IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

CLAIM NO: KB-2024-002473

BETWEEN

(1) BIRMINGHAM AIPORT LIMITED
(2) LIVERPOOL AIRPORT LIMITED
(3) PEEL L&P INVESTMENTS (NORTH) LIMITED
(4) BRISTOL AIRPORT LIMITED
(5) BRISTOL AIRPORT DEVELOPMENTS LIMITED

Claimants

and

PERSONS UNKNOWN
as more particularly described in the Claim Form

Defendants

CLAIMANTS' SKELETON ARGUMENT

For urgent interim injunction hearing: time estimate 2.5 hours

Suggested Pre-Reading (Time Estimate: 1.5 hours of judicial time)

- Draft Orders [bespoke, one per airport: 3, 14, 25]
- Application Notice & Claim Form [36, 74]
- Particulars of Claim [45]
- Nick Barton WS1, 31/7/24 [79]
- John Irving WS1, 31/7/24 [121]
- Graeme Gamble WS1, 31/7/24, [156]
- Wortley WS1 31/7/24 [187]

INTRODUCTION.

1. Cs own and operate the airports at Birmingham Airport ("BHX"), Liverpool Airport ("LJLA") and Bristol Airport ("BRS") (together the "Airports"). Cs are not (relevantly) connected but have co-operated to bring these proceedings as one claim, to save court time and costs.

2. Just Stop Oil ("JSO") has explicitly threatened a campaign of protest at the UK's airports. London Stansted, Heathrow and Gatwick airports have all already been the subject of disruptive protest. Most of the UK's major airports have already obtained injunctions. The evidence indicates that these have a powerful protective / deterrent effect. Cs are among the last major airports to be unprotected by injunctions. They are therefore now particularly exposed. Cs therefore ask the Court for the like relief as has recently been granted in relation to other major airports.

3. The airports in relation to which the Court has recently granted injunctions are: London City

Airport, Manchester Airport, Stansted Airport, East Midlands Airport, Leeds Bradford Airport, Luton Airport, Newcastle Airport, Heathrow Airport and Gatwick Airport. The forms of relief are not identical in all cases, partly because of particularities of individual cases and partly because of the slightly different approaches taken by the judges when (as is entirely appropriate) scrutinising the draft orders in Court: a mixture of individuation and evolution. A majority of the airport cases came on for hearing before Ritchie J, including the most recent: Gatwick.

THE SHORT POINT.

4. The rest of this skeleton argument follows the discipline of taking the proceedings as if the field were, so to speak, entirely unbroken. In fact, however, the present application follows a now well-trodden path: Cs seek materially the same relief and under materially the same circumstances as have now been considered by the Court on multiple occasions in the past few weeks, each time leading to the grant of an injunction in materially the same form as now sought.

5. Cs therefore suggest that the Court would be entitled to treat the pattern of injunctions already granted as justifying an approach whereby, rather than (so to speak) "re-inventing the wheel", the Court focuses on whether there are any material differences between the present application, and the other airport applications which have preceded it.

6. As to that: there is nothing known to Cs about the present circumstances which materially distinguishes their airports from the others which the Court has now protected by injunction.

BACKGROUND.

7. The Airports are used in large numbers by members of the public as well as cargo transportation. Each Airport has the facilities typical of a commercial airport.

8. Civil aviation is heavily regulated at an EU and domestic level. Among other things, the Airports, have to comply with essential requirements set out in Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018. Cs must further comply with the requirements in Annex III and IV of the Commission Regulation (EU) No 139/2014 of 12 February 2014. Both of these regulations survived Brexit: sections 1A(6), 3(1) and (2) of the European Union (Withdrawal) Act 2018 c.16 and section 39(1) of the European Union (Withdrawal Agreement) Act 2020 c.1. These regulatory requirements are explained in Barton 1 at ¶¶ 18 to 19 [82], but, in summary, they make the following three things clear: (1) running a safe airport is of paramount importance; (2) doing so in a manner which ensures that there is no or limited disruption to passengers or freight transportation or injury to persons or valuable assets is a complex undertaking; and (3) the responsibility rests with the airport and its operator to ensure the safe and smooth operation for all persons and activity at the airport.

9. C1, C2, and C4 are airport operators, within the meaning of section 82 of the Airports Act 1986 c.31 ("the Airports Act"). The Airports are also "designated" airports for the purposes of section 63(1)(a) of the Airports Act, by article 2 and Schedule 1 to the Airports Byelaws (Designation)

Order 1987 (SI 1987/380). As a result, the operators are empowered to make byelaws for regulating the use and operation of the airport and conduct of all persons while within the airport, which then have effect once they are confirmed by the Secretary of State. Section 64(1) and (2) of the Airports Act provide that any person contravening any byelaws is liable on summary conviction to a fine not exceeding £2,500.

10. There are byelaws ("the Byelaws") in place for each of the Airports. The Birmingham Airport Byelaws 2021 (the "BHX Byelaws") apply to the land outlined in red to the plan at Schedule 1 to the BHX Byelaws. Cs' solicitors have prepared a plan of the site which replicates its extent as best as practicable. This is Plan 1 annexed to the Particulars of Claim. Plan 1 includes for protection the landing lights, even though (curiously) the landing lights are not within the land outlined in red on the plan to Schedule 1 of the BHX Byelaws. The like exercise has been done for LJLA (Plan 2) and BRS (Plan 3).

