Neutral Citation Number: [2017] EWHC 2945 (Ch)

Case No: HC-2017-002125

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23/11/2017

Before:

THE HONOURABLE MR JUSTICE MORGAN

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Between:

(1) INEOS UPSTREAM LTD **(2) INEOS 120 EXPLORATION LTD** **(3) INEOS PROPERTIES LTD** **(4) INEOS INDUSTRIES LTD** **(5) JOHN BARRIE PALFREYMAN** **(6) ALAN JOHN SKEPPER** **(7) JANETTE MARY SKEPPER** **(8) STEVEN JOHN SKEPPER** **(9) JOHN AMBROSE HOLLINGWORTH** **(10) LINDA KATHARINA HOLLINGWORTH**	**Claimants**
- and -	
(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AND BUILDINGS SHOWN SHADED RED ON THE PLANS ATTACHED TO THE AMENDED CLAIM FORM	**First Defendant**

(2) PERSONS UNKNOWN INTERFERING WITH THE FIRST AND SECOND CLAIMANTS' RIGHTS TO PASS AND REPASS WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT OVER PRIVATE ACCESS ROADS ONLAND SHOWN SHADED ORANGE ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM WITHOUT THE CONSENT OF THE CLAIMANT(S)	**Second Defendant**
(3) PERSONS UNKNOWN INTERFERING WITH THE RIGHT OF WAY ENJOYED BY THE CLAIMANT(S)/OR ITS AFFILIATES AND EACH OF ITS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, EMPLOYEES, PARTNERS, CONSULTANTS, FAMILY MEMBERS AND FRIENDS OVER LAND SHADED PURPLE ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM	**Third Defendant**
(4) PERSONS UNKNOWN PURSUING ANY COURSE OF CONDUCT SUCH AS AMOUNTS TO HARASSMENT OF THE CLAIMANTS AND/OR ANY THIRD PARTY CONTRARY TO THE PROTECTION FROM HARASSMENT ACT 1997 WITH THE INTENTION SET OUT IN PARAGRAPH 10 OF THE ORDER OBSTRUCTING, IMPEDING OR INTERFERING WITH THE LAWFUL ACTIVITIES UNDERTAKEN BY THE CLAIMANT(S) AND ITS AGENTS, SERVANTS, CONTRACTORS, LICENSEES AND EMPLOYEES IN CONNECTION WITH THE SEARCHING OR BORING FOR OR GETTING ANY MINERAL OIL OR RELATIVE HYDROCARBON AND NATURAL GAS EXISTING IN ITS NATURAL CONDITION IN STRATA AND ALL ASSOCIATED AND CONNECTED ACTIVITIES	**Fourth Defendant**
(5) PERSONS UNKNOWN COMBINING TOGETHER TO COMMIT THE UNLAWFUL ACTS AS SPECIFIED IN PARAGRAPH 11 OF THE ORDER WITH THE INTENTION SET OUT IN PARAGRAPH 11 OF THE ORDER	**Fifth Defendant**
(6) MR JOSEPH BOYD	**Sixth**

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Alan Maclean QC, Janet Bignell QC, Jason Pobjoy and Gavin Bennison (instructed by **Fieldfisher LLP**) for the **Claimants**
Heather Williams QC, Blinne Ní Ghrálaigh and Jennifer Robinson (instructed by **Leigh Day**) for the **Sixth Defendant**
Stephanie Harrison QC, Stephen Simblet and Laura Profumo (instructed by **Bhatt Murphy**) for the **Seventh Defendant**

Hearing dates: 31 October 2017, 1 and 2 November 2017
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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MORGAN

Mr Justice Morgan:

The applications

1. There are three applications before the court. The first application was made by the Claimants by application notice dated 31 July 2017. Although that application was expressed to be for final injunctions, the application was presented as an application for interim injunctions intended to last until the trial of this action. The background to that application is that on 28 July 2017, I granted the Claimants interim injunctions in similar terms to the orders which are now sought. Those injunctions were granted on the Claimants' ex parte application. I fixed a return date of 12 September 2017 and on that day I heard argument from counsel for the Claimants and from counsel who had been instructed by Mr Boyd and Mr Corré. Mr Boyd and Mr Corré were then joined as the Sixth and Seventh Defendants. On 12 September 2017, I granted interim injunctions which were intended to last for a short period until a further hearing with a time estimate of three days to enable the court to hear argument on the many points which needed to be considered. That hearing took place on 31 October and 1 and 2 November 2017.

