



Neutral Citation Number: [2023] EWHC 402 (KB)

Case No: KB-2022-003542

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/02/2023

**Before :**

**MR JUSTICE CAVANAGH**

-----

**Between :**

**TRANSPORT FOR LONDON**

**Claimant**

**- and -**

**LEE AND OTHERS**

**Defendant**

-----

-----

**Andrew Fraser-Urquhart KC** (instructed by TfL) for the **Claimant**  
**Oliver Brady** (named Defendant) attended. No attendance or representation for the other  
**Defendants**

Hearing date: 24 February 2023

-----

**Approved Judgment**

**MR JUSTICE CAVANAGH :**

1. On 31 October 2022, Freedman J granted an interim injunction that had been applied for by the claimant, TFL, against 168 named defendants and against persons unknown. The defendants are supporters of, and activists connected with, Just Stop Oil (“JSO”). The injunction prevents the blocking, for the purpose of protests, of the roads/locations currently specified in Annex 2 to that injunction and to the Claim Form in these proceedings. There are approximately 23 of these. These are referred to as “the JSO Roads”. The JSO Roads are strategically important roads in London which form an important part of the TfL Strategic Road Network (“the GLA Roads”). GLA Roads are, very broadly speaking, the most important roads in Greater London, carrying a third of London's traffic despite comprising only 5% of its road network length.
2. A large proportion of those protests have involved protesters blocking roads by sitting down in the road and often gluing themselves to its surface and/or locking themselves to each other to make their removal more time consuming. In more recent times, groups of protesters have walked or marched in the roadway at a very slow pace, thereby impeding traffic.
3. The injunction granted by Freedman J continued an injunction which had been granted, without notice, by Yip J, on 18 October 2022. The period covered by Yip J’s injunction expired on 23.59 on 27 October 2022. Freedman J heard argument from the claimant’s counsel on that day and then continued the injunction for a short time until the return date of 31 October 2022. As I have said, he handed down his ruling on 31 October 2022. The order was sealed on 4 November 2022.
4. The injunction that was granted by Freedman J expires on 23.59 on 28 February 2023.
5. By an application notice dated 1 February 2023, the claimant seeks three further orders. These are that:
  - i) There be an extension of the injunction order, until trial or further order or with a backstop of 23.59 on 24 February 2024. The claimant also seeks orders for alternative service and third party disclosure;
  - ii) That there be an expedited trial, with a time estimate of 2 days; and
  - iii) That there be an Order under CPR r31.22 to use in this Claim any document, including any information therein, which has been disclosed to the Claimant by the Metropolitan Police in Claim No. QB-2021-003841 and Claim No. QB-2021-004122. And to use in those other Claims any document, including any information therein, which has been disclosed to the Claimant by the Metropolitan Police in this Claim. These claims are similar proceedings brought by the claimant against supporters of Insulate Britain, an organisation with similar aims to JSO.
6. None of the Defendants has entered an appearance or attended the hearing before Freedman J. Only one of the Defendants has attended today, Mr Oliver Brady, though the named defendants were served notice of the hearing, using the means provided for in Freedman J’s judgment. Specifically, on 14-15 February 2023, the

claimant's solicitor sent via post to each named defendant a letter containing the details of this hearing and stating that the claimant would provide upon request further evidence or other documents filed in these proceedings. That letter was accompanied by the N244 application notice for these applications and the draft Interim JSO Injunction Order including annexes. These documents were also all sent to JSO via email.