11. Cs' title to the Airports is set out with painstaking detail in Wortley 1 at ¶¶4 to 37 [188] and the Title Schedule to the Particulars of Claim [59]. The land in Plans 1, 2 and 3 is private land to which Cs have the registered freehold or leasehold title, as shown on Plans 1, 2A and 3A. It follows that the general position is Cs have an immediate right to possession, occupation and control of this land. There are five exceptions/qualifications as follows:

12. First, Third Party Areas: there are certain areas within each airport over which third parties have interests which in point of law have the effect that Cs, in relation to those areas, do not have an immediate right to possession or occupation (or none that they seek to assert in these proceedings). These have been identified on Plans 1B, 2B or 3B: "Third Party Areas".

13. However, at LJLA and BRS, the Third Party Areas are only accessible by members of the public if they first use areas to which Cs are entitled to possession, occupation and control by virtue of their unencumbered proprietary interests. At BHX the same is generally true, but five of the Third Party Areas at BHX abut the red line boundary such that those parts of the boundary are not in the possession or control of C1. In turn, however, those parts of the boundary represent a very small proportion of the overall BHX boundary and are not the most obvious point of entry as per Wortley 1 at ¶28 [194].

14. Secondly, Landing Lights: at each airport the landing lights are located on land registered in the names of third parties or which is unregistered, as shown on Plans 1A, 2A and 3A ("the Landing Lights"). Cs might be able to assert a proprietary right to some or all of that land, in view of the length of time they have made use of those pieces of land, but they do not in these proceedings ask the Court to assume that this would be established at trial.

15. Thirdly, Highways: access to and from the Airports obviously includes the use of public roads. Ds as well as Cs have the right to use these, including in principle for at least some amount of protest, because they are public highways. Cs do not seek an injunction in respect of any public highways outside the airport "perimeters".

16. So far as concerns public highways within the perimeters: there is none at BHX or BRS: Wortley 1 at ¶23 [193]. However, in respect of LJLA, Plan 2B uses pink to show public highways running to some extent within the red line boundary. That of course is the area covered by the LJLA Byelaws. Thus, unlike most public highways, the effect of the LJLA Byelaws is that the public has no right of protest on this stretch: or, at least, no right to conduct any protest that could be disruptive. Thus, unusually, the proposed orders will not affect Convention rights of potential protesters even on the highways to which they relate, to any (or any materially) greater extent than the LJLA Byelaws which are already in place.

17. Fourthly, unregistered land: in respect of BHX, on the south western boundary, there is an unregistered strip of land: C1 might be able to assert a proprietary right to some or all of that land, in view of the length of time they have made use of that piece of land, but does not ask the Court to proceed on that basis.

18. Fifthly, Air Rail Link: in respect of BHX, on the eastern boundary is an Air Rail Link and associated platform and station. C1 has possession and control of this area pursuant to an agreement for lease from Network Rail Infrastructure Limited for a term of 999 years and 199 years respectively, but the lease itself has yet to be completed.

19. The reason for mentioning these five exceptions specifically, is that they are the areas where Ds might argue that Cs cannot rely on the simplest cause of action — trespass — in support of their claim. Cs accept that the Court cannot productively rule on that question in proceedings of this kind. Therefore, in relation to these areas, Cs rely mainly on (i) the principle that the Court can restrain even conduct which is lawful as between Cs and Ds, where this is necessary and proportionate in order vindicate Cs' civil rights; and (ii) in reliance on the threatened torts of private / public nuisance, if protest were to take place on these areas. Additionally, in relation to highways, ordinarily the Court must balance Ds' rights of expression etc under Articles 10 and 11 of the Convention (a point discussed further below).

20. This approach has been sanctioned in all the airport cases to date.

THE THREAT.

21. Wortley 1 at ¶¶38 to 85 [197] explains the basis of Cs' view that there is a real and imminent risk of blockading / obstruction / disruption at the Airports.

22. In summary, JSO appear to have been planning a campaign since at least early March 2024, the "blueprint" for which was originally: cutting through fences and persons gluing themselves to runways; cycling in circles on runways; climbing onto planes to prevent them from departing; staging sit-ins at terminals to prevent passengers from access to the terminals. JSO's stated intention remains to mobilise people to take part in a coordinated civil resistance movement related to the environment and opposing fossil fuels at airports.

23. This threat has already materialised at Stansted, Heathrow and Gatwick airports. It is the

campaign advertised by JSO (described below further) together with those events which have alerted Cs to the need to seek the protection of the Court.

Protests at airports in June and July 2024.

24. In June 2024: on 2nd, protesters affiliated with Extinction Rebellion ("XR") protested at Farnborough airport, blocking 3 main gates and obstructing another gate with a vehicle. On 20th, two protesters used an angle grinder to cut a hole in the perimeter fence at Stansted airport. They spray painted 2 aircraft using a fire extinguisher. This resulted in activity on the runway being suspended. Three aircraft departures were delayed. On 25th, six people were apprehended at London Gatwick with bandages in their bags. One of the possible uses of those bandages suspected by the police, was to cause aircraft to ingest them thereby grounding them, or, in fact, merely to pose the risk of this occurring, which could have been enough to cause the airport to close the runaways and prevent any flights from departing or landing.