2. The second application was made by the Sixth Defendant by application notice dated 6 September 2017. By that application, the Sixth Defendant sought the discharge and/or the variation of the ex parte order I had made on 28 July 2017. The third application was made by the Seventh Defendant by application notice dated 6 September 2017. By that application, the Seventh Defendant sought the discharge of the ex parte order I had made on 28 July 2017. The second and third applications were before the court on 12 September 2017 when I continued the ex parte order and the two applications of 6 September 2017 were presented at the three-day hearing as applications to discharge the ex parte order of 28 July 2017 and the further order which I made on 12 September 2017.

The Claimants

3. There are ten Claimants. The First Claimant is a subsidiary company of the INEOS corporate group, a privately owned global manufacturer of chemicals, speciality chemicals and oil products. The First Claimants commercial activities include shale gas exploration in the UK. It is the lessee of four of the Sites which are the subject of the Claimants' application (Sites 1, 2, 3 and 7). The lessors in relation to these four sites include the Fifth to Tenth Claimants. The Second to Fourth Claimants are companies within the INEOS corporate group. They are the proprietors of Sites 4, 5 and 6 respectively. The Fourth Claimant is the lessee of Site 8 and it has applied to the Land Registry to be registered as the leasehold owner of that site. I will refer to the First to Fourth Claimants as "Ineos" without distinguishing between them. The Fifth to Tenth Claimants are all individuals. The Fifth Claimant is the freeholder of Site 1. The Sixth to Eighth Claimants are the freeholders of Site 2. The Ninth to Tenth Claimants are the freeholders of Site 7. The various sites are described below.

and buildings known as Four Topped Oak, Farnworth Road, Penketh, Warrington. Site 4 is described as land and knowns known as land for a Wellhead Site, Givenhead Farm, Ebberston, Snailton, North Yorkshire. Site 5 is described as land and buildings known as Hawkslease, Chapel Lane, Lyndhurst. Site 6 is described as land and buildings known as 38 Hans Crescent, London SW1. Site 7 is described as land and buildings on the south side of Woodsetts Road, Woodsetts, Rotherham, South Yorkshire. Site 8 is described as land and buildings known as Anchor House, 15-19 Britten Street, London. Sites 1, 2, 3, 4 and 7 comprise agricultural land. The buildings on sites 5, 6 and 8 are office buildings.

5. I was given detailed evidence about the planning applications which have been made in relation to some of these sites. I will give a brief summary of that evidence. On 8 May 2017, Ineos applied for planning permission to drill a vertical core well for shale gas exploration on Site 1. That application has been the subject of a public consultation. The position is similar in relation to Site 2 where the application was made on 30 May 2017. It is expected that the application for Site 2 will be considered by the planning committee on 23 November 2017 and it is thought to be likely that the committee will receive a recommendation for refusal of permission on traffic grounds. Ineos would wish to discuss the traffic issues with the local authority with a view to resolving them.

6. Sites 3 and 4 are not the subject of a planning application in relation to shale gas exploration. Site 3 is an existing coalbed methane production site with four wells. Site 4 is a site in Scarborough with two wells on it.

7. As to Site 7, in July 2017, Ineos submitted an Environmental Assessment Screening Report in respect of an intended application for planning permission to drill a vertical core well for shale gas exploration. The local planning authority has since confirmed that it will not require an Environmental Impact Assessment as part of a future planning application for this use. Ineos' evidence stated that it intended to submit such an application at the end of October 2017 but I do not have further information about that matter.

The Defendants

8. There are seven Defendants or groups of Defendants. The first five groups of Defendants are described as persons unknown with, in each case, further wording which is designed to provide a definition of the persons who fall into the group. The First Defendant is described as:

> "Persons unknown entering or remaining without the consent of the Claimant(s) on land and buildings shown shaded red on the plans annexed to the Amended Claim Form".

9. The Second Defendant is described as:

10. The Third Defendant is described as

> "Persons unknown interfering with the right of way enjoyed by the Claimant(s) each of its and their agents, servants, contractors, sub-contractors, group companies, licensees, employees, partners, consultants, family members and friends over land shown shaded purple on the plans annexed to the Amended Claim Form".

