

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

B E T W E E N:-

GATWICK AIRPORT LIMITED

Claimant

-and-

PERSONS UNKNOWN WHOSE PURPOSE IS OR INCLUDES PROTESTING ABOUT FOSSIL FUELS OR THE ENVIRONMENT WHO ENTER OR REMAIN ON THE PREMISES AT LONDON GATWICK AIRPORT SHOWN OUTLINED IN YELLOW AND SHADED YELLOW ON PLAN 1 ATTACHED TO THE CLAIM FORM (WHETHER IN CONNECTION WITH THE JUST STOP OIL CAMPAIGN OR EXTINCTION REBELLION CAMPAIGN OR OTHERWISE)

Defendants

**NOTE OF "WITHOUT NOTICE" HEARING BEFORE
THE HONOURABLE MR JUSTICE RITCHIE
LISTED FOR 19 JULY 2024 AT 12:00**

The hearing commenced at 12pm. Appearing for the Claimant, Tim Morshead KC ("**TM**") and Evie Barden ("**EB**") before Mr Justice Ritchie ("**J**").

1. TM expressed his thanks to J for hearing the application on short notice.
2. TM referred to paragraph 43 of the Witness Statement of Neil Harvey [HB-51] and read out the email of 15 July 2024 [HB-147] in which the Metropolitan Police alerted the Claimant to the potential protest in London on Saturday 27 July.
3. TM explained that on Wednesday 17 July, it became apprehended by the Claimant that in view of proceedings, other airports within the jurisdiction have obtained injunctions and

Gatwick is now the last major airport not to be protected by an injunction. TM explained that it was felt to be better to come before the court to ask on an urgent basis that that be possible as the court can see how dynamic protests can be and that there may be a scan to see which airports are not protected and specifically target those.

4. TM explained that if J is content that that is sufficient justification for the case to be heard today, he invites his Lordship to proceed. He noted that the Claimant comes on an urgent basis to set aside its resources and for the court to consider whether that is appropriate or not. He noted the disruption that can occur at airports and submitted that the claim is appropriate given Gatwick is singularly exposed.
5. J noted that on the front page of the national newspapers, there is a report that the Extinction Rebellion ("XR") and Just Stop Oil ("JSO") founder has been arrested and sentenced for five years.
6. TM referred to the Second Witness Statement of Julian Pollock which mentions that and submitted it is certainly relevant regarding notification, but separate from that it shows that the whole topic is at the forefront of the news agenda at the moment. The risk we would see associated with this is that publicity attracted to the protest by that conviction may stimulate activity. It all proves the negative point that this is not a situation where the campaign has quietened down.
7. J asked whether the acolytes may be unhappy.
8. TM stated that he could not do more than speculate on that but that it is one of the appropriate factors for J to bear in mind.
9. TM further referred to the Third Witness Statement of Julian Pollock and invited the court's clerk to hand up a clip of documents. He explained that this deals with some of the points of intelligence received by the Claimant in the past 24 hours. Paragraph 5 of the statement is mindful of the court's approach in a recent matter and the Claimant was able to provide an email address for protestors to reach out to ask if there is a space that can be set aside for protest.
10. The other point raised by TM was to tidy up confusion regarding the highways. TM explained that J may remember that this online software is a bit of a blessing and a curse in that it has suggested that there is a privately maintained highway at the airport. What the witness Mr Pollock has been able to do, is explain with greater confidence that they are not maintained at public expense. They are private roads, the electronic source is therefore wrong in this regard. This is at paragraph 6 of the Third Witness Statement of Mr Pollock.
11. Paragraph 7 however, in reference to the Plan, shows an odd blip in one corner which seems to suggest that the Claimant is asking for relief over some highways. The Claimant is limiting trespass so Mr Pollock had sought to remove this.

