

Landmark Chambers' seminar

Protest and trespass injunctions after *Wolverhampton CC*



Your speakers today...



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Contents

- What did the Supreme Court decide in *Wolverhampton CC v London Gypsies and Travellers* [2023] UKSC 47
- What is the practical impact of the decision on protest cases?



The Issue

- Can a court grant an injunction (interim or final) against an unidentified and unknown person who has not yet committed or threatened an unlawful act in relation to use of land (“Newcomer”)?
- Contrast:
 - (a) Named Defendant for whom C does have an address
 - (b) Named Defendant for whom C does not have an address
 - (c) Person Unknown who has committed/threatens to commit a tort but whose name and address C does not currently know



Potted history

- Issue - can a court grant an injunction (interim or final) against an unidentified and unknown person who has not yet committed or threatened an unlawful act in relation to use of land?
- Court of Appeal in *Canada Goose v Persons Unknown* (5 March 2020) – NO
- Court of Appeal in *Barking & Dagenham LBC v Persons Unknown* (13 Jan 2022) - YES



What did the Supreme Court decide?

- What?
- **Para 143:**
 - Persons who are truly unknowable at the time of the grant
 - Always made on a without notice basis
 - Unlikely to have any right to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance - typically trespass
 - Generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant's entitlement
 - In practice unlikely to engage with the proceedings as active defendants
 - Usual injunction against named parties inadequate because of potential repetition of conduct by different individuals
 - Injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency
 - Purpose is to provide a more/the only effective means of vindication or protection of relevant rights



What did the Supreme Court decide?

- Issue - can a court grant an injunction (interim or final) against an unidentified and unknown person who has not yet committed or threatened an unlawful act in relation to use of land?
- Answer – yes.



What did the Supreme Court decide?

- Why?
 - No other effective ways of protecting a landowner's rights in these instances: paras. 138, 143(viii), 150 and 164.
 - Otherwise, a claimant would have to engage in a “*rolling programme of applications for interim orders, resulting in litigation without end*”: para. 138.
 - It rejected the idea that “*private law remedies are unsuitable ‘as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors’*”.



What did the Supreme Court decide?

- How:
 - Completely new type of injunction.
 - Newcomers are not parties to the proceedings but can still be in contempt for interfering with the administration of justice. Analysis in *South Cambs DC v Gammell* [2006] 1 WLR 658 rejected.
 - Essentially *contra mundum* orders applicable against the whole world: paras. 120, 132, 135 and 145. See, e.g., internet blocking orders, embargo on publication of draft judgments, anonymity orders, etc.
 - Always without notice: paras. 139, 142 and 151.



Practical impacts

- Supreme Court said Newcomer injunction only justified if (in context of traveller injunctions):
 - Compelling need for the protection of civil rights that could not be adequately met by other available measures: paras. 167(i), 188 and 218.
 - Strong probability that a tort is to be committed causing real harm and the threat must be real and imminent: para. 218.
 - Newcomers should be defined as precisely as possible.
 - Terms of the injunction must be sufficiently clear and precise and correspond as closely as possible to the actual or threatened unlawful conduct. Lawful activity must only be restrained if proportionate: paras. 222-223.
 - Territorial and temporal scope of the injunctions must be strict and constrained as appropriate in light of the compelling circumstances: paras. 167(iv) and 225.

“...in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal”.



Practical impacts

- Supreme Court said Newcomer injunction only justified if (continued):
 - Sufficient procedural protections:
 - Cs under obligation to take all reasonable steps to draw the application and any order made to the attention of those likely to be affected by it – e.g. advertising the application at the site or on suitable websites: paras. 175, 226 and 230-231.
 - Generous provision for liberty to apply: paras. 177 and 232.
 - Cs under stringent disclosure duty to research and present to the court everything that might have been said by Newcomers against the grant of relief - continuing duty: para. 219.



Practical impacts

“(11) Protest cases

235. The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and 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. Any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

236. 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.”



Practical impacts

- What are the differences (if any) from before?
 - Look at *Canada Goose*, para 82, requirements
 - “Compelling need” – is that different from courts being “*inherently cautious*” (see *Ineos*, *Cuadrilla*, etc.)?
 - Duration?
 - No need to try and serve Newcomers?
 - Duty of stringent disclosure to the Court on all arguments for and against.



Practical impacts

- What are the differences from before – wider points?
 - Supreme Court only impacts Newcomers. Important to remember Newcomers will often not be the only Defendants.
 - Even on potentially new requirements imposed by SC, likely courts will try to harmonise approach on at least some issues:
 - Duration – are there really going to be different durations for some Ds compared to others?
 - Service – even if Newcomers do not need to be served, other Ds still do so Cs will presumably use same approach as before.



Practical impacts

- Costs protection: para. 233
 - SC saw the benefits but on issue of whether a court has jurisdiction to make costs capping order – “*a matter to be considered on another day by the judge making or continuing the order*”.
 - Unintended consequences?





- Cross-undertakings: para 234
 - Newcomer injunction not an interim order but may be occasions where appropriate.
 - When can circumstances justify this?
 - But remember other Ds



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