicated fencing team one day to replace at cost to the First Claimant. Whilst posts may be</p>

Incident Date	Incident Type	Incident Summary	Location	Delay, disruption, damage or loss caused
		had been dumped next to a gate leading to a neighbouring landowner's field (photograph at page 57). The worksite is located upon land in temporary possession which was possessed in June 2022 and was not therefore covered within the Injunction.		salvaged sheep netting will likely need replacement.

30. In addition to the summaries in the table above, I have provided some further detail about four of the incidents in the section below. The incident on 05.02.2023 is described in detail at paragraphs 111 to 142 later in this statement.
31. On 06.10.2022 at around 14:04hrs D66 and D67 were identified walking in the area of the ecological mitigation ponds on HS2 Land at an EKFB site on the HS2 Scheme in Aylesbury. The mitigation ponds were constructed by another HS2 Scheme contractor, Fusion, around July 2018 and images of these works from Google Earth are at **page 58**. The ponds were developed as part of a program of ecological mitigation works establishing new wetland habitats to compensate for those which may be lost as part of the HS2 Scheme.
32. A security mobile response vehicle was dispatched to the location to engage with and remove D66 and D67, who were standing adjacent to one of the ecological mitigation ponds, trespassing. The interaction between the security patrol and D66 and D67 was captured on the body worn camera of one of the security operatives. A copy of the video is at **Video 2**.

33. Upon approaching D66 and D67 the security operative's familiarity with D66 and D67 is apparent. He can be heard on the video saying: "*and it's him as well, what a surprise*". D66 and D67 have been actively campaigning against the HS2 Scheme in the Aylesbury area for a number of years, including taking part in a slow walking direct action campaign on 09.09.2021 at the HS2 Scheme site on the A418, just 800m away.
34. In the foreground of the officer's ("Security Operative 1") body worn camera footage, pedestrian barriers and a life ring which had been installed by the First Claimant's contractor EKFB by the pond are clearly visible. These are immediately behind D66. I estimate they are less than 5 meters away and they are unmissable. The boundary of the HS2 Land is also clear in the distance as a hedge line. A screenshot from this point in the video is at [page 59](#)).
35. As Security Operative 1 greets D66 and D67 he says: "*excuse me you're on HS2 land*". D66's response is inaudible.
Security Operative 1: "*yes I'm sure, this is their ecology area*"
D66 is difficult to hear, so Security Operative 1 says "*pardon*". D66 is difficult to hear again but Security Operative 1 responds "*no, we're on HS2 land*".
D66 responds: "*well how do you know?*"
Security Operative 1: "*because, because of the signs, this isn't part of the footpath*".
D66 is inaudible in the wind at this point. D66 then asks the second security operative ("Security Operative 2") "*have you crossed a fence to get to me?*"
Security Operative 2: "*no*"
D66: "*have you gone through a gate? Yeah yeah*".
Security Operative 1: "*this is HS2 ecology land*".
D66: "*you have gone through a gate, therefore ergo you're the one that's on public land, because you've crossed from the HS2 site through the gate onto this side*" at this point Security Operative 1 attempts to interject but D66 says: "*I'm sorry, can I just finish what I'm saying. You've crossed from the HS2 site through a gate.*"

36. For context, there are thousands of gates within the HS2 Scheme trace. Passing through any such gates does not mean passing out of HS2 Land. Ecological areas, for obvious reasons around preserving their integrity, are gated separately from works compounds and plant storage areas etc.
37. D67 is seen approaching the security operatives and D66. To his left is the grey safety barrier and to his rear, some distance away is the site perimeter hedge, which gives a good visual impression of just how far into HS2 Land D66 and D67 were (a screenshot from this point in the video is at [page 60](#)). It is very obvious that they are not on a footpath of any description. Security Operative 1 (to D67): “*Sir, you’re on HS2 Land*
- D66 then says: “*no no, no, but, no they can’t be true*”.
38. The group are speaking over each other but then Security Operative 2 quite clearly says: “*footpath is closed*” and Security Operative 2 says: “*there’s no footpath along here*”.
- D66: “*no, I came to the footpath closed sign*”
- Security Operative 1: “*the footpath is the other side of those bushes*”
- D66: “*but we came through a public footpath through the bushes*”
- Security Operative 1: “*no, it’s the other side of those bushes*”
- D67: “*no, the footpath that goes across there is closed, because we went [inaudible]*”
- Security Operative 1: “*the footpath is the other side of those bushes. It doesn’t come down here*”.
- D67: “*well it’s certainly implied as a footpath, coz there’s a footpath there*”
- Security Operative 1: “*unfortunately you’re on HS2 Land and I need you to go back the way you came.*”
- D66: “*I think they must be wrong, mistaken because they’ve come through a gate onto this land. I haven’t gone through a gate or a fence*”
- D67: “*we haven’t come through a gate, we’ve come down a footpath, a well-used footpath that’s…*”
- Security Operative 1: “*you came through the hedge. I watched you do it*”
- D66: “*yeah there’s a footpath going through it*”
- Security Operative 1: “*that’s not a footpath*”

D66: “well it’s a well-worn path”

Security Operative 1 (who lives locally) responds: “it’s in that field and down towards Fairford leys”

D66: “there’s dog walkers that use all of that area that come through here”

Security Operative 1: “not down here”

D67 (pointing near the pond): “if you go over there there’s a dog’s ball over there”

Security Operative 1: “well there shouldn’t be”

D66: “well there is”.

Security Operative 1: “there shouldn’t be”

Security Operative 1: “you need to go back the way you came”.

D66: “there was a cyclist who came back through here as well”

D67: “I saw him over there and then he went back”.

D66: “have a little chat with him, coz we were both confused us”

Security Operative 2 (on an unrelated issue): “he’s gonna ring back”.

D67: “weird”

D66: “this is very strange”

39. Rather than leaving and ending their trespass and the disruption they were causing, D66 and D67 continued to argue with the security operatives:

D66: “I think you must be wrong guys because you came through a gate and crossed a barrier, I haven’t crossed a barrier”.

Security Operative 1: “yeah it’s an HS2 gate, for the ecology area”.

D67 and D66: “we’ve not come through an HS2 gate”

Security Operative 1: “no you came through the hedge down further over there, the fact is, this is an HS2 ecology area so I don’t go any further than that [referring to the point he drives to], I walk the rest”.

Security Operative 2: “that’s why we can’t drive because all the animals have been released and the insects and the newts”

D66: “oh god we know that HS2 are very considerate about wildlife aren’t they”

D67 “I could show you probably twenty badger setts that have been filled in, even the ecologist has admitted he’s left HS2 because HS2 will not listen to him”

Security Operative 1: “I have no idea about that”

D67: “I have been looking at those badger setts for about 5 years”

D66: “well I think is then [inaudible]”

D67: “so yeah it’s pretty dreadful”

Security Operative 1: “all I know is this area”

D66: “you’re the ones that have come through a gate from the HS2 site [points to the distance] coz clearly there is a fence there”.

Security Operative 1: “yes, but this is their ecology area”

D66: “so we haven’t crossed a fence”.

Security Operative 1: “well that’s why we were called here because you’re on the ecology area for HS2 so I need you to leave unfortunately”

D66: “ok”

Security Operative 2: “Ok, so we’re now informing you that you shouldn’t be here and we have to ask you to leave”

D67: “yeah that’s fine yeah”

Security Operative 2: “thank you very much”

D66 then says “I just want to emphasise to you, that at no point have I crossed a barrier or a gate”

D67: “we haven’t done anything wrong whatsoever, we’ve just continued down a footpath”

Security Operative 1: “ok, but you’re on HS2 land now so”

D67: “nice kestrel up there by the way”

Security operative 1: “there’s a lot of nice birds of prey round here”

D67: “I know. I’ve been watchin em, well intriguing”

D66: “very intriguing”.

40. D66, D67 and the two security operatives start walking to the boundary. There is a conversation in which the security operatives explain to D66 and D67 that they are first responder officers (which means they carry a dual security and medical role and are medically trained).
41. The conversation then turns to previous encounters between the security operatives and D66 and D67:

Security Operative 2 (to D67): “We’ve crossed paths before aint we, out there”

D67: “sorry?”

Security Operative 1: “we’ve crossed paths a few times before”

Security Operative 2: “*at the A418. You had your arm in a sling and you was trespassing then*”

D67: “*yeah, that’s because I couldn’t get out, so I had me lunch on the fence*”.

The next section of the video is inaudible due to the wind. Security Operative 1 then says: “*I wouldn’t say that, we’ve met him a few times at different occasions.*”

Part of D66’s response is then lost in the wind until she can be heard saying “*I’ve not come across an HS2 fence today*”

Security Operative 2: “*we’ve met before*”

D66: “*I’ve met you before?*”

Security Operative 2: “*when you were dancing outside the 418 in your outfit*” [418 is a reference to the HS2 Scheme site on the A418).

D67: “*that’s not, that’s not crossing an HS2 fence*”

Security Operative 1: “*exactly, that’s what, blocking traffic?*”

D67: “*that’s protest on a, on a public right of way*”

D66: “*well I wouldn’t know*”

D67: “*you all look the same to us, because you all look like carrots, it’s the uniform you see*”

Security Operative 1: “*that I do not disagree with*”

D66: “*I mean obviously you’d remember me*”

Security Operative 1: “*obviously, and this gentleman*” [gestures to D67].

D67: “[partly inaudible] recognise me?”

Security Operative 1: “*yeah Hartwell Wall, going over the wall to take more pictures*” [the Hartwell Wall is adjacent to the A418 HS2 Scheme site].

Security Operative 1: “*I don’t mean it as a bad thing,*”

D67: “*I was protecting a Red Kite*”

Security Operative 1: “*but I had to talk to you, to step away just in case one of the trees went through the fence*”.

42. The group then reach the boundary hedge and Security Operative 1 says: “*back the way you came*”

D67: “*we go back the way we came yeah*”

Security Operative 1: “*through the hedge*”

D66: “*it’s a footpath*”

Security Operative 1: “*through the hedge*”

D67: “*through the footpath*”

Security Operative 1: “*through the hedge*”

D66: “*it’s a footpath - wanna come and see?*”

Security Operative 2: “*no thank you*”

D66: “*I’m not exaggerating*”

D67: “*you don’t believe us do you?*”

Security Operative 1: “*we’re just making sure you go*” then D66 cuts in: “*why don’t you wanna come and see, you can’t accuse me of something and then refuse to look at the evidence*”

Security Operative 2: “*we haven’t accused you of anything, we’re just telling you that you’re trespassing*”.

D66: “*that’s it, you’re accusing me of trespass*”

D67: “*actually we are not trespassing, we are only trespassing if you accuse, if you ask us to leave and we don’t, that’s trespassing. But we’re not doing that, so we’re not trespassing*”.

Security Operative 1: “*you’re leaving*”

Security Operative 1: “*I don’t know whereabouts you came through*”

D66: “*It’s quite clear*”

Security Operative 1: “*looks like bushes to me*”

D67: “*you can come and see where we came through if you want, it’s up to you*”

Security Operative 1: “*well we’re coming this way to make sure you do go, coz we have to do that*”.

D67: “*where does HS2 land start then, round here then, coz how do dog walkers and everybody else know where it starts*”

D66: “*That chap on his bicycle*”

Security Operative 1: “*to my knowledge, it ends at this hedge line*” [this information was correct, as shown on the annotated Injunction mapping at **page 61**
D66 then interjects and talks over D67: “*hang on, to your knowledge, it ends at this hedge line*”

D67: “*so you don’t know where the HS2 land starts?*”

D66: “*but you’re happy to accuse people of trespass?*”

Security Operative 1: “*this is HS2 land, I know that for a fact, that side is public*”.

D67: “*we didn’t come through there*”

Security Operative 1: “*well how did you get across?*”

- D67: “*on a footpath*”
- Security Operative 1: “*no*”
- D67: “*on a public footpath*”
43. The camera shows a gap in an established hedge approximately 10m from where the footpath is closed ahead with steel gates (a screenshot from this point in the video is at **page 62**). Security Operative 1 then remarks: “*I don’t know why it’s so open*”
- D66: “*public footpath and you cannot say we’ve forced our way through there*”
- Security Operative 1: “*I never said you’d forced your way through, I just said you was on HS2 land*”.
- D66: “*you implied that we’d forced our way through a hedge*”
- Security Operative 1: “*I said you came through the hedge. You came through the hedge*”
- D66: “*you said there was no footpath, you said there was no footpath*”.
- Security Operative 1: “*I said you came through the hedge*”
- D66: “*and you said there was no footpath*”
- Security Operative 1: “*I didn’t realise -*” before he can finish his sentence D66 interjects with: “*and clearly there is a footpath*”
- D67: “*I think you can clearly see it’s an implied footpath, legally that’s a footpath*”
- Security Operative 1: “*then it needs fencing*”
- Security Operative 2: “*enjoy the rest of your afternoon*”
- Security Operative 1: “*thank you very much*”
- D67 says: “*we’ll pester you buggers down the other end now*” and laughs.
- D66: “*Do you know what, I’ll enjoy it all the more having met you lovely gentleman*”
- Security Operative 1: “*Thank you very much*”
- D67: “*it’s been a lovely day*”
- Security Operative 1: “*bye bye*”
- D67: “*at least it’s not pissing with rain*”
- Security Operative 1: “*yes, yes we don’t need any more of that*”.
- D67: “*we certainly don’t*”
- D66 as she is moving through the hole in the hedge says: “*we don’t need the fellas spraying water on the temporary road either*”

D67: “*and whatever you can do to stop this big fuck up happening would be brilliant*”

Security Operative 2: “*that’s out of our hands I’m afraid*”

Security Operative 1: “*somebody else decided this one*”. The part of the conversation that follows is difficult to hear due to the wind and the distance that D66 and D67 are from the microphone, but it appears that D67 is trying to entrap the operatives in to disapproving of the HS2 Scheme,. Security Operative 2 corrects D67 at one point saying: “*no I didn’t say that at all*”. Security Operative 1 tells D66 and D67 to “*take care of yourself*” and Security Operative 2 says “*thank you*”, followed by Security Operative 1 saying “*thank you very much*”.

44. Throughout the exchanges D66 and D67 seem to treat the interaction as a game - D67 confirms as much when he says: “*we’ll go and pester your buggers down the other end now then*” and laughs. It is clear that the security operatives have encountered D66 and D67 on multiple occasions and that on those occasions D66 and D67 have allegedly been trespassing or blocking access and egress. Neither D66 nor D67 challenge this - they seem to almost revel in it. Their claimed ignorance of the fact that they were in the ecological area on HS2 Land is not credible. D66 admits they passed a footpath closed sign. D66 and D67 have been observing the scheme for up to 5 years according to D67 himself and D66 attended and made representations to the Judge at the Injunction hearing in May 2022. Finally, the presence of site apparatus, gates, pedestrian barriers, life rings etc. on the land makes it obvious that it is not public land. Nonetheless D66 and D67 throughout the interaction constantly challenged the security operatives who were unfailingly polite from start to finish. D66 and D67’s trespass disrupted the security operatives in carrying out their first responder duties on site as they had to go out to the ecological area and deal with removal of the trespassing D66 and D67.
45. I was informed of this trespass at the time by the area security manager for this area. He also reported that after this interaction (and following through on D67’s threat to “*pester you buggers down the other end now*”), around fifteen minutes later, staff at the A418N public right of way crossing point (where a haul road crosses a public right of way) around 500m away reported that D66 and D67 had blocked the crossing point and plant machinery was unable to proceed through the

crossing point. The mobile unit who had previously escorted D66 and D67 from the HS2 Land at the ecology mitigation ponds were then re-tasked to the crossing point. However, by the time they arrived D66 and D67 had left. That incident was not video recorded.

46. D66 was served with a copy of the Injunction on 20.09.2022 (the day that the Injunction was made) by email. Following the incidents on 06.10.2022 described above, the Claimants' solicitors wrote to D66 by email setting out what had happened, attaching a further copy of the Injunction and warning her that breaching an injunction was a serious matter. A copy of that email and D66's response denying the breaches are at **pages 63 to 65**. At that time, D67 had not been identified by the Claimants (he was identified following the incidents on 05.02.2023 described in paragraphs 111 to 142 below) and could not therefore be written to.
47. On 13.11.2022 there was an incident involving breaches of the terms of the Injunction at the HS2 Scheme construction site at Old Oak Common, West London. An unidentified male who had previously assaulted security staff at the site in May 2022 (an incident that was allocated crime reference number CAD1615 by the police), returned to the site and assaulted security officers, damaged equipment and trespassed upon HS2 Land at the entrance to the site.
48. The individual attempted to gain entry to the site and when challenged by members of the site security team, he assaulted a security officer, ripping his body worn camera from his chest. A still image of this is at **page 66**. The individual then picked up the security officer's body worn camera and threw it hard onto the ground. Following this, the individual, who appeared to be in a fit of rage, proceeded to pick up a traffic cone and throw it across the site entrance. A still image of this is at **page 66**. Then he taunted the security officers for around a minute, standing on HS2 Land shouting at them: "*suck my cock*", all while making masturbation gestures (still images from the site CCTV and another officer's body worn camera are at **page 67**). The second still image from body worn camera footage at **page 67** records the time as 08:10hrs, but this camera had not been adjusted for daylight saving time and I can confirm all the images at **pages 66 to**

67 relate to the same event as I reviewed them with the First Claimant's contractor at Old Oak Common on 30.11.2022.

49. The individual entered the HS2 Land on 4 occasions in total between 07:08hrs and 07:10hrs. The police were called and attended the site shortly after and police crime reference number CHS27008 was issued. We have been unable to identify the individual involved and so no further action has been taken in respect of the Injunction breaches.
50. On 15.11.2022 at 01:20hrs, CCTV at the First Claimant's contractor BBV's compound in Swynnerton Staffordshire detected an individual dressed in black clothing attaching a motorcycle chain to the front gate of the site. The security team that attended the incident reported that the chain had "STOP HS2" written on it, albeit that the writing is not visible in the photo taken by the security team (copy at **page 68**) as it was taken in the hours of darkness. Locking the gate in this manner meant the on-site security team were in effect prevented from leaving the site. This gate and the adjacent verge are located on HS2 Land and subject to the Injunction (annotated location map at **page 69**). A BBV mobile security patrol attended the site but were unsuccessful in their attempts to cut the chain. The First Claimant's Security & Safety Support Vehicle Patrol later attended at 03:50hrs. The chain was finally cut from the gate by Police at 03:52hrs, re-establishing access to the compound.
51. On 24.11.2022 staff discovered upon arrival at the First Claimant's contractor BBV's compound in Swynnerton Staffordshire that two pieces of plant machinery had been spray painted with "FUK HS2" (sic) (images at **pages 70 to 71**). This required the removal of the graffiti and inspection of the vehicles to check that they had not been further tampered with before the day's work could be undertaken. Upon checking the perimeter of the site a fencing panel was found damaged (image at **page 72**).
52. It is clear from the incidents that have taken place since the Injunction was imposed and the threats that have continued to be made against the HS2 Scheme (see further

paragraphs 144 to 169 below) that the rationale of activists remains to cause harm, delay and cost to the project, as Mr Justice Julian Knowles found in his Judgment issued on 20 September 2022 (the “**September 2022 Judgment**”) (paragraph 162):
“much of the direct action seems to have been less about expressing the activists’ views about the HS2 Scheme, and more about trying to cause as much nuisance as possible, with the overall aim of delaying, stopping or cancelling it via, in effect, a war of attrition.”

There is a significant likelihood that incidents of unlawful activity directed at causing such harm will escalate in the event that the Injunction is allowed to lapse.

Correlation between works activities and direct-action campaigning

53. Historically, those projects that have been the target of direct action campaigning have tended to be targeted most prolifically during what are perceived by activists to be the most environmentally contentious works activities. During the road protests in the 1990s for example, the clearance of woodland at Newbury bypass saw the most significant direct action by activists, including tunnelling. During the ‘anti-fracking’ protests between 2014 and 2019, arrests for criminal offences committed in the course of direct action campaigning peaked during the site establishment and drilling phases.
54. Looking back at the works so far on Phase One of the HS2 Scheme (which is the furthest advanced of the phases, as discussed in Dilcock 11), unlawful direct action activity was most prolific and disruptive during de-vegetation works (these works include the felling of trees). This is discussed in more detail in Groves 1.
55. By way of a direct example of this principle being a modus operandi for activists, the following was posted on Facebook by veteran environmental activist Christopher Wilson (aka Jag Wag), on 18.12.2022 in response to a comment that activists should have been fighting the project at the planning stage (screenshot at [page 73](#)
“It's OK to say that people should have been doing stuff twelve years ago, but they were. Protest is always driven by the stage the project is at. When it was in the planning stage there was no infrastructure to disrupt. That stuff only happens once

they break ground. To each stage of the project there's an appropriate response. Rolling over and saying "fuck it, I wish they'd put a station near my house" isn't one of them."

56. Wilson was one of the founders of the unauthorised encampments at Small Dean and Jones' Hill Wood and was instrumental in the establishment of the camps at Cubbington & Crackley and the Cash's Pit Land (all of which are described in Jordan 1). Furthermore, Wilson was involved in significant 'anti-fracking' direct action against Cuadrilla, including being found in contempt for breaching a High Court injunction (Cuadrilla Bowland Ltd & Ors v Cornelia Ellis &Ors [2019] 6 WLUK 888).
57. A good example of the kind of unlawful direct action activity that was triggered by the de-vegetation stage of works on Phase One was what happened in the Leather Lane area. On 22.02.2021 D5 and another activist Ella Russell (aka "Pigeon") occupied a large oak tree located approximately 200m to the South of Leather Lane near Great Missenden in Buckinghamshire. D5 and Pigeon had been residents of the Jones' Hill Wood camp, which was positioned approximately 1km to the north. The occupation of that camp was described in Jordan 1 at paragraph 29.1.3. The camp occupation was prompted by an application by the First Claimant's contractor to close the road for de-vegetation works on 15.03.2021. Shortly after the application was made and publicised, the first tree was occupied by D6 and Pigeon, which was then followed by a post on the Jones' Hill Wood Facebook page calling for the rapid establishment of a camp. A post made on 22.02.2021 on the Jones' Hill Wood Facebook page perfectly illustrates the rationale behind the camp establishment (screenshot at [page 74](#)):

"New resistance camp!! (And banner drop)

We are currently occupying a Grandmaster Oak that stands amongst around twenty others that are due to be felled by HS2. We invite you to come and join us in resisting the pointless and needless murder of these trees.

This site in Leather Lane, between Great Missenden and Wendover, we believe will be felled on the 15th March, unless we act. This is the third camp in a line of camps, that include Wendover Active Resistance Camp and Jones' Hill Wood. These camps occupy the planned route of the viaduct through Wendover Valley.

We have approximately three weeks to climb, build, dig and resist!! This site is directly in the firing line and has already had incursions by HS2 over the last week. There is plenty of space to camp, or even better a selection of incredible oaks to occupy! Come and join us, bring yourself, supplies and prepare for another battle with HS2.”

58. The camp was subsequently cleared by the First Claimant’s security team in an urgent clearance operation on 10.03.2021 during a period of bad weather before the camp could be properly established and defences finished. However, had this camp been able to become properly established and de-vegetation delayed by just 6-8 weeks then works at this critical crossing could have been delayed by up to 12 months as explained at paragraph 151 below.
59. Given that the same de-vegetation stage of the project is yet to come on Phase 2a, all the evidence from Phase One suggests that the threat of significant, disruptive and costly direct action campaigning against the HS2 Scheme remains high.

Displacement of activists and unlawful direct action

60. The Injunction has provided welcome relief to the Claimants from the sustained unlawful activity targeting the HS2 Scheme that they were previously experiencing. However, the Claimants are very aware that the activists who were engaged in unlawful direct action against the HS2 Scheme have not necessarily moved away from this type of activity (but have instead displaced to target other “causes”) and as a result, the Claimants adjudge that the risk of them returning to target the HS2 Scheme again remains high in the event that injunctive relief is not continued. At paragraph 13 above, I have given details of the specific position with regard to each of the named Defendants to these proceedings that the Claimants are intending to retain.
61. In addition, anti-HS2 activists have continued to try to find ways to target the HS2 Scheme that do not breach the Injunction, and this has resulted in secondary targeting of the Claimants’ supply chain and direct action interfering with works and intimidating staff and contractors that has been carefully planned to avoid

breaching the terms of the Injunction, but to still cause as much disruption as possible. It is therefore clear that the threat of unlawful activity targeting the HS2 Scheme remains real and imminent and that there is a need both to continue the Injunction in its current terms and to extend it to prohibit the unlawful activity that has been occurring and which is not currently prohibited under the terms of the Injunction. Injunctive relief is necessary to protect the Claimants' rights, the health, safety and wellbeing of both activists and the Claimants' staff and contractors and to prevent the cost to the public purse of dealing with unlawful activity escalating again.

62. In this section of my statement, I have provided information about the unlawful direct action in which some of the named Defendants to these proceedings have been involved. I have also described in detail specific incidents of both secondary targeting and disruption of works on the HS2 Scheme since the Injunction was imposed.
63. In Jordan 1, it was identified that direct action against the HS2 Scheme was typically undertaken predominantly by two types of activists. Set-piece large scale events tend to be undertaken by large, organised groups such as XR whilst smaller disruptive actions are organised, and camps occupied, by groups of transient multi-cause activists. These smaller, more anarchic groups of "autonomous individuals" are often engaged in multiple campaigns and on occasion will associate themselves with the larger umbrella groups such as XR. Many of these activists were formerly engaged in direct action activism against onshore oil and gas projects (fracking) or animal rights campaigns.
64. Following the imposition of the Injunction and the clearance of the Swynnerton Camps, several of these transient multi-cause activists moved across to and are currently engaged in other campaigns. Critically, where actions have been conducted against the HS2 Scheme care has been taken not to breach the terms of the Injunction, whereas actions against other targets have seen a more "gloves off" approach, with the activists conducting disruptive, destructive and occasionally violent direct action, which in some cases is more akin to domestic extremism. I

have set out some examples of campaigns against other targets in which anti-HS2 activists have been involved in the paragraphs that follow.