12. In paragraph 8, looking closely at the red edging, in some parts it bleeds onto the highways. TM explained that there is nothing that could be done about that, so the Claimant is seeking to clarify the position in the Order (Plan 2) with this plan.
13. J asked whether by highways TM meant highways maintainable at public expense.
14. TM confirmed that that is correct, where the public has a right of access, but that the Claimant was not asking for the Order to be granted over public highways. If his Lordship was content that there is sufficient urgency for the matter, the application the Claimant makes is in the form of the Order which the Claimant has handed up.
15. TM explained that the application being sought is in the form of the Heathrow application, which had been adapted in light of the recent matter heard the previous day. This was to include the description of defendants, the provision of an address for people to contact if they want to set aside an area for peaceful protest, review having the effect that the Order should cease on anniversaries if no review takes place, clarification about service including notification of the main individuals, but no longer Mr Hallam on the basis that he is now in prison as the Claimant understands.
16. J stated that he would have to think about that as it is easier to communicate now and there is no suggestion yet that that the reasonable sentence will prevent him from wishing his campaign should continue through other supporters. J explained that he thinks it is now important that although J did hear the application yesterday in which instructions were given by other solicitors and although an order for each airport was made then, and he is grateful for those suggested amendments, in the transcript of this hearing, it is important that we go through the key evidences and steps in this case.
17. TM confirmed that his Lordship is content to proceed to see whether it is appropriate to grant the injunction at the end of the submissions.
18. J said yes and will give his reasons wrapped up at the end of the submissions.

Without notice application

19. Pursuant to CPR 25.3, TM stated the Claimant's reasons for having applied without notice in the strict sense. The Claimant had deliberately not given notice because of tipping off fears. Evidence of this is at para 21 of Mr Pollock's statement at HB-157.
20. TM asked for permission to amend and to improve the description of the Defendants and the Plan attached to the Particulars of Claim. He explained that the principle respects in which the plan has changed is that the Claimant realises that there is no need for the blue shading which shows the leaseholding. This is of no interest of the protesters and instead causes more confusion.
21. The other bit is to tidy up the yellow spur on the plan and finally to introduce additional information regarding this.

22. TM explained that he had introduced to the court the Witness Statement of Mr Pollock which has been produced to the court today. That is only new material that is introduced which is not in the bundle.
23. So far as concerns title, TM referred to paragraphs 6-12 at HB-150 – HB-151. The witness, Mr Pollock explains that the title to this estate is made up of a number of different freehold titles out of which a large number of long leasehold titles were created in favour of a group company which in turn then granted leases back. The corporate reasons are not a matter of relevance. The legal effect is that despite that, the Claimant has possession or control over the whole of Gatwick, subject to third party interests. This expression is used to describe areas within Gatwick which would be leased out or licensed out to third parties including cargo areas, or retail areas within the terminals.
24. Unlike in some other cases, the Gatwick estate is so complicated and due to time pressure, it is not possible to show the court exactly what the tapestry looks like, but these are described at a high level by Mr Pollock in his statement. These all sit within the perimeter over which the Claimant has control.
25. TM put forward that there are two categories of case which the court should have in mind:
- a. retained land (where there is an unencumbered right to possession and control over which the Claimant can claim trespass); and
 - b. third party areas over which the Claimant cannot directly claim trespass but which the court is invited to say that in order that the Claimant might have relief of retained land, it is proportionate and necessary for the injunction to include such third party areas, and additionally because of the probability that protest taking place within a third party area would cause a nuisance to the Claimant's retained land.
26. TM acknowledged that within that, there is a residual possibility of there being such peaceful protest on third party land that the injunction would capture it. The question is whether, that remote risk justifies a level of complexity that would run.
27. J noted that he had not seen evidence of communications with the third parties.
28. TM said no and noted that this is one of those cases where no notice can be given. J may wish, as in the Manchester case, that there be a requirement on the Claimant for a notification of third parties. This would be separate to the service of notices in the order.
29. J noted that he would include this in his list of issues – notification of third parties interested in the scope of the injunction.

Gatwick Plans and Geographical Issues

30. J asked to be taken through the areas on the plan which are covered by the red circumference line that are either a) public roads or b) third party.