11. The Fourth Defendant is described as

> "Persons unknown pursuing any course of conduct such as amounts to harassment of the Claimants and/or any third party contrary to the Protection from Harassment Act 1997 with the intention set out in paragraph 10 of the [relevant] order".

12. The Fifth Defendant is described as

> "Persons unknown combining together to commit the unlawful acts as specified in paragraph 11 of the [relevant] order with the intention set out in paragraph 11 of the [relevant] order".

13. The Sixth Defendant is Mr Boyd. He appeared through counsel at the hearing on 12 September 2017 and was joined as a Defendant. The Seventh Defendant is Mr Corré. He also appeared through counsel at the hearing on 12 September 2017 and was joined as a Defendant.

Shale gas exploration

14. Ineos is engaged, or wishes to be engaged, in the business of shale gas exploration in the United Kingdom. One method of exploration which it wishes to use involves the hydraulic fracturing of rock formations, known as "fracking". Ineos is not the only operator in the United Kingdom engaged in fracking. Indeed, Ineos is a relative newcomer to this industry in the United Kingdom. Fracking has been carried on in the United Kingdom since the early 1990s.

15. Fracking has been, and remains, lawful in England. Exploration for gas in England can only be carried out under licences issued by the Oil and Gas Authority. Fracking requires planning permission from the local planning authority and is subject to various other controls. In order to identify sites where commercial production of shale gas extraction is considered to be profitable, an operator will need to carry out seismic surveys of the relevant land.

16. Fracking is controversial and has generated widespread public concern and opposition. Since 2013, there has been a number of significant protest events linked to

several weeks with the numbers of protestors involved varying from single figures to the low hundreds. The police report continued by stating that many of the protest events involved marches, static demonstrations, obstructions of the highway or site accesses, the use of lock-on type devices and office incursions or occupations. The report stated that the vast majority of the actions taken by protestors were peaceful.

The evidence

17. The parties have served a very considerable amount of evidence in relation to these applications. The Claimants filed seven witness statements before the hearing on 28 July 2017, six more before the hearing on 12 September 2017 and three further statements before the most recent hearing. The Sixth Defendant filed 10 witness statements and the Seventh Defendant filed 14 statements. More witness statements came just before or during the hearing itself. There is a core bundle consisting of five lever arch files and that is accompanied by 23 lever arch files of exhibits.

18. The evidence served by the Claimants sought to describe some of the forms of protest against fracking which have taken place in recent times. The Claimants focussed on the forms of protest which, the Claimants contend, involved unlawful acts which were harmful to fracking operators and third party contractors who supply goods or services to fracking operators. Much of the factual material in the evidence served by the Claimants was not contradicted by the Defendants, although the Defendants did join issue with certain of the comments made or the conclusions drawn by the Claimants and some of the detail of the factual material. The Defendants' evidence stressed the generally peaceful character of anti-fracking protests. The Defendants also commented upon the undesirable effects of the injunctions granted in this case in July and September 2017.

19. In this judgment, I will refer to people who are "protestors" against fracking. It must, however, be remembered that all of the individuals in the United Kingdom who are opposed to fracking do not form a homogeneous group but comprise a great range of individuals with different views as to what is appropriate by way of protesting against fracking. The focus of the Claimants' application is on protests which, the Claimants say, involve unlawful acts. In order to describe the persons who, the Claimants say, ought to be the subject of injunctions, I will refer to those persons as "protestors" but that does not mean that I necessarily agree with the Claimants that the threatened protests are unlawful. That question remains to be examined.

20. Part of the Claimants' evidence explained the Claimants' perception of the benefits of fracking exploration. This part of the Claimants' evidence drew evidence in reply from the Defendants who explained their perception that fracking was not in the public interest. It was accepted at the hearing before me that the court was not in a position to form a view as to which of these perceptions was more accurate. Indeed, it was accepted that this area of dispute, whilst important outside the court room, would not have any real impact on the court's decisions on the many issues which were

exploration or drilling. These companies have been active in the industry for some years whereas Ineos is a relative newcomer to the industry. The evidence shows clearly that the protestors object to the whole industry of shale gas exploration and they do not distinguish between some operators and other operators. This indicates to me that what has happened to other operators in the past will happen to Ineos at some point, in the absence of injunctions. Further, the evidence makes it clear that, before the commencement of these proceedings, the protestors were aware of Ineos as an active, or at least an intending, operator in the industry. There is absolutely no reason to think that the protestors will exempt Ineos from their protest activities. Before the commencement of these proceedings, the protestors were also aware of some or all of the sites which are the subject of these proceedings. In addition, the existence of these proceedings has drawn attention to the eight Sites described earlier.