Palestine Action

65. Palestine Action are a direct action group who have targeted arms manufacturers and latterly businesses with commercial interests in Israel. Actions against arms producers have been destructive, violent and damaging.
66. Since the grant of the Injunction, it appears that D22 has been most recently campaigning with Palestine Action. On 09.12.2022 D22 took part in a violent and damaging direct action campaign at Teledyne Systems in Presteigne, Powys. Allegedly £500k worth of damage was caused by D22 and 3 others who used hammers, angle grinders and smoke bombs during the action. D22 is currently being held on remand at HMP Berwyn awaiting trial for this incident. Articles about the incident are at **pages 75 to 78**.
67. After leaving the unauthorised anti-HS2 camp at Closepit Plantation, D17 became resident at a Palestine Action camp in Shenstone, Staffordshire. This camp was located close to a UAV engines factory that activists claim supplies engines for drones used in Israel. The camp was used as a base for a series of disruptive direct actions targeting UAV Engines (for example, see the articles at **pages 79 to 85**). On 10.09.2022 D17 was arrested at the camp alongside 11 others for conspiracy to cause criminal damage and received bail conditions not to return to that camp. D17 had also previously been engaged in Palestine Action related direct action against Elbit Industries and has participated in action against Sports Direct (Puma - kit sponsors to the Israeli football team) on 21.01.23 and Pret a Manger (who are opening outlets in Israel) on 24.02.23 (**see pages 86 to 87**).
68. On 17.01.2023 a hearing took place at Manchester Crown Court relating to alleged criminal damage at Elbit Systems in Oldham involving D17. A protest was organised outside that court and was attended by D20, D64 and 2 other former residents of the anti-HS2 camps in Staffordshire, Rosie Willow Gunter (aka Mung Bean) and an individual known as Amazon. An annotated image of the protest

attendees outside the Crown Court on 17.01.2023 posted by D17 is at **page 88**. Many of this group also engaged in direct action as part of an HS2 Rebellion / Kier Ends Here direct action campaign at HMP Full Sutton on 31.01.2023. This incident is covered in detail at paragraphs 78 to 80 below.

JSO

69. JSO have been the most active direct action environmental protest group in the UK in the last 12 months. The group are seeking to achieve a radical flank effect, whereby their cause is amplified through radical dramatic and disruptive direct action. Significantly, the group's funding, profile and momentum has drawn activists who had previously been active against the HS2 Scheme, some of whom are Defendants in this case or are subject to undertakings given to the court not to engage in unlawful direct action against the HS2 Scheme. I have set out in the following paragraphs the details of some known anti-HS2 activists who have been involved in, arrested or committed for actions under the JSO banner.
70. D28 Scott Breen (aka Digger Down) engaged in a direct action campaign as part of JSO in Chertsey, Surrey between 01.08.2022 and 06.09.2022. D28 established a small unauthorised camp on land required for the construction a new fuel pipeline linking Southampton and Heathrow airport. On 01.08.2022 D28 dug an excavation approximately 2.5m deep and at the bottom placed a lock on device into the wall of the shaft. The lock on device was designed to allow him to place his hand into it should specialist protestor removal officers try to remove him from the hole. Exxon Mobil sought relief from the courts and an order was granted on 16.08.2022 which ordered D27 to leave the land within 72 hours. D28 then constructed a small pallet tower structure over the excavation where he remained until 02.09.2022, only leaving when an arrest warrant was issued by the High Court. On 06.09.2022 D28 was found in contempt and committed to prison for 112 days. 2 articles summarising this action are at **pages 89 to 94**.
71. D57 Samantha Smithson (aka Swan / Swan Lake), a joint founder (with Larch Maxey) of the anti-HS2 wing of XR known as HS2 Rebellion (see **page 95**), was arrested on 07.11.2022 for her part in a JSO direct action campaign on the M25,

where activists were engaged in climbing gantries in 12 different locations on the motorway. The incident on 7.11.2022 forms part of the amended particulars of claim in KB-2022-004333, a copy of which is at: https://nationalhighways.co.uk/media/giodg0c5/amended-particulars-of-claim-23_11_2022-123754941-1.pdf. A video of D57 discussing her arrest on 7.11.2022 was posted to her Facebook profile on 13.11.2022 and a screenshot of that post is at **page 96**.

72. Larch Maxey was formerly D32 to these proceedings and a joint founder (with Samantha Smithson) of the anti-HS2 wing of XR known as HS2 Rebellion (see **page 95**). As detailed in Jordan 1, he dug and occupied tunnels under HS2 Land at Euston in January 2021 and scaled and spray painted the First Claimant's offices at 1 Eversholt Street on 06.05.2021 (and has since been convicted of criminal damage). Maxey had also been involved in a large number of other disruptive direct action campaigns against the HS2 Scheme prior to the imposition of the Injunction. On 26.08.2022 Maxey took part in a JSO direct action tunnel campaign beneath Stoneness Road in Essex, which is an access road to Grays Oil terminal. The direct action closed the road and the access to the terminal. Screenshots of social media posts and stills from videos posted on social media about this incident are at **page 97**.
73. D60, Xavier Gonzalez-Trimmer, was convicted alongside Maxey of criminal damage to the First Claimant's office at 1 Eversholt Street on 06.05.2021. In August 2022 Gonzalez-Trimmer was also engaged in the JSO direct action tunnel campaign beneath Stoness Road in Essex. An Facebook post referring to Gonzalez-Trimmer and his tunnel occupation at Grays Oil Terminal is at **page 98**. D60 died earlier this year and is on the Claimants' list of named Defendants to be removed.

Stonehenge

74. Many of the activists who have been actively campaigning against the HS2 Scheme have also been resident at the Stonehenge Heritage Action Group camp. The Stonehenge camp has been established (by trespass) on land associated with the

A303 works around Stonehenge and the campaign by the activists is targeted at disrupting or stopping works on that road project (screenshots of the camp's Facebook page are at [pages 99 to 100](#)). This campaign has been running in parallel with the campaign against the HS2 Scheme and activists regularly move between the two campaigns. By way of example, on 15.06.2021, 4 campaigners against the HS2 Scheme, including D17 and D48, undertook a 71 mile trip including hiking, hitch hiking and bunking trains to travel from the anti-HS2 camp at Small Dean to Stonehenge for the Summer Solstice. During this trip the group stopped at the Stonehenge Heritage Action Group camp. D48 is now a permanent resident of that camp. At [page 101](#) is an image of D17 and D48 participating in this.

75. The close links between the campaigns were articulated by D48 in a post on Facebook dated 03.12.2021 (a copy of which is at [page 102](#)):

"A lot of the folks passing through stonehenge camp have been up and down the hs2 line and we wouldn't be able to keep the cogs turning at camp if it wasn't for the base building that's been done on the hs2 camps (and by extension all other protest camps) over the last few years. These two campaigns are closely linked in their concerns and their goals. We all want an end to violence against mother nature from the state, and from the patriarchy. Big love to everyone from the anti-hs2 community who has supported us, dropped off materials and stopped by for a cuppa ❤️".

76. Such is the closeness of the two campaigns that the mother of D63 commented on that post as follows: "*I can send kombucha and scoby when my WAR tunneller joins you*". WAR refers to the Wendover Active Resistance camp on HS2 Land at Small Dean, the clearance of which was covered in detail in paragraphs 56 to 71 of Jordan 1. The "WAR tunneller" reference is to D63, who had been one of the occupants in the tunnels dug under the HS2 Land at Small Dean. I take this opportunity to correct the identity of the Defendants who occupied the tunnels at Small Dean. The Claimants had previously identified one of the tunnellers as D19, Harrison Radcliffe, but have subsequently confirmed that the Small Dean tunneller referred to in Jordan 1 as D19 was in fact D63, Dino Misina (aka Hedge Hog / Sasha James).

Kier Ends Here

77. The Kier Ends Here campaign is a spin off from the anti-HS2 campaign, conducting secondary targeting of the HS2 Scheme supply chain. Kier is a tier one contractor forming part of the EKFB joint venture, which is carrying out the main works construction along an 80km stretch of Phase One of the HS2 Scheme. Kier is also undertaking early enabling works on Phase 2a of the HS2 Scheme. Kier is also engaged in the construction of prisons. So-called “Kier Ends Here” direct action activism has been undertaken at both HS2 Scheme sites - for example the A41 site in Aylesbury (see Jordan 1 para 29.2.2) - and at mega prison construction sites such as at Full Sutton and Wellingborough.
78. On 31.01.2023, D17, D20, D63 and 2 former residents of the Cash’s Pit and Closepit plantation camps, Rosie Willow Gunter (aka Mung Bean/Moss Quito) and Josie Argyle (aka Gin Ger), blocked 2 access points to HMP Full Sutton with 4 bamboo tripods. Images of D20, D63, Argyle and Gunter in tripods are at **pages 103 to 104**. HS2 Rebellion claimed responsibility for the action. At **pages 105 to 112** is a press release shared on Facebook by D17 where he stated:
“Our friend [D33] is in prison for their opposition to High Speed 2, for which Kier - the company we are targeting today - have been awarded a £1.4billion contract to build.
HS2 is in shambles! At this point, it may never even be built!”
Further screenshots of Facebook posts about the action and an article in Construction News are at **pages 113 to 124**.
79. The action at Full Sutton prevented access and egress from around 05:30hrs and prevented works being undertaken at the site for around 10 hours. Later in the above-mentioned press release, D17 gave another insight into why Full Sutton was targeted and the HS2 Scheme was not:
“Despite the huge amount of destruction it will cause, we are now no longer allowed to protest against it without being threatened by an injunction. This is a draconian, privately bought law which threatens anyone who steps foot on HS2

land - or causes disruption in any way - with a 2 year prison sentence, an unlimited fine, and seizure of assets.”

80. An article in the Daily Mail about the action (copy at **pages 125 to 130**), where HS2 Rebellion are quoting as stating:

“Solidarity with: Palestinian action, Kill the Bill, Black Lives Matter, Just Stop Oil and all other activists in prison.”

further reinforces the multi-cause nature of UK direct action campaigning at the current time.

The article continues with: *“'Kier ends here,' the HS2 Rebellion spokesperson said. 'HS2 is a £200 billion mega-project destroying 108 ancient woodlands. Kier profits from building the HS2 and prisons among other things.'”*

XR

81. XR started as a campaign by an organisation called Rising Up. Rising Up's website has long since been removed from the internet but a screen shot from 2019 explaining the background and origins of the group is at **page 131**. It says: *“Rising Up was formed by activists who have also been part of Compassionate Revolution, Earth First!, Occupy, Plan Stupid (SIC), Radical Think Tank and Reclaim The Power. Rising Up is linked to Compassionate Revolution which was birthed in the Occupy movement.”* Compassionate Revolution Ltd is a company registered in the UK, Company No 09622618.
82. In their “about us” description on their website (screenshot at **page 132**), XR describe themselves as an *“international movement that uses non-violent civil disobedience in an attempt to halt mass extinction and minimise the risk of social collapse”*. In reality, XR is an environmental campaign which is trying to enact political change through direct action. The group uses civil disobedience, disruption and delay to heighten awareness of their cause. HS2 Rebellion, JSO and Insulate Britain may all be considered affiliated groups as they share members and founders and on occasion engage in cooperative actions.

83. HS2 Rebellion may be considered an affiliate group to or “wing” of XR. An insight into the key role played by XR in the evolution of HS2 Rebellion can be seen in comments made on a post on the Stop HS2 Facebook group from 02.01.2023 (copy at [page 133](#)), where Sarah Snooks comments “*how do you think we got so many people into the campaign! Where were u 4 years ago when the first camp was a year old and totally empty. XR gave us loads of people and even more publicity*”.
84. One campaign by environmental activists that is ongoing as at the date of this statement is an XR campaign known as “Cut the Ties”. This campaign is primarily a secondary targeting direct action campaign, targeting businesses and government departments that are associated with the fossil fuels industry. It also targets businesses associated with the HS2 Scheme. Latterly, the actions being conducted under this banner have been described by XR as being part of 100 days of action counting down to “The Big One - Unite To Survive” starting on 21.4.2023, when XR claim that 100,000 people will gather at the Houses of Parliament (screenshot at [page 134](#)).
85. On 22.11.2022 a large number of activists operating under the XR umbrella and including activists from HS2 Rebellion (including D36, D39 and D66) executed a series of direct actions under the banner of the “Cut the Ties” campaign at 13 different locations. This included targeting the London office of the law firm Eversheds Sutherland (International) LLP (“**Eversheds**”). The action was livestreamed on Facebook by XR in a video spanning over 3 hours and which cut between the different locations of the action.
86. Eversheds is one of a number of law firms that advise and represent the Claimants in relation to the HS2 Scheme. In particular, Eversheds advised the Second Claimant in relation to the drafting and passing through Parliament of the HS2 Acts and the Phase 2b (Western Leg) Bill and represented the Second Claimant in relation to the committee phases of the HS2 Acts and is currently representing the Second Claimant in relation to the committee phase of the Phase 2b (Western Leg) Bill. Access to legal representation for the Government in dealing with these matters is clearly an important part of the democratic process. As can be seen from the details below, Eversheds’ role in this was cited as a specific reason for them

being targeted with disruptive unlawful direct action activity, seemingly in an attempt to intimidate them into ceasing to act for the Claimants.

87. Eversheds has also previously represented the Claimants in relation to the Harvil Road Injunction and the Cubbington & Crackley Injunction but has not represented the Claimants in relation to these proceedings or the contempt proceedings brought against those Defendants who breached the Cotter Order. Despite this latter point, as can be seen from the details below, the imposition of this Injunction and the imprisonment of D33 following his breaches of the Cotter Order are also cited as specific reasons for the unlawful direct action activity.
88. On 21.11.2022 activists from XR and HS2 Rebellion conducted a direct action outside the London office of Eversheds. The action featured 5 times in the livestream referred to above and copies of the 5 relevant clips are **Videos 3 to 7**. The sections of the livestream from the Eversheds office were narrated by D36 and D66.
89. Upon arrival of the activists outside the office, two unidentified females sprayed the front of the building in black paint, seemingly intended to be “fake oil”, using black fire extinguishers with white writing on the side saying “Cut the ties to the fossil fuels industry”. A still image from **Video 3** showing this is at **page 135**. In addition to the 2 female activists who sprayed the building there was a steel band present and a 2 person white elephant puppet bearing the slogan “Stop HS2” and which has been used by activists at previous protests. D39 was one of the people inside the puppet and he can be seen assembling the puppet in the first 15 seconds of the video montage described at paragraph 97 below, a still of which is at **page 136** activists proceeded to obstruct the entrance to the Eversheds office.
90. The first section of the livestream featuring the action against Eversheds (**Video 3**) ran at approximately 11:30hrs and was narrated by D66 as follows:
“Good morning again we are back here outside Eversheds Sutherland. Going to switch you around so I can talk to you [turns camera to show her face]. Hi everyone, so why are we here outside Eversheds Sutherland you might ask? Well, we are here to cut the ties to fossil fuels and we’re asking these companies that are [inaudible]. You might think what are we doing here? Well, Eversheds

Sutherland is responsible for, er, the insurance and the, well not the insurance, but the legal [inaudible] battles when it comes to all things HS2. So, Eversheds Sutherland – I'm going to switch you around [turns camera back to show the Eversheds office]- who are playing a remarkably, a remarkably green washed, erm, VT in their, er, foyer, which is a bit sickening to watch, are the legal company who pride themselves on their website in creative, er, cutting edge legal works. I read that as, erm, maybe pushing the envelope a bit, when it comes to legal work, creative legal work that is defending HS2 but not only defending HS2, but also bringing prosecutions against peaceful protestors. So Eversheds Sutherland – even before the HS2 enabling Act of 2017, was already being paid £45,000 a week by HS2 to [inaudible] Euston residents who were seeking to, er, find justice for the demolition work that was going on around there, seeking to find justice for the pollution to the aquifer that supplied 22% of London's clean water. Eversheds Sutherland were the legal company that defended HS2 in the courts when it came to Affinity Water, who tried to, erm, get, er, the courts to recognise that HS2 was going to pollute the chalk aquifer that supplies fresh drinking water to 22% of London.”

91. In **Video 4** D66 interviewed one of two females obstructing the entrance to the Eversheds office, who informed D66 that she was there because:

“Eversheds, who were the law firm that enabled these contracts and work for these companies and now bring, er, injunctions to the court so that peaceful protests cannot go ahead at these sites anymore. So the whole of HS2 and the whole of the Exxon pipeline site is now fully injunctioned, which was brought to the courts by this company here [points behind her to the door of the Eversheds office] erm, and granted by one person, one Judge, through money and power, erm, to stop us having any sort of voice. And we're now seeing peaceful protestors imprisoned, not for committing any crime whatsoever, but breaking an injunction and that is just absolutely disgusting abuse of wealth, power and that's why I'm here today.”

92. D66 then goes on to say:

“These injunctions, they are against peaceful protest, although they would claim that not to be the case, erm, currently we have a peaceful protestor who is in prison, er, for protesting against HS2. That person was, or is, a named defendant. But we

also know of at least one person unknown who already has been warned by HS2 lawyers, by Eversheds Sutherland, erm, for apparently or allegedly breaching the injunction, although we have irrefutable evidence that that is not the case. That is not the case. And yet this peaceful protestor, who is a person unknown, has already received a warning, erm, so, despite Eversheds Sutherland in the legal paperwork that they drew up and despite their lawyer claiming that these injunctions would not be to prohibit peaceful protest, it would seem that peaceful protestors are being targeted, to significantly inhibit, their right to peaceful protest, but also any named defendants, are, have prosecutions brought against them and risk imprisonment and indeed have been imprisoned.”

and

“here to raise awareness of how Eversheds Sutherland is facilitating HS2, but also Exon, in the pipeline from Southampton and they brought the injunction to restrict peaceful protest against Exon and against HS2.”

93. As set out above and as is evident from the documents relating to the Injunction, including the Injunction itself (a copy of which was sent direct to D66 as described elsewhere in this statement) Eversheds did not and do not act for the Claimants in relation to these proceedings and have not sent any correspondence to anyone on behalf of the Claimants in relation to the Injunction. Eversheds did not act for the Claimants in relation to the Cash's Pit Contempt and had no involvement in that case, which resulted in the imprisonment of D33 for the contempt referred to by D66. I believe the reference to a warning having been issued to a person unknown is a reference to correspondence issued to D66 by the solicitors (not Eversheds) that did act of the Claimants in relation to the Injunction, following a breach of the Injunction committed by her and D67 on 06.10.2022 and which is described at paragraph 46 of this statement.
94. In **Video 5**, a screenshot of which is at **page 137**, an activist called Dorothea Hackman is interviewed by D36. She says:
“It’s very exciting to be here, as for an incredibly long time, Eversheds has persecuted us when we’re exercising our legitimate right to peaceful protest against High Speed Two and I was horrified to find that not only did they pay Eversheds £5000 a day to trash our petitions back in 2015, before Parliament went

right ahead to pass the hybrid bill that enabled High Speed Two to destroy ancient forests, ruin, absolute devastation a Trafalgar square sized area around Euston station, cutting down our trees, cutting down our trees when we have a climate emergency and we need every tree and green space we can get. So you can imagine how horrified I was to find out that Exxon Mobil are building a pipeline from Southampton to Heathrow in order to increase the amount of jet fuel they can get there for the third runway. I mean, again this is an appalling thing to do when we have an impending catastrophe that threatens the lives of all of our grandchildren, and they too are taking injunctions out against people who protest about the pipeline. I can't begin to tell you how good it is to see people gathering here to protest against Eversheds Sutherland who are clearly major evil doers in the gloomy background of fossil fuel giants. Thank you.”

95. In **Video 6**, a screenshot from which is at **page 138**, D36 does a piece to camera, the tone of which is more sinister and which focuses on the individual people who work in the Eversheds London office (again, who had no involvement in the Injunction proceedings or the Cash's Pit Contempt):

“So behind me is Eversheds Sutherland, Eversheds Sutherland is one of the biggest legal companies in the world. They actually specialise in property, but in specialising in property they also specialise in all the companies that are on the wrong side of history: oil, that’s HS2, that’s the Nuclear fuel companies, that’s life sciences. All backed by these people, all their trading is done through these people and all the legal attempts to stop protest are done through these people. People are going to prison because of the actions the people in that office take. People who have not broken a law, who have not committed a crime are going to prison because of those people over there.

The biggest thing that we can do, all of us is stand up and be a part of the protest, this [points at Eversheds office] is anti-democracy, that [points at Eversheds office] is anti-democracy, down here [points at activists] that is democracy, that is real democracy, people speaking truthfully and honestly from the heart. Come out and join us it’s the biggest piece of power mongering that you will ever have.”

96. In **Video 7** there is a round-up of the day's action in which it is confirmed that the HS2 Rebellion group conducted the action against Eversheds.
97. On 25.11.2022 a shortened video montage narrated by D36 of the action against Eversheds (including footage of the preparations for it) and encouraging others to participate in similar action, was shared on the HS2 Rebellion Facebook page. That post has since been removed, but I took a copy of the video and a screenshot of the post before it was removed and the video is **Video 8** and the screenshot is at **page 139**. D36's narration over the video is as follows:

"As long as we consider profit as our only metric for a successful society, we are gonna carry on destroying the world that we live in, and that is exactly what HS2 is.

For the last 2,3,4 weeks there was genuine hope that sense was going to prevail at long last, but it looks like the construction industry have pushed Hunt into going ahead with it. Even if we get rid of the Conservatives we will have exactly the same problem with Labour. Which is why we have to have protest such as we are about to embark upon here today [video shows 2 women with black fire extinguishers spraying a black substance across the windows of Eversheds' London office]

The only way to buck that trend is to be out here and stand against the system yourselves. This is your power"

At 00:01:06 the audio shifts to an unknown female activist, who says:

"We are at Eversheds Sutherland, erm, they are complicit with ecocidal companies like Exxon Mobil and HS2, they support as a law firm with contracts for both those firms and then further down the line also the injunctions that are now imposed. So we are here today to call out Eversheds Sutherland and say cut the ties and move away from these companies."

At 00:01:42 the audio shifts to another female activist, who says:

"When we were petitioning Parliament not to have High Speed 2 back in 2015, Eversheds - Eversheds Sutherland as they now are - have been paid £5000 a day to trash our petition and they are colluding to criminalise peaceful protest. I

mean look at what has happened to Jellytot [D33], he's been in prison for 280 whatever days merely for breaking an injunction. Eversheds' injunction did that. Eversheds' Injunction against the pipeline that put Digger in jail for a month".

98. On 28.02.2023 around 60 activists operating under the XR umbrella and including activists from HS2 Rebellion executed another series of direct actions under the banner of the “Cut the Ties” campaign. They again targeted Eversheds – this time disrupting Eversheds’ offices in London, Birmingham, Cardiff and Nottingham. Access to the offices was obstructed, criminal damage committed to the buildings with slogans spray painted across them and attempts made to intimidate those working in or visiting the offices.
99. The action was livestreamed to Facebook and a copy of the video is at **Video 9** and stills from the video are at **pages 140 to 144**, along with a photograph of the damage done to the Cardiff Office, which did not feature in the video. In this section of my statement, I have described the action shown in the video and provided transcripts of some of the commentary over it. The information banner running along the bottom of the video and the accompanying summary on Facebook (a copy of which is at **page 145**) makes it clear that this action was related to Eversheds’ work on the HS2 Scheme and designed to intimidate Eversheds into ceasing to act on behalf of the Claimants. The banner running along the bottom of the video reads:

“LIVE: ACTIVISTS TELL MULTINATIONAL LAW FIRM EVERSHEDS SUTHERLAND TO STOP AIDING PLANETARY DESTRUCTION. ACTIVISTS FROM EXTINCTION REBELLION ARE TAKING PART IN NON VIOLENT DIRECT ACTIONS IN BIRMINGHAM, CARDIFF, LONDON AND NOTTINGHAM TO DEMAND THE LAW FIRM CUT THE TIES WITH COMPANIES SUCH AS ESSO (EXXONMOBIL) AND HIGH SPEED 2 (HS2). THESE COMPANIES ARE ACTIVELY TAKING PART IN THE DESTRUCTION OF NATURE AND ENABLING FURTHER BURNING OF FOSSIL FUELS AND EVERSHEDS SUTHERLAND ARE AIDING THEM TO CONTINUE THIS WORK UNINTERRUPTED. THE PROTESTORS, AS PART OF THE CUT THE TIES CAMPAIGN ARE DEMANDING EVERSHEDS CUT THE TIES WITH THESE

*COMPANIES. THE ACTION IS PART OF THE 100 DAYS COUNTDOWN TO
“UNITE TO SURVIVE”*

100. The video opens with footage of activists preparing spraying a black substance (evidently intended to represent oil) across Eversheds' Nottingham office. The video then cuts to feature an activist outside the front of Eversheds' London office, who introduces the livestream. At 0:01:20 of the video, 7 members of the “red rebel brigade” of XR are shown outside Eversheds' London office. The activist narrating the video says:

“We are here in London, we are outside the Eversheds Sutherland, multinational law firm’s headquarters right here slap bang in the City of London”

“Hi, so you were just watching the Notting Hill, Nottingham streams, we are back here now. So you’re here in Central London in the city of London in fact with the Red Rebels as you can see we are outside the Eversheds Sutherland Headquarters erm they are a multinational law firm who are the lawyers for lovely companies such as High Speed 2, HS2 you may of heard of them and also Esso which was Exxon Mobil. Erm they are erm some the solicitors who have been very helpful in getting some of our amazing rebels some very strict erm injunctions against the actions that they are taking.”