7. The claimant is represented before me, as it was before Freedman J, by Mr Andrew Fraser-Urquhart KC and Mr Charles Forrest. I am grateful to them for their assistance. As I have said, Mr Brady has attended the hearing today and I invited him to make submissions. It became clear that the main reason for his attendance, to his credit, is that he did not want the court to think that he was showing disrespect to the court by his non-attendance. He also explained that he had been arrested for actions which he says were outside the prohibited area. He says that he was told yesterday that the police will not take action against him in criminal proceedings. He is concerned that the civil proceedings will continue. He also gave me some explanation of the motivation behind the protests. As for those matters, I must stress that I am not dealing today with the question whether Mr Brady should be personally liable, or whether there should be a final remedy against him. That is a matter for another time and does not affect the question whether there should be a continuation of the injunction. As for the reasons for the protest, that is not a matter upon which the court should comment.
8. I have been provided with a witness statement of Mr Abbey Ameen, the defendant's solicitor, and with a number of other documents. I should add that one key document was not filed with the court. This was the written judgment of Freedman J, which is reported at [2022] EWHC 3102 (KB), in which he considered and dealt with most of the same issues that I am required to deal with, on much of the same evidence. I did not understand why this was not drawn to my attention specifically and filed with the court well in advance of this hearing. However, Mr Fraser-Urquhart KC provided an explanation, which was that the claimant's legal team was unaware that a written copy of the judgment had been published. Fortunately, I located the judgment of my own motion and read it at an early stage of my preparation for this hearing.
9. The factual allegations on the basis of which the injunction is sought, as they stood at 31 October 2022, are very fully set out by Freedman J in his judgment dated 31 October 2022. I will not repeat the summary of the facts which Freedman J has already given in that judgment beyond noting that Freedman J said this following:
  - i) JSO is a group which has been demanding that the government halt all future licensing consents for the exploration, development and production of fossil fuels in the United Kingdom. It lends its name to a wider coalition - the JSO coalition - whose demands are (i) no new oil, (ii) tax big polluters and billionaires, (iii) energy for all, (iv) insulate our homes and (v) cheap public transport. JSO have stated that unless the government agrees to do what it requires, it will be forced to intervene and will take direct action, which it has now sought to do on a large number of occasions.
  - ii) There is an intersection between the groups Insulate Britain, JSO and Extinction Rebellion. Since September 2021, the courts have granted a number of other injunctions, similar in form to the injunction granted by

Freedman J in these proceedings, against members and supporters of those organisations. These were obtained at the behest of other bodies, including National Highways Limited and HS2 Ltd. Many of the same named defendants appear in a number of the cases. In October and November 2021, the claimant was granted two urgent without notice interim injunctions against certain named defendants and persons unknown in connection with Insulate Britain protests which involved Insulate Britain protesters sitting down in and blocking GLA Roads. There is a large overlap between the defendants named in the TFL Insulate Britain injunctions and the defendants in this case;

- iii) JSO protests have, until recently, largely involved protesters blocking highways with their physical presence, normally either by sitting down or gluing themselves to the road surface. The intention is thereby to prevent traffic from proceeding along the highway or to disrupt traffic. The effect has been to cause traffic jams and significant tailing back of traffic.
  - iv) It is said on behalf of the claimant that JSO's actions have been deliberately to block the highway and cause disturbance, rather than that being an incidental result of their protesting. It is also claimed that the protests have been disruptive and are capable of giving rise to putting the lives of those protesting and people driving on the roads at risk, in particular on the movement of emergency service vehicles. There is also the risk that other motorists and users of the highway, antagonised by the methods of JSO, will engage in violence in the context of their ordinary lives being disrupted. It is submitted that the protests have also caused economic harm, serious nuisance and a great deal of cost to the police and other public bodies, including local authorities, National Highways and the CPS.
  - v) As of 26 October 2022, 1,900 arrests had been made of JSO protesters since 1 April 2022. 585 of those arrests were made between 1 and 26 October 2022.
  - vi) Protesters have breached interim injunctions on multiple occasions and there have been committal proceedings.
  - vii) On 4 May, 9 May and 12 May 2022, JSO declared both Birmingham Crown Court and the prison at which its protesters have been held to be sites of civil resistance. Various instances are referred to of protests both around the court and in prisons.
  - viii) There were protests daily by JSO between 1 October and 31 October 2022., During that period, there were, on a daily basis, large scale protests at key areas of largely the central London road system; and
  - ix) On many occasions, JSO have been reported as saying that they will not cease their protests until their demands are met and that they will not be discouraged from doing so by injunctions from the court. The protests on roads in London continued, even after interim injunctions were made and served.
10. All of the same points were made in the evidence before me, contained in Mr Ameen's seventh statement. Indeed, this was an updated version of the statement that was before Freedman J. Mr Ameen's statement also provided evidence, in an

appendix, about the strategic importance of the JSO roads, explaining both the damage which has been caused and/or might further be caused by protesters blocking them and therefore also their attraction to protesters who have sought or who might further seek to cause maximum disruption through their protests in pursuit of their demands.