25. Such a protest, if it had occurred, would likely have caused severe disruption and financial loss. As explained in Barton 1 at ¶40 [91] even a small disruption to a flight schedule has a cascade effect, often meaning significant delays for passengers at the airport affected. This would likely have been felt by other airports in view of aircraft likely having to make landings (potentially on an emergency basis) elsewhere. That in turn would have had a knock-on effect on flight arrival and departures as well as ground transportation services carrying passengers from the location, dealing with the increased demand. Aircraft can then be in the wrong place for the purposes of restaffing and refuelling. Consequent on that is the ability (or inability) of aircraft operators to staff their services in view of the maximum hours crew can work. There is also the additional cost and diversion of resources which goes into: (a) ensuring the runways and taxiways are free from debris; (b) assessing their condition; and (c) dealing with the consequences of the delays to the flight schedule. Further, there is the damage that any such material can cause to the aircraft or any other equipment or fuel that is on the site and/or the potential risk of injury to passengers and crew if such material is ingested by an aircraft while it is in motion or flight.

26. On 27 June 2024, six JSO activists were arrested by the Metropolitan Police whilst attending an event organised by JSO.

27. Turning to July 2024: on 24th, a further ten JSO activists were arrested at Heathrow Airport following an intelligence led operation. According to media reports, some of those arrested were found to be carrying cutting gear and glue. On 28th, a further eight JSO activists were arrested at Gatwick on suspicion of interfering with national infrastructure. (Note that it is not clear whether the injunction obtained by Gatwick was effective when these events took place: the Court's order required notices to be placed etc and it is not clear that these steps had been completed by the time of the protests). On 29th, two JSO activists were arrested at Heathrow after spraying orange paint around the entrance hall to Terminal 5.

Likely future incidents

28. The JSO website states (Wortley 1 at ¶67 [206]):

> "This summer, Just Stop Oil will be taking action at airports.
>
> As the grass becomes scorched, hosepipe bans kick in and the heat of the climate crisis enters peoples' minds, our resistance will put the spotlight on the heaviest users of fossil fuels and call everyone into action with us.
>
> We'll work in teams of between 10-14 people willing to risk arrest from all over the UK. We need to be a minimum of 200 people to make this happen, but we'll be prepared to scale in size as our numbers increase. Exact dates and more details are coming
>
> Our plan can send shockwaves around the world and finish oil and gas. But we need each other to make it happen. Are you ready to join the team? [emphasis added]"

29. Just Stop Oil has also organised a fundraising page which says the following (Wortley 1 at ¶68 [206]):

> "Cat's out the bag. Just Stop Oil will take action at airports
>
> The secret is out — and our new actions are going to be big.
>
> We're going so big that we can't even tell you the full plan, but know this — Just Stop Oil will be taking our most radical action yet this summer. We'll be taking action at sites of key importance to the fossil fuel industry; superpolluting airports. …"

30. Cs are not aware of what specific locations or dates of further protests are planned. However, the arrests on 20 June 2024 and 27 June 2024 do not appear to have had a deterrent effect, in view of correspondence sent to the subscription list on 29 June 2024 (Wortley 1 at ¶77.3 [208]) in which it was stated that:

> "…The incoherent pattern of arrests we have seen over the last 24 hours suggests a rattled system. They know that as climate breakdown intensifies, civil unrest will increase and one day there will not be enough police to cope with the millions stepping into action, as the full betrayal of the political establishment becomes clearer.
>
> We will not be intimidated by the death throes of a broken system. Nothing the state can throw at us is worse than the realities that will be imposed on all of us if the breakdown of our climate carries on unabated. We WILL be stepping into action in the summer because when the lives of your family are at risk, there is no other choice than to protect them…"

31. On 18th July 2024, Roger Hallam, a leading environmental campaigner, received a 5 year sentence for his part in the chaos caused by protesters obstructing parts of the highways network in November 2022: Wortley 1 ¶38 [199]. Others who were involved in that campaign have also been sentenced. However, the incidents/arrests at Gatwick and Heathrow on 24th, 28th and 29th July post-date this sentencing. Thus, there is not yet any sign of abatement in the appetite for "direct action": as matters stand, it is too early to say that these sentences will have a deterrent effect. They might, indeed, work as a kind of stimulus.

32. That would be consistent with what has happened before. Widespread protests occurred across England in 2022, targeting oil and gas infrastructure, soon after the announcement of a campaign by JSO, Extinction Rebellion and Youth Climate Swarm. These resulted in injunctions being

obtained in relation to various sites and highways in the vicinity of the relevant oil and gas terminals. The protests involved protesters climbing onto tankers, blocking motorways by gluing themselves to the road surface, physically attaching themselves to equipment and similar activities with the aim to induce the government to take certain specific kinds of action to address the climate emergency and fuel poverty. These past activities demonstrate that the people involved are committed to their causes and that their activities can be well coordinated and organised.

Potential Disruption.

33. If protests occur at the Airports, Cs would expect to see disruption, as demonstrated by the experience at Stansted airport. It takes little imagination to recognise that, depending on the nature and/or number of the protests, the implications could easily be yet more significant.

34. To spell it out: protest at the Airports, or on a flight departing therefrom, has obvious potential for detrimental effects. These are referred to in Barton 1 at ¶¶35 and 36 [90]. The potential for harm includes threats to:

    (1) Cs' ability to ensure: the safe operation of aircraft at the Airports; the safe movement of vehicles and persons on the runways / taxiways and other operational areas, to avoid collisions and damage to aircraft; and that the firefighting and rescue services are able to respond to incidents or accidents with the necessary urgency.