101. Later in the video at 00:04:15 the narrator explains in some detail why Eversheds have been the subject of the day’s action:

“We are telling Eversheds Sutherland to stop working on these injunctions. Why are they helping companies like HS2 and Esso to erm be able to continue their devastation of the planet. We could even suggest that they should be our lawyers [laughs] and help us, the climate activists. Why are they on the wrong side of history? So that is what we are saying here today. Don’t help these companies. So, the really well-known injunctions, er first came out in Harvil Road area in West London for the HS2 protestors. The HS2 protestors were setting up camps and trying to obstruct the work that was being done in the area, for the HS2 project”

102. The narrator then goes on at 00:05:32 to talk about how activists campaigning against HS2 are drawn from a broad church of groups:

“So our brave rebels from Extinction Rebellion, but also Stop HS2, HS2 Rebellion and lots of other groups have been working very hard to try and obstruct the destruction of the woodlands and the forests, the trees, erm, and instead of there being the recognition from, erm, from, er, these kinds of companies like these big multinationals, they’re thinking: we know, we’ll take HS2 on as a client and erm go to court and get lots of injunctions to put on these brave, brave rebels who are trying to stop the destruction of nature and erm if you have ever been to the site the notes are all, er, sort of, erm, pasted all over the fences where it says no one is allowed to come here, erm, you’re not allowed to protest here erm so that is basically the job of Eversheds Sutherland, erm, so very unpleasant, erm, bunch”

103. Following this the livestream returns to Nottingham where an activist in white coveralls explains at 00:07:20 that they have sprayed the office in fake oil: *“because they’ve represented the government in doing a injunction against HS2 peaceful protestors, and also against the protestors against the Esso pipeline, and so we are calling them out, they have been hidden so far, this is our chance to let the world know that these people are facilitating climate crisis by their involvement with the government. What we have done today is proportionate and necessary. There’s a trivial amount of damage that we’re causing”*.
104. The livestream then cuts to Birmingham, showing the outside of the building where graffiti can be seen sprayed on the ground and on the windows and doors at the entrance to Eversheds’ offices. The narrator in Birmingham introduces the livestream and action at 00:08:30 with:
“Hi we are live from Birmingham where we have also targeted the offices of Eversheds Sutherland, and spray painted the message onto the doors of their building. We are asking them to cut the ties to fossil fuels, to stop defending fossil fuel companies and HS2. To stop bringing injunctions to court that are imprisoning activists who are trying to save our planet. So we are here from Birmingham as well, this is our third site today and we are spray painting our message on to the floor, on to the windows, on to the doors and the people inside do not look very happy”

105. At 00:17:00 the livestream returns to London, where a person can be heard shouting “Eversheds Sutherland your silence is violence” the footage then shows the individual (who was formerly D55 to these proceedings) Jacob Harwood, holding a large banner blocking the access to the building. The banner reads Eversheds Sutherland = Unjust Injunctions. Shouting can be heard in the background: “*cut the ties to fossil fuels and HS2, Eversheds Sutherland your silence is violence*”. Harwood requested that he be removed as a Defendant at the hearing in May 2022 and in writing to the Claimants’ solicitors and the court.
106. Later in the livestream at 00:19:37 the narrator describes the activists’ outfits as: “*faceless lawyers that have blood on their hands*” and “*we are saying Eversheds cut the ties to these companies that you should not be representing. Why are you representing these kinds of companies? And we see here the faceless lawyers.*” Somewhat ironically, the narrator goes on to describe injunctions against protestors as “*intimidation*” that Eversheds are using to “*try and stop us from disrupting the works of things like HS2*”.
107. One of the most disturbing aspects of the unlawful activity taken against Eversheds is that it represents a deliberate attempt by activists opposed to the HS2 Scheme to use threats, intimidation and criminal damage to try to force a law firm to stop representing its clients, including acting for Government in a vital part of the democratic process of the passing of Acts of Parliament. This strikes at the heart of rights of access to justice and legal representation and the democratic process. It is also striking how little attention is paid by these individuals and groups to the details of the “justification” for their actions. It is very clear from the documents relating to the Injunction and the Cash’s Pit Contempt that Eversheds did not act for the Claimants in relation to those cases and yet these groups are still seeking to justify the unlawful action by alleging Eversheds’ involvement.
108. The Claimants consider that the action clearly demonstrates that activists opposed to the HS2 Scheme remain intent on using unlawful means to try to disrupt the project and cause loss and damage to the Claimants. These individuals and groups are actively seeking and exploiting means of achieving that whilst

avoiding breaching the Injunction in its current terms. It is highly likely that were the Injunction not to be continued and the current prohibitions under the Injunction removed, these individuals and groups would return to the direct targeting of the HS2 Scheme in which they were engaged prior to the imposition of the Injunction.

109. Since the imposition of the Injunction, tier 1 contractors working on the HS2 Scheme have also been the subject of secondary targeting. The BBV compound at Swynnerton has been targeted twice by activists opposed to the scheme (see paragraphs 50 to 51 above).
110. Activists opposed to the HS2 Scheme have also evolved their tactics to conduct direct action interfering with works and intimidating staff and contractors that has been carefully planned to avoid breaching the terms of the Injunction, but to still cause as much disruption, loss and damage to the Claimants as possible. I have described in detail an instance of this by way of example in the paragraphs that follow.
111. From 23.01.2023 the First Claimant's contractor, EKFB, was scheduled to undertake de-vegetation works (including the removal of trees) along an 800m stretch of HS2 Land adjacent to the A418 to the west of the town of Aylesbury. These works were required in order to prepare for the realignment of the A418 that is to take place in this location as part of the HS2 Scheme.
112. To enable EKFB to safely conduct the works, the First Claimant exercised its powers under paragraph 6 of Schedule 4 of the Phase One Act to temporarily stop up the highway for the duration of the works.
113. The works involved the closure of a single lane on the A418 between 09:30 to 15:00 on weekdays. The road was then fully closed only on Sundays from 08:00 to 18:00.
114. The operation of Schedule 4 of the Phase One Act is described in detail in Dilcock 11. The effect of the temporary stopping up under Schedule 4 in this area was to remove the rights of the public to enter onto the parts of the highway that had

been temporarily stopped up and to make the land an HS2 Scheme work site. Each period of temporary stopping up was the subject of a separate Schedule 4 submission. These submissions are made through the Government portal for managing roadworks, which is known as Street Manager (<https://www.gov.uk/guidance/plan-and-manage-roadworks>). Information about roadworks submitted through the Street Manager portal is publicly available. The incidents of disruption to the works described in this section of my statement occurred on 05.02.2023 and a copy of the Schedule 4 submission for the temporary stopping up of the A418 on that date is at **pages 145 to 149**. To assist with orientation a plan showing the location of the works and the incidents that occurred during the works is at **page 150**.

115. The southern edge of the road was lined by mature trees which required removal to enable the realignment. A single lane closure was in place from Monday to Friday to allow the removal of the smaller trees. However, Sundays were reserved for the removal of the largest trees and the clearance of a drainage ditch beside the road. The largest trees were over 15m tall requiring the larger branches to be dropped by arborists onto the carriageway below. In addition, forestry equipment like logging machines which can lift whole trunks were being used, these machines are noisy and due to the risk of debris safety areas are required. In order to establish safe working areas red and white pedestrian barriers were used with pedestrian routes clearly defined around the works area. Furthermore, security personnel were deployed to ensure a safe working environment throughout. A plan showing the works area, pedestrian routes overlaid on the relevant section of the Parliamentary Plans for this area is at **page 150**.
116. Advanced notice of the works, the lane/road closure and the diversion that was to be in place during the closure were posted in local media and on social media and were shared by local businesses from 10.01.2023. These posts were shared extensively with one post on the Aylesbury and Wendover news Facebook pages being shared 74 times.
117. On 15.01.2023 EKFB CCTV cameras identified D66 and D67 outside the HS2 Scheme site entrance on the A418. Then on 22.01.23 D66 uploaded a livestream

to Facebook whilst walking along the A418. During this she met with D67. This livestream was posted on the HS2 Rebellion Facebook page on 22.01.2023. A screenshot of the post is at **page 151** and a copy is at **Video 10**.

118. D66 opened the livestream with an introduction to what she was doing and a misrepresentation of the works as a complete road closure for a week (it was not, as set out above). She then speculated on the potential consequences for that incorrectly characterised road closure.
119. The livestream showed a conversation between D66 and D67, with their conversation initially focussed upon the road closure and an incorrect belief that it would apply to emergency vehicles (the works were planned to allow for emergency vehicles to use the section of the A418 that was temporarily closed, should that be required and that is reflected in the Schedule 4 submission). Their conversation then turned to the Injunction as follows:
- D66: “*last week when we were here we picked up on the fact that along here there were no notices of the injunction*”
- D67: “*Yep*”
- D66: “*Now you, and, I wonder, I think, I think HS2 are a bit sneakier than we give them credit for, because we were, we were actually discussing this at the gate, and then what did you find the next day? Was it the next day?*”
- D67: “*2 days later I walked down here and there was a copy of the injunction taped to the fence*”
- D66: “*well lo and behold just in case we should be in any doubt*”
120. Copies of the Injunction had been placed in this location in line with the principles set out in paragraphs 10 and 11 of the Injunction as the location had been identified by myself, in conjunction with the EKFB security manager, as HS2 Land considered likely to be targeted by objectors to the HS2 Scheme.
121. The conversation in the livestream continued as follows:

D67: “*which is funny enough is what they did, a couple of other walks we’ve done in other parts of this they’ve suddenly, the injunction notices have appeared on a fence*”

D66: “*I know. Bit late then though, wasn’t it?*”

D67: “*It is*”

D66: “*Bit late by then*”

122. I am quite certain that this reference to other locations where they have been walking relates to their trespass and removal from HS2 Land on 06.10.22 (see paragraphs 31 to 45 above). Following that incident, I advised the local security manager that copies of the Injunction should be placed at that location. A copy of the Injunction was also served on D66 by the Claimants’ solicitors (see paragraph 46 above). D67 had not been identified at that time and so a copy could not be served on him.
123. D66 went on in the livestream to reference the incident on 06.10.2022 and to deny that she breached the Injunction, directly addressing Julie Dilcock, whom she incorrectly identified as working for “DL Piper” and incorrectly identified as having written to her about breaching the Injunction:
- D66: “*oh by the way big shout out to Julie Dilcock at DL Piper HS2 solicitors. Hello darlin’ – you having a nice day? Erm, Julie Dilcock, for those who don’t know, she’s the lead counsel, she’s lead counsel, Julie – well, did I say lead counsel? She’s not lead counsel, but she’s, she’s the woman that drew up the, that has her name, er, assigned to the Injunction.*
- D67: “*Oh right*”
- D66: “*Yeah*”
- D67: “*Interesting*”
- D66: “*She’s not that interesting. Erm, anyway, just so you know, Julie my love, erm, not only have I never had any intention of breaking the injunction, I’ve not broken the injunction, erm, this is all livestreamed, so, erm don’t just take my word for it, don’t just listen to your new security, er, that’s here. They’re kinda the ones, the guys with the green hats, er – Romeo – as well. Ryan, hi Ryan, if you’re watching as well. He’s head of security round here, I haven’t seen him in ages.*

D67: "Who's that sorry?

D66: "Ryan!"

D67: "Oh, right, yeah, yeah"

D66: "Romeo, you know him. Anyway, erm, he's got, he's been promoted and he's now heading up, you know those two guys with the green lids. Erm , and then and then they went telling tales out of school and said that I breached the injunction. Julie my darlin', don't exercise yourself anymore and have to go writing off silly emails, cos this, this is obviously being livestreamed and everyone will see very clearly that I've not breached any injunction today, not did I last Sunday and I certainly didn't on the 6th of October when you accused me of doing so. Erm, and I have still, I have still got the video. I did actually offer to send that to you but I have not heard back from you. I don't know why you're being shy Julie"

124. D66 also showed one of the copies of the Injunction displayed outside the HS2 Scheme site entrance in the video.
125. From 08:00hrs on 05.02.2023 the A418 was temporarily stopped up and closed between the Bugle Horn Pub at the west and the A418 roundabout to the east to allow for the safe removal of larger trees which could not be conducted under a single lane closure. Sunday 05.02.2023 was the second full road closure that had been implemented. The previous closure on 29.01.2023 had been largely uneventful. D67 had attended and took photographs of the works but no attempts of note were made to disrupt works and I personally witnessed D67 move position whenever asked by security officers.
126. As set out in the Schedule 4 submission, despite the removal of the rights of the public to pass and repass over the temporarily stopped up section of the A418 (whether by vehicle or on foot), the First Claimant's contractors intended nonetheless to facilitate pedestrian access through the works area by directing pedestrians along a safe route, albeit that it was envisaged that at some points pedestrian access would need to be closed entirely for safety reasons.

127. On the morning of 05.02.2023, setting up for the complete road closure involved the establishment of a perimeter by the contractor's staff with the assistance of the security team and then segregating the areas where works were to take place with barriers to create safe working spaces into which members of the public were not permitted. The setting up of the works area took a period of time at the beginning of the day, before the road was then physically closed (the legal effect of the stopping up to remove the rights of the public to pass along the road were already in effect pursuant to the exercise of Schedule 4 powers).
128. D66 arrived in the works area just after 9am and began livestreaming to Facebook (she uploaded livestreamed videos totalling almost 3 hours in length that day) as she approached from the roundabout located to the east of the works area. Relevant extracts of D66's livestreams are at **Video 11**. At around 9 minutes into her first livestream (at around 09:39hrs) she met with and spoke to D67. From their initial conversation and subsequent engagement with EKFB staff it became clear that D66 and D67 had a solid understanding of the terms and boundaries of the Injunction and land possessions in the immediate area and were knowledgeable about what actions would constitute a breach of the Injunction. D67 even remarked that he had "*taken legal advice*". In this footage D67 could be seen carrying a copy of the Injunction and also some of the laminated diagrams which showed the boundary lines as they appear on the ground. Unfortunately, the advice that D67 claimed to have obtained did not appear to have correctly informed him about the right to and effect of the stopping up of the road under Schedule 4. In the video D67 remonstrates with the security personnel claiming that they cannot stop pedestrians and cyclists "*going anywhere they want on the footpath and the road.*"*,* which was obviously not the case.
129. Through their conversation with the EKFB foreman shown in the livestream, D66 and D67 make their intentions and modus operandi for the day quite obvious: D67: "*Coz when I look at this it goes up to the edge of the footpath, if you look at that closely that goes up to the edge of the footpath, it doesn't include the footpath.*"

EKFB foreman: “*This is something you’re going to have to take up with HS2, I am only responsible for the machine and my employees, I am not responsible for any road closures or anything or anything to do with that.*”

D67: “*So if we stand here you can’t work.*”

The EKFB foreman gestures with his arms by his sides in acknowledgement

D67: “*but we are not doing anything wrong are we?*”

EKFB foreman: “*That’s down to you and HS2, if you stand here, I can’t work*”

D67 “*yeah yeah*”

EKFB Foreman: “*and that’s the bottom line*”

D67: “*But we are not doing anything illegal*”

D66: “*We are not doing anything illegal*”

EKFB foreman: “*I’m just making sure that I’m not causing any harm. So any time you stand in front of my machine, then I just have to stop my work. All I’ve got to do is make sure you guys are safe.*”

D67: “*The best way of doing your health and safety is to not create the issue in the first place. You ought to tell your bosses to get their act together.*”

D66: “*You are a free man, you don’t have to do as you’re told.*”

EKFB foreman: “*Well, are you gonna go and pay my mortgage?*”

D66: “*Ah, no,no,no,no,I didn’t say you, I didn’t say you had to give up your job, I didn’t say you had to give up your job my love. Yeah, I know, it’s alright, if you don’t do it we won’t tell anybody.*”

130. It was clear from the exchange that D66 and D67 intended to position themselves in such a manner that works would not be able to continue safely, but without breaching the terms of the Injunction and that was exactly what then happened. For the next c. 4 hours – throughout the duration of the works – D66 and D67 repeatedly entered onto the stopped up highway outside of the safe areas that had been designated by the First Claimants’ contractors for the use of pedestrians. Such entries onto a highway stopped-up under Schedule 4 of the HS2 Acts without the consent of the First Claimant are unlawful. They entered into a number of altercations with the First Claimant’s security incident response team (“IRT”) and contractors and disrupted works by placing themselves in areas which would have then made continuing the works a hazard to their health and safety. They refused to leave when asked by the IRT and by the contractors and

had to be physically ushered away. D67 engaged in pushing and shoving members of the IRT and physically overpowered a female member of the IRT. He dragged a pedestrian barrier approximately 3m across the carriageway. A number of these incidents were captured on D66's livestream and others on footage taken by a drone belonging to a member of the public that was flying in the area that day. I have described some of the incidents in more detail below and sections of relevant video are at **Video 11**.

131. D66's second livestream of the day was taken commencing at 10:43hrs and shows an incident in which she was on the carriageway of the stopped-up highway. A member of the security team asked her very politely to leave the carriageway and she refused. The security team member then ushered her from the highway to allow a works vehicle to pass. D66 remonstrated with the security team member, who calmly and repeatedly advised her that she could not be on the road that day. D66's responses quickly deteriorated to a tirade of abuse.

D66: "*I'm using my phone at the moment, I'm using my phone at the moment.*"
IRT member: "*You've already said that my face offends you, so you keep walking and I won't offend you anymore.*"

D66: "*It does, your attitude offends me, your job offends me, your life offends me, the way you earn your money offends me, because you are an absolute scum on society. You are contributing to destroying this world, to destroying the future of our children. Do you know that? Do you know that? Do you know that?*"

132. D66 and another activist then took issue with the fact that they were not allowed into an area that had been segregated with barriers to allow the works to take place safely. A member of the IRT explained the position to them:

IRT member: "*There are works taking place on various parts of the road, they are just trying to keep people safe that is all, that simple.*"
and

IRT member: "*there's a gigantic machine over there cutting trees, it's not very safe, you will have to go around.*"

133. At 11:06hrs and despite the clear warnings issued to her by the IRT, D66 opened the barriers and walked into working area, which there was no public right to

enter, in full knowledge (having been told by the EKFB foreman earlier, as set out at paragraph 129 above) that works could not be conducted if there was a potential threat to safety. Over the course of the next 53 minutes D66 then attempted to move closer to works on a number of occasions. D66 was repeatedly warned that she should not move any closer for her own safety. D66 then proceeded to sit down in the works area.

134. Shortly afterwards, D67 entered into a physical altercation with members of the IRT. As can be seen in the drone footage, D67 pushed and shoved members of the IRT and dragged a pedestrian barrier approximately 3m across the carriageway. D67 overpowered a female IRT team member and then barged into her. He then attempted to run into the works area and had to be physically restrained by two other IRT members. All of these activities by D67 were unlawful (constituting, for example, trespass, nuisance and battery). The IRT team members then proceed to remove D67 from the area.
135. At around 11:50hrs D66 again attempted to stop the works by putting herself in danger and was prevented from getting closer to the equipment by a security officer who told her that it was not safe. This interaction was captured in her third livestream. The passage of conversation was as follows:
Security Guard: "*it is not safe for you to be here.*"
D66: "*That's why he [referring the machine removing trees] needs to stop what he is doing.*"
136. D66 had to be physically prevented from getting any closer by security officers. Then at around 12:00hrs D66 was removed from the area by the IRT, having spent approximately 53 minutes attempting to delay and disrupt works by placing herself in harm's way.
137. D66 continued to livestream following her removal, and at 12:07hrs again addressed the First Claimant's legal representatives:
"So HS2 Lawyers before you bother sending me an email to say that I have breached the injunction, I haven't, this isn't in injuncted land, erm..."

138. D66 kept her livestream running and at 12:18 engaged with another member of the public, when she again outlined that they should adopt a tactic of positioning themselves where works were being carried out, thereby forcing the works to stop for safety reasons:

"We need them to stop, erm we need to position wherever they are working."

and

"that man really should, [D66 Shouts to IRT and EKFB staff] Excuse me! There's a member of the public down there shouldn't he stop what he is doing, because there's a member of the public there"

and

"We should go and stop what he's doing there's a member of the public there"

"We better go and tell him to stop."

139. By around 12:39 D66, clearly frustrated by her lack of success in stopping work, became aggravated and increasingly offensive towards the IRT and the First Claimant's contractor's security staff. This culminated in the following abusive diatribe directed by D66 at the security officers:

"How do you sleep at night; how do you sleep at night. No answer, maybe he doesn't sleep at night, maybe he has no soul."

"The only reason he is that cross is coz he's not getting off at 2 o'clock like he thought he might."

"Doesn't give a shit about the environment, and you, and you, and you, and you, more interested in earning some money than what's happening to the environment. You're disgusting, you're disgusting. Absolutely disgusting examples of humanity. I suppose you're the same kind of people who complain about people sitting down in the road. Are you the same kind of people that complain about Insulate Britain and Just Stop Oil sitting down in the road because they're stopping blue light vehicles, and look what you're doing, you absolute hypocrites, you disgusting hypocrites. I bet you phone into Nick Ferrari don't you complaining about protestors blocking roads for blue light ambulances and look what -"

"Yeah, walk away, walk away Jay. Walk away, pathetic, hypocrites blocking the road for blue light vehicles, that might come down here, that have come down here this morning, and had to proceed at about 10 mph. These are the same people

that complain about protestors sitting in the road. They're doing it themselves on a route that we've seen, we've seen blue light ambulances."

"I hope it isn't your mother, or your mother, or your mother, or his mother, that might get stuck in a blue light vehicle wanting to go to Stoke Mandeville Hospital down there. I hope it's not, you know, a fire engine that might be up there going to the thatched cottages down there that are burning down. Cause it will be on your head, and your head, and your head.

So congratulations, good day's work, I hope the money's worth it, I hope the money is worth it and I hope every single penny that you spend makes you sick, and makes your children sick. And I hope that food the you put on the table from the money you earn makes them sick and I hope that you can look them in the eye and you've got the nerve to look them in the eye and explain where that money's come from, and I hope they vomit all over you.

You've got kids that feel proud of you? I doubt it, I doubt it. Got nieces and nephews, you go home and tell them what you've done? How you earned some money to buy them their Christmas presents and their birthday presents and take 'em on little outings.

What holiday did you go on this year with all the thousands and thousands that you've earned, when you're sunning yourself in Tenerife or wherever it was. Absolute hypocrites, absolute hypocrites."

140. During this incident, D66 and D67 showed they had a clear and unambiguous understanding of the Injunction. On 05.02.2023 D67 was in possession of a copy of the Injunction, and several references had been made to the Injunction on the livestream on 22.01.2023. The objective of D66 and D67 on 05.02.2023 was clear: they intentionally conspired to delay and disrupt the works. Their method, however, was cognisant of the Injunction and they were careful not to breach it. But for the proactive deployment of specialist security by (and at cost to) the First Claimant, the actions of D66 and D67 would have resulted in significant delays to works.
141. The presence of D66 and D67 and their prior reconnaissance and the subsequent actions of 05.02.2023 had necessitated the deployment of considerable additional

security resource at a cost to the First Claimant and that resource was then able to prevent serious disruption occurring to the works. However, had this resource not been deployed, then the traffic management, project management and de-vegetation teams would have had to return to complete their works the following Sunday at an estimated cost of c. £20,000 and with further disruption to the public's use of the road.

142. Once it became apparent to D66 and D67 that their tactics had been anticipated and rendered ineffective, the tone of the interactions changed. D66 was offensive and aggressive towards staff and D67 became physically aggressive and violent towards staff. D66's interactions with the First Claimant's IRT and contractors during these works were highly reminiscent of the examples of extreme verbal abuse described in Jordan 1 as creating an unreasonably difficult and stressful working environment for those working on the HS2 Scheme. Her actions and those of D67 placed themselves at risk and hampered and disrupted works authorised by Parliament for the construction of the HS2 Scheme.
143. As can be seen from the foregoing, whilst the Injunction has provided welcome relief to the Claimants from the sustained unlawful activity targeting the HS2 Scheme that they were previously experiencing, activists who had previously targeted the HS2 Scheme have not moved away from unlawful direct action, they have merely displaced to other "causes". Anti-HS2 activists have also continued to try to find ways to target the HS2 Scheme that do not breach the Injunction, but still cause as much delay, disruption and loss as possible. It is therefore clear that the threat of unlawful activity targeting the HS2 Scheme remains real and imminent and that there is a need both to continue the Injunction in its current terms and to extend it to prohibit the unlawful activity that has been occurring and which is not currently prohibited under the terms of the Injunction.

Ongoing risk of unlawful conduct and need for continued injunctive relief

144. By reason of the foregoing, the Claimants consider that there is a real and imminent risk of further unlawful conduct and a need for injunctive relief to continue in order to protect the Claimants' rights.

145. As discussed above, key leaders and veteran environmental activists who had been campaigning against the HS2 Scheme are not currently doing so because they are either bound by undertakings or deterred by the Injunction. A combination of the making of the Injunction and committal to prison of D33 has dispersed multi-cause activists to other groups, but crucially, they have not moved away from direct action campaigning altogether and there is a real threat that they will return if the Injunction is not continued.
146. When actions have been undertaken against the HS2 Scheme, they have by and large been deliberately cognisant of the terms of the Injunction, as articulated by D17 in his press release regarding the Full Sutton action (see paragraphs 78 to 79 above). Without the protection of the Injunction, the Claimants will be in a position where key activist leaders who have joined other campaigns, expanded their networks and potentially further refined their tactics are able to return to target the HS2 Scheme.
147. As demonstrated by the example of the incidents on the A418 in Aylesbury on 05.02.23, activists opposed to the HS2 Scheme are constantly adapting their tactics and will look to work around the Injunction to find ways to continue to target the HS2 Scheme with the aim of causing disruption, delay and cost. In Aylesbury, mindful that the First Claimant's contractors will always prioritise health and safety, D66 and D67 specifically sought to place themselves in dangerous positions, thus compelling the First Claimant's contractors to cease work, thereby delaying, disrupting and causing loss and damage to the Claimants. The Claimants are seeking the protection of the court from such tactics.
148. Historically, injunctions to deal with unlawful direct action campaigning which have been tightly geographically bound have been incredibly successful at preventing trespass. For example, Cuadrilla Resources for whom I was formerly the Head of Business Resilience, had an anti-trespass injunction on their Preston New Road site from 28.02.2017 until the end of works at that site and which essentially eradicated trespass on the site. However, the direct action at that location evolved and activists found workarounds to try to continue to disrupt the

work at the site without breaching the injunction. Of the over 400 arrests at the Preston new Road site between January 2017 and September 2019, only one was for actions on the site itself (criminal damage to fencing).

149. The recent Government announcement about delays to the HS2 Scheme and the fact that contentious work has barely begun on Phase 2a make further evolution of tactics such as the nascent tactics observed on 05.02.2023 at Aylesbury or simply beating the Claimants to possession of land increasingly likely.
150. The most contentious works undertaken by the Claimants from the perspective of activists are the removal of trees and hedgerows and this work may only be undertaken outside of bird nesting season. Birds are usually nesting in Q2 and Q3 therefore survey and vegetation removal is undertaken between October and April, and direct action has typically peaked during Q4 and Q1 as a result (see Groves 1).
151. The objective of activists opposed to the scheme remains to raise awareness, delay and disrupt in order to increase costs. The increased costs in turn affect public opinion and political viability. This is one of the primary reasons that activists focus upon delaying de-vegetation work. If the works are not completed in time, then they are delayed to the next season. Only once woodland is cleared can the civils and ground works be conducted and ideally these works are undertaken during the summer months when the ground is drier. Therefore, if activists can delay work scheduled in March by 6 weeks the compound delay to the programme can be as much as 12 months, as the subsequent earth works cannot be undertaken until the following summer.
152. As outlined at Groves 1, activists opposed to the HS2 Scheme have consistently looked to scout ahead and occupy land required for the HS2 Scheme prior to the Claimants exercising their powers under the HS2 Acts and taking possession. For example, the unauthorised encampments at Euston Square Gardens, Small Dean and the Cash's Pit Land (all described in Jordan 1) were all established before the Claimants exercised their powers to acquire or take possession of the land in question. This scouting ahead has even occurred on the Phase 2b (Western Leg) of the HS2 Scheme which is still passing through Parliament (see **pages 152 to**

153 and paragraph 157 below). This tactic by activists has been seen on other campaigns and may be traced all the way back to the direct action campaigning against road projects in the 1990s and more recently to the protection camps set up at proposed onshore oil and gas drilling sites (see **pages 154 to 157**).