22. The second category of companies which are the direct targets of protest activities are companies which form part of the supply chain to the operators who carry on shale gas exploration. The evidence makes it clear that the object of the protestors is to cause those companies to withdraw from supplying shale gas operators. Indeed, the protestors have reason to believe that they might succeed with this object. The supply companies do not themselves carry out shale gas exploration and may be able to seek work and contracts in other industries. If the protestors' actions targeting the supply companies convince them that the costs and burdens of those actions are too great, then the supply companies may choose to give up supplying shale gas operators and may not themselves seek relief from the courts to prevent the protestors' actions.

23. In his second witness statement dated 26 July 2017, Mr Talfan Davies, the solicitor for the Claimants, described in detail earlier acts of trespass on the land of other fracking operators. This evidence has been summarised in the skeleton argument for the Claimants as follows:

> "*Case Study 1: Preston New Road*, Cuadrilla Resources Ltd. Cuadrilla obtained planning permission on 16 1 16. From 14 8 14 to date there have been numerous serious instances of trespass resulting in court proceedings for possession and injunctive relief.
>
> *Case Study 2: Leith Hill*, Europa Oil & Gas (UK) Ltd. Europa was granted planning permission in August 2015. On about 29 10 16, prior to works commencing, protestors moved on to the site and established a "*protection camp*". Protestors dug tunnels and built tree houses on the proposed drill site, again resulting in court proceedings.
>
> *Case Study 3: Daneshill*, Dart Energy Ltd. A camp was set up outside the site and there have been acts of trespass onto the site.

> bailiffs 9 hours. Protestors locked themselves into structures, hid in underground tunnels and even set their hands in concrete.
>
> *Case Study 5: Barton Moss/Barton Bridge*, IGas Energy plc. In June 2014 an extension to a planning permission was sought. The site was occupied by protestors.
>
> *Case Study 6: Crawberry Hill, Walkinton*, Rathlin Energy (UK) Limited. In May 2014 a permit to undertake exploratory drilling was obtained. A matter of days later, a number of protestors, including D6, unlawfully trespassed on the site, and set up a protest camp, on which they constructed a small fortress from wooden pallets. This was not dismantled for some 3 months and upon being dismantled a further small fortress was constructed by protestors on adjoining land. This remained in-situ for some 6 months.
>
> These acts of trespass have frequently been of an aggravated nature. They have required protracted and expensive proceedings to clear the sites, and have given rise to extremely dangerous conditions posing a serious risk of harm to both protestors and others. The history of activity at these sites demonstrates that trespassing protestors against hydraulic fracturing are typically well-organized, coordinated, determined. Such protestors have shown themselves not to be deterred by the prospect, some months down the line, of being the subject of eviction proceedings."

24. In his second witness statement, Mr Talfan Davies described the actions of protestors attempting to block the primary access way to operators' sites (and the sites of their contractors) either by standing or parking in front of the site entrances or by attaching themselves to the entrances. The Claimants' skeleton argument summarised this evidence (together with later evidence which updated it) as follows:

> "In the period January-August 2017, at Cuadrilla's Preston New Road site, protestors locked themselves to fencing outside the site entrance; obstructed a lorry; congregated on the public highway, forcing its closure; and engaged in numerous "*lock-on*" protests outside the site entrance. D6 played a key role in these protests. The protestors continue to congregate at the site on a daily basis with the purpose of blocking access, resulting in a number of road closures over the past months.
>
> On 6 2 17, protestors blocked access to a quarry operated by a supplier to the shale gas industry, Armstrong Aggregates,