    (2) In view of the particular vulnerabilities of aircraft and airports and Cs' responsibility to ensure that the safety of aircraft and persons is not endangered, any unexpected, and potentially dangerous, protest activity at the Airports or on an aeroplane would, almost inevitably, result in delays or cancellations to schedule flight arrivals and departures. Anything which disrupts flight schedules clearly constitutes a potential threat to the interests of the public.

    (3) Cs' and public resources, which would be diverted as a matter of urgency into responding to any emergency caused by the protesters' activity.

    (4) Safeguarding persons – including the protesters themselves given the previous behaviour of protesters at Stansted Airport and at other airports.

    (5) Counter-terrorism operations at the Airports and police.

35. These matters clearly have significant economic implications for Cs and others operating at the Airports, in addition to the harm (whether or not it is called "economic") to the travelling public and other individuals lawfully present at airports affected by disruption (see Barton 1 at ¶¶40 to 48 [91]).

INJUNCTIONS AGAINST "PERSONS UNKNOWN": THE LEGAL CONTEXT.

36. Ds are "newcomers" of the sort discussed in *Wolverhampton CC v London Gypsies & Travellers*

[2024] 2 WLR 45: persons who are not identifiable at the date that proceedings are commenced, but who are intended to be bound by the terms of the injunction sought. In such cases, the proceedings are typically a form of enforcement of undisputed rights rather than a form of dispute resolution: ¶143(iv). They involve a "wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring": ¶144. They are likely only to be justified as a novel exercise of an equitable discretionary power if the conditions in ¶167 are met (¶¶167, 235).

37. The Supreme Court also considered the "practical application of the principles" in the context of injunctions against gypsies and travellers, and the procedural safeguards which should accompany such orders at ¶¶187–234. It emphasised that its discussion had focused on injunctions against gypsies and travellers and that "nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers." (¶235). At ¶236, it gave the following guidance with respect to 'newcomer' injunctions against protesters:

> "Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained."

38. *Wolverhampton* shows that:

(1) This is an emerging jurisdiction, equitable and discretionary, still in its early stages, with a dynamic role for the Courts to play in working out the 'rules' or practices which should apply as experience of such cases accumulates (¶185). For that reason, it would be wrong to treat authorities articulating, or purporting to articulate, a series of principles or 'tests' as decisive or prescriptive at this point in time.

(2) The overarching questions are those identified in Wolverhampton at ¶167, specifically: (i) is there a compelling need sufficiently demonstrated by the evidence that justifies the exercise of the court's jurisdiction to give effective protection to the claimant's rights; (ii) have adequate procedural safeguards been provided to protect the affected newcomers; and (iii), overall, is it just and convenient for an injunction to be granted on the facts of the case.

39. Subject to that, the principles outlined by the Supreme Court in *Wolverhampton* were helpfully

drawn together and synthesised with established practice, by Ritchie J in *Valero Energy Ltd v Person Unknown* [2024] EWHC 134 (KB) at ¶¶57–58:

Substantive requirements

(1) A civil cause of action identified in the claim form and particulars of claim.

(2) There must be full and frank disclosure by the claimant.

(3) There must be sufficient and detailed evidence to demonstrate that there is a compelling need for the order.

(4) Balance of convenience – there must be a compelling justification for the order.

(5) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2022] AC 408 if the defendants' rights under ECHR Articles 10 and/or 11 are engaged. The injunction must be necessary and proportionate to the need to protect the claimant's rights.

(6) Damages are not an adequate remedy for the claimant.

Procedural requirements

(7) Identification of the defendants: persons unknown should be identified as clearly and precisely as possible and by reference to the conduct sought to be restrained and by reference to clearly defined geographical boundaries.

(8) The terms of the injunction should be set out in clear words and not framed in legal technical terms.

(9) The prohibitions should correspond to the threatened torts and should only relate to conduct that would otherwise be lawful if there is no other proportionate means of protecting the claimant's rights.

(10) The injunction should have clear temporal and geographic limits.

(11) The proceedings, the evidence, the application and the draft order must be served by alternative means, and reference should be made to s.12 of the Human Rights Act 1998.

(12) The defendants should be given the right to set aside or vary, and provision should be made for reviewing the order in the future.

SUBMISSIONS.

40. The threat described by Mr Wortley and the other witnesses combined with the potential for harm has been accepted by the Court in all other airport cases as demonstrating a sufficiently compelling need to justify the grant of a "newcomer" injunction. While not determinative, Cs suggest that this should carry significant weight in the Court's evaluation. Events which have

occurred since the last such injunction to be granted (at Gatwick) do not suggest any dissipation of the threat: rather the reverse.

41. The remainder of this skeleton will take BHX (Plans 1, 1A and 1B) as the exemplar. The points generally apply also to LJLA and BRS.

(1) Compelling need: trespass: the Airports apart from the Third Party Areas, the Landing Lights and highways.