153. Typically, activists will often seek to occupy woodland as it provides shelter, exalts their cause and allows the construction of elaborate defences which delay and increase the costs of removal. Within these woodland camps activists can construct large structures or tree houses and excavate deep tunnels beneath the ground. This was aptly demonstrated at the unauthorised encampments at Small Dean (Jordan 1 paragraphs 56 to 71) and the Cash's Pit Land (see Jordan 1 paragraphs 72 to 79 and paragraphs 17 to 22 above). Combined, the enforcement operations to remove activists and take possession of just those two sites cost the taxpayer over £13.5m. In both cases, activists had established camps on land which at the time of first occupation, was not possessed by the Claimants.
154. The technique by activists of establishing camps and delaying the Claimants in taking possession is well established. The activists, mindful that the Claimants are limited as to the time of year that certain works can be carried out by factors such as bird nesting and bat hibernation seasons, will look to play for time. If they can delay long enough, they can achieve a compound effect, forcing works on the HS2 Scheme back by a season, causing programme delay and increasing the costs of the project.
155. Activists opposed to the HS2 Scheme have established approximately 50 encampments along the route of the HS2 Scheme so far. A map showing the geographical distribution of these encampments is at **page 158**. Approximately half of these camps have been cleared by the First Claimant and around half have been abandoned. Notably, these camps have been located across Phase One and into Phase 2a from Euston in London to Swynnerton in Staffordshire. Most were established before works on the HS2 Scheme started in the area in which they were located and many (including those that cost the Claimants the most to evict) were established before the Claimants' right to possession had arisen (whether by compulsory acquisition or exercise of temporary possession powers). As Mr

Justice Julian Knowles observed in the September 2022 Judgment at paragraph 176:

“To my mind, it is not an attractive argument for the protesters to say: ‘Because you have not started work on a particular piece of land, and even though when you do we will commit trespass and nuisance, as we have said we will, you are not entitled to a precautionary injunction to prevent us from doing so until you start work and we actually start doing so.’ As the authorities make clear, the terms ‘real’ and ‘imminent’ are to be judged in context and the court’s overall task is to do justice between the parties and to guard against prematurity. I consider therefore that the relevant point to consider is not now, as I write this judgment, but at the point something occurs which would trigger unlawful protests. That may be now, or it may be later. Furthermore, protesters do not always wait for the diggers to arrive before they begin to trespass. The fact that the route of HS2 is now publicly available means that protesters have the means and ability to decide where they are going to interfere next, even in advance of work starting.”

156. Not only is the route of the HS2 Scheme publicly available, but activists are also clearly very familiar with it. For example, as set out in Jordan 1:
 - 156.1. On 28.07.2021, D33 shared with other activists on Facebook maps of the HS2 Scheme route that he had transcribed onto OS maps saying: “*This gives a good idea of where HS2 are working ... Feel free to use in whatever way you see fit, share, edit, download, whatever...*”. A copy of the post is at [page 159](#)).
 - 156.2. On 16.03.2022 a post was placed on the Bluebell Woods Protection Camp Facebook page detailing the timetable for their “Open Weekend – The Last Stand” which included:
 - “Climbing, traverses and nets”
 - “Tree house building, barracading + more”
 - “HS2 map study”
 - “Climbing workshop”Most of the activities appeared to be designed to teach people techniques for resisting eviction. “HS2 map study” likely involved planning to target further

land designated under the HS2 Acts for use for the HS2 Scheme. A copy of the post is at **pages 160 to 162**.

157. Land which is due to be possessed by Claimants over the course of the next 12 to 18 months for the purposes of the HS2 Scheme has already been the subject of scouting by the Defendants. For example, D5 posted (screenshots of the posts are at **page 163**) two videos on Facebook on 07.07.2021 and 31.12.2021 showing him in Whitmore Woods on Phase 2a, which is the largest single block of woodland due to be possessed on the route of the HS2 Scheme (copies at **Video 12** and **Video 13** respectively). During **Video 12** D5 confirms that not only has he been scouting ahead on the Phase 2a route, but he has also visited the Phase 2b route:

"I've been exploring the north of England, er, Staffordshire, er, and Warwickshire and Cheshire and even further north actually, I've been over the east coast. I've been over near Sheffield and places and up near Leeds and I've been looking at all the different places that HS2 and due to go on Phase 2a, Phase 2b"

158. In **Video 13** D5 acknowledges that being in Whitmore Woods (which is privately owned) is trespass. At the time that these videos were taken and as matters stand at the date of this statement, Whitmore Woods has not been taken into possession by the Claimants, but the land is due to be possessed for the purposes of the HS2 Scheme under the Phase 2a Act. At the time that the videos were taken, the First Claimant was carrying out survey work pursuant to its powers under the Phase 2a Act.

159. D5 concludes **Video 13** by saying:

"It's not too late to cancel HS2. Please help. Please apply the pressure. Please follow Bluebell [a reference to the unauthorised encampment on the Cash's Pit Land, which was founded by D5]. Please support other camps as they emerge up and down the line".

160. Mr Justice Julian Knowles also found that the activists intended to continue to try to disrupt the HS2 Scheme without limit and that an extensive injunction was justified by that clearly stated intention and necessary to allow the unhindered

completion of the HS2 Scheme. Paragraphs 212 to 215 of the September 2022 Judgment are as follows:

[212] *Firstly, by committing trespass and nuisance, the Defendants are obstructing a large strategic infrastructure project which is important both for very many individuals and for the economy of the UK, and are causing the unnecessary expenditure of large sums of public money. In that context, I conclude that the aim pursued by the Claimants in making this application is sufficiently important to justify interference with the Defendants' rights under Articles 10 and 11, especially as that interference will be limited to what occurs on public land, where lawful protest will still be permitted. Even if the interference were more extensive, I would still reach the same conclusion. I base that conclusion primarily on the considerable disruption caused by protests to date and the repeated need for injunctive relief for specific pockets of land.*

[213] *Second, I also accept that there is a rational connection between the means chosen by the claimant and the aim in view. The aim is to allow for the unhindered completion of HS2 by the Claimants over land which they are in possession of by law (or have the right to be). Prohibiting activities which interfere with that work is directly connected to that aim.*

[214] *Third, there are no less restrictive alternative means available to achieve that aim. As to this, an action for damages would not prevent the disruption caused by the protests. The protesters are unlikely to have the means to pay damages for losses caused by further years of disruption, given the sums which the Claimants have had to pay to date. Criminal prosecutions are unlikely to be a deterrent, and all the more so since many defendants are unknown. By contrast, there is some evidence that injunctions and allied committal proceedings have had some effect: see APOC, [7].*

[215] *I have anxiously considered the geographical extent of the injunction along the whole of the HS2 route, and whether it should be more limited. I have concluded, however, given the plain evidence of the protesters' intentions to continue to protest and disrupt without limit – 'let's keep fucking up HS2's day and causing as much disruption and cost as possible. Coming to land near you' – such an extensive injunction is appropriate. The risks are real and imminent for the reasons I have already given. I accept that the Claimants have shown that the direct action protests are ongoing and simply move from one location to another;*

and that the protesters have been and will continue to cause maximum disruption across a large geographical extent. As the Claimants put it, 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. 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.

161. The Injunction has proved exceptionally successful thus far reducing the significant hinderance previously caused to works on the HS2 Scheme by unlawful direct action campaigning. However as identified at paragraph 148 above, activism is evolutionary, the nascent attempts to adopt tactics intended to thwart the purpose of the Injunction and continue to cause disruption to the HS2 Scheme (see for example paragraphs 111 to 142) will almost certainly spread in time if not restrained by the court.
162. The objectives of many of the activists opposed to the HS2 Scheme remain unchanged, though many are likely to be more guarded online following the heavy use of social media evidence in Jordan 1. However, individuals threatening to trespass or encouraging guerrilla tactics do still occur.
163. For example:
 - 163.1. D36 Whilst filming the Red Rebel protest at Euston said at 00:01:50 of the video (a screenshot of the Facebook post for the livestream (which I have watched) is at **page 164**):

“This planet is finite, this planet is falling apart and it’s because we just keep allowing the likes of HS2 to just keep going and going, we’ve got to stop it.”
 - 163.2. On 02.01.2023 a post (copy at **page 165 to 166**) added to the Stop HS2 Group on Facebook was commented on by Lewis Edwards as follows:

“The architects of this crime are like Russia and we are Ukraine – it’s a bloody fight but ultimately the costs of opposition will undo the invading force, it’s just not sustainable. Never give up, never surrender and tell the world about it whenever the opportunity arises as the state media are gagging everyone, but

again they can't stop the web and how this can facilitate the necessary guerrilla tactics.”

- 163.3. Another comment read: “*Well take ya own dame tools and cut up any section ya at. And stop anoucing it so you can argue with fools for the day.. there gonna carry on reguardless. The government has given it another go ahead so I suggest you go ahead before it's actually Done and to late.... Delay and distroy*” (sic).
- 163.4. When the Aylesbury and District News Facebook page published (screenshot at [page 167](#)) that the Claimants had been granted a route wide injunction on 21.09.22, one poster commented with an ominous quote from John F Kennedy: “*Those who make peaceful revolution impossible will make violent revolution inevitable.*”
- 163.5. On 10.12.2022 D17 posted a memory of the direct action conducted at an HS2 Scheme site in Swynnerton, Staffordshire. The original post showed the daily gate blocking being undertaken by D6, D17 and other residents of the camp on the Cash’s Pit Land. On the Facebook memory D17 posted:
“*Good times, good people. What was it Arnold Schwarzenegger said? Well we will*”.
D17 was clearly referring to Schwarzenegger’s most famous quote from the film Terminator 2 “I’ll be back”. A screenshot of the post is at [page 17](#).
- 163.6. On 29.01.2023 images of the tree felling conducted on the A418 were posted on the HS2 Save our Countryside Facebook page, one comment on that post (a screenshot of which is at [page 168](#)) – a reference to the activist tactic of tree-spiking - stands out:
“*Put nails in the trees, chainsaws don't like it.*”
Tree-spiking is the act of deliberately putting screws and nails into trees. It is designed to delay tree-felling works and can cause significant safety hazards to the First Claimant’s arborists. The metallic screws and nails are hazardous to the de-vegetation teams: striking a metal object can damage chainsaws and cause them to kick (when a chainsaw kicks back putting the operator in danger) or result in debris being launched at high speed as a result of striking the nail/screw.

Metallic objects placed within branches damage chipping machines as they jam the internal mechanism.

- 163.7. In addition, a new threat of ‘stealth camping’ has recently emerged. Stealth camping is the act of concealing oneself away and camping in a location where you should not be, for example on an HS2 Scheme site or beside a motorway. Stealth camping is defined by www.stealth-camping.co.uk as “a thrilling experience similar to wild, bush craft camping. The difference with stealth camping is there’s an element of stealth from remaining undetected”. On 26.02.2023 a video recorded in Wendover by a stealth camper was posted on YouTube (copy at **Video 14**) which shows him attempting to stealth camp on an HS2 Scheme construction site. The video shows the scale and progression of the project. The HS2 Scheme sites in this area are typically in operation 6 days per week, therefore the idea of somebody stealth camping, or walking around a site which includes trenches, excavations (which are referred to in the video) and heavy machinery poses a considerable health and safety concern. As the video progresses it shows the clear demarcation of boundaries of HS2 Land through fencing and signage adopted by the First Claimant and its contractors and the host, unsure if he can successfully camp, states:

00:09:30 “bit of a conundrum guys, don’t know where to spend the night, really don’t know, maybe where we are now, maybe elsewhere we’ll see. So many people I’m gonna have to pack this is in really really quick, coz there’s people, people coming right now. But yeah there’s so many people guys”

164. Later the host admits defeat “*on this occasion*” and at 00:10:01 the clip shows one of the First Claimants’ mobile safety and security vehicles parked up, with the host adding:

“these bad vibes mixed with the fact I was clearly failing to find a stealth camping spot led me to decide this, I think I am probably not gonna stay here tonight, just because I don’t want the heat guys, I don’t want the heat, and with the lack of good spots I think it’s best to call it a day before I run into trouble or get kicked out or whatever in the middle of the night.”

165. The host makes it clear that he will come back, within the video where he says:

“But let me finish with this, HS2 this is definitely not the last time you have seen me. I will come back and I will find a place that I can sleep along you, I’m sure at some point”

166. The host then reiterated his intention to camp on HS2 Land in the comments section of his YouTube post (screenshot at **page 169**) when he responded to another comment which stated: *“You will succeed there Dave I’m pretty sure of it, still a great video as always what a shame all that landscape destroyed for another train”*. To which he responded: *“We shall see Chris! I’ve already got a few spots in mind, maybe I’ll revisit in a new area in a few months’ time [strong arm emoji] Cheers for the support I’m glad you enjoyed”*.
167. It goes without saying that the notion of individuals concealing themselves and camping by stealth on such a dynamic construction site is not only unlawful trespass and nuisance but poses an extreme risk to the safety of themselves and the First Claimant’s workforce.
168. Sometimes the social media posts take on an even more sinister tone and are directed not just at the Claimants and their staff and contractors, but also at their suppliers, legal representatives and the judiciary. Following the committal of activists for contempt for breaching the Cash’s Pit Injunction, one activist re-posted on Facebook an article about the skinning alive of a corrupt judge, with another commenting on the post that: *“We are literally at war with the bar”* (screenshot at **pages 170 to 171**).
169. This trend continued following the making of the Injunction. One user commented on a post on the HS2 Rebellion Instagram page (screenshot at **page 172**) showing a Guardian article about the Injunction as follows:
“These judges have names and addresses, just saying”.
170. The Claimants do not seek to stifle anti-HS2 views and respect the right to engage in lawful protest and to express views that are opposed to the HS2 Scheme. The Injunction has significantly reduced the cost of delay, disruption and security to the taxpayer of dealing with unlawful direct action campaigning. It has also, in

some respects, changed the way that protest against the HS2 Scheme is conducted.

171. Significantly, individuals and groups who would almost certainly have engaged in unlawful direct action activity to try to delay or disrupt tree felling on the HS2 Scheme prior to the Injunction, staged a lawful vigil for the trees at Euston Square Gardens on 20.02.2023 during tree-felling works (see [page 173](#)).
172. The vigil consisted of a steel band, the “Red Rebel Brigade” of XR, D36 and D55. They stood by the trees to mark their passing, however, at no point were the First Claimant’s contractors’ works disrupted. Prior actions against the HS2 Scheme involving the Red Rebels have often involved unlawful direct action. For example: at Calvert they staged a “die in” direct action, closing the main access route to the HS2 Scheme site (Jordan 1, paragraph 26.2.4) and in Wendover on 19.07.20 they were part of a group which stormed an HS2 Scheme site (see [page 174](#)). The significance of this legitimate protest is difficult to overstate. The planned removal of trees at Euston in Q1 of 2021 was the catalyst for the establishment of an anti-HS2 camp and the first major tunnel occupation by activists opposed to the HS2 Scheme. It was that extreme direct action in central London which catapulted direct action campaigning against HS2 into the mainstream media. Therefore, it is remarkable that the removal of trees at such a symbolic site was the stage for a legitimate and lawful protest and no disruption occurred.
173. On 13.03.2023, a demonstration was held at Parliament Square, Westminster London. The event was organised by Sarah Green, a former Defendant to the Harvil Road Injunction proceedings and attended by D36, D39, the Red Rebel Brigade of XR and XR London Drummers. The event took the form of a lawful, peaceful and non-disruptive protest with the agenda for the demonstration described on Facebook (screenshot at [page 175](#)) as:

*“Colne Valley Biteback Monday 13 March 12noon - 2pm Parliament Square
Drummers from 12 noon, Short speeches at 12:30 with Blue (or Red) Rebels*

Debut 1pm Discobedience Flashmob: Dance to the tune of "Shame shame shame shame shame, on High speed two, and the government too!"

At the time of writing the First Claimant is not aware of any arrests or disruption caused by this event.

174. The Claimants seek the Court's assistance to try to ensure that the Defendants do not again resort to unlawful direct action activity. Not only is that conduct unlawful, but it is extremely disruptive, dangerous, costly and unpleasant and difficult for those engaged in work on the HS2 Scheme. The activity engaged in by the Defendants historically and to which they threaten to return if the Injunction is not maintained and extended in the manner sought by the Claimants is an attempt, not to articulate views, but a hard-fought and continuous campaign to try to compel the Claimants to stop the work they are mandated to do by two Acts of Parliament.
175. By way of a reminder, Mr Justice Julian Knowles found in the September 2022 Judgment as follows:
- [171] Other salient points on the same theme include the following (paragraph numbers refer to Jordan 1):*
- a. Interview with The Guardian on 13 February 2021 given by D27 after he was removed from the tunnels dug and occupied by activists under HS2 Land at Euston Square Gardens, in which he said: 'As you can see from the recent Highbury Corner eviction, this tunnel is just a start. There are countless people I know who will do what it takes to stop HS2.' In the same article he also said: 'I can't divulge any of my future plans for tactical reasons, but I'm nowhere near finished with protesting.'*
- b. In March 2021 D32 obstructed the First Claimant's works at Wormwood Scrubs and put a call out on Twitter on 24 March 2021 asking for support to prevent HS2 route-wide. He also suggested targeting the First Claimant's supply chain.*
- c. On 23 February 2022 D6 stated 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' ([21.12]).

d. D6 on 24 February 2022 stated if the Cash's Pit camp is evicted, 'we'll just move on. And we'll just do it again and again and again' ([21.13]).

e. As set out in [21.14] on 10 March 2022 D17, D18, D19, D31, D63 and a number of persons unknown spent the morning trespassing on HS2 Land adjacent to Cash's Pit Land, where works were being carried out for a gas diversion by Cadent Gas and land on which archaeological works for the HS2 Scheme were taking place. This incident is described in detail at [78] of Jordan 1. In a video posted on Facebook after the morning's incidents, D17 said:

"Hey everyone! So, just bringing you a final update from down in Swynnerton. Today has been a really – or this morning today - has been a really successful one. We've blocked the gates for several hours. We had the team block the gates down at the main compound that we usually block and we had – yeah, we've had people running around a field over here and grabbing stuff and getting on grabbers and diggers (or attempting to), but in the meantime, completely slowing down all the works. There are still people blocking the gates down here as you can see and we've still got loads of security about. You can see there's two juicy diggers over there, just waiting to be surfed and there's plenty of opportunities disrupt – and another one over there as well. It's a huge, huge area so it takes a lot of them to, kind of, keep us all under control, particularly when we spread out. So yeah. If you wanna get involved with direct action in the very near future, then please get in touch with us at Bluebell or send me a message and we'll let you know where we are, where we're gonna be, what we're gonna be doing and how you can get involved and stuff like that. Loads of different roles, you've not just, people don't have to run around fields and get arrested or be jumping on top of stuff or anything like that, there's lots of gate blocking to do and stuff as well, yeah so you don't necessarily have to be arrested to cause a lot of disruption down here and we all work together to cause maximum disruption. So yeah, that's that. Keep checking in to Bluebell's page, go on the events and you'll see that we've got loads of stuff going on, and as I say pretty much most days we're doing direct action now down in Swynnerton, there's loads going on at the camp, so come and get involved and get in touch with us and we'll let you know what's happening

the next day. Ok, lots of love. Share this video, let's get it out there and let's keep fucking up HS2's day and causing as much disruption and cost as possible. Coming to land near you."

Hence, comments Mr Jordan, D17 was here making explicit threats to continue to trespass on HS2 Land and to try to climb onto vehicles and machinery and encourages others to engage in similar unlawful activity.

f. 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] and Dilcock 4, [33], et seq. 172. These matters and all of the other examples quoted by Mr Jordan and Ms Dilcock, to my mind, evidence an intention to continue committing trespass and nuisance along the whole of the HS2 route."

176. The Claimants reasonably fear a return to the levels of unlawful activity experienced prior to the application for the Injunction if it is allowed to lapse, with the significant health and safety risks, detrimental effects on staff and contractors, drain on police and other emergency service resources, delays to the HS2 Scheme and significant financial losses to the taxpayer that would bring.
177. The incidents that occurred historically have caused injury to persons working on the HS2 Scheme and eye-watering levels of loss (all borne by the public purse) and damage via damage to property, suspension and delay of works and the need to incur the costs of specialist security to respond to and deal with incidents. A significant amount of police time and resources and time and resources of the other emergency services has also been expended. The incidents are distressing to the Claimants' contractors, sub-contractors and employees. It remains the case that the Defendants do not have the consent or permission of the Claimants to enter onto the HS2 Land and the Claimants do not want the Defendants on the HS2 Land. The evidence suggests that the Defendants – or some of them – remain intent upon causing loss and damage to the HS2 Scheme and therefore to the Claimants by unlawful means and are actively seeking ways to do so outside of the bounds of the activities that are currently restrained by the Injunction.

178. The Claimants therefore seek the continued assistance of the Court in preventing further incidents, loss and damage.

Statement of Truth

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.

Signed:.....


JAMES DOBSON

Dated: 27 March 2023

On behalf of: Applicants/Claimants
J.Dobson
1st statement of witness
Exhibits: JD5 and JD6
Date: 27 March 2023

Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
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")
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

**EXHIBIT JD5 TO THE
WITNESS STATEMENT OF JAMES DOBSON**

The documents in this Exhibit are at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>

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On behalf of: Applicants/Claimants
J.Dobson
1st statement of witness
Exhibits: JD5 and JD6
Date: 27 March 2023

Claim No. QB-2022-BHM-000044

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

Defendants

**EXHIBIT JD6 TO THE
WITNESS STATEMENT OF JAMES DOBSON**

All videos are at: <https://vimeo.com/showcase/exhibit-JD6>

INDEX TO EXHIBIT JD6

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Video Number	Date	Description	Duration	Source URL
Video 1	23.03.2022	D17 at Closepit Plantation	00:08:17	https://www.facebook.com/100035849292228/videos/332646708928457
Video 2	06.10.2022	D66 and D67 at Aylesbury Ecological Area	00:11:44	Body worn camera footage
Video 3	21.11.2022	Action against Eversheds Clip 1	00:06:09	https://www.facebook.com/XRebellionUK/videos/652476849707618
Video 4	21.11.2022	Action against Eversheds Clip 2	00:06:34	https://www.facebook.com/XRebellionUK/videos/652476849707618
Video 5	21.11.2022	Action against Eversheds Clip 3	00:02:04	https://www.facebook.com/XRebellionUK/videos/652476849707618
Video 6	21.11.2022	Action against Eversheds Clip 4	00:02:04	https://www.facebook.com/XRebellionUK/videos/652476849707618
Video 7	21.11.2022	Action against Eversheds Clip 5	00:01:24	https://www.facebook.com/XRebellionUK/videos/652476849707618
Video 8	25.11.2022	HS2 Rebellion Montage of action against Eversheds	00:03:22	https://www.facebook.com/photo?fbid=237341451948750&set=a.230251385991090 https://www.facebook.com/STOP.HS2/videos/817254309553667
Video 9	28.02.2023	Action against Eversheds	00:44:06	https://www.facebook.com/XRebellionUK/videos/168796375505347
Video 10	22.01.2023	D66 and D67 at A418	00:33:08	URL removed following HS2 Rebellion hack

Video Number	Date	Description	Duration	Source URL
Video 11	05.02.2023	D66 and D67 at A418	00:07:51	https://www.facebook.com/caroline.thomsonsmith/videos/485412460460956/?id=384792308986381 https://www.facebook.com/caroline.thomsonsmith/videos/699724868367001/?id=384792308986381 https://www.facebook.com/caroline.thomsonsmith/videos/1641966312888710/?id=384792308986381 https://www.facebook.com/caroline.thomsonsmith/videos/1589764861471826/?id=384792308986381 https://www.youtube.com/watch?v=zafRKmeXf-M
Video 12	07.07.2021	D5 at Whitmore Woods	00:08.05	https://www.facebook.com/ross.monaghan.35/videos/10161057827499992
Video 13	31.12.2021	D5 at Whitmore Woods	00:05:11	https://www.facebook.com/ross.monaghan.35/videos/465863348539189
Video 14	26.02.2023	Stealth Camping	00:10:50	https://www.youtube.com/watch?v=XGLs95i0nDs

On behalf of: Applicants/Claimants
J.Groves
1st statement of witness
Exhibits: JG1
Date: 27 March 2023

Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
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BIRMINGHAM DISTRICT REGISTRY**

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

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

Defendants

WITNESS STATEMENT OF JOHN GROVES

I, JOHN GROVES, of High Speed Two (HS2) Limited, Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA, WILL SAY as follows:

Introduction

1. I am the First Claimant's Chief Security and Resilience Officer. I am accountable for the delivery of corporate security support to the First Claimant in line with its security strategy, and the provision of advice on all security related matters. This includes incident response, business continuity, cyber security, information assurance, physical security, personal security, personnel security and security of the future railway. I am the senior representative on behalf of the First Claimant dealing with external security partners, such as the police, security representatives at the Department for Transport, Centre for Protection of National Infrastructure and relevant security authorities and agencies. I have been in this role since March 2022. Prior to this I have extensive experience of security and resilience operations, with over 20 years' experience leading the security and resilience functions of the Bank of England, UK Parliament and Government departments including Defra, No.10 Downing Street and the Home Office.
2. I am authorised to make this statement in support of the Claimants' application to vary and extend the injunction imposed by the Order of Mr Justice Knowles dated 20.09.2022 (the "**Injunction**").
3. This statement has been prepared with the Claimants' legal representatives.
4. This statement is made from matters that are within my own knowledge and/or (unless other sources of information are stated) knowledge gained from my review of the First Claimant's documents, incident reports logged on the First Claimant's HORACE and Trak Tik systems (these systems are explained in Dobson 1), reports by the First Claimant's security and legal teams and those of the First Claimant's contractors, as well as material obtained and reviewed from open-source internet and social media platforms. In each case I believe them to be true. The contents of this statement are true to the best of my knowledge and belief.

5. There are now shown and produced to me marked **JG1** true copies of documents to which I shall refer in this statement and which can be found at <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>.
Page numbers without qualification refer to that exhibit.
6. In preparing this statement I have read the following witness statements filed previously in these proceedings:
 - (a) Witness Statement of Richard Jordan (“**Jordan 1**”)
 - (b) First to tenth witness statements of Julie Dilcock (“**Dilcock 1**” to “**Dilcock 10**”)
I have also reviewed the Eleventh witness Statement of Julie Dilcock (“**Dilcock 11**”) and Witness Statement of James Dobson (“**Dobson 1**”) in draft.

Defined terms used in this statement are the same as those defined in the Particulars of Claim and the above listed statements, unless separately defined in this statement.

Purpose and scope of this statement

7. In this statement I will:
 - 7.1. Update the court on the reduced impact of unlawful direct action by activists upon the HS2 Scheme since the clearance of the encampments in Staffordshire and the granting of the Injunction.
 - 7.2. Explain how the level and type of direct action against the HS2 Scheme is typically affected by the works activity being undertaken or planned and how that works activity is often season dependant.
 - 7.3. Set out the modelling that the First Claimant’s security team has carried out to forecast the expected level and impact of unlawful direct action by activists against the HS2 Scheme were the Injunction not to be continued.
 - 7.4. Explain the pattern of unlawful direct action by activists that has emerged since the granting of the Injunction as activists seek to continue to cause loss and damage to the HS2 Scheme via means not currently prohibited by the Injunction.