11. I will now summarise events and developments since Freedman J handed down his judgment. The information upon which this summary is based comes from the seventh witness statement of the claimant's solicitor, Mr Abbey Ameen.
12. The claimant accepts that JSO activity involving blocking roads in London has slowed down somewhat since its peak in October 2022. The claimant believes that the injunction granted by Freedman J and other similar such interim injunctions have had the effect of pausing and/or reducing such protests. The claimant's evidence is also that a factor which temporarily pauses or reduces the intensity of such protests is the cold weather from around mid-December to around the end of March. Experience has shown that the absence of, or reduction in, protests during this period should not be interpreted as a sign that the protesters have stopped for good. Furthermore, the claimant says that the public statements made on behalf of JSO make clear that JSO has no intention of bringing its campaign of protests to an end. At paragraph 50 of his witness statement, Mr Ameen referred to 12 specific occasions, in which JSO (now also the JSO Coalition) and/or its individual protesters have said that they will not cease their deliberately disruptive protests until their demands are met. For example, on 16 October 2022, in a response directed to the Home Secretary, JSO stated "We will not be intimidated by changes to the law, we will not be stopped by injunctions sought to silence nonviolent people. These are irrelevant when set against mass starvation, slaughter, the loss of our rights, freedoms and communities." On 1 November 2022, JSO stated that it would temporarily pause its disruptive protests to give the government time to reflect on JSO demands. But JSO said that if it did not receive a response by the end of 4 November indicating compliance with its demands then it would escalate its legal disruption against what it called a treasonous government. In late December 2022, JSO stated that it will continue its deliberately disruptive protests notwithstanding Extinction Rebellion saying on 31 December 2022 that it will be temporarily ceasing theirs.
13. There have, in fact, been a considerable number of JSO protests since Freedman J granted his injunction. There have been the following:
  - i) On 7 November 2022, JSO started 4 days of protest on the M25. JSO protesters (including one named defendant in the TfL JSO Claim) climbed onto M25 overhead gantries in at least 6 locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25. JSO stated that it would continue to protest on the M25 and urged National Highways Limited to implement a 30mph speed limit on the whole M25.
  - ii) On 8 November 2022, around 15 JSO protesters (including a named defendant in the TfL JSO Claim) climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25.

- iii)** On 9 November 2022, around 10 JSO protesters, along with Animal Rebellion protesters, climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25. The disruption resulted in two lorries colliding and a police officer, who had been trying to set up a roadblock, being injured when he was thrown from his motorcycle.
- iv)** On 10 November 2022, JSO protesters (including a named defendant in the TfL JSO Claim), along with Animal Rebellion protesters, climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25.
- v)** On 11 November 2022, JSO said it was ceasing its protests on the M25 to give the government time to reflect on JSO's demands. In the 4 days of protest on the M25, 65 JSO protesters were arrested, 31 of whom were remanded in custody including 13 named defendants in the TfL JSO Claim. In combination with the 5 JSO protesters already in prison this meant on 11 November 2022 there were 36 JSO protesters in prison. Another 6 of the named defendants in the TfL JSO claim were also involved in the JSO M25 protests.
- vi)** On 14 November 2022, JSO protesters threw orange paint over the Silver Fin building which is the headquarters of Barclays Bank in Aberdeen. This was expressly in connection with a national day of action by Extinction Rebellion aimed at Barclays, with over 100 of the banks' offices and branches targeted with paint, posters, fake oil and crime scene tape.
- vii)** On 28 November 2022, JSO began a new tactic of slowly marching on roads in London in order to disrupt and delay traffic without necessarily bringing it to an absolute stop. 13 JSO protesters walked onto the road at Shepherds Bush Green and proceeded to march slowly in the road, causing traffic delays. Two were arrested for obstruction of the highway, albeit the Police have since stated on 6 December 2022 that this new tactic makes arrest and prosecution less likely because the protesters have been small in number and traffic is able to move around them.
- viii)** Also on 28 November 2022, similar JSO 'slow march' protest action was taken at Aldwych delaying motor traffic.
- ix)** On 30 November 2022, 10 JSO protesters walked onto Aldersgate Street in the City of London and proceeded to march slowly along London Wall, causing traffic delays. The march continued on major roads through the City, followed by at least 7 police vehicles and up to 20 police officers, but there were no arrests.
- x)** Also on 30 November 2022, similar JSO 'slow march' protest action was taken on Upper Street and Holloway Road near Highbury and Islington station, delaying motor traffic.
- xi)** On 3 December 2022, 4 JSO protesters occupied beds and sofas in Harrods Department Store.