Strong probability of harm

42. The injunctions sought would restrain trespass occurring on C1's land (the nature of which is explained in Barton 1 at ¶16 [82]). The harm potentially arising from this is explained above. Clearly damages cannot be an adequate final remedy in such circumstances. Further, a person whose proprietary interests in land are being unlawfully interfered with is *prima facie* entitled to an injunction to restrain that continuing interference. C1 has, in the past, permitted protesters the use of a specified area for the conduct of pre-arranged protest activity. But the present circumstances have created a new level or risk, including the risk of the unexpected/ spontaneous/ concentrated protest, including protest which relies on the element of surprise in order to achieve its disruptive effect, and for which C1 has given no consent.

Real and imminent risk

43. The explicit announcement of a campaign targeting airports, combined with the recent protest action at airports in/near London and the repeated statements of intent from JSO, put beyond doubt the existence of a real and imminent risk to Airports. This is explained further above.

Alternative remedies

44. Byelaws, the Criminal Justice and Public Order Act 1994 and the Public Order Act 2023: *Wolverhampton* envisages that the Court will consider these specifically, with a view to examining whether they are an adequate alternative remedy [¶¶172, 216]. Wortley 1 at ¶¶95 to 101 [213] explains that criminal sanctions are ineffective and indeed breach of the general law leading to arrest seems to be one of the objectives of some protesters. The evidence also shows that JSO's campaign has been commenced in contemplation of a large number of arrests and that when such arrests occur – as they did on 20 and 27 June 2024 – the campaign continued undeterred: the arrests are perhaps seen as symbolic victories, looking at JSO's most recent statement on the matter.

45. C1 has attempted to regulate the safe operation of the Airports by means of byelaws, in discharge of the duties imposed by other regulations and implicit also in the very nature of the power for airport operators to make byelaws.

46. But campaigners have avowed the intention to disregard the general criminal law. The specific offences created by infringements of the Byelaws do not serve to protect further C1's rights —

they were ignored at other airports — and, most critically, these do not protect the rights and safety of others using and occupying the Airports. The possible enforcement of the Byelaws and the readiness of airport staff and police to apprehend protesters and put in place contingency plans can only serve as relatively trivial, punishment after the conduct has occurred rather than prevention of, possibly very considerable, harm. It is too soon to tell whether the recent convictions of Roger Hallam and others will have a deterrent effect but early indications are not promising.

47. By contrast, the efficacy of the Court's intervention has been admitted by JSO: injunctions make it "impossible" to conduct protest at protected sites: Wortley 1 at ¶57 [203]. Protests due to have taken place at City Airport on 27/7/24 were relocated after the grant of the injunction in that case; and another protest there on 31/7/24 took place within the limits of what remained achievable under the terms of the injunctions: Wortley 1 ¶¶78 and 79 [210].

48. Damages: damages could not be an adequate remedy for any injury suffered by Cs where there is no injunction. Cs have no reason for confidence that any individual who commits any tort would have the means to provide any financial remedy. But that consideration, though sufficient by itself, is of course dwarfed by the larger points about the particular threats in the present case: not only the threat of disruption which might be literally incalculable in its effects but also the safety implications of protests in airports.

Balance of rights & proportionality

49. The Court must consider, "in the round" whether appropriate weight has been given to Ds' qualified rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the Convention. In protest cases, Articles 10 and 11 are linked. The right to freedom of assembly is recognised as a core tenet of a democracy. There exist Strasbourg decisions where protest which disrupted the activity of another party has been held to fall within Articles 10 and 11. But Articles 10 and 11 do not bestow any "freedom of forum", and do not include any ancillary right to trespass on private property: *Ineos Upstream v PU* [2019] 4 WLR 100 per Longmore LJ at ¶36; *DPP v. Cuciurean* [2022] QB 888 at per Lord Burnett at ¶¶45–46:

> "[i]t 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."

Full and frank disclosure.

50. The evidence explains in painstaking detail the various title etc nuances which might be relied on by Ds to deny that, or sow doubt about whether, Cs can rely on trespass in relation to the whole extent of the red line areas. That has all been covered above and explains why Cs have dealt separately (below) with areas where trespass is not, or might not, be available.

51. It is also appropriate to draw the following points to the Court's attention, being points occurring

to Cs which might be raised by Ds against the grant of the application:

52. Firstly, protesters perceive demand for and use of fossil fuels in the UK to be seriously harmful from the environmental and economic points of view and they are committed to ameliorating climate change and changing government policy. The sincerity of the protesters' views, and the fact that many agree with their aims (if not necessarily their means) were recognised in both *Zeigler* and *City* of *London Corpn v. Samede* [2012] PTSR 1624 as potentially relevant factors in the assessment of the proportionality of the interference with their Article 10 and 11 rights. But clearly this does not arise as a weighty factor in the case of trespass now being considered, or in relation to the limited highway involved.

53. Secondly, there are other methods available to protect the Airports apart from the grant of an injunction, and the police themselves are intervening. The main available measures have been mentioned in the Particulars of Claim and witness evidence referred to above (Byelaws, aggravated trespass, interference with key national infrastructure). However: events at London Stansted and Gatwick and the campaigners' own pronouncements have demonstrated that the general law is ineffective.

Just and convenient

54. In the round, therefore, it is a case where it would be just and convenient to grant an injunction in respect of this element of the application.

(2) Compelling need: necessary restriction on otherwise lawful activity and/or nuisance: Third Party Areas, the Landing Lights and BHX areas

55. Substantially the same submissions as above apply in relation to the Third Party Areas, except that C1 does not rely directly on trespass as a different cause of action in relation to these areas.

