

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

Applicants / 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

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## SKELETON ARGUMENT OF THE CLAIMANTS

*For Review Hearing Tuesday 16 May 2023*

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### PRELIMINARY

#### References

[CB/Y/X]: volume y and page x of the Core Bundle

[SB/X]: page x of the Supplemental Bundle

[AB/X]: page x of the Authorities Bundle

[IO/X]: paragraph x of the Injunction Order

#### Suggested Pre-Reading (Time Estimate: 4 hours)

1. Injunction Order [CB/A-3]
2. *HS2 and SoST v Persons Unknown* [2022] EWHC 2360 (KB) (“**Judgment**”) [CB/A/23]
3. *HS2 and SoST v Persons Unknown* [2022] EWHC 2364 (KB) (“**Consequential Judgment**”) [AB/86]
4. Ruling of the Court of Appeal in CA-2022-001952 dated 9 December 2022 (“**Ruling**”) [CB/A/98]
5. Application Notice dated 27 March 2023 pursuant to the provisions at paragraphs 15 and 20 of the Injunction Order (“**March 2023 Application**”) [CB/A/122]
6. 11<sup>th</sup> Witness Statement of Julie Dilcock dated 27 March 2023 (“**Dilcock 11**”) [CB/A/254]
7. 1<sup>st</sup> Witness Statement of John Groves dated 27 March 2023 (“**Groves 1**”) [CB/A/246]
8. 1<sup>st</sup> Witness Statement of James Dobson dated 27 March 2023 (“**Dobson 1**”) [CB/A/157]
9. Draft Order [CB/A/125]

### INTRODUCTION

1. This is the Claimants’ skeleton argument for the extension and variation of an injunction order protecting the High Speed Rail 2 scheme (“**HS2 Scheme**”).
2. On 20 September 2022, in response to the Claimants’ claim and application (“**Claim**”), Julian Knowles J made an order (“**Injunction Order**”) [CB/A/3] which granted an interim precautionary injunction against the Defendants. The learned judge’s reasons are recorded in his judgment, *HS2 and SoST v Persons Unknown* [2022] EWHC 2360 (KB) (“**Judgment**”) [CB/A/23].

3. [IO/15] provides for its reconsideration on approximately a yearly basis “to determine whether there is a continued threat which justifies continuation of [the Injunction Order]”.
4. [IO/20] provides that the Claimant have liberty to apply to extend or vary the Injunction Order.
5. [IO/21] provides that the Claim was stayed with liberty to restore.
6. Further submissions were made by certain defendants following the Judgment, which prompted the learned judge to hand down a further judgment on consequential matters: [2022] EWHC 2364 (KB) (“**Consequential Judgment**”) [AB/86]. In the Consequential Judgment, Julian Knowles J dismissed a number of suggested amendments to the Injunction Order proposed by D6, declining in particular suggestions relating to “consequence wording” in the terms of the Injunction Order, a provision of “knowledge”; a requirement for demarcation of the injunctioned land; and refused permission to appeal.
7. On 9 December 2022, the Court of Appeal refused permission to appeal against the Injunction Order [CB/A/98], and issued a ruling on the application for permission (“**Ruling**”) [CB/A/99]. All five grounds of appeal advanced by D6, relating to HS2’s interest in the HS2 Scheme’s land; Article 1 Protocol 1; the terms of the Injunction Order; Service; and general public interest were rejected by Coulson LJ. In particular, the Ruling noted:
  - a. [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”; and
  - b. And concluded at [46]: “...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*<sup>1</sup>, *Barking and Dagenham*<sup>2</sup>) and recent Divisional Court and Court of Appeal guidance on the balancing of possessory and protestors’ rights (*DPP v Cuciurean*<sup>3</sup> and *SoS for Transport v Cuciurean*<sup>4</sup>). 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

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<sup>1</sup> [AB/112]

<sup>2</sup> [AB/56]

<sup>3</sup> [AB/92]

<sup>4</sup> [AB/166]

increase the cost of a project which has been subjected to the most detailed public and Parliamentary scrutiny.”