31. TM explained that as to the first question, no part of the order as drafted will cover public road.
32. J commented that Plan 1 and the orange shading therein and the roads therein are maintained at private expense and hence likely to be in the possession of the Claimant.
33. TM notes that this is more than likely, and that he believed the roads to be what Real Estate lawyers refer to as estate roads or private roads.
34. J remarked that therefore the main roads going up the main roundabout at the North Terminal on Plan 1 are public, but it appears, and the Claimant would need to assist, that the main road into the South Terminal roundabout seems to be not public.
35. TM confirmed that it is, to which J asked whether there is a plan which zooms in.
36. TM explained that this may be one of the reasons Plan 2 is needed in the order. This is an example of bleeding which is with Plan 2 of the draft order TM handed out.
37. J noted that the road going to the North Terminal is public in Plan 1, but it is going to be rather difficult to know what is meant there.
38. TM suggested that that be coloured with pink using a pen.
39. J remarked that it needs to be clear what the public highways are as that is the area most likely to be the subject of dispute on entry to Gatwick by train or car if protesters stood on public highway running through the South Terminal and it was unclear whether that was covered by the injunction. It may be that the Claimant needs a zoom in on the South Terminal of some sort as it is not helpful to protestors who want to protest on public terminal. It is clear in relation to the North Terminal but unclear in relation to the South Terminal.
40. TM responded that the Claimant will endeavour to improve that.
41. J then asked for help on the station, noting that the plan shows the station is within the ownership of the Claimant and asking if this was the case.
42. TM commented that the written evidence shows this to be a third party carveout.
43. J went on explain that if one gets off a public train onto the Gatwick south platform, this plan doesn't make it clear and suggests that as soon as you get off the train you're caught by an injunction and that the Claimant would need to ask Southern Rail whether they can be caught by the injunction.
44. TM noted that Southern Rail had not been asked in the same way as with other third parties.
45. J stated that he understands that with hangars and shops, but from Plan 1 it looks like the station is enclosed.
46. TM responded that his Lordship had identified a point of intricacy. There may be layers here at the station.

47. J reiterated that it needs to be clear where the injunction starts and ends. Is it when you go through the ticket areas into the station or when you leave the part of the station which takes you into the South Terminal. Where is the boundary? That's going to need to be made exactly clear.
48. TM responded that that would need to be parked while a discussion is had between those in the court and those with the technology as to whether that railway carveout can be practically shown on a plan.
49. J described the entry way into Gatwick, coming from the escalator onto a raised concourse and then ticket barriers and ticketing area with machines leading either into the overground monorail and after a few paces one is in the terminal. J noted that it would be possible for those instructing TM to indicate very clearly that if it is a protest in the railway station it is Southern Rail's issue and if it is Gatwick it is caught by the injunction.
50. TM responded that from that description it sounds that it should be capable to show this.
51. J further stated that from judicial knowledge of the airport, he is reasonably comfortable that he has a 3D understanding of how the phraseology should be drafted by TM's instructing solicitors with instructions from Gatwick.
52. J then asked in relation to the monorail whether TM had any instruction on whether that is included in the Claimant's ownership.
53. TM responded that he had understood that but would better check.
54. J commented that he is going to put notification of third parties under the geographical heading and his next point would be the British Rail Station and GA South delineation.
55. TM concluded that subject to any other questions, that sweeps up the geographical issue.

Compelling Need

56. TM then discussed the threat and compelling need noting the general history of environmental protest. The Witness Statement of Julian Pollock refers to the general history of environmental protests with a concentration of events in 2022 onwards when oil terminals became the focus of attention at paragraphs 13-14 [HB 152-155]. Further reference was made to a tweet that JSO made in September 2023 in which JSO acknowledged that it was impossible to protest at sites with an injunction. TM stated that the Claimant relies heavily on this, noting it is still well understood that it is special protection. It is a firewall that is holding out.
57. TM drew attention to the Witness Statement of Mr Harvey at HB-45 – HB-52 where Mr Harvey gives evidence about the threat as it has become more specific, at paragraphs 19-44. Paragraph 41 describes evidence at Gatwick where on 25 June 2024 the police

intercepted people carrying bandages. The police infer that those bandages were intended to cause harm, block drains or for ingestion in aeroplane engines.