- xii)** On 6 December 2022, around 15 JSO protesters walked onto the road at Bricklayers Arms roundabout in South London and proceeded to march slowly along the Old Kent Road, causing delays to motor traffic. The march continued through South London, followed by at least 3 police vehicles and up to 10 police officers.
- xiii)** Also on 6 December 2022, similar JSO ‘slow march’ protest action took place at Bank junction in the City, delaying motor traffic.
- xiv)** On 8 December 2022, and including in response to the recent government decision to consent to a new coalmine at Whitehaven in Cumbria, around 15 JSO protesters walked onto Whitechapel Road, East London and proceeded to march slowly east and then west causing delays to traffic. The march continued on Commercial Road.
- xv)** On 12 December 2022, around 20 JSO protesters (including one of the named defendants in the TfL JSO Claim) walked onto the A24 near Clapham South and proceeded to march slowly Northwards, delaying traffic. They continued along Clapham High Street accompanied by around 7 police officers.
- xvi)** Also on 12 December 2022, similar JSO protest action was taken in Camden Town, delaying motor traffic.
- xvii)** On 14 December 2022, 17 JSO supporters (including one named defendant in the TfL JSO Claim) walked onto Green Lanes, Finsbury Park, and proceeded to march slowly northwards accompanied by around 7 police officers, delaying traffic. This protest reportedly delayed a people carrier vehicle carrying 9 cancer patients by 30 minutes.
- xviii)** Also on 14 December 2022, similar JSO protest action was taken in Camden Town.
- xix)** On 19 January 2023, JSO undertook a ‘slow march’ protest in Sheffield which delayed traffic and led the police to have to close a road.
- xx)** On 28 January 2023, JSO protesters (including one named defendant in the TfL JSO Claim) undertook a ‘slow march’ protest on a road(s) in Manchester causing traffic delays. JSO stated that further such protest action would take place across in the North in the coming months.
- xxi)** On 11 February 2023, JSO protesters undertook a ‘slow march’ protest in Islington starting outside Pentonville Prison, delaying motor traffic, and
- xxii)** On 18 February 2023, in total over 120 JSO protesters (including two named defendants in the TfL JSO Claim) undertook a ‘slow march’ protest in Liverpool, Norwich, and Brighton, delaying motor traffic and causing tailbacks through those city centres.

### **Expedited trial**

14. It is convenient first to consider whether there should be an expedited trial, because that will affect the likely length of a further extension to the interim injunction.

15. The principles applicable to an application for expedition are set out in the claimant's skeleton argument. They were summarised by Lord Neuberger in **WL Gore and Associates GmbH v Geox SPA** [2008] EWCA Civ 622. There are four factors to be considered:
- i) Whether good reason for expedition has been shown;
  - ii) Whether expedition would be contrary to the good administration of justice. Good administration of justice involves both:
  - iii) Consideration of the interests of the various parties involved in the specific case and the efficient disposal of their various competing claims.
  - iv) Consideration of the interests of those parties not before the court; other litigants who would be prejudiced if the specific claim was given expedited treatment in preference to theirs. (**The Rangers Football Club PLC (In Administration) v Collyer Bristow LLP and others** [2012] EWHC 1427 (Ch));
  - v) Whether expedition would prejudice the other parties in the specific case; and
  - vi) Whether there were any special factors involved.
16. In my judgment, all of these factors point in favour of an expedited trial. It is in the public interest for a trial to take place, leading to determination as to whether a final injunction should be granted, as soon as possible, given the importance of this case to the claimant, to the general public and, indeed, to the defendants, who face the risk of committal for contempt if they breach the injunction. The defendants are not prejudiced, since they have not entered an appearance or, with one exception, taken part in the proceedings in any way.
17. The only countervailing factor is that which applies in any case in which expedition is ordered, namely that other cases will go further back in the queue, but I am satisfied that the importance of this case outweighs that factor. In any event, if a final disposition of this case takes place, it will, overall, free up court resources as there will no longer be any need for there to be regular applications to extend the interim injunction.
18. I am, therefore, prepared to order expedition, for a 2 day trial. It will be for the claimant to make arrangements to obtain a listing appointment. However, I have made enquiries myself with KB listing and I am told that a 2 day listing can be accommodated in May to July 2023. This means that, if I grant a further extension to the injunction, it is likely to last for between 2 and 4 months, approximately.
19. It is necessary for directions to be given for the trial. These can be more limited than normal, since the Defendants are not participating.