8. Pursuant to [IO/15], the Claimants sought directions for this hearing (“**Review Hearing**”). On 16 March 2023, HHJ Kelly made a directions order (“**Directions**”) [CB/A/120]. The Directions provided for some administration, such as amendments to the web address for claim documents; provided for service by alternative method; and made provision for the case management of the Review Hearing.
9. A brief history of these proceedings, and the Claimants’ compliance with the Directions is provided in Dilcock 11 [CB/A/256] at paras. 8 – 15.

## **BACKGROUND**

10. A general introduction and wider background are set out in full in the Judgment at [1] – [47] and so summarised briefly. It is sufficient here to note that 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**”).
11. Following the Claimants’ application, two directions hearings, a precursor geographically constrained interim injunction (“**Cash’s Pit Injunction**”), a directions order, and a two day contested hearing, Julian Knowles J made the Injunction Order.
12. In the Judgment, the learned judge made specific findings relevant to the continuation of the Injunction Order and to the Claimants’ further applications set out below:
  - a. [161]: “...there has been significant violence, criminality and sometimes risk to the life of the activists, HS” staff and contractors...”
  - b. [162]: “...much of the direct action seems to have been less about expressing the activists’ views of the HS2 Scheme, and more about trying to cause as much nuisance as possible, with the overall aim of delaying, stopping or cancelling [HS2] via, in effect, a war of attrition.”
  - c. [176]: “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.”

- d. [213]: “...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.”
- e. [214]: “...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”.

### **NEED FOR CONTINUED INJUNCTIVE RELIEF**

- 13. There is a compelling case for the Injunction Order to be continued, and the Court is respectfully invited to do so. The Judgment confirms that the relevant legal tests for the grant of an injunction on the basis of a real and imminent risk of unlawful activity have been met<sup>5</sup>. It is submitted that the only questions for the Court at this Review Hearing are whether there is a continuing threat which justifies the continuation of the Injunction Order, and whether it should be maintained, varied or discharged.

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<sup>5</sup> To assist the Court, the Claimants’ skeleton argument on the relevant legal principles which was not opposed by any defendant before Julian Knowles J is provided at [CB/A/304]. So far as necessary, the Claimants continue to rely on the principles set out in that skeleton argument.

14. The Injunction Order has been kept under review by the Claimants, and they continue to discharge their duties under the terms of the Injunction Order and the relevant case authorities. The Claimants seek a continuation of the Injunction Order for a period of at least another year on the basis that there continues to be a real and imminent risk of serious harm. For the reasons set out in Dobson 1, the protection of the Injunction Order in materially identical terms remains necessary, subject to the variations proposed which are supported by the Claimants' witness evidence and discussed further below.
15. Groves 1 paras. 8 – 11 [CB/A/249] explains how successful the Injunction Order has been for the Claimants. As well as the economic benefits (which represent a saving to the public purse), the significant benefits to HS2's staff and contractors are highlighted in para. 11.
16. Groves 1 at para. 16 explains the Claimants' forecast of what might happen should the protection of the Injunction Order not be continued. The costs in that circumstance are estimated to be in excess of £22m by the end of this year. This compares against the costs to the public purse in dealing with activism-related incidents since 1 October 2022 of £0.96m (Groves 1, para. 10).

### **Continued Threat**

17. Despite the considerable impact of the Injunction Order, it is plain that anti-HS2 activists continue to oppose the HS2 Scheme through direct action protest. Both Groves 1 and Dobson 1 highlight the fact that direct action by anti-HS2 activists tends to occur in response to different HS2 Scheme-related activities taking place – see Groves 1 at paras. 12 – 15 and Dobson 1 at para. 55 – 59 [CB/A/192].
18. The Claimants' evidence of continued threat, and evolution of the threat, to the HS2 Scheme is set out in Dobson 1, particularly at paras. 16 – 52. Dobson 1 describes both the direct protest related incidents since the Injunction Order was made, and also details what is described as “secondary targeting” related to the HS2 Scheme. The incidents since the making of the Injunction Order are tabulated at para. 29 of Dobson 1, and consist of trespass, criminal damage, interference with fences and gates, anti-social behaviour and other activities aimed at disrupting the HS2 Scheme.
19. What is plain from the evidence in Dobson 1 is that there remains a “hardcore” of committed anti-HS2 activists who remain willing to do whatever it takes to cause delay, annoyance and disruption to the HS2 Scheme. Dobson 1 para. 44 explains how the proposed D66 and D67 appear to treat baiting HS2 staff as a game and are explicit that they will continue to cause

problems in other areas in order to attack the HS2 Scheme. Dobson 1 para. 48 sets out the unacceptable assaults, damage and taunting which HS2 staff and contractor continue to be subjected to.