58. The other matter called to the court's attention was the email shown the court early on justifying the urgency of the application at para 43 of Mr Harvey's Witness Statement. The police have been involved and draw attention to the injunction at City Airport being the thing which has caused the protestors to find another spot for demonstration.
59. J referred to the report in the Daily Mail of a JSO statement and set out in Mr Harvey's email. J noted the Metropolitan police email TM read out which includes the assertion that protests are likely on the 27th of July, now only 8 days away.
60. TM commented that it is within the reasons for making the application urgently. The threat identified is that the protests will be coming into London. The problem is the Claimant does not know how that is going to materialise as it relates to airports. TM cannot say that it is evidence of a specific threat to Gatwick.
61. J commented that this depends on how that interlinks with the threat that Stanstead was only a prelude. The date on that threat put chronologically by Mr Harvey was between the 20th of June and 25th June.
62. TM noted that this is the Article at HB-126 by the Daily Mail on 21 June.
63. J concurred that this would make sense in the timings given.
64. TM commented that indeed the impossibility of predicting how the events exactly will unfold is one of the reasons for acting on a precautionary basis.
65. J returned to his earlier question and stated that it is part of his role to consider defences which might be put forward. Might it be said that now that the conspiracy charge has been laid against the guiding light and others and has been successfully proven in court with a conviction and quite substantial prison sentences, there is now more powerful argument that that is the appropriate route?
66. TM responded that the essential problems that are touched are unchanged. The essential question is adding anything to the general law to vindicate private rights. Evidence shows that the injunction is achieving more than private law. It shows also that protesters and that there are people willing to accept risks under general law (trial in front of a magistrate or jury) who are not willing to take the risk application in front of a judge.
67. J commented that there is evidence in the call to arms on the JSO website in the Witness Statement that one must be prepared to risk arrest.
68. TM responded that there is recognition that an injunction is something else, as there should be.
69. J noted that risk of arrest is part of recruitment criteria.

70. TM agreed that far from being a deterrent, it is a trophy. What is new is the length of sentence imposed on conspirators. It is not yet known what the deterrent effect of that 5 year sentence will be. At this moment the Claimant cannot determine how far the deterrent effect of that sentence will go. It is not possible to say, so the choice of the court is between taking the risk of inflicting on Gatwick the risk that it will not be a deterrent working on precautionary principle and the evidence that shows sufficiently that the injunction is likely to do more than what the ordinary law can. Bearing in mind, any order will be subject to review. If the recent sentences have the effect of collapsing the protest movement, that will materialise if not in a year then in 2 years' time. It is a point of review.
71. J commented that for instance in discharging the HS2 injunction, that was track wide in relation to that part of the track running from the East Midlands (the area that had been withdrawn), and the justification was the rationale of the rail no longer being built. Were the protests to cease or reduce substantially, that would come into review.
72. TM commented that they do not have the evidence of that high risk assessment as a factor against the civil rights. It is not a weighty enough factor.
73. Additionally, TM referred to JSO's menacing email on 16 July at paragraph 44 of Mr Harvey's statement which is signed by JSO rather than any named individual.
74. J flagged the "campaign of non-cooperation at airports" referring to JSO's letter to the Prime Minister.
75. TM read out from the same letter JSO's words that "we remain in civil resistance and are preparing to take action, but that, as ever, we remain open to dialogue." That is not language which is directly specific to airports.
76. J referred to the preceding paragraph referencing airports and commented that the threat is not limited to but is specific to airports.
77. TM agreed that it is not limited to airports but there is no evidence of the campaign showing signs of abating. This same campaign currently focuses on airports, and is moving dynamically to airports and sites not protected by injunction which shows a real, imminent risk of harm.
78. In the event the Claimant is not able to satisfy the court that that is appropriate, Mr Harvey gives evidence of other airports in large measure, spelling out the obvious complex environments involving large members of the public whose presence is intrinsic to the whole operation. TM submitted that Gatwick is larger than many – with 41m in 2023 and 150,000 a day. The sheer complexity makes airports very vulnerable places where things happening out of the ordinary can be quickly escalated or misunderstood. Contrast was drawn between airports and other kinds of property where injunctions have been granted such as power

stations which are critical and dangerous, and oil terminals where generally no member of the public enters. Here the risk is that much enlarged by the complexity of what is going on.