56. Although C1 does not seek to rely directly on trespass in respect of the Third Party Areas, nevertheless in order for relief over C1's retained land (ie, the land over which they can maintain an action in trespass) to be fully effective, it is necessary and proportionate to injunct entry by protesters onto the Third Party Areas, too — even if this would otherwise be lawful as between Cs and Ds (*Wolverhampton* ¶222 and *Cuadrilla Bowland Ltd v. Persons Unknown* [2020] 4 WLR 29 at ¶50):

(1) A person who has obtained access to any of the Third Party Areas could easily move between that area and an area over which Cs do have an immediate right of possession or control. So, protest in a Third Party Area could easily 'spill over' into C1's land.

(2) Additionally, although there are some minor exceptions, for the most part, C1 controls the perimeter of BHX and the access routes to the Third Party Areas.

(3) Further or alternatively, any protest occurring on the Third Party Areas (or any part of them) threatens to constitute private nuisance, being activity which would interfere

substantially with C1's ordinary use and enjoyment of their land: Clerk & Lindsell on Torts, 24th edn at ¶¶19-08-10 and 19-16.

57. The question of who is entitled to possession or control of the land on which the Landing Lights are situate, and in respect of the areas referred to on BHX above, is not something the Court needs to grapple with, because either they are on land to which C1 can maintain a claim in trespass or they constitute a specific example of Third Party Areas. To expand on that further, one of these analyses is right, and either is sufficient:

(1) The Landing Lights, or other BHX areas, are situate on land in respect of which C1 may have an interest, for example, by adverse possession thereof. The precise nature of C1's interest is immaterial, because it is sufficient for C1's claim in trespass that C1 has a better right than Ds, who would be mere trespassers: *Manchester Airport plc v. Dutton* [2000] QB 133 at 150; or

(2) The Landing Lights, or other BHX areas, are situate on land in respect of which C1 has no interest or right. In those circumstances, the points above in relation to the Third Party Areas, apply equally. The Landing Lights are adjacent to the main operational area at the airport and/or integral to the operation of the flight schedule, such that there is a compelling need for an injunction in respect of the Landing Lights for C1's relief to be fully effective and/or to vindicate its cause of action in private nuisance. The same goes for the BHX areas referred to above.

58. So, again, there is clearly a strong probability on the detailed evidence of the tortious conduct which will cause real harm. Once again, there is no question of the Court needing to carry out an assessment of the proportionality of the relief sought because C1 seeks to restrain activity which would occur on private land.

(3) Compelling need: nuisance: highways

59. The issues presented by public highways arise only in respect of LJLA.

Strong probability of harm

60. In relation to the highways, the threatened conduct would likely constitute:

(1) public nuisance, in the form of obstruction of the highways at LJLA occasioning particular damage to C2: *Ineos Upstream v. Persons Unknown* [2017] EWHC 2945 at ¶44-46;

(2) private nuisance, in the form of unlawful interference with the right of access to C2's land (by them or the licensees) via the highways: *Cuadrilla* at ¶13;

(3) private nuisance by activity on the highway which would substantially inference with C1's ordinary use and enjoyment of its land.

61. In those circumstances, there is a strong probability of the tortious conduct which would cause harm.

Balance of rights & proportionality

62. Cs accept that not all protest on the public highway is unlawful, or constitutes either a trespass (actionable by the highway owner) or a nuisance, even if it results in some disruption. However, in the present case, such conduct would in fact be unlawful, in view of the LJLA Byelaws, byelaws 3.18.

63. In those circumstances, it is not necessary for the Court to consider the questions in *DPP v. Ziegler*: unusually, despite the fact that the public has rights over the highway, the right of disruptive protest has already been removed. Consequently, to the degree to which the injunctions sought might, in any other case, interfere at all with any individual's Article 10 & 11 rights, any such interference does not arise in the instant case, and does not require the Court to modify its approach to the threatened interference with C1's rights.

64. However, applying the *Ziegler* guidance, it is clear where the balance would fall to be struck, even apart from the Byelaws having already made disruptive protest unlawful on the highways. "Deliberately obstructing traffic or seriously disrupting the activities of others is not at the core of these Convention Rights": *DPP v. Cuciurean* [2022] EWHC 736 at ¶36.

(4) Procedure

65. Addressing the requirements identified in Canada Goose, which were referred to with approval in *Valero*:

(1) Cs are currently unable to name any individual, save for those involved with the Stansted, Heathrow and Gatwick protests. As they are in the hands of the criminal courts, Cs take the view that, absent evidence that they are a fresh cause for concern, it would be oppressive to join them and seek relief against them.

(2) It is possible to give effective notice to the category of persons unknown (this is addressed further below).

(3) Ds might argue against "the purpose" of their presence at the airport being used as a descriptor, rather than their conduct upon it. But this approach has now been sanctioned by the Court on multiple occasions and is justified in the present case:

(a) The approach finds support in the BHX Byelaws which, by byelaw 3.27, prohibit entry to the airport save for a bona fide purpose and prohibit persons from remaining once that purpose has been discharged. Accordingly, the civil injunction proposed would mirror the criminal law.

(b) That provision is not found in the BRS Byelaws and the LJLA Byelaws, but the former contains a prohibition to "enter the Airport, except for a bona fide

purpose" and both provide for a requirement for persons to correctly state the purpose of their being on the Airport to a constable on request.