Reduced Impact on the HS2 Scheme

8. At Jordan 1 my predecessor, Richard Jordan, outlined to the court that the Claimants had incurred costs totalling **£121.62m** up to the end of December 2021 in dealing with unlawful direct action protest across Phase One of the HS2 Scheme (Jordan 1, para 14).
9. This cost continued to escalate until Q3 2022, when there was a notable change in the number and severity of incidents and the costs associated with dealing with those incidents. At **page 1** is a graph showing the change in direct action protest related incidents over time, from which the following can be seen:
 - 9.1. Q2 2022. There were 49 recorded direct action protest-related incidents. This period included the lead up to the bulk of the enforcement at Cash's Pit and Closepit Plantation, which commenced on 10.05.22. The costs incurred in Q2 were **£13.02million**.
 - 9.2. Q3 2022. The number of incidents reduced to 28, reflective of the fact that the enforcement at Cash's Pit was ongoing until 12.07.2022. Q3 saw a change in tone and severity of incidents. This is attributed to the adoption of a more cautious approach by activists whilst awaiting the Injunction judgment and the trial and subsequent committal of the defendants who breached the Cotter Order. The costs incurred by the Claimants reduced significantly to **£3.08million**.
 - 9.3. Q4 2022. A paradigm shift in the severity and cost of unlawful direct action against the HS2 Scheme occurred following the making of the Injunction order on 20.09.22 and the committal to prison of D33 for 268 days on 23.09.22. Whilst 28 incidents were still recorded, the cost attributable to those incidents reduced to **£0.76million**.
 - 9.4. Q1 2023. Only 9 incidents have been recorded in this quarter, and the cost to HS2 Ltd is recorded at **£0.2million**.
10. The costs incurred in dealing with activism-related incidents from 01.10.22 (the beginning of the quarter following the imposition of the Injunction) to the time of writing is **£0.96million**. The cumulative cost to the HS2 Scheme of dealing with direct action to date is plotted as a green line on the graphs presented at **pages 1 and 3** and the change in cost is correlated to gradient. When the line is steeper, spend in that period is higher, if the gradient levels off spend is reducing. The graphs clearly show

that since 01.10.22 the total cost has plateaued and that the Injunction has had a significant impact in reducing the amount of taxpayer money being spent on dealing with unlawful direct action against the HS2 Scheme.

11. A further impact of the Injunction that is not captured by the financial figures is the change in the working environment for staff and contractors. In Jordan 1, the hostile, intimidating and often violent and dangerous work environment created by unlawful direct action for the Claimants' staff and contractors was described. The feedback from our staff and contractors is that the significant reduction in unlawful direct action activity has changed the perception of those working across the HS2 Scheme, who feel safer and no longer face the previous extraordinary levels of abuse whilst doing their jobs.

Factors Impacting Upon Direct Action (When and Where)

12. Spikes in unlawful direct action against the HS2 Scheme have often coincided with those stages of the project that involve carrying out activities that activists consider to be the most contentious. This is most often de-vegetation works and specifically the felling of trees.
13. The graphs at **page 2** show how unlawful direct action has typically peaked during Q4 each year as actions have been deliberately coordinated to disrupt de-vegetation works that need to take place outside of bird nesting season. The year 2022 on the graph is an anomaly, with a spike in incidents in Q2 due to the clearance of the Swynnerton camps and by Q4 unlawful direct action was being deterred by the Injunction and so the usual spike in that quarter is not seen in this year.
14. The removal or planned removal of trees on the HS2 Scheme has often precipitated the establishment of protest camps. Establishing camps within woodlands presents a number of advantages to activists intent upon delaying and disrupting the HS2 Scheme as set out in Dobson 1. Woodland encampments are particularly problematic for the security teams and significantly increase the costs and risks associated with eviction. For example the 4 most costly, dangerous and enduring enforcements on the HS2

Scheme to date were the following, all of which were in woodland and/or camps established to protect specific trees:

Land	Enforcement commencement date	Cost of enforcement
Cash's Pit Land	10.05.2022	£8.5million (Dilcock 7)
Small Dean (W.A.R. Camp)	10.10.2021	£5million (Jordan 1, para 71)
Euston Square Gardens	27.01.2021	£3.4million (Jordan 1, para 50)
Jones Hill Wood	01.10.2020	£1.5million (Jordan 1, para 48)

Furthermore, the construction of camps and activists' proficiency in doing so in such a way as to cause as much disruption and cost to the Claimants as possible has developed with time, with the resulting costs of enforcement generally increasing from camp to camp.

15. Encampments have provided a base from which transient activists could conduct sustained unlawful direct action against the HS2 Scheme and have allowed the campaign to draw activists from other causes to bolster numbers. In almost all cases, encampments were established upon land required at a future date by the HS2 Scheme, but not yet in possession, with activists scoping ahead and moving ahead of the programme. Therefore, unlawfully possessing land or conducting direct action activity intended to delay, disrupt or damage the HS2 Scheme on land within the LLAU, but ahead of the Claimants' taking possession for the purposes of the HS2 Scheme has proven to be the most impactful (in terms of cost and delay) form of direct action encountered thus far. The First Claimant's security team consider that this remains a significant threat to the HS2 Scheme.

Forecasted Future Activity

16. The graph at page 3 shows the security team's forecast as to the expected trajectory of direct action incidents and associated costs should the Injunction not continue. This is based on the security team's assessment that the levels would be analogous to the experience in late 2019 going into 2020. It is projected that the Claimants could incur

costs of **£6.03m** in Q3 2023 and **£16.2m** in Q4 2023. In producing this forecast the following factors were considered:

- 16.1. The proficiency of the activists taking direct action against the projects has increased with time (see paragraph 14 above).
- 16.2. Many of the activists opposed to the HS2 Scheme have not abandoned direct action altogether. Instead, they are currently campaigning against other causes (as explained in Dobson 1), and it is considered that there is a significant likelihood that these individuals may return if the deterrent effect of the Injunction were removed.
- 16.3. The time required by activists to regain momentum would be less than the time it took to first build momentum in the earlier years of the project. The campaign would be able to cross recruit and grow from other groups such as JSO and Insulate Britain, where many of the leaders who were so instrumental in the anti-HS2 campaign through 2020 and 2021 are currently actively campaigning.
- 16.4. The recent media coverage around the Government's decision to delay construction on parts of the HS2 Scheme in order to try to defray the rising costs caused by inflationary pressures will undoubtedly encourage activists to believe that their unlawful direct action may yet succeed in having the HS2 Scheme "cancelled" (despite clear Government statements to the contrary) and may increase potential support for activists from some quarters (posts around this have already started appearing on social media – an example from D16 is at [page 4](#)). This could create fertile ground for the re-establishment of camps. In this sense 2023-24 may be considered analogous to 2020 when the Oakervee Review and delays around the issuing of notice to proceed coincided with significant camp establishment on Phase One.

Unlawful Activity Since the granting of the Injunction

17. As set out in detail in Dobson 1, there have been 37 protest-related incidents recorded against the HS2 Scheme since the grant of the Injunction. The incidents at Eversheds and HMP Full Sutton described in Dobson 1 are not included in this figure as they were secondary, rather than primary targeting of the project. Critically the cost and disruption associated to these incidents has been significantly reduced, totalling **£0.96million**.

18. The incidents that have been experienced can be summarised as follows:
 - 18.1. Vandalism and criminal damage committed during the hours of darkness, for example graffiti sprayed on plant and machinery or banners placed in trees (by trespassing).
 - 18.2. Direct action where activists seek to disrupt and delay works on land within the LLAU but beyond the scope of the Injunction, for example by placing themselves in harm's way and causing delays to works, which have to stop for reasons of health and safety. A summary of an example of this type of activity committed by D66 and D67 in Aylesbury on 05.02.23 is set out in Dobson 1.
19. Whilst unwelcome, the types of activity set out at paragraph 18.1 are anticipated on a project of this size and nature and are in large part low level and opportunistic and likely to remain that way so long as the Injunction remains in place.
20. The category described at paragraph 18.2 represents an evolution of tactics by activists seeking to continue to cause delay, damage and loss to the project notwithstanding the imposition of the Injunction, by adopting tactics intended to thwart the purpose of the Injunction. This category of incident is concerning to the Claimants and the security team consider that these types of incidents are likely to increase in number and severity unless the Injunction is extended to cover conspiracy to harm the Claimants by unlawful means.

Statement of Truth

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.

Signed:.....

JOHN GROVES

Dated: 27 March 2023

On behalf of: Applicants/Claimants
J.A Dilcock
11th statement of witness
Exhibits: JAD13
Date: 27 March 2023

Claim No. QB-2022-BHM-000044

IN THE HIGH COURT OF JUSTICE
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")
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

ELEVENTH WITNESS STATEMENT OF JULIE AMBER DILCOCK

I, JULIE AMBER DILCOCK, of High Speed Two (HS2) Limited, Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA **WILL SAY** as follows:

1. I am a solicitor of the Senior Courts of England and Wales and employed by the First Claimant as Head Counsel - L&P Disputes. My role involves advising the First Claimant and instructing and assisting external legal advisers advising and representing the First Claimant and in that capacity my role includes instructing our external legal advisers, DLA Piper UK LLP, in relation to the conduct of these proceedings. I am authorised to make this, my Eleventh Witness Statement, on behalf of the Claimants.
2. I make this statement in support of the Claimants' application to extend the injunction imposed by the Order of Mr Justice Julian Knowles dated 20.09.2022 (the "**Injunction**").
3. This statement has been prepared with the Claimants' legal representatives.
4. This statement contains matters that are within my own knowledge, whether directly or resulting from matters reported to me – both orally and in writing. Where matters are based upon information received from a third party I identify the third party source and why I believe the truth of the matters stated.
5. There are now shown and produced to me marked **JAD13** true copies of documents to which I shall refer in this statement and which can be found at <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings> (the "**RWI Updated Website**"). Page numbers without qualification refer to that exhibit.
6. In preparing this statement I have read the following witness statements filed previously in these proceedings:
 - (a) Witness Statement of Richard Jordan ("**Jordan 1**")
 - (b) My first to tenth witness statements ("**Dilcock 1**" to "**Dilcock 10**")I have also reviewed the Witness Statement of John Groves ("**Groves 1**") and Witness Statement of James Dobson ("**Dobson 1**") in draft.

Defined terms used in this statement are the same as those defined in the Particulars of Claim and the above listed statements, unless separately defined in this statement.

Purpose and scope of this statement

7. In this statement I will:
 - 7.1. Explain the history of these proceedings and compliance with the directions order made by the court on 15.03.2023.
 - 7.2. Give an overview of the Claimants' position on the addition and removal of Defendants.
 - 7.3. Explain the purpose and scope of the Claimants' application to vary and extend the Injunction.
 - 7.4. Explain the land defined in the Phase One Act and the Phase 2a Act as land within the limits of land to be acquired and used for the HS2 Scheme ("LLAU") and the Claimants' rights in relation to the land within the LLAU.
 - 7.5. Update the position regarding the land of which the Claimants are entitled to possession and introduce the updated plans showing that land (the "**March 2023 HS2 Land Plans**").
 - 7.6. Give an overview of other powers (beyond acquisition and temporary possession) in relation to the use of land afforded to the First Claimant for the construction of the HS2 Scheme.
 - 7.7. Give an overview of the phases of construction of the HS2 Scheme.

History of these proceedings

8. These proceedings were initiated on 28.03.2022 by the Claimants under CPR Part 55 as a claim for possession of the Cash's Pit Land and an application within those proceedings for an injunction across the HS2 Land. There was an initial hearing on 05.04.2022 at which the matter was adjourned. There was a further hearing on 11.04.2023 at which the Cotter Order was made, ordering that possession of the Cash's Pit Land be given to the Claimants and imposing an injunction over the Cash's Pit Land restraining trespass, obstruction of access and other matters. The Claimants' application for an injunction over the wider HS2 Land was listed for a directions hearing.

9. A directions hearing took place on 28.04.2022 at which Mr Justice Julian Knowles set directions to take the matter to hearing. The substantive hearing then took place on 26.05.2022 and 27.05.2022, following which judgment was reserved. Judgment was then handed down and the Injunction made on 20.09.2023. D6 applied to the Court of Appeal for permission to appeal and that application was refused on 09.12.2022.
10. The Injunction was expressed to be in force until 23:59 on 31.05.2023 with express provision for a hearing to take place between 15.05.2023 and 31.05.2023 to determine whether there is a continued threat which justifies the continuation of the Injunction. The Injunction also gave the Claimants liberty to apply to extend or vary the Injunction or for further directions.
11. On 13.01.2023 the court issued Notice of Hearing for the hearing to review the Injunction (the “**Review Hearing**”) and on 10.03.2023 the Claimants applied for directions for the conduct of the proceedings up to the Review Hearing. On 15.03.2023 the court issued a directions order giving directions for the conduct of the proceedings up to the Review Hearing.
12. Between the hearing on 26.05.2022 to 27.05.2022 and the making of the Injunction on 20.09.2022, the Claimants issued applications for committal for contempt against 7 Defendants for breaching the injunction imposed over the Cash’s Pit Land by the Cotter Order (the “**Cash’s Pit Contempt**”). The hearing of those applications took place on 25.07.2022 to 28.07.2022, with 2 Defendants giving undertakings to the court and 4 given immediate or suspended custodial sentences. The remaining Defendant’s (D33) case was adjourned to a further hearing on 22.09.2022 to 23.09.2022 at which an immediate custodial sentence was imposed on him. Copies of the relevant undertakings and committal orders are at **pages 1 to 26**.
13. The Claimants’ original application had sought an injunction for a period of 12 months, subject to review. The timescales by which the proceedings progressed to the making of the Injunction mean that by the time of the Review Hearing, the Injunction will have been in place for just 8 months.

14. Since the making of the Injunction on 20.09.2022, no-one has applied to vary or discharge it pursuant to the provisions at paragraph 16 of the Injunction and no-one has filed an acknowledgment of service pursuant to paragraph 18 of the Injunction.
15. The Claimants have complied with the requirements set out at paragraphs 2 to 8 of the directions order made by the court on 15.03.2023 (and received by the Claimants on 16.03.2023) as follows:
 - 15.1. In accordance with paragraph 2 a notice was placed on the top of the HS2 Proceedings Website informing users that from 16.03.2023 all documents relating to the HS2 Route-wide Injunction proceedings will be uploaded to the website at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>
 - 15.2. In accordance with paragraph 3 of the order, on 16.03.2023, copies of all documents already uploaded to the HS2 Proceedings Website were made available via the RWI Updated Website.
 - 15.3. As required by paragraph 4 of the order, the HS2 Proceedings Website remains live.
 - 15.4. In accordance with paragraph 5 of the order, a copy of the directions order was uploaded to the HS2 Proceedings Website and the RWI Updated Website on 16.03.2023.
 - 15.5. As required by paragraph 6(b) of the order, an advert was placed in the Times and published on 21.03.2023 and in the Guardian and published on 22.03.2023 advertising the date of the Review and the web address of the RWI Updated Website.
 - 15.6. In accordance with paragraph 6(c) of the order, on 20.03.2023 copies of a notice advertising the date of the Review and the RWI Updated Website and a copy of the directions order were sent to 18 libraries and 11 Parish Councils along the line of the HS2 Scheme route with a request that the documents be displayed in the libraries / on Parish notice boards.
 - 15.7. As required by paragraph 6(d) of the order, on 16.03.2023 a tweet was issued from the HS2 Twitter account and a post made on the HS2 Facebook page advertising the date of the Review and the web address of the RWI Updated Website.

15.8. In accordance with paragraph 8 of the order, the Claimants' solicitors emailed a copy of the directions order to the solicitors for D6 and any other party who had at the date of the directions order provided an email address to the Claimants to the email addresses: HS2Injunction@governmentlegal.gov.uk or HS2Injunction@dlapiper.com.

Defendants

16. I set out the rationale for those individuals whom the Claimants originally named as Defendants to the proceedings in Dilcock 1 (paragraphs 42 to 43). To a certain extent, the Claimants were bound to name a number of individuals who had already moved away from unlawful direct action campaigning against the HS2 Scheme by virtue of the fact that they had been named Defendants to proceedings for other injunctions obtained by the Claimants and which the Claimants were seeking to consolidate as part of the original application. Several individuals were removed as named Defendants in the Injunction by agreement with the Claimants. The numbers originally used for those removed Defendants are now shown as "not used". Those individuals remain bound by the terms of the Injunction that apply to persons unknown.
17. D64 and D65 were added as named Defendants to the proceedings by way of an order made by Mr Justice Ritchie on 14.06.2022 (a copy of which is at **pages 27 to 33**) as part of the Cash's Pit Contempt.
18. The Claimants take seriously their obligation to review whether individuals ought to remain named as Defendants to these proceedings and whether any further individuals ought to be added as named Defendants. In preparation for the Review Hearing, the Claimants have carried out an extensive and careful review of the named Defendants in order to take an informed decision as to whether to remove each one from the proceedings. The results of that exercise are described in Dobson 1. The Defendants whom the Claimants are now proposing to remove as named Defendants to the proceedings appear not to pose a continuing threat of unlawful direct action campaigning against the HS2 Scheme. It is, of course, open to any of those Defendants to oppose the Claimants' proposal to remove them, in which case the Claimants are content that those individuals remain as named Defendants if they wish. The Claimants detailed reasons for retaining the remaining individuals as named Defendants –

essentially because they are each considered to pose a continued threat of unlawful direct action against the HS2 Scheme - are also set out in Dobson 1.

19. The Claimants are also under an obligation to add any new Defendants whom they consider have been involved in or pose a significant threat of being involved in the forms of unlawful activity that the Claimants are asking the court to make an order prohibiting. For this reason, the Claimants are adding D66 – Caroline Thomson-Smith (aka Carl Woods) and D67 – Christopher Paul Butcher (aka Rob) as named Defendants to the proceedings. As set out in detail in Dobson 1, D66 and D67 have both breached the Injunction and engaged in unlawful direct action campaigning seeking to delay and disrupt works on the HS2 Scheme which the Claimants are seeking an order prohibiting by way of the present application.
20. Finally, the Claimants are proposing to remove D1 from the proceedings. D1 was a category of persons unknown relating to the Cash's Pit Land and was necessary in relation to the claim for possession of that land. That category has now become obsolete as the land in question is now HS2 Land (as defined in the Injunction). The Claimants are also proposing to add a further category of persons unknown as D68 in connection with the Claimants' application to extend the Injunction to prohibit conspiracy to cause harm to the Claimants by unlawful means.

Claimants' Application to extend the Injunction

21. By the current application, the Claimants are seeking:
 - 21.1. continuation of the Injunction for a further 12 months (the "**Temporal Extension**").
 - 21.2. to amend the definition of HS2 Land to cover the land shown coloured pink and green on the March 2023 HS2 Land Plans, thus extending the protection afforded by the Injunction to land that has come into the Claimants' possession for the purposes of the HS2 Scheme since the original application was made in March 2022 (the "**Geographical Extension**").
 - 21.3. to prohibit the Defendants from 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 (the “**Unlawful Means Conspiracy Extension**”).

I have explained the reasons for each of these and further details about what is sought below. There are also a number of “tidying-up” or consequential amendments sought.

22. With regard to the Temporal Extension, as is explained in detail in Dobson 1 and Groves 1, the Claimants reasonably fear that there remains a real and imminent threat of unlawful direct action campaigning targeting the HS2 Scheme if the Injunction is allowed to lapse and have evidence to support that fear. Accordingly, the Claimants are seeking to continue the protection afforded by the Injunction for a further 12 months, with provision for the court to review the matter again in May 2024.
23. With regard to the Geographical Extension, as I have explained in paragraph 34 below, the Claimants have become entitled to possession of further land since the original application was made. As explained in Dobson 1 and Groves 1, that land is vulnerable to unlawful direct action activity unless protected by extending the Injunction to cover it.
24. As explained in detail in Dobson 1, activists opposed to the HS2 Scheme have been deterred from engaging in the forms of unlawful direct action campaigning prohibited by the Injunction. However, activists remain committed to seeking to delay and disrupt the HS2 Scheme and to causing loss and damage to the Claimants by unlawful means. Activists have deliberately sought to find ways of continuing to cause disruption, loss and damage by methods that are not currently prohibited under the terms of the Injunction – effectively adopting tactics that are intended to thwart the purpose of the relief granted by the court in the Injunction. The Claimants reasonably fear that if the Injunction is not extended to prohibit these nascent forms of direct action against the HS2 Scheme, such action will become more widespread and quickly have a significant impact on the construction of the HS2 Scheme. Accordingly, the Claimants seek the Unlawful Means Conspiracy Extension to prohibit activists from committing the tort of conspiracy to cause harm to the Claimants by unlawful means. The Claimants have carefully considered how to make this extension to the Injunction proportionate to the

threat at hand and are proposing the following limits on the prohibited activity under this extension:

- (a) The prohibition is limited to unlawful means.
- (b) The prohibition is limited to circumstances where the actions are intended to cause damage to the Claimants by preventing, obstructing, delaying, hindering or impeding the works or activities authorised by the HS2 Acts for the provision of the HS2 Scheme. These are works and activities that Parliament has specifically approved the Claimants to undertake after a rigorous process of Parliamentary scrutiny during the passing of the HS2 Acts.
- (c) The prohibition will not apply to the freeholders and leaseholders of land over which the Claimants have taken temporary possession under the terms of the carve out in paragraph 4 of the Injunction, and the HS2 Land in accordance with the recitals to the Injunction.

LLAU

25. As described in Dobson 1 and Groves 1, the Claimants have experienced unlawful direct action campaigning on land that is outside of the HS2 Land, but which is land that Parliament has designated for use for the HS2 Scheme. That may be land that is to be possessed in the future (either permanently or temporarily) or land that is to be used in some other way in accordance with the powers granted to the Claimants under the HS2 Acts. In view of this, I thought it may be helpful to explain the land that is designated for use for the HS2 Scheme under the HS2 Acts.
26. When the Bills that preceded the HS2 Acts were deposited with Parliament, a set of plans accompanied each one, showing the limits of the land to be acquired or used for the project under each Bill. Those plans were amended as the Bills passed through the Committee stages of the Bill, before being finalised as the plans that accompany each of the HS2 Acts.
27. The Parliamentary plans and sections show the centreline of the main works, the Limits of Deviation (“**LOD**”) and the Limits of Land to be Acquired or Used (“**LLAU**”). The plans also show the course of proposed permanent diversions of public footpaths and bridleways. The plans have a key at the beginning. The LOD are show as a dashed

line and the LLAU are shown as a dash-dot line. The grey shading on the plans is just there to help distinguish between different land parcels and does not denote what is LOD or LLAU.

28. The LOD are used to show the limits within which the scheduled works, as listed in Schedule 1 of HS2 Acts, may be constructed. These limits show the extent of the proposed works based on the design developed to the stage necessary for the preparation of each Bill. The LOD provides allowances for contingencies, working spaces and similar factors. This is achieved by including powers to deviate from the position of the works shown on the Parliamentary plans by a small amount; this deviation is restricted by the LOD marked on the plans. The scheduled works can be constructed anywhere within their specific LOD. The scheduled works cannot be constructed outside of their specified LOD. Separate LODs show the limits within which the proposed permanent diversions of public footpaths and bridleways may be provided. Those limits are shown in red on the Parliamentary plans to differentiate them from the other limits shown on the Parliamentary plans.
29. The LLAU are used to show additional limits for other works (i.e. ancillary works such as the provision of environmental mitigation) as well as the limits of land required in connection with the construction and future maintenance of the project.
30. The Parliamentary plans describe the horizontal limits, within which the scheduled works may be constructed. They are determined at an early stage and allow for design development following the deposit of the Bill.
31. Accordingly, the Claimants have the right to use any of the land that is designated as land within the LLAU for the purposes of the HS2 Scheme. The plans showing the land that is within the LLAU for Phase One and Phase 2a are publicly available:

Phase One: <https://www.hs2.org.uk/documents/collections/plans-sections-hs2-phase-one-amended-select-committee/>

Phase 2a: <https://www.gov.uk/government/publications/plans-and-sections-for-hs2-phase-2a>

32. The First Claimant has also published information papers to assist the public with understanding the Hybrid Bills that became the HS2 Acts which are available at:

Phase One:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672188/B9 - Introduction_to_hybrid_Bill_Powers_v1.1.pdf

Phase 2a:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960598/B3_Limits_on_Parliamentary_Plans_v1.2.pdf

and the limits shown on Parliamentary Plans:

Phase One:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672178/B2 - Limits_on_Parliamentary_Plans_v1.4.pdf

Phase 2a:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960595/B1_Understanding_the_Bill_v1.1.pdf

The HS2 Land

33. In Dilcock 1 and Dilcock 3 I explained the Claimants' powers to take possession of land for the HS2 Scheme and introduced the HS2 Land Plans and Revised HS2 Land Plans and the different categories of land shown on them. The Revised HS2 Land Plans were then incorporated into the Injunction to show the land defined as "HS2 Land".

34. The Revised HS2 Land Plans showed the land to which the Claimants were entitled to possession as at March 2022 when the application for the Injunction was first made. Since that date, the Claimants have become entitled to possession of further land for the purposes of the HS2 Scheme. This additional land, broadly speaking, falls into three categories:

34.1. Land in Phase One that has vested since the date of the original application. The Second Claimant's powers of compulsory acquisition granted by the Phase One Act expired in February 2022. Prior to expiry, the Claimants reviewed the

position with regard to the land required for Phase One of the HS2 Scheme and a large number of GVDs were made in the run up to the end of powers (some notices to treat were also served). Compulsory powers of acquisition are exercised at the point that a GVD is made or notice to treat served, but the ownership of the land that is the subject of the GVD does not vest in the Second Claimant until the expiry of a notice period (which is a minimum of 3 months). At the time that the original application was made, there were areas of land in Phase One in respect of which GVDs had been made, but where the notice periods were running and therefore the land had not yet vested. All of that land has since vested and the Second Claimant is entitled to possession of it.

- 34.2. Further land that has been acquired in Phase 2a. At the time that the original application was made, the programme of acquisition of land on Phase 2a of the HS2 Scheme was in its infancy. Acquisition has continued on Phase 2a since the original application was made and accordingly, the Second Claimant is entitled to possession of additional land on Phase 2a.
- 34.3. Further land on Phase One and Phase 2a over which the First Claimant has exercised powers of temporary possession. The First Claimant's powers to take temporary possession of land on Phase One and Phase 2a of the HS2 Scheme remain in force and are exercised as and when required for the purposes of the HS2 Scheme.
35. The Claimants wish to add the further land to the Injunction 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 wish to update the definition of "HS2 Land" to reference the March 2023 HS2 Land Plans.