### **Should the interim injunction be extended?**

20. There are a wide range of considerations that the court must take into account when deciding whether to extend the injunction. I will identify them in a moment. I have carefully considered and taken into account each one. However, there is no need to



set out my reasoning on the issues in full detail in this judgment, because they have each been set out and considered in detail in the judgment of Mr Justice Freedman. I am in complete agreement with the reasoning and conclusions of Mr Justice Freedman in his judgment of 31 October 2022, to the clarity of which I pay tribute. This means that I agree that, on the evidence before him on that date, Mr Justice Freedman was right to grant an extension to the injunction which was originally granted by Mrs Justice Yip, for the reasons that he gave. The relief sought by the claimant in the extension to the injunction is, apart from duration, materially identical to the relief obtained on the 31 October 2022. The real issue before me, therefore, is whether the evidence of events that have taken place since 31 October 2022 provides grounds for declining to extend the injunction on materially identical terms.

21. The answer is that there are no such grounds. The activities of JSO have continued, albeit with a change of tactics, and in my judgment the justification for interim injunctive relief to restrain unlawful activities on the JSO roads is as great as it has ever been.
22. It is true that the protests are less frequent than before the end of October 2022, but there has been no change to JSO's position that it will continue its protests indefinitely, and there have been a substantial number of protests on the roads in London since that time, including one in February 2023. The reduction in protest may be the result of a tactical decision, or it may be a result of the Winter weather, or it may be the result in part of some reduction in appetite because of the earlier injunctive relief, or a combination of all of these things, but in any event the evidence that protests will take place unless restrained by injunctive relief is as strong now as it was before Freedman J. The mere fact that some people have chosen to act in breach of the injunctions is not, of course, a reason for declining to grant a continuation (**South Buckingham DC v Porter** [2003] 2 AC 558; [2003] UKHL 26 at paragraph 32).
23. There has been additional evidence of harm, cost and disruption. Mr Ameen said the following in his witness statement:

“As a result of a JSO protest on the M25 on 9 November 2022 two lorries collided and a police officer who had been trying to set up a roadblock was injured when he was thrown from his motorcycle. In early December 2022 a JSO protester stepped out on the road in front of a moving lorry which had to come to a sudden halt to avoid hitting him as he back-pedalled to avoid it. They have also caused a risk of violence between protesters and ordinary users of the highway, particularly in the removal of protesters from the highway and indeed force has been used to do this in both Insulate Britain and JSO protests. The force used between protesters and users of the highway seems to be particularly common in London, probably because other users of the highway are more willing to intervene on smaller London roads than strategic roads such as the M25.

The protests have also caused considerable economic harm, serious nuisance, and a great cost to the police and to other public bodies such as NHL, TfL, local authorities, and the CPS.

JSO protests have caused fuel shortages in petrol stations around the Midlands and south-east England and, as of 11 May 2022, had cost the police alone £5.9m in just a few months. On 5 February 2023 it was reported that, in just 9 weeks in the autumn of 2022, the JSO protests cost the Metropolitan Police alone £7.5m.

The protests also cause significant but less measurable harm, such as members of the public missing or being significantly delayed for weddings, funerals, flights for holidays or work, important business meetings, important medical appointments etc. A man missed his father's funeral due to the JSO protests in November 2022 and, as I have said, a JSO protest on 14 December 2022 reportedly delayed a people carrier vehicle carrying 9 cancer patients by 30 mins."