(c) As explained in Barton 1 ¶16 [82], the public has consent to enter the Airports for the purpose of travel or related purposes. Cs wish to describe those people who come to the Airports otherwise than for those purposes, rather than the public at large (for example, the innocent person who seeks to travel wearing a JSO tee shirt, whose "purpose" at the airport would not be, or include, "protest"), or persons merely passing through.

(4) Cs are also concerned not to draw the lines too narrowly. Cs note the difference in approach that was taken to describing the defendants in *Heathrow Airport Limited v Persons Unknown*, unreported but a copy of the order and note of hearing before Knowles J on 9 July 2024 are at [copies of which can be provided at the hearing]. Cs appreciate that the drafting of Knowles J's order of 9 July 2024 overcomes the problem in some of the older orders (which limit the description of the "Persons Unknown" by reference to named campaigns). But Cs have the following concerns about that basic method of naming the "Persons Unknown":

(a) the wording is conventional, having been lifted in large part from injunctions ordered historically to deal with completely different factual situations and, sometimes, un-reflectingly applied to new ones. That is not what the Supreme Court expects at this stage in the jurisprudence;

(b) it would not capture the lone protester or group of protesters who disavow a "campaign".

(c) Cs' proposed language is straightforward and not (foreseeably) open to misinterpretation or loophole-finding. The Supreme Court's guidance in *Wolverhampton* at ¶221 was that the defendants should be identified by reference to conduct prior to what would be a breach but, if necessary, could be identified by reference to intention. This is a case where it is necessary to do so.

(d) Notably, although the form of words somewhat masks this, in truth the conventional "in connection with" formula also involves an inquiry into subjective "intentions". As between the older formulation and the newer "purpose" formulation, the newer is clearer.

66. In relation to the prohibited acts: Cs propose solely to prevent entering, remaining and occupying the Airports. This mirrors the approach taken in the Heathrow case, although it diverges from the orders in *Manchester Airport plc and ors v PU* granted by Her Honour Judge Coe K.C. [694], in which there was a lengthier list of prohibited acts. Either approach might be justified; but, any further prohibited activity could only be undertaken by a person if they first breached the terms of the order by entering onto the prohibited land.

67. In relation to Cs' land on which Ds would be trespass, such an order does not prohibit any conduct that might conceivably be lawful (because Cs alone have the right to control the terms of any licence on the part of the public to enter their land). In relation to protest on the Third Party Areas and the highways, the order would only capture entry onto that land by a person which was done for the purposes of protesting on the land. There is a theoretical level of lawful protest which would not amount to nuisance and would not breach the Byelaws: but since this would be almost entirely passive and ineffectual, it is hardly likely to materialise; and, above all, there is no way of predicting when a "peaceful" protest might morph into a disruptive one. The wording suggested by Cs respects the *Wolverhampton* ¶222 guidance about prohibiting otherwise lawful conduct no further than proportionate to vindicate Cs' rights, in that any prohibition of "innocent" conduct is minimal, incidental and no more than strictly necessary.

Geographical & temporal limits

68. Cs do not in these proceedings assert that they are legally entitled to possession and control of the whole of the land outlined in red in Plans 1, 2 and 3, because of the Third Party Areas / landing lights / highways / BHX areas (as defined above). But, for the reasons set out above they seek relief in respect of the entirety of the land outlined in red on those plans.

69. These additional considerations also support avoiding making any distinction between different areas of land within each airport:

70. First: any injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do:

    (1) In large part, the red line boundary on the Plans follows the physical boundary features of the operational limits of the Airports. There are, some, limited exceptions, but, on the whole, the identification of the land to which the injunctions relate is clearly identifiable by features on the ground and on which the Orders and warning notices can be affixed.

    (2) It may be actively misleading to anyone reading an order if there were areas carved out within the Airports as it might create the impression that, were they to get to any of the Third Party Areas, they would have positive permission / sanction to carry out their protests on those parts, when, in fact, to do so would constitute a trespass.

    (3) Thus, Cs' approach ensures there can be no realistic doubt in the mind of any person whether or not they are in an area which is subject to the injunctions.

71. Second: it is important that protesters are not able to use any "carved out areas" to circumvent the orders, i.e., by stating that their purpose is to protest only in the Third Party Areas, therefore complicating the question of whether they fall within the class of "newcomers".

72. Third: C1, C2 and C3 are the persons with responsibility for the administration and management of the airport as a whole — hence their byelaw making powers.

73. To this end, the definitions of the subject to the injunction within the proposed draft order have been drafted so as to enable anyone reading the draft Orders to identify (by means of a red line on the plan) the general location of the boundaries of the protected site.

74. Cs seek Orders with review periods of 12 months. 12 months is what is reasonably necessary to protect Cs' legal rights in view of the carefully planned and now well-funded campaign planned by JSO.

Advertisement of the application

75. The application is necessarily without notice in view of the respondents being "Persons Unknown". But it is also a case where any advertisement, of the kind mentioned by the Supreme Court in Wolverhampton at ¶226, risks "tipping off" Ds as to what might happen at a hearing of the application, which might lead to them taking some of the action which the injunctions seek to prevent. The evidence supporting this claim necessarily exposes some of Cs' vulnerabilities and shows that (and how) it is possible for protesters to trespass, cause a nuisance on land and set up these protests on short notice.