36. The Claimants have also produced spreadsheets setting out the basis of the Claimants' right to possession of the newly defined HS2 Land. These also run into hundreds of pages and accordingly have also been placed on the RWI Updated Website.
37. The format and colouring used for the March 2023 HS2 Land Plans are the same as those used for the Revised HS2 Land Plans. For completeness, I have set out again here what the plans show.
38. The First or the Second Claimant are the owner of the land coloured pink on the March 2023 HS2 Land Plans, with either freehold or leasehold title (the "**Pink Land**"). The Claimants' ownership of much of the Pink Land is registered at HM Land Registry, but the registration of some acquisitions has yet to be completed. The basis of the Claimants' title is explained in the spreadsheets named "**March 2023 Table 1**" and "**March 2023 Table 3**". March 2023 Table 1 reflects land that has been acquired by the GVD process and March 2023 Table 3 reflects land that has been acquired by other means. A further table ("**March 2023 Table 2**") has been included to assist with cross referencing GVD numbers with title numbers. Where the Claimants' acquisition has not yet been registered with the Land Registry, the most common basis of the Claimants' title is by way of executed GVDs under Section 4 of the HS2 Acts, with the vesting date having passed.
39. The Claimants have excluded the Let Estate from the Pink Land.
40. The Claimants' interest in the Pink Land excludes any rights of the public that remain over public highways and other public rights of way and the proposed draft order deals with this point (in the same way as it was dealt with in the Injunction order). The Claimant's interest in the Pink Land also excludes the rights of statutory undertakers over the land and the proposed draft order also deals with this point (in the same way as it was dealt with in the Injunction).
41. The First Claimant has served the requisite notices under the HS2 Acts and is entitled to temporary possession of the land coloured green on the March 2023 HS2 Land Plans (the "**Green Land**") pursuant to section 15 and Schedule 16 of the Phase One Act and section 13 and Schedule 15 of the Phase 2a Act. A spreadsheet setting out the details

of the notices served and the dates on which the First Claimant was entitled to take possession pursuant to those notices is at **March 2023 Table 4**.

42. This update to the definition of HS2 Land is necessary to ensure that all of the land of which the Claimants are entitled to possession is afforded the protection of the Injunction.

Overview of other powers to use land for the HS2 Scheme

43. The construction of the HS2 Scheme between London and Manchester has been split into 3 phases:
 - 43.1. Phase One – London to West Midlands
 - 43.2. Phase 2a – West Midlands to Crewe
 - 43.3. Phase 2b (Western Leg) – Crewe to Manchester
44. The construction of Phase One and Phase 2a have already been authorised by Parliament as set out in Dilcock 1. The High Speed Rail (Crewe – Manchester) Bill seeking to secure powers for the construction of Phase 2b (Western Leg) was introduced into Parliament in January 2022 and secured its second reading in June 2022 and the petitioning period ended in August 2022. The Select Committee is currently hearing petitioners.
45. In Dilcock 1 I set out in detail the process by which Phase One and Phase 2a of the HS2 Scheme received Parliamentary approval.
46. In Dilcock 1 I also explained the provisions of the Phase One Act and the Phase 2a Act (the “**HS2 Acts**”) relating to the acquisition and taking of temporary possession of land required for the HS2 Scheme and the operation of Statutory Blight, the HS2 Discretionary Schemes and acquisitions by consent (whether of freehold or leasehold interests). I expanded on this in Dilcock 3, in which I gave further detail about the operation of the temporary possession regime under the HS2 Acts.
47. The explanations that I gave in Dilcock 1 and Dilcock 3 remain correct and relevant to the application that the Claimants are now making.

48. The Claimants have also been granted other powers in the HS2 Acts in relation to the use of land for the HS2 Scheme. In the paragraphs that follow, I have set out an overview of some of those powers relevant to the Claimants' application. As matters stand under the Injunction, there is no protection afforded to HS2 in the exercise of these other powers. As set out in Dobson 1, activists opposed to the HS2 Scheme have shifted to focus their unlawful direct action on disrupting the carrying out of works for the construction of the HS2 Scheme under those other powers in a bid to continue to disrupt work on the project without breaching the terms of the Injunction. As part of this application, the Claimants are seeking the assistance of the Court to prohibit disruption to the HS2 Scheme by this unlawful activity.

49. Under Part 1 of Schedule 2 of the Phase One Act and the Phase 2a Act respectively, the First Claimant is given various powers to enter onto land to:

- 49.1. carry out various types of intrusive and non-intrusive surveys (paragraph 1)
- 49.2. survey and carry out works to support buildings that are or may be affected by the HS2 Scheme (paragraph 2 to paragraph 6)
- 49.3. deal with overhanging trees (paragraph 7)
- 49.4. deal with the discharge of water (paragraph 8)
- 49.5. temporarily interfere with waterways (paragraph 9)

Part 2 of Schedule 2 sets out the powers of entry afforded to the First Claimant in relation to these activities and the enforcement methods available to the First Claimant in the event that the relevant landowner refuses to allow the First Claimant to exercise its powers.

50. Part 1 of Schedule 4 of the Phase One Act and the Phase 2a Act respectively grant the First Claimant powers to form and lay out means of access and to improve existing means of access at any place within the LLAU.

51. Part 2 of Schedule 4 of the Phase One Act and the Phase 2a Act respectively grant the First Claimant powers to stop up highways (which includes bridleways and footpaths) permanently and temporarily:

- 51.1. the right to permanently stop up highways (paragraph 2)

- 51.2. the right to temporarily stop up highways (paragraph 8)
- 51.3. the right to use any highway or part of a highway stopped up using these powers as a working site if it is within Act limits (paragraph 11)

the effect of stopping up a highway is (whether permanently or temporarily) to remove the rights of the public to pass and repass across that land.

52. Subject to compliance with the particular requirements for the exercise of these powers set out within the HS2 Acts (such as the service of notices under Schedule 2 and the submission of Schedule 4 proposals to the relevant Highway Authority for review), the Claimants are entitled to exercise these additional powers across the land designated as land within the LLAU on the Parliamentary plans. In some circumstances, the highway powers extend outside even of the land within the LLAU.
53. Parliament considered it necessary to grant the Claimants these additional powers for the purposes of the provision of the HS2 Scheme. Interference by activists with activities being carried out under the exercise of these powers has caused delay and disruption to the HS2 Scheme and loss to the Claimants (which is expense to taxpayer as the HS2 Scheme is publicly funded).

Overview of construction of the HS2 Scheme

54. Construction of each Phase of the HS2 Scheme consists of the following stages:

- 54.1. Early enabling works – including ecological surveys, ground investigation works. These are often carried out under the powers afforded to the First Claimant under Schedule 2 of the HS2 Acts or by agreement with landowners without the need to exercise powers.
- 54.2. Enabling works - including ecological and archaeological surveying and mitigation, de-vegetation, ecological translocation and utilities diversions. These activities are often carried out following the taking of temporary or permanent possession but are also sometimes carried out under Schedule 2 and sometimes under Schedule 4. Sometimes powers under Schedule 4 are used to support works being carried out on land held by the Claimants following acquisition or under powers of temporary possession, where it is not possible to carry out all of the works without, for example, utilising the verge or

carriageway of a road or because the works cannot be carried out safely whilst an adjacent verge and road remain open to the public.

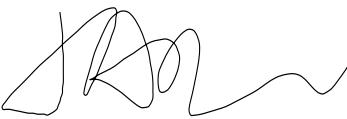
- 54.3. Main works – including construction and civil engineering of haul roads, demolition of structures, excavation of cuttings, building of bridges, boring of tunnels. These works are carried out on land that has been permanently acquired and also utilising land that has been temporarily possessed. Again, powers under Schedule 4 are often exercised as part of these works where roads and verges are required to be utilised temporarily as a working site or to be closed to the public for safety during works.
 - 54.4. Railway systems – including installation of the railway infrastructure and systems. These works will be carried out on land that has been permanently acquired, but also utilising land that has been temporarily possessed to carry out the works and powers under Schedule 4 in support.
55. Phase One of the HS2 Scheme is currently in the main works stage with tunnels being bored and viaducts, bridges and cuttings under construction in hundreds of locations along the route. This is the most intense stage of construction.
56. Phase 2a is currently at the early enabling works stage. The Claimants' contractors are engaged in conducting ground and ecological surveys and limited mitigation works. Land is also being acquired under section 4 and temporarily possessed under Schedule 15 of the Phase 2a Act.
57. In his witness statement in support of this application, John Groves explains the pattern of unlawful direct action that the project has experienced in the past relative to the different stages of construction and the Claimants' fears for action against the project going forward if the Injunction is not extended as requested by the Claimants.
58. Finally, I want to address the well-publicised recent announcement by the Government of delays to the HS2 Scheme. Whilst I do not consider it to be relevant to the present application, I anticipate that those opposed to the HS2 Scheme and who may wish to oppose the present application, may well raise it. A copy of the statement made to Parliament by the Second Claimant is at **pages 34 to 35**. By way of explanation, the Government and the media have used the shorthand of a 2 year delay to the HS2

Scheme to refer to what is in reality something more complex. The HS2 Scheme is subject to inflationary pressures in the same way as any other construction project. The current level of inflation is impacting all aspects of the costs of the project and is being felt keenly in the cost of materials, for example. The Government has decided to take steps to try to mitigate exposure to current inflationary pressures and those steps will have the effect of prolonging the construction programme. In reality, what is happening is that the Government is limiting the funding that it is providing to the HS2 Scheme over the next two years to a level that is below that which would be required to continue constructing the project at full pace and as a result, works in some areas are being prioritised over others. This means that works will still continue across the HS2 Scheme and, for example, acquisition of land will still continue (there is a finite time in which to complete that before powers of compulsory acquisition granted by the Phase 2a Act expire). The “delay” does not therefore diminish the risk that the HS2 Scheme will be subject to unlawful direct action and may well heighten that risk as outlined in Groves 1.

Statement of Truth

I believe that the facts in this witness statements 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.

Signed



Name: JULIE AMBER DILCOCK

Dated: 27 March 2023

On behalf of: Applicants/Claimants
J.A Dilcock
12th statement of witness
Exhibits: JAD14
Date: 17 April 2023

Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
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")**
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

TWELFTH WITNESS STATEMENT OF JULIE AMBER DILCOCK

I, JULIE AMBER DILCOCK, of High Speed Two (HS2) Limited, Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA **WILL SAY** as follows:

1. I am a solicitor of the Senior Courts of England and Wales and employed by the First Claimant as Head Counsel - L&P Disputes. My role involves advising the First Claimant and instructing and assisting external legal advisers advising and representing the First Claimant and in that capacity my role includes instructing our external legal advisers, DLA Piper UK LLP, in relation to the conduct of these proceedings. I am authorised to make this, my Twelfth Witness Statement, on behalf of the Claimants.
2. I make this statement pursuant to paragraph 13 of the Directions Order dated 15 March 2023 (the “**Directions Order**”). Paragraph 12 of the Directions Order required any person seeking to amend (including discharge) the Injunction Order, or oppose any applications made by the Claimants to file and serve a statement of case and any evidence upon which that person seeks to rely by emailing or posting it to the Court and the Claimants at the addresses listed in the Directions Order by 4pm on 11.04.2023. The only submission received by the deadline specified in the Directions Order was a document from D36, Mr Mark Keir, headed: “Grounds for Defence of Mark Keir Defendant No. 36” (“**D36 Grounds**”). That document refers to a number of exhibits, which were not filed or served by the deadline and which were only received by the Claimants at 19:16 on 14.04.2023. This late submission (without the permission of the Court) of the exhibits that were required to understand and respond to the matters set out in the D36 Grounds has severely limited the time available for the Claimants to respond. D36 also submitted a document entitled: “Grounds for Defence of Mark Keir Defendant No. 36” (“**D36 Second Statement**”) at 19:16 on 14.04.2023 without the permission of the Court. It is the Claimants’ position that the contents of that document and the associated exhibits are entirely irrelevant to these proceedings as set out further below.
3. This statement has been prepared with the Claimants’ legal representatives.
4. This statement contains matters that are within my own knowledge, whether directly or resulting from matters reported to me – both orally and in writing. Where matters

are based upon information received from a third party I identify the third party source and why I believe the truth of the matters stated.

5. There are now shown and produced to me marked **JAD14** true copies of documents to which I shall refer in this statement and which can be found at <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings> (the “**RWI Updated Website**”). Page numbers without qualification refer to that exhibit.
6. This statement has been produced in response to the D36 Grounds and the D36 Second Statement. Paragraph numbers in the format [#/D36G] in this statement are references to the paragraph numbers of the D36 Grounds. I have sought to respond to the points raised by D36 only where relevant or useful to do so in the context of these proceedings. Where no response has been made in this statement to a matter in the D36 Grounds or the D36 Second Statement, it should not be taken that the Claimants agree with that point.
7. As to [5/D36G], paragraph 15 of the Injunction provides as follows:

Further Case Management

15. This Order will be reconsidered at a hearing to be listed on approximately a yearly basis between 15 and 31 May to determine whether there is a continued threat which justifies continuation of this Order. It will be the Claimants’ responsibility to arrange such a hearing and to place details of any such hearing on the HS2 Proceedings Website.

The timescales in the order were drafted by reference to the hearing, which took place in May 2022. Accordingly, it was always envisaged that the review would take place between 15 and 31 May and D36, having been served with the Injunction, has been aware of the timing of the review since the Injunction order was made in September 2022. There is no “*note of panic*”.

8. As to [6/D36G] and [7/D36G], the new category of persons unknown (D68) is neither vague nor contorted and the reasons for the Claimants seeking to add this are clearly articulated in the witness statements already filed and served in support of the Claimants’ application. The new category is not aimed at all protest or campaigning

against HS2 as D36 alleges. It is quite clearly aimed at persons obstructing, impeding, hindering or delaying works or activities authorised by the HS2 Acts by unlawful means with the intention of causing damage to the Claimants. This would not prohibit any lawful protest or campaigning.

9. As to [8/D36G], the Claimants' video evidence (which is contained in Exhibit JD6 to the Witness Statement of James Dobson ("Dobson 1")) has been available since 27.03.2023 at the link set out in paragraph 5 of Dobson 1 (<https://vimeo.com/showcase/exhibit-JD6>) and provided on the RWI Updated Website:



[108. Notice of Review Hearing](#)

PDF, 141 KB, 3 pages

This file may not be suitable for users of assistive technology.

► [Request an accessible format.](#)

Details

The following exhibits contain strong and/or abusive language and scenes of violence that some viewers may find disturbing. Viewer discretion advised.

Video exhibit RJ2 can be found by following this link: [Exhibit RJ2](#).

Video exhibit JAD5 can be found by following this link: [Exhibit JAD5](#).

Video exhibit JAD7 can be found by following this link: [Exhibit JAD7](#).

Video exhibit JD6 can be found by following this link: [Exhibit JD6](#).

At the direction of the Court, some documents have been removed or replaced by updated versions. Therefore, document numbering may not be sequential. Click the 'show all updates' link below for details of the changes.

Published 16 March 2023

Last updated 6 April 2023 [+ show all updates](#)

10. The contents of [9/D36G] to [18/D36G] are not accurate – particularly D36's assertion that he has "*yet to see production of any evidence of unlawful behaviour on my part*". As D36 sets out himself, he was named as a Defendant to the Claimants' application

for an injunction over land at Harvil Road in Hillingdon, which was granted by Mr Justice Barling in February 2018. The Claimants filed evidence in support of that application and the subsequent applications to extend that injunction (both geographically and temporally) through 2019 and 2020 which included evidence of acts of trespass and obstruction by D36, along with threats made by D36 – including threats described as “sinister” by Mr Holland QC, sitting as a Deputy Judge of the High Court, at paragraph 144 of his Judgment at [2019] EWHC 1437 (Ch). D36 attended the hearings and was represented by Counsel who did not dispute the allegations made against D36. In addition, a further possession claim was brought against D36 and others in September 2019 in respect of their persistent trespass on the Claimants’ land in the Harvil Road area, which land was also subject to an injunction restraining trespass.

11. After leaving Harvil Road D36 moved to the Wendover area, latterly to Jones Hill Wood which he cites as his current place of residence and where he also engaged in trespass on HS2 Land. D36 has also posted a video of himself trespassing on HS2 Land at Cubbington Woods, which I have viewed (a screenshot of this is at [page 1](#)). In the opening of that video he says:

“We’ve gone through the first part of their fence. We’re pretty much on where the line is supposed to be and as you can see there is more fencing at this side. They really don’t want us in here I guess and they don’t want you in here”

Later in video he says:

“Come on people, we need you, we need you, we need you. As yet, there are still some gaps in the fences, come on, come and help us please.”

Around 10 days later, the land was occupied by a group of activists and the Claimants subsequently obtained an order for possession and an injunction restraining further trespass on the land ([2020] EWHC 671 (Ch)).

12. For completeness, I have set out below some of the incidents of unlawful behaviour of D36 and relevant judicial findings by way of example.
13. In February 2018 the Claimants applied for an injunction over land at Harvil Road in Hillingdon and the injunction was granted on 19.02.2018 by Mr Justice Barling ([2018] EWHC 1404 (Ch), 2018). D36 was a named Defendant (D4) in those proceedings precisely because he had engaged in unlawful activity (trespass and obstruction of

access) and had threatened to continue to engage in that behaviour (examples of the threats I put in evidence in those proceedings are at **pages 2 to 3**). The evidence against D36 was presented in my second witness statement in those proceedings and was not challenged by D36.

14. The Claimants applied to extend the Harvil Road Injunction in 2019 and that application was heard in May 2019 and an order made extending the injunction by Mr Holland QC. Again, the evidence presented by the Claimants included evidence against D36, presented in what was, by then, my fourth witness statement in those proceedings. A copy of the injunction order made in May 2019 is at **pages 4 to 12**.
15. In September 2019, the Claimants returned to Court to seek an order for possession of land in the Harvil Road area as a result of significant trespass by activists, including D36. The land that was the subject of the trespass was at that time also subject to the Harvil Road Injunction (as explained more fully below) and accordingly, the actions of those trespassing were also in breach of the injunction. A copy of the resulting possession order made in those proceedings (in which it can be seen that D36 was named Defendant number 2) is at **pages 13 to 16**.
16. The Claimants returned to Court again in 2020 to further extend the Harvil Road Injunction (the application determined in May 2020 was for a short extension to allow for the preparation of the application that was then heard in August 2020 and an order made in September 2020). The applications again included evidence of unlawful behaviour by D36 (who was named Defendant number 4 to those applications), set out in witness statements given by Richard Jordan.
17. In order to minimise the volume of documents, I have not exhibited copies of all the witness statements from previous proceedings referred to and have instead summarised those incidents in the table below and described some incidents in further detail further below. Evidence of D36's involvement is included within Exhibit JAD14 and referenced in the paragraphs that follow.

Date	Activity	Exhibit
11.11.2017	Trespassed with others and sat in a circle crossed arms to prevent removal.	Page 17
12.11.2017	Trespassed and had to be asked to leave by security after taking a selfie by an oak tree.	Page 18
04.12.2017	Trespassed on the bellmouth entrance to the Harvil Road site to prevent access and egress of vehicles.	Page 19
09.01.2018	Trespassed by entering the bellmouth of the site to prevent access and egress.	Pages 20 to 21
10.01.2018	Trespassed by entering the bellmouth of the site to prevent access and egress.	Pages 22 to 23
11.01.2018	Trespassed by entering the bellmouth of the site to prevent access and egress.	Pages 24 to 25
27.04.2019 to 28.04.2019	D36 and 10 - 15 persons unknown climbed trees on Harvil Road preventing de vegetation works. Incident covered in detail at paragraph 18 below.	Pages 26 to 27
09.09.2019 and 26.09.2019	Trespassed whilst visiting a small protest camp established on the closed U34 PROW and adjacent HS2 Scheme land in breach of the May 2019 injunction order. This incident is covered in detail at paragraph 20 below.	Pages 28 to 33
19.11.2019	D36 and D28 engaged in a lock on trespassing and blocking access from 07:04hrs until late afternoon preventing access and egress and preventing night staff from leaving. This incident is covered in detail at paragraph 21 below.	Pages 34 to 36

Date	Activity	Exhibit
11.02.2020	D36 joined D39 and others in obstructing the access of a vehicle to the site. Through standing in the road and slow walking the vehicle was delayed by 3 hours and 35 minutes.	Page 37
Late March 2020 to early April 2020	Series of trespass and obstruction incidents, some of which are covered in detail at paragraphs 23 to 25 below.	Page 38 to 45
08.03.2021	D36 and others trespassed upon land at Jones Hill wood with the objective of delaying and disrupting works.	Page 50 to 51

18. The events of 27.04.2019 and 28.04.2019 were covered in some detail in my fourth witness statement in support of the Claimants' application to renew the Harvil Road Injunction in May 2019. Approximately 15 to 20 persons climbed the trees on Harvil Road to prevent de vegetation works (in aid of which a road closure had been initiated under Schedule 4 of the Phase One Act) on each of the days in question and refused to come down, preventing the scheduled works from taking place for the duration of the planned road closure. As a result, the works were delayed by a number of weeks as a further road closure needed to be planned. Several posts were made to D36's social media at the time confirming his presence. In one post (a copy of which is at **page 26**) D36 tagged himself alongside D65 as being part of the action. When asked by another activist on his social media post "*won't they just come back when people are out of the trees*" D36 went on to make the following threat in response, which was quoted at paragraph 170 of the September 2022 Judgment (an image of the original post is at **page 27**):

"Lainey Round no Lainey, these trees are alongside the road, so they needed a road closure to do so. They can't have another road closure (sic) for twenty days. Meanwhile they have to worry BIG time about being targetted by Extinction Rebellion. And what's more they're gonna see more from us at other places on the royte (sic) VERY soon. Tremble HS2, tremble!"

19. Mr Holland QC at paragraph 144 of his Judgment ([2019] EWHC 1437 (Ch)) said of D36 (D4 at the time):

"For what it is worth, if I was forced to make a decision, I would not remove the 3rd and 4th defendants as named Defendants. They have been guilty of incursions and obstructions in the past. While they have not been guilty of any breach of the terms of this order, as I have stated above, they are still both vehemently opposed to the HS2 project in general and to the works being carried out on the Site in particular. Both are still intimately involved in the protests at the Site. The Third Defendant has been guilty of trespass on the ragwort field and, indeed, has obstructed work on it. She feels that she has a duty effectively to monitor the work being carried out there. The Fourth Defendant has, as I have described above, made what I regard as, I am afraid, distinctly sinister comments on social media."

In response to this finding, D36 changed the name on his Facebook Profile to: "Mark Sinister Keir":



20. The trespass in September 2019 was part of a wider action by a number of activists including the following named Defendants to these proceedings: D32 (Larch Maxey), D33 (Elliot Cuciurean), D39 (Iain Oliver) and D41 (Matt Atkinson). The land that was subject to trespass was part of the Harvil Road site, held by the Claimants either as owners or under temporary possession and subject to the Harvil Road Injunction, a copy of which is at **pages 4 to 12**. The Claimants, its stakeholders and contractors

were undertaking works on the land in connection with the HS2 Scheme. As part of the works, a public right of way that had run across the land had been stopped-up. A number of activists entered the land on 22.08.2019, erected a ladder platform and placed a small boat (named “the Little Polly Higgins” by the activists) on the land, obstructing access to the works compounds on the land. A number of activists occupied the boat and two tents that were also placed on the land next to the boat. The location of the boat and the ladder platform are marked on the plan that accompanied the possession order that was ultimately made in respect of the land on 28.11.2019, a copy of which is at **pages 13 to 16**. D36 was observed by the Claimant’s contractors visiting the boat on the land on several occasions (and therefore trespassing and breaching the injunction) and made three posts on Facebook of videos (once on 09.09.2019 and twice on 26.09.2019) recording his own trespass. I have viewed all three videos and screenshots of the Facebook posts are at **pages 28 to 33**, along with still images from the 09.09.2019 video, which was taken shortly after the possession proceedings were served on the encampment. The injunction warning notices are visible in the footage. A plan showing the position of the boat camp plotted onto the plan to the May 2019 injunction is at **page 36**.

21. On 19.11.2019 D36 and D28 undertook a lock-on direct action at West Gate 3 to the Harvil Road site, preventing vehicular access and egress from 07:04 hrs until the afternoon. The action was described at paragraph 41 of the second witness statement of Richard Jordan filed in support of the 2020 application to extend the Harvil Road Injunction as follows:

“41. On 19 November 2019:

(i) At 07:05, a “lock on” (a technique used by protesters to make it difficult to remove them from their place of protest) was reported at the bell mouth of West Gate 3 (the entrance to plot S232_064).

(ii) Sarah Green (D3) and three other male persons were identified by security officer Mr Hogan. Sarah Green and a young male, later identified as Elliott Cucurean (D10), were seen to be “guarding” the two locked-on protesters. The two locked-on protesters

were later identified by members of the security team viewing the images as Mark Kier (D4) and Scott Breen (D13). Photographs of the incident are at pp. 17 - 18.

(iii) Mark Kier (D4) and Scott Breen (D13) had secured themselves to a steel pipe filled with concrete and other materials with another pipe inside into which they had inserted their arms and secured themselves to each other. 18

(iv) The police (incident reference number 0926912/19) and an ambulance arrived on site at 08:30. A Metropolitan Police specialist public order protest team subsequently also deployed to the site successfully removed the lock on device, which work was completed during the late afternoon.

(v) This incident prevented contractors from leaving or entering site at a time when there was a shift changeover resulting in significant disruption to site operations on that day.”

A plan showing the incident location plotted onto the May 2019 Injunction plan is at **page 36**. Photographs of the incident are at **pages 34 to 35**.

22. In addition to the unlawful behaviour of trespass and obstruction of access, the action was also a breach of the terms of the May 2019 injunction (a copy of which is at **pages 4 to 12**), specifically paragraph 7 of the injunction:

7. With immediate effect, the Second Defendant and each of them are forbidden from substantially interfering with the Claimants' and/or their agents', servants', contractors', sub-contractors', group companies', licensees', invitees' or employees' access to (or egress from) the Harvil Road Site (or any part of it) from (or to) the public highway at Harvil Road, Harefield in the London Borough of Hillingdon.
 8. For the purposes of paragraph 7, acts of substantial inference shall include (but not necessarily be limited to):
 - 8.1 climbing onto or underneath vehicles;
 - 8.2 attaching persons or objects to vehicles;
 - 8.3 standing, sitting or lying in front of vehicles;
 - 8.4 attaching persons to other persons or objects so as to create an obstruction of the public highway or the splay or bell-mouth areas at the Vehicular Entrances;
 - 8.5 attaching persons or objects to the gates at the Vehicular Entrances.
23. Further acts of trespass were committed by D36 in late March through to early April 2020, two of which were described by Richard Jordan at paragraphs 51 to 52 of his second witness statement filed in support of the 2020 application to extend the Harvil Road Injunction:
51. On 23 March 2020 at c.14:40 hrs, one of the security teams reported that protesters had been present throughout the day at the main entrance to the HQ compound in Dews Lane on land falling within plot S232_036, at the junction with Harvil Road. They had been causing a general nuisance for the duration of the day's work including making access and egress difficult without physically obstructing the gateway. At 14:30 Mark Kier (D4) approached contractors along Dews Lane where de-vegetation works were taking place. He then managed to get his arm between two sections of Heras fencing and hold on to a tree that was due to be removed preventing further works being carried out for approximately 30 minutes. The Police were informed but were unable to attend the site due to resources (CAD number 3441/23/03/2020).