79. The witness Mr Harvey also talks about particular security implications that have to be borne in mind in relation to airports. Evidence is given of the concern giving heightened security measures of mistakes being made with either a protest being misinterpreted as terrorist activity or actual terrorist activity using protest as a mask. As this evidence is coming from the person within the organisation, versed with the security regime, the Claimant invited the court to give this weight. It is not just speculative fear mongering and what his Lordship could infer is that the witness has a level of trust with the police to have received this information from them and be told those things.
80. Mr Harvey in his statement further explains how even relatively minor disruptions at airports can have ripple effects which become enlarged very rapidly. Reference is also made to the danger at airports which is too obvious. Any penetration of the public onto the open is very acute risk. Evidence of the specific risks to aircrafts are mentioned at paragraph 47 of the witness statement. There is therefore a very imminent risk of harm that is easy to identify and spell out and harm that has the potential to be irretrievable in the sense of damage to property.
81. TM further explained that byelaws have the effect of prohibiting disruptive protests. They also empower us to remove named persons. The Claimant's submission is that all the airports have byelaws, but despite that, they have not been regarded by protesters and are not perceived to deter protest. They are perceived as part of the general law, like an injunction. It was noted that being relatively modest the maximum fine is £2500.
82. J remarked that it will give an exemplary injunction, however the Claimant will need to revisit the plans showing the boundary at the station.

Judgment

83. This is an application issued on 18 July 2024, by Gatwick Airport Limited for an injunction against Persons Unknown to prevent them from entering or occupying the airport in connection with JSO or other environmental groups to protest about fossil fuels or other environmental impact.
84. 1 hour was not long enough. I am grateful to Mr Morshead and Evie Barden and read the digital bundle alongside authorities bundle. I have also read a second and third witness statement from Julian Pollock.
85. The Claim form was issued on 18 July and in that Gatwick Airport sought to restrain unknown persons from entering onto their premises.
86. The Claimant set out their ownership or possession of various parcels of land. The airport handles approximately 44 million passengers per annum and £1bn of revenue per annum.

Some of the parcels of land are held under third party leases. They include aircraft hangers and retail units. Gatwick has statutory powers to make byelaws and under these byelaws persons are not entitled to protest or obstruct the airport or display protest banners and must leave if requested. They have implied consent to attend for travel and concessions have consent to run their businesses there.

87. I have received submissions relating to the land that the Claimant possesses and third party areas so that the Order gives effective protection and is proportionate and necessary and all within the precincts of the airport. This would be reduced or undermined if protesters could pop into WH Smith to evade the effects of the injunction. The Claimant has set out main threats by protesters through JSO mainly but also through XR.
88. On 13 September 2023, JSO said injunctions made protest impossible.
89. On 9 March 2024, a journalist infiltrated a meeting of JSO and reported that they had announced a campaign of direct action in summer 2024, cutting fences, gluing, cycling and climbing onto aeroplanes.
90. Their websites have made announcements of the need for bold, unignorable action at airports. They also published a fundraising page which announced that JSO would take action at airports that would be “big” and would be the “most radical action yet”.
91. On 2 June 2024, XR protesters blocked Farnborough runway.
92. On 20 June 2024, JSO protesters accessed Stansted Airport.
93. On 27 June 2024, protesters were arrested who were planning to disrupt airports. They were arrested at Gatwick carrying suitcases of bandages. The worry was that they would use these to cause a flood or release on them on runway. A bandage that flew off the runway into a jet engine might be particularly dangerous.
94. Neil Harvey, the Head of Stable Operations at Gatwick, received a warning of potential protest and therefore proposed in the Particulars of Claim that persons unknown will trespass and protest and cause a nuisance at the airport. Gatwick airport and other large airports are complex and vulnerable. Slight disruption creates significant complications and risks, and aircraft are vulnerable. The alternative remedies, which include byelaws, in relation to key national infrastructure would not be sufficient. These are after the event and result in a modest penalty and the Public Order Act event offences after the event. Both of these are not proactive and not preventative.
95. The pleading mentioned heightened security and this state of heightened security might lead to misinterpretation. It was also pleaded that protest and demonstration could be used as a cover for terrorist.
96. There are no defences from Persons Unknown.