Service & s. 12 Human Rights Act 1998

76. What is required in light of *Wolverhampton* is a method of notification: ¶167(ii) and ¶230 – 231. It is a moot point whether the Supreme Court in Wolverhampton was identifying a distinction between "service" and "notification" with any intention to change the practice which has previously been established. In some of the orders made to date, following conventional practice, the Courts have ordered "alternative service" — though of course without depriving a newcomer of any defence that he or she might be able to advance if faced with a committal application, as to whether he or she was sufficiently on notice of the order. However, sensitivity about this point has led to the emergence of a different technique in some recent orders: of dispensing with service and merely indicating what measures the Court requires the Claimant to take by way of giving notice of the order to Persons Unknown. This might perhaps be something of a difference without a distinction. Cs are not wedded to one approach rather than the other but they will suggest that the Court follows the second approach, as did Ritchie J in the recent Drax power station case.

77. Subject to that: the reasons for seeking the orders proposed, are set out in Wortley 1 at ¶102 – 105 [215] and are not repeated here.

78. Consistent with Cs' duty of full and frank disclosure, in addition to the various matters already addressed, Cs would like to make the Court aware of the following:

    (1) First, Ds would no doubt wish to emphasise their strongly and genuinely held views about the negative aspects of fossil fuels and what they perceive to be the necessity of seeking to prevent it.

    (2) Second, since Ds' Convention right to freedom of expression is engaged, and since Ds

are (by definition) neither present nor represented, by virtue of s.12 of the HRA 1998 before making the order the Court must be satisfied either that (i) Cs have taken all practicable steps to notify the respondents, or that (ii) there are compelling reasons why the respondents should not be notified. As to that:

(a) Cs have proceeded on the basis that s12 applies and what they propose to do by way of service is – they submit – all that is "practicable." Cs note that "practicable" is a less stringent test than "possible".

(b) Cs struggle to think of additional steps beyond those proposed, which are realistically likely to draw these proceedings to a materially larger pool of interested respondents.

(c) Moreover, unless and until someone is named as a defendant, or knowingly breaches the order, there is strictly no defendant to the proceedings and, by parity of reasoning, no available respondent to Cs' application.

(3) In the circumstances, Cs submits that both (i) and (ii) are satisfied.

79. Clearly the issue of how alternative service / notification might be effected is one upon which there can be different approaches. If present or represented, Ds could have made submissions to the effect that further and additional measures could have been taken. It might be said on behalf of Ds (for example) that the existence of the injunction could be advertised in local or national press. Whilst it is right to draw these potential arguments to the attention of the Court in the absence of any representation for Ds, Cs submit that there is no good reason to consider that the steps already proposed are in any way inadequate, or that addition of any further measure would have any significant prospect of drawing the existence of the Order to the attention of someone who would not have been made aware of its existence by the measures actually undertaken.

Cross-undertaking.

80. It is difficult to envisage how the making of the injunction could cause any injury to any person at all. Even theoretically, any interference with Convention rights is necessarily predicated on Ds committing acts which would be unlawful. Therefore, it is hard to see how any respondent could suffer an injury which is incapable of being compensated adequately by Cs' cross-undertaking to pay compensation.

81. Notwithstanding that, Cs are prepared to offer cross-undertakings to the Court; as per Barton 1 at ¶53 [95]; Irving 1 at ¶42 [129]; and Gamble 1 at ¶43 [165].

(5) The draft order

82. Cs propose to go through the draft Order for each of the Airports at the hearing. At this stage, these characteristics of the drafts are noted:

83. The Orders are clearly defined by reference to proposed conduct and which is expressed in

everyday terms.

84. The Orders provide for the ability and procedure for Ds, or any other person affected, to apply to the Court to vary or discharge the order, and to be joined to the proceedings on "generous terms".

85. Ds may argue that, if the Court is minded to grant an injunction, it should order a return date in (say) two weeks time, as if this were a conventional form of without notice injunction application. That is a possibility — and it is the practice sometimes adopted in the past. However, *Wolverhampton* has made clear that claims of this kind are sui generis and that their distinctive character is that they are all "without notice", whether interim or final. In view of the clarification provided by *Wolverhampton*, the conventional precaution of a return date would be an unnecessary use of judicial resources, as well as adding needlessly to the costs. The putative Defendants, and anyone else concerned about the Orders, are fully protected by the liberty to apply, which may be exercised at any time prior to breach.

86. There is no provision in the Orders for notification of third parties, as there was in the *Manchester Airport* case [694]. This is because Cs have put their major tenants on notice of the proceedings already (Wortley 1 at ¶¶32 to 37 [195]). In addition, any person has a right to apply to vary or set aside the Orders and the methods of notification used for the third parties were materially identical to those proposed for alternative service of Ds, such that appropriate steps to draw the Orders to the attention of the third parties are already being taken.

87. The draft Orders also provide Cs with permission to apply to extend or vary the Order. Cs will of course keep the Orders and the claim under review.

88. The Orders make it clear that no acknowledgement of service, admission or defence is required by any party in advance of the return date hearing. Costs are reserved.

89. The Orders provide for periodic review.

90. Subject to any modifications the Court considers appropriate, Cs respectfully ask that the Court make the Orders in the terms sought.

TIMOTHY MORSHEAD, KC

Tmorshead@landmarkchambers.co.uk

PETER SIBLEY

Psibley@landmarkchambers.co.uk

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Landmark Chambers
180 Fleet Street
London EC4A 2HG