> depot in Bolton. The company suffered a "*lock on*" protest at the entrance to the depot on 3 4 17.
>
> On 27 3 17, protestors targeted a supplier of the shale gas industry, Tarmac and Aggregate Industries, with an 11-hour blockade.
>
> On 30 3 17, anti-hydraulic fracturing protestors blocked the entrance to Eddie Stobart's Orford Depot. They engaged in slow walking outside the depot on 3 4 17.
>
> On 6 4 17, a supplier of Cuadrilla, Lomas Distribution, was subjected to a "*slow walk*", leading to protestors being arrested on suspicion of an offence under section 137 of the Highways Act 1980.
>
> On 25 April 2017, a number of protestors blockaded access to a site operated by Third Energy UK Gas Ltd near Kirby Misperton, North Yorkshire. This protest camp is situated on private farmland off a main road, being the main road via which access is afforded to Third Energy's site. The ongoing protestor activity has escalated since the 12 September 2017 hearing. The recent activity (covering the period up to 11 October 2017) is set out in detail in the seventh witness statement of Mr Talfan Davies."

25. In his second witness statement, Mr Talfan Davies gave evidence as to the actions of protestors which were aimed directly at contractors providing services to fracking operators, where the actions were designed to force or persuade the contractors to cease to provide those services. Mr Talfan Davies referred to a large number of matters of which the following is a selection:

(1) on 10 March 2017, protestors congregated outside the depot of A E Yates, a supplier of Cuadrilla, and engaged in a slow walk in order to delay vehicles leaving the depot; on 3 May 2017, protestors engaged in a lock on at this supplier's depot in Bolton;

(2) on 3 February 2017, protestors obstructed a Moore Readymix lorry on its way to Cuadrilla's site in Preston New Road;

(3) on 6 April 2017, protestors engaged in a slow walk outside the depot of Lomas Distribution, a supplier of Cuadrilla;

(4) on 18 February 2017, protestors entered the offices of MediaZoo, PR consultants for Ineos and chained themselves to piping in the lobby of the offices;

(6) on 30 March 2017, protestors blocked the entranceway to Eddie Stobart's depot in Cheshire and engaged in slow walking in front of their lorries at Appleton Thorn;

(7) on 7 April 2017, protestors targeted the drilling company P R Marriott, a shale gas industry supplier; the protestors chained themselves to the gates of P R Marriott's depot; there were further incidents concerning P R Marriott on 23 May 2017, 1 July 2017, 13 July 2017 and 18 July 2017.

26. The Claimants also rely on a witness statement dated 5 September 2017 from Mr Hobday of P R Marriott in which he gave more detail as to the nature of the protests aimed at his company and the effect of those protests on his business. In addition to many incidents of blocking the entrance to its depot and slow walking in front of its lorries, Mr Hobday refers to incidents of lock-ons and protestors climbing on to the roof of lorries to prevent them moving and trespass on to the depot itself. He also refers to the setting up during the night on 30 June 2017 of a protest camp on land near to the company's depot; the land is owned by a third party and not P R Marriott.

27. In his fifth witness statement dated 5 September 2017, Mr Talfan Davies gave further evidence of protestors' activity, trespassing on private land, blocking the entrance to the operators' sites and targeting the businesses of suppliers to operators. Mr Talfan Davies provided further detailed evidence on these matters in his seventh witness statement dated 19 October 2017 and in his eighth witness statement dated 25 October 2017.

28. On 5 September 2017, Assistant Chief Constable Terry Woods wrote to the Chief Executive of United Kingdom Onshore Oil and Gas with information as to the nature and extent of protestor activity in relation to fracking. He made the following points:

(1) there were at that date six occupied anti-fracking camps in England and Wales;

(2) in early 2016, an initial increase in oil and gas exploration activity prompted a corresponding increase in anti-fracking campaigns and protest activity;

(3) since the beginning of 2017, there had been a significant uplift in anti-fracking protests directed at active drilling sites involving community-based protestors and more established environmental protest groups;

(4) although protests had mainly been peaceful, 2017 saw a significant increase in direct action with a sizeable number of arrests; the vast majority of arrests were for obstruction of the highway and of the police, infringement of section 14 of the Public Order Act, criminal damage, threatening behaviour and assault on the police;

(5) during the first three months of 2017, there were 60 arrests of anti-fracking protestors, a considerable increase on the 2016 figures;

(8) a small number of anti-fracking activists were willing to engage in criminality and direct action;

(9) the protests have required significant policing operations;

(10) the tactics used by some protestors included:

a. slow walking;

b. placing bicycles and cars in the path of vehicles;

c. placing placards in front of drivers' windscreens;

d. climbing onto haulage tankers;

e. haulage vehicles being followed back to the depot to identify the contractor involved;

f. parking across site gates;

g. the impeding of site workers;

h. lock-on blockades of site entrances;

i. lock-ons to the underside of vehicles;

j. the targeting of secondary and tertiary supply companies.