### **Geographical Extension to the Injuncted Land**

20. The Claimants seek to amend the definition of the HS2 Land in the Injunction Order in order to extend the protection of the Injunction Order to land which has come into the Claimants' possession since the original application was made in March 2022, for the reasons set out in the Judgment, buttressed by the evidence in Groves 1 and Dobson 1. The Court was aware of further land acquisition by the Claimants taking place, and the Claimants' entitlement is set out in paras. 33 - 42 of Dilcock 11.

## **THE CLAIMANTS' FURTHER APPLICATIONS**

### **Removal and Addition of Named Defendants**

21. The Claimants seek to remove certain named individuals as Defendants to the Claim, for the reasons set out in Dobson 1 paras. 9 – 15 and Dilcock 11 at paras. 16 – 18 and 20. In summary, the Defendants proposed to be removed have shown no continued involvement in unlawful direct action protest and/or have provided undertakings to the Court not to engage in such behaviour. In such circumstances, it is appropriate to remove such individuals as named defendants to the Claim. Of course, Defendants so removed have been served with the Injunction Order, and were any of them to engage in prohibited activity would fall within the definition of persons unknown. Should any Defendant indicate that they would wish to remain as a named Defendant, the Claimants would not seek their removal.

22. For completeness, Dobson 1 provides reasons in para. 13 as to why other named defendants are not proposed to be removed – those persons are either continuing to unlawfully disrupt HS2 or are people who the Claimants are compelled to name in line with *Canada Goose* as persons who may carry out the activities prohibited by the Injunction Order.

23. For the reasons set out in Dilcock 11 at para. 19, the Claimants seek to add two named defendants, D66 and D67 in accordance with the obligation in *Canada Goose*.

### **Conspiracy to Injure by Unlawful Means**

24. The Claimants make a further application to add a new persons unknown defendant, D68, and a new category of prohibited conduct (with consequential amendments to the particulars of claim).

25. This further protection is required due to the evolution of activist tactics to disrupt works in response to the Injunction Order. This is shown starkly by the direct action undertaken by D66 and D67 at the A418, described in detail in Dobson 1 at paras. 111 – 142. Although the direct action took place on land not currently protected by the Injunction Order and over which the First Defendant had exercised temporary possession powers pursuant to Schedule 4 of the Phase One Act, the Claimants consider that a number of potentially unlawful acts were committed, including: public and private nuisance, trespass (both entry onto a stopped up highway, and exceeding a public right of way), harassment under s. 2 of the Protection from Harassment Act 1997 and sections 4A and/or 5 of the Public Order Act 1986, common assault and battery, intimidation, and causing loss or injury by unlawful means.
26. Dobson 1 at paras. 60 – 64 explains further how activists have been displaced and evolved their tactics. Paragraphs 64 – 106 highlight the tactics of other protest groups and the cross-pollination of activists between anti-HS2 activist and other protest movements. In particular, the Court will note the direct action protest carried out by XR against the law firm Eversheds Sutherland described at paras. 81 - 106, which was explicitly related to the HS2 Scheme. As Dobson 1 notes at para. 107, this:
- “...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.”
27. The additional claim advanced by the Claimants is framed in the tort of conspiracy to injure by unlawful means (“**conspiracy**”). The ingredients of conspiracy are identified in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9 [2020] 4 WLR 29 [AB/136] per Leggatt LJ at [18]: (a) an unlawful act by the defendant, (b) with the intention of injuring the claimant, (c) pursuant to an agreement with others, (d) which injures the claimant.
28. The authorities were analysed recently by Johnson J in *Shell UK Oil Products Limited v Persons Unknown* [2022] EWHC 1215 (QB) at [26] – [32] [AB/38]. In particular, the learned judge held:
- a. At [27] that it is not necessary to show the underlying unlawful conduct is actionable by the claimant: criminal conduct which is not actionable in tort can suffice.