97. Evidence comes from Neil Harvey and three from Julian Pollock. Responsibility for risk management and counter terrorism has been set out.
98. Gatwick is the second largest in the UK and 11th in Europe with 11, 000 passengers per day. No one has permission to enter for demonstration and peaceful protests are accommodated through prior arrangement. Gatwick have never themselves sought to enforce the byelaws by criminal action but Mr Harvey set out the maximum fine permissible.
99. As for the airport's statutory obligations, these are contained within the Airports Act 1986. These include a duty to mitigate risks, risks relating to movement of vehicles, relating to objects on the tarmac, and air navigation. If unsafe conditions arise, there is statutory duty to stop flights, amongst many other duties.
100. Gatwick Airport Byelaw 3.17 bars demonstrations and protest which interfere with the proper use of Gatwick.
101. An Evening Standard article was published in which a journalist attended a meeting run by Phoebe Plummer in which she predicted and prescribed efforts which would be radical and unignorable.
102. The JSO website also stated that they would gather together teams of 10-14 willing to be arrested and note their most radical action yet. £24,000 has been raised to help fund it.
103. On 27 June 2024, 27 protestors were arrested.
104. The police knew JSO planned to disrupt airports. Gatwick considered that they needed protection and there was a real and urgent threat. Direct action was also planned for May 2024 in Munich Airport, on 22 June when protestors blocked access and 20 June 2024 when axle grinder was used at Stansted. The result of that was that 75 flights at Stansted were disrupted. On 21 June, JSO threatened this was only a prelude.
105. On 25 June 2024, protestors were arrested on arrival at Gatwick.
106. On 15 July, the Metropolitan police warned that on 27 July 2024 protestors were "coming to London" and stated to Gatwick the injunction obtained reduced likelihood of protests at London City Airport.
107. It is part of the key background that JSO wrote to the Prime Minister on 24 June making demands and requiring that they be complied with by 12 July. The threat was that if not complied with, a campaign of non-cooperation would go ahead. On 16 July, a new letter to the Prime Minister was sent, making the same demands and threats.
108. The risks identified by Mr Harvey include serious consequences of protests such as the risk to emergency services by having to climb up structures, the knock on effects on passengers, jet engines which are sensitive and hazardous and fuel could be at risk of explosion. This

could also be used as a cover for terrorist activity, and emergency services might be put at risk.

109. At London City Airport, XR climbed to the roof of the airport and members glued themselves to a plane. It was stated that there would also be financial risks as the daily operations attract around £3m of turnover.
110. In relation to the need for the injunction, Mr Harvey pointed out that various injunctions had been granted for other airports. In submissions TM pointed out further injunctions for Leeds, Newcastle and Luton granted recently and that Gatwick was a standout without protection.
111. In relation to freedom of speech, Gatwick do allow protests in the arrivals but I note current threats of surprise and chaotic action. Gatwick could self protect. However, subsequent prosecution did not prevent sufficiently to deter direct action by JSO, XR and other environmental groups.
112. As a gloss on that, Mr Morshead pointed out that there was a recruitment qualification of members who were prepared to risk arrest.
113. Turning to the Witness Statement of Mr Pollock of 18 July, this set out registered title to land and third party areas. He set out that the Claimant maintained most of the roads but was unsure and also set out history of JSO and XR protests at oil terminals, including Valero terminal at the Kingsbury Terminal in Staffordshire and the aggressive direct action, where hundreds of police resources were used in that direct action. There are others who operate out of there and the direct action of Birmingham, West Midlands and the police action involved in those direct actions, also the real danger of fire and explosion involved in those cases.
114. I wrote a judgment in one of them. For instance, a protester was tampering with a lid to the oil tanker. The risks with petro-chemicals were evidence. The actions for injunctions and then the effects of the injunctions had been worthwhile. They were deterrent. JSO communicated that this was their view because they communicated that they put them off protesting at injunction site. Highways and other airport injunctions have been granted by Knowles J and HHJ Coe KC.
115. As for Persons Unknown, the claimant asserts that they do not know who the Persons Unknown are. However the JSO website states that Roger Hallam is founder and in evidence Phoebe Plummer is named as one of the architects or promoters of the direct action disruption at airports. These two are identified in the promotion and enterprise of torts committed by direct action at the airports.
116. As part of the ex parte nature of the application, Mr Pollock justifies that on the basis that if JSO had been notified in advance by Gatwick as one of the only airports without an

injunction, that would most likely trigger the risk of opportunistic attack and that increased the danger.

