

## Protecting Events and Buildings from Direct Action Protest

22 May 2023



## Meet the speakers



Michael Fry



Jonathan Welch





## 1. Introduction to injunctions, how they can help to prevent or reduce the risk of disruptive protest

- What is an injunction? An order of the court to do or not do the specified action
  - Mandatory
  - Prohibitory

Three reasons why they are such a potentially powerful tool:

- Anticipatory/precautionary basis – in response to feared future wrongdoing
- Against named defendants or against “persons unknown” who fall into a specified class, e.g. by their presence on certain land.
- Breach of injunction is very serious: contempt of court



## 1. Introduction to injunctions

### Typical applications

- Trespass of land or obstruction of access by protesters
- Gypsies/Travellers arriving on land without permission
- Unauthorised waste, fly-tipping, nuisance
- Journalism – defamation, privacy and confidentiality
- Fraud, Mareva/freezing injunctions
- Search orders
- Restraint of unlawful competition by directors and employees
- Anti-suit injunctions
- Intellectual property



## 1. Introduction to injunctions

### Basis, nature and type

1. Power: s.37 Seniors Court Act 1981; broad power - *Barking & Dagenham v Persons Unknown* [2022] EWCA Civ 13 – but awaiting outcome of Supreme Court
2. Stage of proceedings –
  - Final
  - Interim
3. Need for underlying cause of action, but see CPR 25.1(4)
4. Unless brought by a local authority under the Local Government Act 1972 – no power of arrest



## 1. Introduction to injunctions

### Legal test for grant of an injunction

See: *American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396

1. Serious question to be tried (see: *Cayne v Global Natural Resources plc* [1984] 1 All ER 225)
2. Adequacy of damages (see: *R. v Secretary of State for Transport, Ex p. Factortame Ltd (No. 2)* [1991] 1 A.C. 603; *Allen v Jambo Holdings Ltd* [1980] 1 W.L.R. 1252)
3. Balance of convenience (see: *N.W.L. Ltd v Woods* [1979] 1 W.L.R. 1294)

#### Plus:

- For a precautionary injunction: Must show strong possibility of wrongdoing occurring and causing irreparable harm that cannot be reversed or adequately compensated by damages (*London Borough of Islington v Elliott and another* [2012] EWCA Civ 56).
- Human Rights: Where injunction affects right to freedom of expression, s.12(3) of HRA 1998 applies.



## 2. Targets: potential defendants and prevention

- Named defendants and 'persons unknown'
- For 'persons unknown' guidance see:

*Canada Goose v Persons Unknown* [2020] EWCA Civ 303 at [82]:

1. Persons unknown – must be capable of identification, although not when proceedings started; must be served; includes newcomers
2. Must be defined by reference to alleged unlawful conduct
3. Must be sufficiently real and imminent risk of a tort being committed
4. Defendants subject to interim injunction must be individually named if known and identified
5. Prohibited acts must generally correspond to threatened tort
6. Terms of injunction must be sufficiently clear and precise
7. Need for clear geographical and temporal limits



## 2. Targets: potential defendants and prevention

- **What can be protected?**
- Buildings (Shard); project land (HS2), company land (petrol station forecourts), objects (M25 gantries).
- **What can be prevented?**
- Trespass, nuisance, conspiracy to cause economic harm
- **In practice what might an injunction order target?**
- Getting onto land/buildings, obstructing, digging, gluing-on, tunnelling, damaging property.



### 3. Legal Risks

- **High evidential burden:**
  - “Strong possibility”
  - “Irreparable harm”
- **Procedural and legal risks:**
  - Service and alternative service
  - Wider procedural and substantive points of law
  - Contested jurisdiction
- **Discretionary remedy**



### 3. Organisational Risks

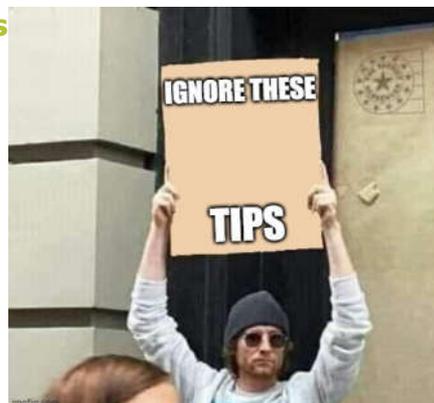
- **Not a quick solution**
  - Committal
  - Ongoing review
  - Trial
- **Resource heavy**
  - Out of hours
  - Costs
- **Press and PR**
- **Lighting Rod?**





#### 4. Tips, Thoughts and Suggestions

- Can you rely on the criminal law?
- Risk registers
- Media monitoring – NB: social media
- Preparation:
  - Evidence
  - Witnesses
  - Early engagement with counsel
- Timescales for getting an injunction
- Pre-empt, control the narrative.



#### 4. Practical Considerations

- Evidence gathering – for an injunction and then for committal
  - Liaison with the police?
  - Own resources – can be expensive
- Land ownership
  - If pleading trespass, need to know the position: check title. Are you the correct claimant if you are an event?
- Open Court – are you happy with witness evidence on, e.g. commercial matters to be public?
- Duty of Full and Frank Disclosure
- The wording of the injunction order is critical – does it do what is required? Badly worded injunctions are unenforceable.



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