(11) there were protestor activities at Little Plumpton in Lancashire on 22 days in July 2017 alone, leading to multiple arrests;

(12) the above-mentioned protests in July 2017 have had a significant adverse impact on the local area, businesses, public services and the police service, in the latter case with a significant financial impact on the police budget.

29. The evidence shows clearly that there is a considerable degree of organisation and exchange of information via social media between some groups of protestors. The evidence from social media shows that the identity of Ineos is well known to many potential protestors. That evidence also shows that groups of protestors were aware of areas of land in which Ineos has an interest and where it will wish to carry out seismic testing and/or drilling. I will give some examples of these matters.

30. The website "Drill or Drop" identified Site 1 in January 2017. The same website identified Site 2 in March 2017. There were acts of trespass on Site 1 in January 2017; it is possible that these acts were by protestors against fracking but I could not find on the balance of probabilities that that was the case. There were protests against Ineos'

cellars on it. Site 4 has been the subject of trespass in the past and has been the subject of threats on social media. Site 4 would also pose a risk to trespassers upon it.

32. In August 2017, there were significant exchanges on social media when two protestors exchanged information about vehicles used by Ineos, including descriptions and registrations. Also in August 2017, following the granting of the ex parte injunctions, one protestor suggested visiting Ineos' office at Site 6 to "test the injunction".

33. There is clear evidence that persons opposed to seismic testing and drilling have stolen or tampered with seismic testing equipment on various of the Ineos sites.

34. I referred earlier to the fact that, on 18 February 2017, protestors entered the offices of MediaZoo, PR consultants for Ineos and chained themselves to piping in the lobby of the offices.

35. Ineos' seismic testing equipment has been stored at the P R Marriott depot which has been the subject of sustained protests.

Matters requiring consideration

36. I heard detailed submissions on a large number of matters which were said to be relevant to my decision in this case. I will consider those matters in the following order:

    (1) The acts which are alleged to be unlawful;

    (2) Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

    (3) The test for an interim injunction;

    (4) Quia timet injunctions;

    (5) The likely result at a trial;

    (6) Persons unknown;

    (7) The duty of candour on an ex parte application;

    (8) The need for clarity and precision; and

    (9) Whether I should grant any injunctions.

The acts which are alleged to be unlawful

unlawful acts and to allow Ineos to carry out its lawful business without such interference.

38. The Claimants have identified the following causes of action in relation to the unlawful acts to which they refer. The causes of action are:

(1) trespass on private land;

(2) actionable interference with private rights of way;

(3) public nuisance caused by interference with the Claimants' right to pass and repass on the highway, where the Claimants are able to show they have suffered particular damage over and above the ordinary damage suffered by the public at large;

(4) harassment contrary to the Protection from Harassment Act 1997; and

(5) conspiracy to injure the Claimants by unlawful means, namely, various criminal offences which are:

a. intimidation by annoyance or violence contrary to section 241(1) of the Trade Union and Labour Relations (Consolidation) Act 1992;

b. criminal damage contrary to section 1 of the Criminal Damage Act 1971;

c. theft contrary to section 1 of the Theft Act 1968;

d. obstruction of the highway contrary to section 137 of the Highways Act 1980;

e. causing danger to road-users contrary to section 22A of the Road Traffic Act 1988.

39. Leaving aside the present context which involves various forms of protest in relation to a matter which is of genuine public concern, there is not much dispute between the parties as to the ingredients of the causes of action relied upon by the Claimants. I will briefly describe those causes of action in a little more detail without regard, in the first instance, to Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and then I will consider the potential impact of Articles 10 and 11 in this case.

Trespass

40. The cause of action for trespass on private land needs no further exposition in this case.

> "Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. There is no actionable interference with a right of way if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him."