52. **On 26 March 2020:**

- (i) At 08:46, Mark Kier (D4) accessed Dews Farm on land falling within plot S232_036, by scrambling underneath the Heras fencing. This was witnessed by one of the security team. The security officer sought to prevent Mr Kier from getting into the works area by moving towards him asking him to leave the works' area. Another security officer joined and Mark Keir sought to complain that the officers were in his personal space. When the officers took two steps back, Mr Keir advanced and took two steps towards them.
- (ii) The security team then placed five barriers around Mr Kier for his own safety, but Mr Kier started to push up against the barriers and forcefully pushed the security manager on site. The security team then maintained their two metre social distancing gap.
- (iii) At 09:16 Mr Kier left the site in the direction of the protester camp. The Police were contacted during the incident (CAD 077826032020).

D36's unlawful behaviour during this period should be viewed in the context of the dates on which it occurred and the wider global situation. 23.03.2020 was the first day of the coronavirus pandemic lock down, when the general public (save for essential workers) were ordered to stay at home unless exercising for one hour or buying food. Posts were made on Facebook by D36 and others about the incidents during this period (screenshots from some of these posts are at **pages 38 to 45**) and videos of some of the incidents were uploaded to Facebook and YouTube. Screenshots from these videos are at **pages 38 to 45**.

24. D36 filed evidence in response to the 2020 application to extend the Harvil Road injunction and did not deny any of the allegations. At paragraph 54 of his Judgment given in September 2020, Mr Holland QC observed that:

54. In paragraph 36.3(i) and (ii) of his Opening Skeleton Mr Roscoe says this:

The Court is invited to review this full account of that position on the ground. Such is the volume of incidents, any attempt to summarise it would omit the important impression to be gained from the scale of events. This is not a case about protests from time-to-time which inevitably cause a degree of disruption to the wider public: such protests are part and parcel of a democratic society, and must of course be tolerated. This is an attempt, not to articulate views, but a hard-fought and continuous campaign to try to compel the Claimants to stop the work they are mandated to do by an Act of Parliament. It is no exaggeration to say that the protestors appear to be seeking to engage in a war of attrition with the

Claimants – of which the security personnel at the Site are at the front line. The very considerable deployment of police resources has also been required.

Nothing said by or on behalf of any of the Defendants sought to contradict this submission. Nothing in what I have seen or heard falsifies it. Indeed Mr Powlesland accepted the description that this was a “war of attrition” between HS2 and the protesters.

Mr Powlesland was Counsel for D36 (who was named Defendant number 4 in those proceedings).

25. At paragraphs 81 to 83 of his Judgment, Mr Holland QC found that:

81. Having considered all the evidence in these proceedings, it is clear that:

- (i) The Defendants (both unnamed and named) have committed acts of trespass and nuisance by way of obstruction on (collectively) a very significant number of occasions in the past.
- (ii) That course of conduct continues.

- (iii) As stated, there is in my view now at the Harvil Road Site a group of protesters who are determined to continue to wage a ceaseless campaign against what they see as the pernicious effects of the HS2 project.
- (iv) That campaign has involved, and in my view will continue to involve, acts of trespass and nuisance as described. Its aim is not only to express disapproval of the HS2 project but also to seek by acts of “civil disobedience” to hinder or delay it.
- (v) Nothing has changed since the grant of relief in 2018, 2019 or 2020 which would tend to make it *less* likely that the Claimants would be granted relief at trial. Quite the opposite.
- (vi) The final words of Mr Collins D26 when he addressed me were “*You can stick your injunction up your arse*”. However amusing he might have thought those words were, they are clearly indicative of a determination on the part of the protesters to keep up their present activities come what may.

82. Thus I am clear that the risk of further acts of trespass and nuisance is imminent and real.
83. Further, not only do I think it is likely that the Claimants will establish their case for a final injunction at trial, at the moment, I cannot see that the Defendants have any valid defence at all.
26. A costs order was made against a number of the named Defendants, including D36, following the order extending the injunction in September 2020. In response, D36 and a number of other named Defendants sent a “Pledge of non payment” to the Claimants’ solicitors and also posted it on Twitter, in which they stated that they would not pay the costs ordered against them. A copy of the pledge and the Tweet are at **pages 46 to 49**. To date, D36 has still not paid the costs ordered against him.
27. After leaving the Harvil Road area, D36 moved to the Jones’ Hill Wood Protection camp, located to the South of Wendover. The Jones Hill Wood Protection camp was located partly upon HS2 Land and partly upon third party land. The HS2 Land was

initially cleared of activists between the 01.10.2020 and 08.10.2020 in an operation describe in detail at in Jordan 1. Subsequently, significant attempts were made by activists to re-occupy the HS2 Land and to try to prevent de-vegetation works. Numerous incidents of trespass occurred until the summer of 2021 when de vegetation works were completed. D36 engaged in some of these trespasses, an example of which is shown in social media posts at [page 50](#), when on 08.03.2021 D36 and others trespassed upon HS2 Land, approximately 70m to the south of Jones Hill Wood close to Bowood Lane (the location is plotted onto the March 2023 HS2 Land Plans at [page 51](#)). D36 has given the part of the encampment that remains on third party land in this location as his address in the D36 Grounds.

28. Accordingly, the assertion made by D36 at [10/D36G] that he has “*yet to see production of any evidence of unlawful behaviour on my part*” is not accepted.
29. As to [19/D36G] and [20/D36G], the allegations are not accepted by the Claimants. As D36 is aware, there have now been rulings on a number separate occasions in proceedings involving injunction applications by the Claimants (which rulings are referred to in the September 2022 Judgment) and in which D36 has been a named Defendant that have clearly stated that allegations of this nature are not relevant to these proceedings.
30. As to [21/D36G], as I explained in Dilcock 1 and as was the subject of discussion during the hearing in May 2022, the Claimants own both freehold and leasehold land that is outside of LLAU. D36 is conflating two separate matters: the question of land to which the Claimants are entitled to possession and the question of land on which the HS2 Scheme railway may be built pursuant to the powers granted by the HS2 Acts. There is no fetter or limit on the Claimants’ right or ability to acquire or take leases of land. A good example of this is the First Claimant’s registered office at Snowhill in Birmingham. This is outside of LLAU and held on a lease. It is perfectly lawful for the Claimants to hold that property and to operate from it. Further, the Claimants are required by statute to acquire land in some circumstances that is outside of LLAU (under the blight or material detriment regimes, for example).

31. Further still (and as I explained in Dilcock 1), the Claimants have committed to acquiring land and property outside of LLAU under the various Discretionary Schemes set up by the Government to assist property owners affected by the HS2 Scheme. The details of the various Discretionary Schemes are publicly available online at: <https://www.gov.uk/claim-compensation-if-affected-by-hs2>.
32. The Claimants also acquire land by agreement for various reasons, some of which relate to mitigation measures for the HS2 Scheme or for e.g. storage or compounds. Use by the Claimants of any land that is not covered by the deemed planning permission regime under the HS2 Acts is subject to planning control in the same manner as any other land.
33. The Injunction is based upon the Claimants' right to possession of and unobstructed access to its land – howsoever the Claimants have become entitled to possession of that land. The September 2022 Judgment held that the Claimants were entitled to possession of the HS2 Land.
34. Given the foregoing, I do not intend to provide a point by point response to D36's exhibit 2, however, he has separately raised queries about plots LL02 and 1493 and these are dealt with below. I dealt with plot LL04 in Dilcock 4 at paragraph 29.
35. With regard to [22/D36G], I do not consider that the Claimants are obliged to provide explanations to D36 as to the Claimants' rights in respect of each and every parcel of land to which they are entitled to possession simply because D36 has an unfounded and unevidenced belief that the Claimants do not have rights that D36 appears to consider that they require. However, as D36 has cited two specific parcels in this paragraph of his submission, I have briefly addressed them.
36. Taking Park Lodge Farm first, this is plot 1493 and spans map sheets 29, 29-R1, 30, 30-R1, 31, 31-R1 and 31-R2. Plot 1493 appears in "March 2023 Table 3 – HS2 Acquired land non-GVDs" and also appeared in "Revised Table 3 HS2 Acquired Land non GVDs", which formed part of the application that resulted in the Injunction. It is therefore land that was acquired by the Claimants by means other than GVD. The freehold title to Park Lodge Farm is owned by Hillingdon Borough Council ("HBC"). They leased the land to individuals. Those individuals served a blight notice on the

Claimants and their leasehold interest was then acquired by the Second Claimant. There was no need for the Claimants to apply for any change of use as the use of the property was not changed following acquisition. Prior to the acquisition, the property was broken into and severely vandalised, rendering it uninhabitable. Since the acquisition, the Claimants (via their managing agents) have undertaken day to day management activities of the site to include manned security, payment of rent and utilities, tree surveys and hedge cutting. Our managing agents have also worked with HBC's rights of way officer to agree and complete a schedule of repairs for the footpaths and bridleways which cross the holding. Where feasible (and with the consent of HBC) grazing and cropping licences have also been agreed with a local farmer to support in the maintenance and husbandry of the land. The lease of this land contained a break right and this right was exercised. As a result, the Claimants' interest in the land came to an end on 01.04.2023, which was after the March 2023 HS2 Land Plans were finalised, filed and served. In view of the fact that the Claimants' interest in this land has now come to an end, the Claimants propose substituting the above listed sheets in the March 2023 HS2 Land Plans with the sheets at **pages 52 to 58**, which reflect the fact that this land is now no longer in possession. The Claimants also propose a corresponding amendment to Table 3 to remove the entry for plot 1493.

37. D36 has also queried the position with regard to Ruislip Golf Course. The golf course appears on map sheets 28, 28R1 and 29. Parts of the golf course have been acquired by GVD as the HS2 Scheme cuts across the southern end of the golf course – for example Land Acquisition Area (“LAA”) S232_185_0, which can be seen on map sheet 29. Parts have been taken into temporary possession – for example LAA S232_080, which can also be seen on map sheet 29. The remainder of the golf course is held by the First Claimant under two leases granted by HBC – these areas are labelled as plots LL02 and LL03 on map sheets 28, 28R1 and 29. These leases are now registered at HM Land Registry under title numbers AGL560820 and AGL547359 and Official Copies for those titles showing the First Claimant as the registered proprietor are at **pages 59 to 65**. The Claimants propose amending Table 3 to insert these title numbers.
38. The golf course is the subject of a wider agreement between the Claimants and HBC, which provides for mitigation works to mitigate the effect of the removal of those parts

of the golf course that are required for the construction of the railway. The land is the subject of a detailed planning permission for the complete redesign of the golf course, a report on which is publicly available and can be found here: <https://modgov.hillingdon.gov.uk/documents/s53613/3359.pdf> and which provides for “remodelling of Ruislip Golf Course, incorporating: reconfiguration of 18 existing hole course into a nine hole course, short game practice area, putting green and six hole academy course; construction of a single storey rifle range; demolition of existing covered driving bays and construction of replacement driving range, including associated floodlights and safety netting; a new drainage system and associated ponds; ecological and landscaping works; realignment and enhancement of the Hillingdon Trail and creation of a new public footpath; excavation of a new channel for the Ickenham Stream (canal feeder); and other associated works”. This redevelopment has been well publicised for a number of years and it was therefore open to D36 to find out more about what was planned for this land if he so desired.

39. As to [23/D36G] to [26/D36G], whilst I am unable to respond regarding specific entries as there is no red highlighting on the copy of exhibit 4 that D36 has provided, my understanding is that D36 is alleging that land has been acquired by the Second Claimant by exercise of compulsory powers of acquisition after those powers have expired. It appears that this stems from misunderstandings on the part of D36 as to the way in which powers of compulsory acquisition operate and it also appears that D36 may be confusing land acquired under the Phase 2a Act with land acquired under the Phase One Act. I have already explained the way in which the Claimants’ powers of acquisition operate in Dilcock 11 (paragraphs 34 and 38 to 41) and prior to that in Dilcock 1 and Dilcock 3. For completeness, I am setting out the position again here.
40. D36 has referred to section 10 of the Phase One Act, which provides as follows:

10 **Termination of power to acquire land**

- (1) After the end of the period of 5 years beginning with the day on which this Act is passed—
 - (a) no notice to treat may be served under Part 1 of the Compulsory Purchase Act 1965, as applied by section 4(3) to the acquisition of land under section 4(1), and
 - (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by section 4(4) to the acquisition of land under section 4(1).
- (2) The Secretary of State may by order extend the period under subsection (1) in relation to any land, but may only do so—
 - (a) once, and
 - (b) by not more than 5 years.
- (3) An order under subsection (2) is subject to special parliamentary procedure (as to which, see the Statutory Orders (Special Procedure) Act 1945).
- (4) Schedule 13 contains provision about a right to require acquisition where an order is made under subsection (2).

This section defines the period under which the Second Claimant has compulsory powers of acquisition to acquire the land required for Phase One of the HS2 Scheme. It provides a deadline of 5 years from the passing of the Phase One Act (the Act was passed on 23 February 2017) for the Second Claimant to *serve* notice to treat or *execute* GVDs for the acquisition of land for Phase One. I can confirm that all notices to treat were served and GVDs executed for Phase One prior to that deadline.

41. The dates that appear in the right-hand column of the March 2023 Table 1 – HS2 Acquired Land GVDs (which I assume is the document that D36 refers to as the Claimant’s Exhibit 120 – it is document number 120 on the RWI Updated Website) is the date on which the land in question *vested* in the Second Claimant. As I explained in Dilcock 11, the date on which a GVD is executed is not the date on which the land vests in an acquiring authority. The Phase One Act refers to section 4 of the Compulsory Purchase (Vesting Declarations) Act 1961 (the “CP(VD)A 1961”), which provides as follows:

4 **Execution of declaration.**

- (1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves from the end of such period as may be specified in the declaration (not being less than [F13 months] from the date on which the service of notices required by section 6 below is completed).

When a GVD is made, it is required to specify a period after which the land that is the subject of the GVD will vest in the acquiring authority. That period must be a *minimum* of 3 months from the date on which notices about the making of the GVD are served on owners and occupiers and others pursuant to section 6 of the CP(VD)A 1961. 3 months is the minimum period, and the period can be and often is longer than 3 months. Accordingly, whilst all GVDs required for Phase One were executed prior to the expiry of compulsory acquisition powers, some of the land that was the subject of those GVDs – particularly those made in the last few months of powers - vested in the Second

Claimant after the expiry of powers. This does not, however, present the difficulties that D36 appears to think that it does.

42. Whilst I am unable to check because there is no red highlighting on the copy of exhibit 4 that D36 has provided, it may be that some of the entries in Table 1 to which he is referring are entries for land on Phase 2a of the HS2 Scheme. All of the LAAs that start with an “A” are on Phase 2a. The corresponding provision for the termination of power to acquire land in the Phase 2a Act is in section 9, but has exactly the same wording as the Phase One Act:

9 Termination of power to acquire land

- (1) After the end of the period of 5 years beginning with the day on which this Act is passed—
 - (a) no notice to treat may be served under Part 1 of the Compulsory Purchase Act 1965, as applied by section 4(3) to the acquisition of land under section 4(1), and
 - (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by section 4(4) to the acquisition of land under section 4(1).
- (2) The Secretary of State may by order extend the period under subsection (1) in relation to any land, but may only do so—
 - (a) once, and
 - (b) by not more than 5 years.
- (3) An order under subsection (2) is subject to special parliamentary procedure (as to which, see the Statutory Orders (Special Procedure) Act 1945).
- (4) Schedule 13 contains provision about a right to require acquisition where an order is made under subsection (2).

This section defines the period under which the Second Claimant has compulsory powers of acquisition to acquire the land required for Phase 2a of the HS2 Scheme. It provides a deadline of 5 years from the passing of the Phase 2a Act (the Act was passed on 11 February 2021) for the Second Claimant to *serve* notice to treat or *execute* GVDs for the acquisition of land for Phase 2a. Accordingly, the Second Claimant’s powers of compulsory acquisition remain live for Phase 2a and land acquisition is continuing.

43. For completeness, the above deadlines do not apply to the First Claimant’s powers to take temporary possession of land under the HS2 Acts.

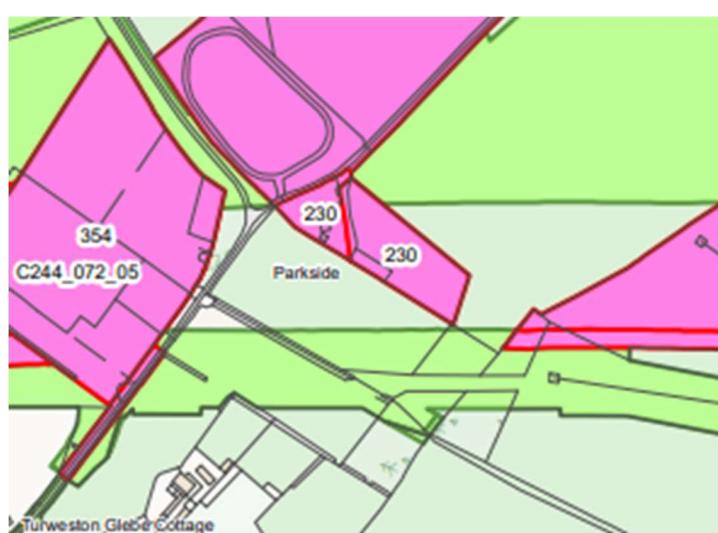
44. By “TPO” at [27/D36G], I have taken D36 to be referring to temporary possession notices under Schedule 16 of the Phase One Act. At his Exhibit 5, D36 has produced a short list of LAAs, parts of which are shown coloured green on the March 2023 HS2 Land Plans and over which he acknowledges that the Claimants have exercised powers of temporary possession. The point D36 appears to be making is that the Claimant has not made GVDs over those areas of land. This point is of no relevance to these

proceedings. Mr Justice Julian Knowles has already ruled in the September 2022 Judgment that the Claimants are entitled to possession of land over which they have exercised the powers afforded to them under Schedule 16 of the Phase One Act and that the right to possession of that land is sufficient to found a right to seek an injunction. It is therefore entirely immaterial for the purposes of considering the Claimants' application for an injunction that the Second Claimant has not made GVDs in relation to that land. In general, the Claimants seek to keep the extent of the land that they take for the HS2 Scheme to the absolute minimum required. Not all land is required permanently. Some land is only required temporarily for Phase One purposes (for example, temporary access, haul roads, environmental monitoring, construction compounds etc.). For completeness, I mention that there will also be some areas of land over which temporary possession has been taken where the Second Claimant has elected to serve Notice to Treat, rather than making a GVD, but where Notice of Entry has not yet been served. The Second Claimant has 3 years after service of Notice to Treat in which to serve Notice of Entry and acquire the land in question if required and is entitled to remain in temporary possession prior to service of any Notice of Entry (and indeed after expiry of the deadline for service of Notice Entry if it is decided that permanent acquisition is not required).

45. As to [28/D36G] and the accompanying Exhibit 6, I note that D36 has again raised points that I addressed in Dilcock 4 in May 2022. Exhibit 6 is a table containing items, which I shall refer to as Item 1, Item 2 etc. for ease of reference.
46. Item 1 – the Chalfont St Giles vent shaft is on sheet 36, not sheet 34 (see also paragraph 12 of Dilcock 4).
47. Items 2, 3, 8 and 9 – D36 is making the same point in each of these in respect of different plots of land. In each case he acknowledges that the Claimants either own the land in question or have rights of temporary possession and therefore (as already ruled in the September 2022 Judgment) the Claimants are entitled to possession and entitled to seek an injunction in respect of that land. It would involve the production of large volumes of documents to fully evidence the position in relation to each of these plots of land, but the queries raised by D36 and the answers thereto are of no relevance to the Claimants' application and there is therefore no requirement to engage in this

exercise. The short and general answer to D36's queries is that when land is acquired by the Claimants, they take subject to third party interests in some cases (for example this is sometimes the case where acquisition is by agreement or under blight etc.). In those cases, in order to take possession as against those third parties where that is required for Phase One purposes, the Second Claimant uses its temporary possession powers. The temporary possession element is the only element showing on the mapping in some cases because the wider permanent acquisition has been excluded from the scope of the injunction application (e.g. because it forms part of the Let Estate).

48. Item 4 – As set out in Table 1, LAA 221_01 was acquired under GVD 853, which was executed on 25 January 2022 (and therefore almost a month before the end of the Second Claimant's powers of compulsory acquisition under the Phase One Act). A copy of GVD 853 is at **pages 66 to 80**. As explained in Dilcock 1 and repeated in Dilcock 11, there is often a lag between the vesting of land pursuant to a GVD and the registration of title at the Land Registry.
49. Item 5 – By “Parkside”, I assume that D36 is referring to this area on map number 68:



The area marked “Parkside” is not coloured pink or green and therefore the Claimants are not seeking to injunct it. As set out in Dilcock 4, the Claimants are not required to explain why land is *not included* in the application for an injunction. This land is owned by the Second Claimant but is currently let to a third party and has therefore

been excluded from the injunction application as part of the Let Estate (see paragraph 39 of Dilcock 3 and paragraph 39 of Dilcock 11).

50. Item 6 – this is the same point as Item 5. Illets Farm is owned by the Second Claimant (as D36 observes) but is currently let to a third party and has therefore been excluded from the injunction application as part of the Let Estate.

51. Item 7 – As I explained in Dilcock 4, each LAA comprises multiple Land Acquisition Parcels (“LAPs”). The Claimants do not own all of LAA C313_071 – they have acquired some LAPs within that LAA and have taken temporary possession of others. For example, in relation to this part (which is only part of C313_071):



the part shown coloured green has been taken into temporary possession only.

There is a further part of C313_071 here for example:



and the part shown coloured pink has been acquired by the Second Claimant.

52. I note that the D36 Grounds do not bear a CPR compliant statement of truth.

53. Turning to the D36 Second Statement, the points raised by D36 are all of no relevance to these proceedings. The Claimants’ solicitors wrote to D36 on 06.04.2023 reminding him of the relevant paragraphs in the September 2022 Judgment which ruled that such material was not relevant and a copy of that email is at **pages 81 to 83**. These themes

were also the subject of part of the Judgment given by Mr Holland QC in September 2020 in relation to the Claimants' application to extend the Harvil Road Injunction (in respect of which D36 was a named Defendant and represented by Counsel). Mr Holland QC found as follows:

86. So far as there being breaches by HS2 of environmental laws or requirements and the consequences, it is worthwhile reading certain passages from the judgments in the Packham case. That was an attempt, by the well-known naturalist and television presenter Chris Packham, to judicially review the decision of the Secretary of State to give the Notice to Proceed in respect of the HS2 scheme. Of course, the Administrative Court is if anything a more appropriate forum than this court for challenging the validity or lawfulness of the HS2 scheme. The challenge failed on all grounds. In their judgment, in the course of describing the statutory scheme under the Act, the Court of Appeal said this (at paragraphs 16 to 19):

16. *Section 68(5)(a) of the 2017 Act refers to a "statement deposited" in connection with the Phase One Bill in November 2013 under Standing Order 27A of the Standing Orders of the House of Commons "relating to private business (environmental assessment)". Section 68(5)(b) refers to "statements containing additional environmental information" published in connection with the Phase One Bill – supplementary environmental statements – in 2014 and 2015. Both the environmental statement and the supplementary environmental statements were subject to public consultation in accordance with Standing Order 224A. A report prepared by an "independent assessor" under Standing Order 224A, summarising the issues raised by comments made on the environmental statement, was presented to MPs before the Second Reading of the Bill in the House of Commons, and, in the case of the supplementary environmental statements, before the Third Reading.*

17. *Both the environmental statement and the supplementary environmental statements contained detailed descriptions and assessment of the environmental effects of the Phase One works – for example, their effects on wildlife, including European Protected Species and their habitats, and on designated ancient woodlands and other areas of woodland affected by the works authorised by the 2017 Act. Both set out detailed arrangements for the mitigation of those effects where they could not be avoided, and for compensation – for example, by extensive tree planting – where they could not be fully mitigated. Their content was the subject of petitions to both Houses. Among the petitioners were local authorities, and many organisations concerned with the environment – for example, national and local wildlife trusts and the Woodland Trust. The environmental statement also provided an assessment of the performance of Phase*

One, as proposed to be authorised under the Bill, against the then current legislative, regulatory and policy requirements and objectives relating to climate change.

18. *As nominated undertaker for Phase One of the project, HS2 Ltd. is under a contractual duty in the HS2 Phase One Development Agreement to comply with the published Environmental Minimum Requirements ("EMRs") for construction of Phase One of HS2. The EMRs are intended to ensure that Phase One is delivered in accordance with the deemed planning permission granted under section 20 of the 2017 Act, with the environmental statement and supplementary environmental statements, and with the requirements of Parts 3 and 4 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations").*

19. *The HS2 Phase One Code of Construction Practice, issued in February 2017, is a component of the EMRs. Section 9 of the Code of Construction Practice imposes obligations on HS2 Ltd. for the protection of ecological interests, including protected species, statutorily protected habitats, and other habitats and features of ecological importance – such as ancient woodlands. HS2 Ltd. also published, in August 2017, an Ancient Woodland Strategy for Phase One, setting out detailed arrangements for managing the impact of the construction of Phase One on the areas of designated and other ancient woodland in which works are authorised under the 2017 Act.*

87. In considering the challenge brought by Mr Packham on the ground that "the Government's decision [was] flawed by a failure to consider environmental effects" (referred to as "ground 2"), the Court of Appeal said this (at paragraphs 54, 55, 58 and 61-63):

54. *Before the Divisional Court it was common ground that the Phase One works were lawful. They had been authorised under the 2017 Act. An environmental impact assessment of that phase had been undertaken, in accordance with EU and domestic legislation, including public consultation, during the process of Parliamentary scrutiny. Petitions against the Bill had been brought by local authorities and by national and local wildlife and woodland trusts, and had been heard by Select Committees appointed by each House. The works were subject to regulation by Natural England as competent authority through the operation of the licensing procedures in Parts 3 to 5 of the Habitats Regulations. And they had to be carried out in accordance with the published HS2 Phase One Code of Construction Practice.*

55. *The Divisional Court regarded these propositions as "self-evidently correct" (paragraph 47 of the judgment)...*

58. *Specifically on ground 2 of the claim, the Divisional Court said it would be impossible to construct a project on the scale of HS2 Phase One without causing "interference with and loss of significant environmental matters, such as ancient*

woodland", and this had been authorised in the 2017 Act (paragraph 81). The environmental impacts of Phase One had been assessed in detail in the Parliamentary process...