- b. At [29] that in respect of interim relief, it is only necessary for the Court to decide whether the claimant has established a serious issue to be tried as to whether the torts that are alleged may suffice as the unlawful act necessary to found a conspiracy claim. It would be anomalous if a claim for trespass could not support a claim in conspiracy.
29. The approach in *Shell UK Oil Products Limited* was followed in *Esso Petroleum Company Limited v Scott Breen and others* [2022] EWHC 2664 (KB) [AB/18] in which HHJ Lickey KC, sitting as a judge of the High Court, explained how the necessary intention may be demonstrated, and need not be actionable at the suit of a claimant, at [22] - [27]. The Court will have noted that Mr Breen is also a named defendant to these proceedings.
30. The requirement for framing an additional cause of action in this way is set out in Dilcock 11 at para. 24. In essence, the Claimants' case is this:
  - a. The Court has repeatedly and comprehensively determined that the HS2 Scheme is entitled to protection as against "direct action" activists who seek to thwart the HS2 Scheme through "attrition" in circumstance where the HS2 Scheme has been "subjected to the most detailed public and Parliamentary scrutiny" (Ruling [46]).
  - b. Activists have abided (by and large) with the prohibitions contained in the Injunction Order. However, some activists have decided to continue to cause attritional harm to the HS2 Scheme by carrying out actions which are not prohibited by the Injunction Order, but which are unlawful ("**Unlawful Action**"), as set out in Dobson 1 and Dilcock 11.
  - c. The Unlawful Action is often carried out on land where the Claimants do not have a sufficient degree of possession or control to be entitled to plead trespass to land / nuisance directly against trespassers / causers of nuisance. As well as in the case of secondary targeting, Parliament also provided for the use of other land within HS2 Act limits, which is explained in Dilcock 11 at paras. 25 – 32. It would be excessively granular and impractical / disproportionate (and indeed, potentially confusing to defendants) to seek to identify each and every Unlawful Action. Pleading conspiracy overcomes this difficulty.
  - d. The intention of those committing the Unlawful Action is to oppose the HS2 Scheme, in circumstances where the Court has already carried out the balancing exercise of rights of activists against the right to construct the HS2 Scheme unhindered, and found that the HS2 Scheme is at risk of serious harm from activists. The Unlawful Action seeks to circumvent the Court's findings.

- e. Moreover, there is nothing lawful about causing damage to the HS2 Scheme, so the starting point of any objection to this additional prohibition is unattractive. Nevertheless, the Claimants have carefully framed the prohibited unlawful means: “obstructing, impeding, hindering or delaying works or activities authorised by the HS2 Acts”. It is difficult to see what could possibly be objectionable about preventing activists from delaying or obstructing etc. a HS2 Scheme, sanctioned by Parliament, by unlawful means.
- f. A further protection is built into the description of the D68: the only person unknown who would become a defendant is explicitly operating by “unlawful means...with the intention of causing damage to the Claimants”.

31. As regards each of the four elements of the tort of conspiracy:

- 32. (1) Unlawful Action: the Claimants seek to restrain only such acts which, by their nature, are necessarily unlawful, whether or not that unlawfulness would be actionable by the Claimants directly. For example, the Unlawful Action identified Dobson 1 at paras. 86 - 108 relates to private nuisance, trespass and criminal damage against a law firm acting for the Claimants. Dobson 1 provides other examples of Unlawful Action and intended Unlawful Action at paras. 109 – 178.
- 33. (2) Done with the intention of injuring the Claimants: in respect of unlawful means conspiracy, it is not necessary for the intention of injuring the Claimants to be the “predominant” purpose of a defendant. This can be contrasted with lawful means conspiracy – see *FSDEA v Dos Santos* [2018] EWHC 2199 at [31] [AB/231].
- 34. The proposed order only applies to Unlawful Actions done “with the intention of causing damage to the Claimants”. This formulation is sufficient for present purposes – see *Cuadrilla* at [30].
- 35. (3) Pursuant to an agreement with one or more other persons: the proposed order applies only to acts done “in express or implied agreement or combination with another person”.
- 36. (4) Actually injures the Claimants: the evidence in Dobson 1 is clear that the conscious aim of those engaging in the Unlawful Action is to disrupt the construction of the HS2 Scheme. The evidence in Dobson 1 and Groves 1 is that such Unlawful Actions have already caused delay and damage to the Claimants.