117. The second witness statement of Mr Pollock set out the convictions of various JSO and the five year prison sentence on Mr Hallam.
118. Finally Mr Pollock clarified that highways within the airport were maintained at private expense and hence was satisfied that the public roads are not included within the scope of the injunction.
119. I have taken into account, when providing this judgement, the authorities in the authorities bundle put before me including *Wolverhampton, Canada Goose v Persons Unknown*, *Valero Energy v PUs*, *DPP v Cucuirean*, *Cuadrilla v Bowland*, and the relevant practitioner texts.

Factors that are necessary to be considered when granting an injunction against Persons Unknown

120. The substance of the cause of action. This includes trespass and private and public nuisance, ownership of the roads, Byelaws prohibiting protest and consent to enter only for travel purposes. In this case the substance of cause of action is valid.
121. Full and frank disclosure. I am satisfied that the Claimant through counsel has provided full and frank disclosure including efforts on roadways, and interaction on Gatwick with Southern Rail.
122. Whether there is sufficient evidence to prove the claim. The Witness Statements of Mr Harvey and Mr Pollock do, in my judgment, provide more than sufficient evidence to prove there is a, what we fear, risk of torts being committed at Gatwick as they have been committed already at Stanstead, Munich and oil terminals.
123. Whether there are realistic defences. In relation to private land there is no real defence under the Human Rights Act based on protest because it can take place on public land. However, on third party land it is trickier, on balance, taking into account paragraph 50 of the judgement of LJ Leggatt in *Cuadrilla v PUs* cited above. I consider that the scope of the injunction should cover small parcels of third party land within the airport to provide proportionate, necessary vindication for the claimant, protection of the land and business run within their own possession. The impingement on the unknown persons' right to freedom of speech is relatively small compared to the huge damage that might occur if a PU decided to run into Gatwick and hide in a third party store so they are not governed by the terms of the injunction.
124. Compelling justification for granting the ex parte and against persons unknown. I consider it so. There is a very high threat level. The letters to the Prime Minister make it clear that these protests groups are going to carry through with their threats. Airports are national infrastructure. The functions at Gatwick are complex interactions concerning millions of passengers passing through and substantial amounts of money, woven in with deeply

sensitive terrorist security issues. Adding to that the commercial damage, the freedom of family life damage to members of the public and the business damage that can be caused by chaos at Gatwick if direct action as threatened is allowed to take place is compelling justification. I do not consider that bylaws and fines of £2500 are sufficient to deter the protestors.

125. Alternative remedies of bylaws. Considering whether the 5 year prison sentence on Mr Hallam will worry colleagues or acolytes, at a later stage, that may be determinative on a review if direct action has ceased. It may lead to an upswing in direct action but we are not in a position to determine which way it will go. Recruitment criteria for these groups involves being prepared to be arrested. Damages are therefore not an adequate remedy. If such direct action were to take place, there would be thousands of claimants who will have suffered damage and disruption to their business and family lives, and very substantial damage to airport and third parties.
126. As for identifying the Persons Unknown, they should be identified by their reference, direct action at the airport to protest and by geographic boundaries. I consider that that it will be sufficiently tight for unknown persons.
127. With regard to the terms of the draft order, they should be in clear terms so that they are understandable to the lay person being with immediate effect, that the Defendants are forbidden.
128. I am satisfied that the prohibitions match the claim.
129. On the geographical issue, the British Rail station is not included from past the ticket barrier up to the threshold where the station meets the terminal. As for the roads – regarding the peripheral road and internal estate roads, the Plan adequately shows which are and are not.
130. 12 month limit on the injunction will be granted and 12 monthly review is required.
131. With regards to service, this will be by the Gatwick website, email and status on the ground. Notification to be given to Reuters of the order so they can make with that as they will.
132. Separate notification must also be given to all third parties who have not been notified.
133. The 15 factors set out in Valero are satisfied. It is appropriate to grant an injunction against JSO protestor direct action.
134. Granted permission to amend as necessary.

TM and J then reviewed the draft Order and suggested amendments and the Hearing came to a close.