24. Similarly, there have been no new developments that alter the position in relation to the other considerations that the Court must take into account from that which obtained before Freedman J. There are only two other changes of significance.
25. The first is that the tactics appear to have changed, in that protesters are generally taking part in slow marches, rather than sitting down to block the road, as before. Mr Fraser-Urquhart KC has made clear that his client does not intend that the order covers this type of activity, though he leaves open the possibility that an application might be made in the future. The fact that the tactics of JSO have changed for a while, however, does not mean that the risk of a return to the type of action which previously took place, and which was the subject of Freedman J's injunction, has evaporated. However, I have proposed that a form of words be added to the order, making it clear that "For the avoidance of doubt this wording [the wording in paragraph 5 of the injunction] does not apply to the practice of slow marching on the road." I should add that this means that I do not need to consider whether the recent tactic of slow marching changes the outcome of the balancing exercise which the court must undertake to determine whether the extension of the injunction would infringe the defendants' rights under Articles 10 and 11 of the European Convention on Human Rights. I make clear that I make no observation, one way or another, on this issue.
26. The other change is the obvious one that the duration of the interim injunctive relief will be extended. However, this is only likely to be for 2-4 months, before the trial of the action, and this is not, in my view, a reason to refrain from granting injunctive relief.
27. For the sake of good order, I list the considerations that I have taken into account, though as I have said, I will not set out my reasoning in full detail, as, in relation to each consideration it is exactly the same as the reasoning that was set out by Mr Justice Freedman in his judgment.
28. The considerations are:

- i) Whether the named Defendants have been properly identified, on a proper evidential basis. I am satisfied that they have been, for the reasons given by Freedman J, and in light of the evidence that I have seen;
- ii) Applying the well-known test in **American Cyanamid v Ethicon** [1975] AC 396, whether there is a serious issue to be tried. For the reasons given by Freedman J, which echo the reasoning of Bennathan J in **National Highways Ltd v Persons Unknown and Ors** [2022] EWHC 1105 (QB), at paragraph 37, I am satisfied that there is. There is a serious issue to be tried as to whether the defendants are committing trespass, and private and public nuisance on the roads;
- iii) Whether damages are an adequate remedy. They are plainly not. I agree with what was said in this regard in the claimants' skeleton argument, namely that damages would not prevent any further protests because the claimant cannot claim damages for others' loss, and that loss would in any case be impossible to quantify, and in any case the Defendants would not have enough money to pay it. The protests have had a very wide-ranging impact on London given the central role which GLA Roads have for the city. Given London's status as the national centre for commerce/business, politics/government, law, culture and creativity etc., they have also indirectly had an impact on the rest of the country. Impact assessments also cannot measure impacts which are of fundamental importance to those making their journey, e.g. attending hospital appointments, funerals, weddings, important business meetings etc. The claimant has offered a cross-undertaking as to damages, in the highly unlikely event that it might be necessary to rely upon it;
- iv) Whether injunctive relief should be refused because this is in the form of a quia timet injunction, or because an injunction would infringe the rights of the defendants under Article 10 and Article 11 of the European Convention on Human Rights. I have taken into account that this is a quia timet injunction. For the reasons given by Freedman J, I do not think that this is a reason to refrain from granting relief. I have conducted the balancing exercise required by the impact of the injunctive relief upon the defendants' rights under Article 10 and Article 11 of the European Convention on Human Rights. In this regard, I have taken account of the guidance of the Supreme Court in **DPP v Ziegler** [2022] AC 408 and the observations made by Lord Neuberger in **Samede** [2012] PTSR 1624. In my judgment, the outcome of the balancing exercise in relation to the defendants' art 10 and 11 Rights remains the same as it was when Freedman J considered the matter, namely that it is not a good ground for declining to grant injunctive relief. Undertaking the same balancing exercise as was undertaken by Freedman J at paragraphs 41-61 of his judgment, I come to the same conclusion as he did. Balancing the relevant considerations, I have come to the view, as he did, that the injunction strikes a fair balance between the rights of individual protestors and the general interest of the community, including the rights of others.
- v) Whether the balance of convenience is in favour of continuing the relief. I agree with Freedman J that there is a strong likelihood that the defendants will imminently act to infringe the claimant's rights and that they will cause serious disruption to the claimant and the public. The injunctions are limited to key

roads and road junctions. On the evidence before me, the harm would be (and is intended to be) grave and irreparable as well as very widespread. The protesters either give no warning of their protests, or rarely give sufficient details about their nature/location for the claimant to react effectively. Protests also frequently change and move on the day itself, partly in response to policing and other crowd management;