## **OTHER MATTERS**

37. Section 12 of the Human Rights Act 1998 (“HRA 1998”) is addressed as follows:

- a. In relation to those Defendants who do not appear and/or are not represented at this Review Hearing, no issue arises as to s.12(2) because the Claimants have taken all practicable steps to notify those Defendants. This is a Review Hearing for which:
  - i. there has been service on the Defendants (Dilcock 11 at para. 15);
  - ii. the Injunction Order makes specific reference to the Review Hearing and its date; and
  - iii. there is any event significant constructive knowledge of this Review Hearing.
- b. Similarly, in respect of s.12(3), to the extent that direct action protest could amount to publication, the Court has already found that such publication should not be allowed in the Judgment.

## **OTHER SUBMISSIONS TO THE COURT**

38. The Court has been provided with submissions from some of the Defendants. The Claimants are aware of emails and letters from (or from those acting for) D6 (Mr Knaggs), D36 (Mr Keir), D66 (Ms Thomson-Smith), D67 (Mr Butcher) and Mr Cooper.

39. With the exception of Mr Keir’s grounds, most of those materials have been submitted late, not in compliance with directions, and the Claimants expect that there is very little prospect of any applications being made. To assist the Court, the Claimants have reviewed and engaged with some of that material, and the Twelfth Witness Statement of Ms Dilcock responds to Mr Keir’s material.

40. In respect of D66 and D67:

- a. D66 indicated on 20 April 2023 material would be submitted the following week [CB/C/201]. Nothing has been received and the Claimants’ solicitors reminded D66 on 26 April 2023 that an application to adduce evidence out of time would be required and that any material would need to be placed in a separate bundle prepared by D66 [CB/C/207].
- b. D67 emailed materials to the court on 21 April 2023 and 25 April 2023 [CB/C/228 – 232]. The Claimants’ solicitors explained to D67 on 26 April 2023 that those materials

would need to be placed in a separate bundle prepared by D67 and reminded D67 that an application to adduce evidence out of time would be required [CB/C/237].

41. However, the Claimants over-arching position on the materials before the Court, is that:
  - a. Each of the issues raised (particularly in Mr Keir's lengthy materials) is dealt with by Julian Knowles J in the Judgment, and the Review Hearing is not an opportunity to replead the underlying principles and evidence; and
  - b. Even taking the material at its highest, it does not assist the Court. For example, even if Mr Butcher's contested material was accepted in full by the Court as correct, it should make little difference to the Court's assessment of ongoing risk, given the precautionary nature of the relief.
  
42. The Injunction Order provides at para. 16 that any person affected by the Injunction Order may apply to vary or discharge it, and the process at Schedule A must be followed. Schedule A sets out the steps to be taken to "ensure effective case management". Schedule A para. 1 provides that:

"Any person seeking to contest the Claimants' entitlement to interim relief should file...and serve...  
...(b) Written grounds...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..."
  
43. The reason for Schedule A was to discourage the provision of excessive amounts of unfocussed and irrelevant material, and to seek to protect the efficiency and conduct of any hearing.
  
44. Whilst the steps in Schedule A were not carried through into the case management directions for the Review Hearing, the Claimants respectfully submit that that requirement of differentiation from the Judgment (and, in due course, the judgment on this Court on the Review Hearing) is the appropriate direction and approach for both this Review Hearing, and future review hearings. Although such provision is not presently included in the draft Order, should the Court approve this approach the draft Order can be amended appropriately.
  
45. Further, the Court will have noted Mr Keir's application for cross-examination of the Secretary of State and Mr Jordan. The Secretary of State has not provided any statement in these

proceedings, and so cannot be called. Mr Jordan did provide witness evidence before Mr Justice Julian Knowles, but has not provided evidence to this Review Hearing, on which basis the Claimants are not calling him. He is not therefore available for cross-examination. In the Judgment, the learned judge relied extensively on the evidence of Mr Jordan, which was not disturbed in the hearing before him (see paras. 26, 45, 154 - 158, 161 – 164, 169, 171, 172, 198 and 210 of the Judgment).