61...We agree with the conclusions of the Divisional Court. We do not accept that it misunderstood Mr Wolfe's submissions, but in any event we see no merit in the argument as it was presented to us.

62. HS2 is an infrastructure project of national significance, with a long and well-publicised history. When the Government made its decision to proceed with the project in February 2020, the factual context in which the Oakervee review had come to be set up in August 2019 was a matter of record. Phase One of the project had passed through a lengthy process of consultation, assessment – including environmental impact assessment – and statutory approval. The process had been punctuated by challenges in the courts, and its lawfulness had been confirmed. Statutory authorisation for Phase One was embodied in the 2017 Act, which referred in several of its provisions to the environmental impact assessment that had been carried out. The Parliamentary process was well advanced for Phase 2a, and would soon begin for Phase 2b.

63. The deemed planning permission for Phase One of the project depended on the assessment of environmental impacts and mitigation and compensation measures set out in the environmental statement and the supplementary environmental statements. HS2 Ltd., as nominated undertaker, was under a contractual duty to comply with the EMRs and to ensure that both the construction and operation of Phase One were controlled in accordance with that assessment. It was an appropriately extensive and thorough assessment. Matters raised in representations in the course of the Oakervee review, and to which Mr Packham refers in these proceedings – such as the effects of tunnel boring on water quality and water supply and the possible dewatering of the River Misbourne and Shardeloes Lake, and ecological effects of various kinds – had already been raised in petitions against the Bill. Such effects were addressed in the environmental statement and controlled under the EMRs. These are merely a few examples. But they serve to illustrate the comprehensive coverage of environmental impacts within the approval process.

88. These passages serve to emphasise the points which I have made (albeit in much less detail) in my previous judgments. So far as this Court is concerned, HS2 is a lawful scheme mandated by the Act. The works carried out under the HS2 scheme by HS2 are lawfully carried out. Parliament carefully considered the likely environmental impacts of the scheme before it sanctioned the works by means of the Act. There are environmental safeguards mandated by Parliament and built into the scheme which Parliament has deemed to be sufficient to avoid or mitigate any environmental damage caused.

89. Thus any challenge to HS2 or the works being carried out on the grounds that they are somehow in breach of UK or EU environmental legislation or have not been the subject of adequate Parliamentary scrutiny, is bound in my view to fail.

90. I have already rejected a submission to the effect that the Defendants' Article 10 or 11 rights include a right to stand on a public highway to monitor HS2's activities on its own land (see paragraphs 88 and 141-147 of my second judgement). I see no reason to change my mind on that point. Further, having rejected the argument in relation to the Defendants standing on a public right of way (onto which, a fortiori, they are lawfully permitted to go) my rejection becomes all the more emphatic when, as now, it is sought to say that this alleged right extends to monitoring by trespassing on private land such as the Harvil Road Site.

91. Further, as the courts pointed out in the Packham case, there is built into the Parliamentary scheme what Parliament regards as sufficient environmental safeguards and it is not for interested members of the public to seek to second-guess what Parliament has decreed to be adequate.

...

92. Further, even if it was to be established that HS2 was breaking the law in some way (and I hasten to add that it has not been established) I do not see how this could amount to a defence to a claim in trespass and nuisance as advanced by the Claimants against the Defendants. I venture to repeat the points I made at paragraphs 132 to 135 of my second judgment.

93. 94. I do not accept any submission made by the Defendants to the effect that the risk or prospect of the Claimants committing a criminal offence or breach of statutory provision if the injunction is granted, could possibly amount to a defence. This is for a number of reasons:

94. Firstly, on the facts, there is no clear proof that any criminal offence or breach of statute will occur if the injunction is granted. The Claimants deny that it will. The Defendants assert that it will. However, the Defendants have not produced any formal statements or specifically prepared expert reports and none of them are experts. I do not therefore accept that there is any strong evidence to the effect that the Claimants are likely to commit any crime or breach of statutory provision if the injunction is granted.

95. Further, even if I was to accept that the evidence showed that there **was** a risk or even a likelihood that the Claimants would carry out some unlawful activity if the injunction was granted, I would not hold that this was a defence to a claim for injunctive relief. As set out above, the Claimants are entitled, by reason of statute, to possession of the Land and the Additional Land. There was, and is, nothing unlawful about the acquisition of the Claimants' rights. The Defendants cannot and do not assert any countervailing right to possession of the Land or the Additional Land. There is no necessary connection between the grant of an injunction to protect the Claimant's rights over the Site and the subsequent commission on the

Site of any crime or breach of statutory provision: the latter is not the inevitable consequence of the former.

(iii) In the words of Lord Toulson in PATEL V MIRZA [217] AC 467, the public interest in maintaining the integrity of the justice system does not, in my view, result in the denial of the remedy which the Claimants seek in these circumstances. If, following the grant of an injunction, the Claimants carry out unlawful activities on the Site, then there are sufficient other remedies available to the law.”

Statement of Truth

I believe that the facts in this witness statements 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.

Signed



Name: JULIE AMBER DILCOCK

Dated: 17 April 2023

On behalf of: Applicants/Claimants
J.A Dilcock
12th statement of witness
Exhibits: JAD14
Date: 17 April 2023
Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY**

Between:

(3) **HIGH SPEED TWO (HS2) LIMITED**
(4) **THE SECRETARY OF STATE FOR TRANSPORT**

Claimants

-and-

- (6) 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")
- (7) 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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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
- (8) 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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES WITHOUT THE CONSENT OF THE CLAIMANTS
- (9) 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
- (10) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE)

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

Defendants

**EXHIBIT JAD14 TO THE TWELFTH WITNESS STATEMENT OF JULIE AMBER
DILCOCK**

The documents in this Exhibit are at: <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings>

Claim No. QB-2022-BHM-000044

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY**

BETWEEN:

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

Claimants

- and -

PERSONS UNKNOWN & OTHERS

Defendants

SCHEDULE OF NAMED DEFENDANTS TO BE REMOVED OR ADDED

PART 1 - NAMED DEFENDANTS TO BE REMOVED

Defendant Number	Name
11	Mr Tony Carne
12	Ms Amy Lei
13	Mr Tom Holmes
18	Mr William Harewood (aka Satchel / Satchel Baggins)
19	Mr Harrison Radcliffe (aka Log / Bir_Ch / Sasha James)

Defendant Number	Name
21	Mr William French (aka Will French / Took)
23	Mx Scarlett Rien (aka Leggs)
31	Mr Rory Hooper
34	Mr Paul Sandison
37	Mr Thorn Ramsey (aka Virgo Ramsay)
38	Mr Vajda Robert Mordechaj
40	Ms Jess Walker
41	Mr Matt Atkinson
42	Ms Hannah Bennett
43	Mr James Ruggles (aka Jimmy Ruggles)
44	Mr Nick Grant (aka Potts)
45	Mr Stuart Ackroyd
46	Ms Wiktoria Paulina Zieniuk
49	Mr Sebastian Roblyn Maxey
50	Ms Jessica Heathland-Smith
51	Ms Ella Dorton
52	Mr Karl Collins
53	Mr Sam Coggin
60	Mr Xavier Gonzalez-Trimmer
61	Mr David Buchan (aka David Holliday)
62	Ms Leanne Swateridge (aka Leayn / Flowery Zebra)
65	Mr Liam Walters

PART 2 - NAMED DEFENDANTS TO BE ADDED

Defendant Number	Name
66	Ms Caroline Thomson-Smith (aka Carl Woods)
67	Mr Christopher Paul Butcher (aka Rob)

**IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY**

B E T W E E N:

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

Claimants/Applicants

-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")**
- (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 ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/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 THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM**

Defendants/Respondents

**CLAIMANTS' SKELETON ARGUMENT ON
APPLICABLE LEGAL PRINCIPLES**

INTRODUCTION

1. This is the Claimants' first skeleton argument for the hearing of its application dated 25 March 2022 for relief in respect of unlawful trespass and related activities on and around land relating to the High Speed Two Railway Scheme ("the **HS2 Scheme**"). Its sole aim is to set out applicable legal principles. Defendants are invited to agree or propose amendment.

2. A second skeleton argument will address the merits.

ENABLING LEGISLATION

3. The HS2 Scheme is a project specifically authorised by Acts of Parliament (the High Speed Rail (London - West Midlands) Act 2017 – "the **Phase One Act**"; and the High Speed Rail (West Midlands – Crewe) Act 2021 ("the **Phase 2a Act**") together: the "**HS2 Acts**").

4. It is "...*an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament...*" and "...*those lawful activities in this case had been authorised by Parliament through the 2017 Act after lengthy consideration of both the merits of the project and objections to it. The legislature has accepted that the HS2 project is in the national interest.*" DPP v Cuciurean [2022] EWHC 736 (Admin) at [84]; see also R (oao) Packham v SSfT [2021] EWCA Civ 1004; Env LR 10 at [54].

CAUSES OF ACTION

Trespass

Title

5. A landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on his land: Snell's Equity at §18-012.

6. Temporary possession powers in the HS2 Acts give sufficient title to sue for trespass: SSfT & HS2 v Persons Unknown (Harvil Road) [2019] EWHC 1437 (Ch) at [30]-[31]. All that needs to be demonstrated is better right to possession than the

occupiers: *Manchester Airport plc v Dutton* [1999] 3 WLR 524 per Laws LJ at p147 onwards.

Defences

7. Genuine and bona fide concerns on the part of the protestors about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *City of London Corporation v Samede* [2012] EWCA Civ 160 at [63].
8. A protestor's Articles 10 and 11 rights, even if engaged in a case like this, will not justify continued trespass onto private land (the HS2 Harvil Road decision [2019] EWHC 1437 (Ch) at [136], and *DPP v Cuciurean* at [46], [50] and [77]). See further below as to Convention rights.
9. There is no right to undertake direction action protest on private land: *Secretary of State for Transport and HS2 v Persons Unknown* [2020] EWHC 671 (Ch) at [35] and [42]

Nuisance

Private Nuisance - Definition

10. Private nuisance is "any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land": *Bamford v Turnley* (122 ER 25); more recently *West v Sharp* [1999] 79 P&CR 327 at [332].
11. The unlawful interference with the right of access to its land via the public highway, where the Claimants' land adjoins a public highway can be a private nuisance: *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 at [13]; and can be an unlawful interference with one or more of the Claimants' rights of way over land privately owned by a third party: *Gale on Easements* at 13-01.

Public Nuisance and the Highway

12. An owner of land adjoining a public highway has a right of access to the highway and a person who interferes with this right commits the tort of private nuisance. In addition, it is a public nuisance to obstruct or hinder free passage along a public highway and an owner of land specially affected by such a nuisance can sue in respect of it, if the obstruction of the highway causes them inconvenience, delay or other damage which is substantial and appreciably greater in degree than any suffered by the general public: see Clerk & Lindsell on Torts, 22nd ed (2017), para 20–181, cited in *Cuadrilla* at [13].

13. The position in relation to actions which amount to an obstruction of the highway, for the purposes of public nuisance, is described in Halsbury's Laws, 5th ed. (2012) at para. 325 where it is said (cited in *Ineos Upstream Ltd* [2017] EWHC 2945 (Ch)):
 - (1) whether an obstruction amounts to a nuisance is a question of fact;
 - (2) an obstruction may be so inappreciable or so temporary as not to amount to a nuisance;
 - (3) generally, it is a nuisance to interfere with any part of the highway; and
 - (4) it is not a defence to show that although the act complained of is a nuisance with regard to the highway it is in other respects beneficial to the public.

Remedy

14. The starting point, if not the primary remedy in most cases, will be an injunction to bring the nuisance to an end: *Shelfer v City of London Electric Lighting Co* per A L Smith LJ at 322–323; *Hunter v Canary Wharf* [1997] AC 655 per Lord Goff at 692H; *Lawrence v Fen Tigers* per Lord Neuberger at [120] to [124].

INTERIM INJUNCTIVE RELIEF

Power

15. The High Court may grant an injunction (whether interlocutory or final) in all cases in which it appears to the court to be just and convenient: s. 37(1) of the Senior Courts Act 1981 (“**the 1981 Act**”).

Purpose

16. The function of an interim injunction is to “hold the ring” pending final determination of a claim (*United States of America v Abacha* [2015] 1 WLR 1917). The basic underlying principle of that function is that the court should take whatever course seems likely to cause the least irreparable prejudice to one party or another (*National Commercial Bank Jamaica Limited v Olint Corp Ltd (Practice note)* [2009] UKPC 16 at [17]).

Test

17. It requires that there be at least a serious question to be tried and then refers to the adequacy of damages for either party and the balance of justice (or convenience): *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
18. The threshold for obtaining an injunction is normally lower where wrongs have already been committed by the defendant: *Secretary of State for Transport and HS2 Limited v Persons Unknown* [2019] EWHC 1437 (Ch) at [122] to [124]. *Snell’s Equity* states at §18-028:

“In cases where the defendant has already infringed the claimant’s rights, it will normally be appropriate to infer that the infringement will continue unless restrained: a defendant will not avoid an injunction merely by denying any intention of repeating wrongful acts.”
19. However, *Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515; 4 WLR 100 at [44-48] makes clear that the Court should be satisfied that the Claimants would be likely to obtain an injunction preventing future trespass at trial; not just that there is a serious question to be tried. “Likely” in this context usually means more likely than not: *Cream Holdings Limited v Banerjee* [2004] UKHL 44, [2005] 1 AC 253 at [22].

Precautionary injunction

20. Where the relief sought is a precautionary injunction, the question is whether there is an imminent and real risk of harm: *Ineos* at [34(1)] and the first instance decision *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch) at [88]. ‘Imminent’ means that

the circumstances must be such that the remedy sought is not premature – *Hooper v Rogers* [1975] Ch 43 (CA) at [49-50].

PERSONS UNKNOWN

21. There has been much recent consideration of the availability of injunctions against persons unknown in a protest context by the Court of Appeal, in: *Boyd v Ineos Upstream Limited* [2019] EWCA Civ 515; *Cuadrilla* and *Canada Goose v Persons Unknown* [2020] EWCA Civ 303. All were considered by the Court of Appeal in *London Borough of Barking and Dagenham v Persons Unknown & Ors* [2022] EWCA Civ 13. The guidelines set out in *Canada Goose (CA)* at [82] remain good law:

“(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the “persons unknown”.

(2) The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant’s rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

22. The Court of Appeal's review in *Barking and Dagenham* considered the grant of final injunctions against persons unknown, but made the point that there was considerable commonality between interim and final injunctions:
- 22.1 The Court undoubtedly has the power under s.37 of the 1981 Act to grant final injunctions that bind non-parties to the proceedings – [71]. The remedy can be fairly described as ‘exceptional’, albeit that formulation should not be used to lay down limitations on the Court’s broad discretion. The categories in which such injunctions can be granted are not closed and they may be appropriate in protest cases - [120].
- 22.2 There is no real distinction between interim and final injunctions in the context of injunctions granted against persons unknown [89] and [93]. While the guidance regarding identification of persons unknown in *Canada Goose* was given in the context of an application for an interim injunction, the same principles apply in relation to the grant of final injunctions: [89].¹
- 22.3 As to the position of a non-party who behaves so as satisfy the definition of persons unknown only after the injunction has been granted ('newcomers'), such a person becomes a party on knowingly committing an act that brings them within the description of persons unknown set out in the injunction: *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 at [32]. There is no need for a claimant to apply to join newcomers as defendants. There is “no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort”: *Boyd (supra)* at [30].²
- 22.4 Procedural protections available to ensure a permanent injunction against persons unknown is just and proportionate include the provision of a mechanism for review by the Court - “*Orders need to be kept under review. For as long as the court is concerned with the enforcement of an order, the action is not at end.*” – [89], “...all persons unknown injunctions ought normally to have a fixed end point for review

¹ See also [102] and [117]. This aspect of *Canada Goose* was not disturbed by the overall conclusion in *Barking and Dagenham* (which was based on criticisms of other aspects of the judgment in *Canada Goose*).

² See *Barking and Dagenham* at [94] to [100], where the Court of Appeal refuses to follow the reasoning in *Canada Goose* drawing a sharp distinction between interim and final injunctions, *inter alia* on the basis of a failure by the Court in *Canada Goose* to consider the propositions cited above from *Gammell* and *Ineos*.

as the injunctions granted to these local authorities actually had in some cases” – [91], “It is good practice to provide for a periodic review, even when a final order is made” – [108].

- 22.5 In the unauthorised encampment cases, the Court of Appeal has suggested that borough-wide injunctions should be limited to one year at a time before a review – *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043 (CA) at [106].

INJUNCTIVE RELIEF & GEOGRAPHICAL SCOPE

23. There is effectively no limit to injunctive relief. It may operate against the world. In the trespass and nuisance jurisdiction, the Court was not troubled by a 4,300 mile injunction: *National Highways Limited v Persons Unknown & Ors* [2021] EWHC 3081 (QB), at [24(7)]: “*the geographical extent is considerable, since it covers 4,300 miles of roads, but this is in response to the unpredictable and itinerant nature of the Insulate Britain protests*”.
24. The Court in *National Highways Limited* at [24(7)(c)] found additionally that if a claimant is entitled to an injunction, it would not be appropriate to require the claimant to need to apply for separate injunctions for separate roads, effectively chasing protestors from location to location.
25. Although an individual protest may appear small in the context of the HS2 Scheme as a whole, that was not a reason to overlook its impact. Protesters should not “*believe with impunity they can wage a campaign of attrition*”: *DPP v Cuciurean* at [87].

INJUNCTIVE RELIEF & CONVENTION RIGHTS

26. The key articles of European Convention on Human Rights (“the **ECHR**”) for these purposes are:

“PROTOCOL 1, ARTICLE 1
Protection of property

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of

health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

27. The ECHR is given effect in domestic law via the Human Rights Act 1998 (“the **HRA 1998**”). Section 6(1) of the HRA 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The Court is a public authority - s.6(3)(a).
28. Section 12 of HRA 1998 provides as follows:

“12.— Freedom of expression.

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

 - (a) that the applicant has taken all practicable steps to notify the respondent; or
 - (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.”
29. “Publication” in s.12(3) has been interpreted by the courts as extending beyond the literal meaning of the word to encompass *“any application for prior restraint of any form of communication that falls within Article 10 of the Convention”* – *Birmingham City Council v Afsar* [2019] ELR 373 at [60] to [61].
30. Articles 10 and 11 were considered in respect of protest on publicly owned land in *Samede* at [39] – [41], and were cited with approval by the Supreme Court in *DPP v Ziegler* [2022] AC 408 at [17], [72], [74] to [77], [80] and [152]. However, the more restrictive approach where the protest takes place on private land is explained in *Appleby v United Kingdom* [2003] 27 EHRR 38 at [43] and [47].
31. In *Ziegler*, the Supreme Court highlighted the features that should be taken into account, as: (i) the place where the obstruction occurs; (ii) the extent of the actual interference the

protest causes to the rights of others, including the availability of alternative thoroughfares; (iii) whether the protest is aimed directly at an activity of which protestors disapprove or another activity which had no direct connection with the object of the protest; (iv) the importance of the precise location to the protestors; and (v) the extent to which continuation of the protest breaches domestic law. At [58], the Supreme Court endorsed the “Ziegler questions” where Articles 10 and 11 were engaged:

- 31.1 Is what the defendant did in exercise of one of the rights in article 10 or 11?
- 31.2 If so, is there an interference by a public authority with that right?
- 31.3 If there is an interference, is it “prescribed by law”?
- 31.4 If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 and 11, for example the protection of the rights of others?
- 31.5 If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?
- 31.6 The last question has been divided into sub-questions as follows:
 - (i) Is the aim sufficiently important to justify interference with a fundamental right?
 - (ii) Is there a rational connection between the means chosen and the aim in view?
 - (iii) Are there less restrictive alternative means available to achieve that aim?
 - (iv) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

32. This structured approach is one which the Court would be “well-advised to follow” at each stage of a process which might restrict Article 11 rights: SSfT v Cuciurean [2022] EWCA Civ 661 at [13].
33. As observed in Cuadrilla (CA) at [94], given that Articles 10 and 11 are concerned with the protection of rights to persuade others, it is a relevant point of distinction that a protest that aims to cause disruption is ultimately seeking to compel, rather than persuade, others to act in a particular way.
34. The same principles have been applied by the courts in concluding that offences criminalising protests that involve serious disruption to ordinary lives or to activities lawfully carried on by others (where the disruption is more significant than that involved in the normal exercise of the right of peaceful assembly in a public place) do not

constitute a breach of Articles 10 or 11: *DPP v Cuciurean* at [37] – [38], [45], [62], [76] – [79].

35. A permissible interference with freedom of expression must therefore be prescribed by law, must pursue one or more of the legitimate objectives in article 10(2) and must be necessary in a democratic society for the achievement of that aim. The last limb requires, to the extent that it arises at all (*SSfT v Cuciurean* (CA) at [34]) an assessment of the proportionality of the interference to the aim pursued (*Crossland* at [40]).
36. In having regard to the balance of convenience and the appropriate weight to be had to the Defendants' convention rights, there is no right to protest on private land (*Appleby* at [43] and *Samede* at [26]) and therefore articles 10 and 11 rights are unlikely to be applicable (see *Ineos* at [36], and *DPP v Cuciurean* at [46], [50] and [77]).
37. Whilst there is a right to express a point of view, and to gather together to do so, there is no right to do so by trespass on private land (*DPP v Cuciurean* at [77]). There is no "freedom of forum" (*Ibid* at [45]). A protest which involves serious disruption or obstruction to the lawful activities of other parties may amount to "reprehensible conduct" so that articles 10 and 11 are not violated: *Ibid* at [76].
38. Direct action protest and trespass to the HS2 Land is "*against the public interest*" (*DPP v Cuciurean* at [84]). The rights enshrined in articles 10 and 11 "...*do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament*".

ALTERNATIVE SERVICE

39. It is a fundamental principle of justice that a person cannot be subject to the court's jurisdiction without having notice of the proceedings (*Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 at [14]). The essential requirement for any form of alternative service is that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant (*Cameron* at [21] and *Cuciurean v SSfT and High Speed Two (HS2) Limited* [2021] EWCA Civ 357 – at [14] – [15], [25] – 26], [60] and [70]). Posting on social media and attaching copies at or nearby

premises would have a greater likelihood of bringing notice of the proceedings to the attention of defendants: *Canada Goose* (CA) at [50].

40. There is a difference between service of proceedings, and service of an injunction order. A person unknown is a newcomer, and is served and made a party by violating an order of which they have knowledge, as opposed to being personally served (*Barking and Dagenham* at [85] and [91], approving *South Cambridgeshire v Gemmell* [2005] EWCA Civ 1429 at [34]).
41. Service provisions must deal with the question of notice to an unknown and fluctuating body of potential defendants. There may be cases where the service provisions in an order have been complied with, but the person subject to the order can show that the service provisions have operated unjustly against him or her. In such a case, service ought to be set aside and the threat of committal removed altogether: *SSfT and High Speed Two (HS2) Limited v Cuciurean* [2020] EWHC 2614 (Ch) at [63(7)].

RICHARD KIMBLIN QC
SIONED DAVIES

No 5 Chambers

MICHAEL FRY
JONATHAN WELCH

Francis Taylor Building

18th May 2022

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

CLAIMANTS' SKELETON ARGUMENT ON THE MERITS

For hearing at 10.30 am on 26th, 27th and 30th May 2022

INTRODUCTION

1. The Claimants' first skeleton argument sets out relevant legal principles relevant to this application, dated 18th 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 injunction¹, 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,² the Claimants ask that these be discharged (along with discontinuance of the underlying proceedings) upon the grant of the order that is now applied for³.

¹ Formerly referred to as a *quia timet* injunction

² See Particulars of Claim, paragraph 7.

³ 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.⁴
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.

⁴ 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 23rd 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.⁵

[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

⁵ 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 links⁶). The land is coloured as follows:⁷
 - 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.

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

⁷ 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.⁸ 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.⁹

18. There has been significant violence, criminality and risk to the life of the activists, HS2 staff and contractors.¹⁰ 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.¹¹ 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.¹²

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

⁸ though the actual number is likely much higher (see **Jordan 1**, para 13)

⁹ **Jordan 1**, para. 15.

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

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

¹² 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 **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**].¹³
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

¹³ 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 summary¹⁴:

- 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

¹⁴ 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.”¹⁵*
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,¹⁶ and the fact that if the injunction was limited to one area, the protesters would invariably simply

¹⁵ Ibid., Lavender J at [24(7)(c)].

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

move to another accessible and effective location.¹⁷

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.¹⁸ 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 undertaking¹⁹ 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.²⁰

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

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

¹⁸ (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

¹⁹ Exhibited to Dilcock 2.

²⁰ 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 17th 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:²¹

“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:²²

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

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

²² *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.²³

CONCLUSION

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

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20 May 2022

²³ At present the Harvil Road and Crackley injunction terms differ from one another.

ANNEX

Summary of Responses to proceedings by Defendants and non-Defendants

Name	Received [ref]	Summary
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 th 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) [D/27]	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) [D/28]	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) [D/29]	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) [D/30]	Email attachment of statement which will not open, plus article by Lord Berkeley, plus news story
Swynnerton Estates	Email (05.05.22) [D/31]	Email re whether Cash's Pit objectors had licence to occupy.
Steve and Ros Colclough	Letter (04.05.22) [D/32]	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) [D/33]	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) [D/34]	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) [D/35]	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.

The below statements are contained within the submission of D36 (Mark Keir)

Val Saunders "statement in support of the defence against the Claim QB-2022-BHM-00044"	Undated [D/37/2493] (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 [D/37/2509-2520] (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 protesters 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 [D/37/2674-2691] (bundle D, vol G)	Complaints about merits of scheme and conduct of HS2 security contractors against protesters.
Misc statement – "Seven arguments against HS2"	Undated 2692-2697	Merits of scheme. Argues for scrapping.

Brenda Bateman – “statement in support of the defence...”	Undated 2698-2699	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 2700-2701	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 2702-2703	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 2704	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 2705-2710	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 2711-2714	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 2715-2716	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 2717-2718	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 2719	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 2724-2731	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 2735	Complaint about Buckinghamshire HS2 security van monitoring ramblers near HS2 site. Concerns about privacy.
Mr & Mrs Phil Wall – “Statement”	Undated 2737-2740	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 2742	Merits of scheme. Protests are therefore valid.

Ann Hayward – Letter regarding RWI	6.05.22 2743-2744	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 2745-2746	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 2747-2751	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 2752-2753	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 2754-2755	Criticism of merits of Scheme, argument re right to protest.