- vi) Finally, the effect of section 12 of the Human Rights Act 1998. I agree with what was said by Freedman J on this matter.
29. The order that is sought applies to persons unknown in addition to the named defendants. The claimant says that this is necessary because it is not considered that the list of named defendants represents the entirety of those engaged in the JSO Protests, and so it remains necessary to identify the category of persons unknown as additional defendants. Freedman J considered whether it was appropriate to include persons unknown amongst the category of defendants at paragraphs 83-93 of his judgment, and addressed the test set out by the Court of Appeal in **Canada Goose v Persons Unknown** [2020] 1 WLR 2802; [2020] EWCA Civ 303. I agree entirely with Freedman J's reasoning and conclusion and so I agree that it is appropriate for the relief to extend to persons unknown. No good purpose would be served by me simply repeating in this judgment what Freedman J said in this part of his judgment, and so I will not do so.
30. For these reasons, I will extend the injunctive relief until trial or further order.

### Alternative service

31. I am satisfied that the claimant has made out grounds for the continuation of alternative service under CPR r6.15 and r6.27 of all documents in this Claim, including the sealed interim injunction order as extended, thereby also dispensing with personal service for the purposes of CPR r81.4(2)(c)-(d). I will therefore permit alternative service in the terms of the draft TfL Interim JSO Injunction Order.
32. The reasons for alternative service are set out in paragraph 19 of Mr Ameen's witness statement. Similar orders have been made in other cases of a like nature. Alternative service is necessary for the relief to be effective. Moreover, as Mr Ameen points out, the Defendants already have a great deal of constructive knowledge that the TfL Interim JSO Injunction may well be extended: the extent and disruptive nature of the JSO protests since March 2022 (and the Insulate Britain protests which began in September 2021); the multiple civil and committal proceedings brought in response to those protests by National Highways Limited, TfL, local authorities and energy companies and the frequent service of documents on defendants within those proceedings including multiple interim injunctions; the extensive media and social media coverage of the protests, their impact, and of the legal proceedings brought in response; the large extent to which, in order to organise protests and support each other, JSO protesters are in communication with each other both horizontally between members and vertically by JSO through statements, videos etc. shared through its website and social media. These are not activities that single individuals undertake of their own volition. In my judgment, in the perhaps unusual circumstances of this case, it is very unlikely, perhaps vanishingly unlikely, that anyone who is minded to take part in the JSO protests on JSO roads in London is unaware that injunctive relief

has been granted by the courts. An order for alternative service has already been made in identical terms in this litigation, by Freedman J. For these reasons, I do not consider that it is necessary to adopt the step adopted by Bennathan J in the **NHL v Persons Unknown** case of directing that those who had not been served would not be bound by the terms of the injunction and the fact the order had been sent to the relevant organisation's website did not constitute service. However, Mr Fraser-Urquhart KC has said that in practice the claimant adopts and will continue the practice of not commencing committal proceedings against a person unknown unless that person has previously been arrested and has been served with the order.

### **Third party disclosure**

33. The Claimant seeks, in the terms of the draft TfL Interim JSO Injunction Order, continuation of the provision for third party disclosure of information from the Metropolitan Police under CPR r31.17. That information is a) the names and addresses of those who have been arrested in the course of, or as a result of, any JSO protests on the JSO Roads; and b) evidence relating to any potential breach of the TfL Interim JSO Injunction.
34. The Metropolitan Police does not object to such an order, though it requires an order from the court before it will give such disclosure. An order to this effect was granted by Freedman J in the 31 October 2022 order. Similar orders have frequently been made in other cases such as this.
35. Once again, I agree with Freedman J's reasoning on this issue, at paragraphs 94-96 of his judgment, which I will not repeat. The conditions for the making of an order under CPR 31.17 have been met. The relevant circumstances have not changed since Freedman J made his ruling. For the reasons given in those paragraphs of his judgment, I grant this order.