46. Mindful of the need to protect public funds and court time, the Claimants do not propose to address further the materials provided by the various Defendants unless invited to by the Court.

### **THE DRAFT ORDER**

47. The recitals in the draft Order [CB/A/125] are materially identical to the recitals in the Injunction Order. In particular, the recitals contain the Claimants' renewed undertaking to comply with any order for compensation; renewed confirmation that the draft Order does not seek to prohibit lawful protests; renewed confirmation that no freeholder or leasehold with a lawful interest in the HS2 Land is intended to be captured by the prohibition; and renewed undertaking not to seek the committal of any freeholder or leaseholder with a lawful interest in the HS2 Land.
48. Paragraph 2 of the draft Order sets out the consequential amendments to the Claim arising out of the Claimants' further applications.
49. Paragraphs 3 - 6 set out the prohibitions, with a sunset date of 23:59 on 31 May 2024, and repeats the clarifications. The only other difference to the injunction in force from the Injunction Order is the inclusion of para. 3(d) which contains the conspiracy prohibition. As to the proposed duration, the Claimants propose a continuation of the injunctions until trial or further order or with a backstop at 23:59 on the relevant 12-month anniversary of the date of this Order. As the Master of the Rolls pointed out in *Barking & Dagenham* "there is no rule that an interim injunction can only be granted for any particular period of time. It is good practice to provide for a periodic review, even when a final order is made": [AB/83] at [108]
50. Paragraphs 7 -11 set out the alternative service requirements, and are again materially identical to the provisions in the Injunction Order. For the reasons set out in the Judgment and Ruling, these service provisions remain reasonable and effective. In the months since the Injunction Order was granted, similar alternative service provisions have been granted in other cases, and the Court has noted that in respect of injunctions against direct action activists, there is

considerable, and increasing, constructive knowledge of such injunctions. Injunctive relief was granted to Transport for London (“TfL”) against a similar backdrop of direct action protests on TfL roads in central London, Cavanagh J held in *TfL v Lee* [2023] EWHC 402 [AB/3] at [32]:

“Similar orders have been made in other cases of a like nature. Alternative service is necessary for the relief to be effective. Moreover, as Mr Ameen points out, the Defendants already have a great deal of constructive knowledge that the TfL Interim JSO Injunction may well be extended: the extent and disruptive nature of the JSO protests since March 2022 (and the Insulate Britain protests which began in September 2021); the multiple civil and committal proceedings brought in response to those protests by National Highways Limited, TfL, local authorities and energy companies and the frequent service of documents on defendants within those proceedings including multiple interim injunctions; the extensive media and social media coverage of the protests, their impact, and of the legal proceedings brought in response; the large extent to which, in order to organise protests and support each other, JSO protesters are in communication with each other both horizontally between members and vertically by JSO through statements, videos etc. shared through its website and social media. These are not activities that single individuals undertake of their own volition. In my judgment, in the perhaps unusual circumstances of this case, it is very unlikely, perhaps vanishingly unlikely, that anyone who is minded to take part in the JSO protests on JSO roads in London is unaware that injunctive relief has been granted by the courts”

51. It is similarly submitted that here there is extensive constructive knowledge of the Injunction Order amongst those persons opposed to the HS2 Scheme. In any event, if alternative service is permitted, it remains open to any defendant on committal to argue that the alternative service provisions operated unfairly against them: *Secretary of State for Transport v Cuciurean* [2020] EWHC 2614 (Ch) at [63(9)].
52. Paragraphs 12 – 18 provide substantively identical case management directions as provided for in the Injunction Order. Those directions continue to remain appropriate and have become fairly standard drafting in such injunction orders.
53. Paragraphs 19 and 20 are in respect of costs.

## **CONCLUSION**

54. For these reasons, the Court is respectfully invited to grant the Order in the terms sought:

- a. Extending the Injunction Order;
- b. Allowing the Removal and Addition of Named Defendants;
- c. Permitting the inclusion of D68 and further prohibited activity; and
- d. Making any other order that the Court sees fit.

**9 May 2023**

**RICHARD KIMBLIN KC**

**No5 Chambers**

**MICHAEL FRY**

**Francis Taylor Building**