### **The application for an Order under CPR r31.22**

36. This was not a matter that was dealt with at the hearing before Freedman J, though the point was raised by Freedman J.
37. CPR r31.22 provides:
  - “(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –
    - (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
    - (b) the court gives permission; or
    - (c) the party who disclosed the document and the person to whom the document belongs agree.
  - (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.
  - (3) An application for such an order may be made –
    - (a) by a party; or
    - (b) by any person to whom the document belongs.”
38. The law relating to this is helpfully summarised in the claimant's skeleton argument.

39. This rule applies to protect not just documents themselves but also their contents i.e. the information derived from them (**IG Index Plc v Cloete** [2013] EWHC 3789 (QB) at §31).
40. The Court's power under this rule is a general discretion to be exercised in the interests of justice and having regard to all the circumstances in the case. Good reason has to be shown (but this does not mean that the grant of permission is rare or exceptional if a proper purpose is shown) and the Court has to be satisfied there is no injustice to the party compelled to give disclosure (**Gilani v Saddiq** [2018] EWHC 3084 (Ch) at §21).
41. Documents read by a judge out of court before the hearing on which the judge based their decision and to which they made compendious reference in their judgment were documents referred to at a hearing held in public for the purposes of CPR r31.22(1)(a) (**SmithKline Beecham Biologicals SA v Connaught Laboratories Inc** [2000] FSR 1), as was a document mentioned briefly in oral evidence and exhibited to a witness statement which was before the judge (**NAB v Serco Ltd** [2014] EWHC 1225 (QB) at §27).
42. A Court may grant prospective or retrospective permission and in the case of the latter an important consideration would be whether permission would have been prospectively granted (**The ECU Group Plc v HSBC Bank plc** [2018] EWHC 3045 (Comm))
43. The trigger for the application in the present case is that the claimant has three ongoing Claims: this claim involving JSO, and the two TfL Insulate Britain Claims.
44. Under third-party disclosure Orders made in all of those Claims, the Police have disclosed to the Claimant the names and addresses of protesters who have been arrested for protests on certain roads. This disclosure has been in the form of names and other details (e.g. address, location and date of protest) contained in an excel spreadsheet, or that type of information sent in the body of an email which has then been copied and pasted into such a spreadsheet by the Claimant's lawyers. The disclosure also consists of Body Worn Video footage and arrest notes relating to potential breaches of the TfL Interim JSO Injunction and TfL Interim Insulate Britain Injunctions. I have seen these spreadsheets.
45. Against that background, the Claimant seeks an Order under CPR 31.22(1)(b) for documents, or at least information contained within them, disclosed in the Insulate Britain Claims to be able to be used in the JSO Claim, and vice versa.
46. Mr Fraser-Urquhart KC said that, arguably, such an Order is unnecessary as the material has been seen by the judge outside the hearing and referred to during the hearing. Nevertheless, the Claimant seeks permission from the Court to secure the basis for using such documents/information in all its Claims against these protesters. He said that the reason why permission should be granted is so that the Court can see all the protest activity undertaken by each named defendant, whether for JSO or Insulate Britain. This will help the court to determine whether a final injunction should be granted and against whom. It is also appropriate given the lack of distinction between the two groups: they are in coalition with each other including

having joint aims, their protest methods such as sitting down in the road are the same, and there is a large overlap in who protests on each of their behalf.

47. 48. Mr Fraser-Urquhart KC further submitted that granting permission would not cause injustice to the Metropolitan Police who do not object to the proposed use of the disclosed material. It would not result in more of each named defendant's personal data being published and in any case each named defendant's address is redacted in any published document.
48. I agree that, in the interests of justice and having regard to all the circumstances in the case, this order should be made, for the reasons given by Mr Fraser-Urquhart KC.

### **Conclusion**

49. For these relatively brief reasons, I order expedition of the trial of this action, grant the extension of the interim injunction until trial or further order, in the terms sought, and make the other orders sought by the claimant.