Public nuisance

42. In relation to the cause of action for obstruction of the highway, the Claimants put their case in public nuisance. However, I note that Clerk & Lindsell on Torts, 21st ed., at para. 20-180 states that the right of an owner of land adjoining the highway to gain access to the highway is a private common law right distinct from the right of the owner of the land to use the highway itself as a member of the public.

43. Some obstructions of the highway will amount to a public nuisance. I did not hear detailed submissions as to what amounts to a sufficient obstruction of the highway for the purposes of public nuisance. Instead I heard submissions as to what would amount to an obstruction of the highway for the purposes of the criminal offence created by section 137 of the Highways Act 1980. The parties assumed that the same basic principles applied to the public nuisance and to the criminal offence.

44. The position in relation to actions which amount to an obstruction of the highway, for the purposes of public nuisance, is described in Halsbury's Laws, 5th ed. (2012) at para. 325 where it is said:

(1) whether an obstruction amounts to a nuisance is a question of fact;

(2) an obstruction may be so inappreciable or so temporary as not to amount to a nuisance;

(3) generally, it is a nuisance to interfere with any part of the highway; and

(4) it is not a defence to show that although the act complained of is a nuisance with regard to the highway it is in other respects beneficial to the public.

The notes to para. 325 contain references to cases where the test for obstruction is variously described. Thus, it has been said that any wrongful act or omission upon or

45. In Harper v G N Haden & Sons [1933] Ch 298 at 320, Romer LJ said:

> "The law relating to the user of highways is in truth the law of give and take. Those who use them must in doing so have reasonable regard to the convenience and comfort of others, and must not themselves expect a degree of convenience and comfort only obtainable by disregarding that of other people. They must expect to be obstructed occasionally. It is the price they pay for the privilege of obstructing others."

46. A member of the public has a right to sue for a public nuisance if he has suffered particular damage over and above the ordinary damage suffered by the public at large: see R v Rimmington [2006] 1 AC 459 at [7] and [44].

The Protection from Harassment Act 1997

47. In relation to the Protection from Harassment Act 1997, as amended by the Serious Organised Crime and Police Act 2005 (I will refer to the 1997 Act as amended as "the 1997 Act"), it is helpful to distinguish between a claim under the 1997 Act brought by an individual and a claim brought by a company. This is because section 7(5) provides that references in the 1997 Act to "a person", in the context of the harassment of a person, are references to a person who is an individual. Other references in the 1997 Act to "a person" can therefore include a company.

48. In the case of an individual, such as the Fifth to Tenth Claimants, such a person has a cause of action, under sections 1(1) and 3(1), where he or she is the victim of a course of conduct pursued by another person which course of conduct amounts to harassment of the victim and which the other person knows or ought to know amounts to harassment of the victim.

49. In the case of a company, such as the First to Fourth Claimants, such a person may have a cause of action pursuant to sections 1(1A) and 3A. Section 1A of the 1997 Act provides that a person must not pursue a course of conduct:

> "(a) which involves harassment of two or more persons, and
>
> (b) which he knows or ought to know involves harassment of those persons; and
>
> (c) by which he intends to persuade any person (whether or not those mentioned above) (i) not to do something that he is entitled to or required to do; or (ii) to do something that he is not under any obligation to do."

50. Accordingly, pursuant to section 1(1A) and 3A, Ineos can sue a defendant who

know involves harassment of two or more individuals, who are (for example) members of the staff of PR Marriott, by which the defendant intends to persuade those members of staff or anyone else (such as PR Marriott or Ineos itself) not to do something which it is entitled to do or to do something which it is not under an obligation to do.

51. Both sections 1(1) and 1(1A) are subject to section 1(3) which provides that those provisions do not apply to a course of conduct if the person who pursued it shows:

> "(a) that it was pursued for the purpose of preventing or detecting crime,
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or
>
> (c) that in the particular circumstances the pursuit of the course was reasonable".

Section 1(3)(c) of the 1997 Act imposes an objective test of reasonableness: see also R v Colohan [2001] 2 FLR 757.

52. Section 7(2) of the 1997 Act provides that: "references to harassing a person include alarming the person or causing the person distress". This is a non-exhaustive definition. In Thomas v News Group Newspapers Ltd [2002] EMLR 78 at [30], Lord Phillips MR said that: ""Harassment is … a word which is generally understood".

53. More assistance as to the scope of "harassment" is provided by Majrowski v Guy's and St Thomas' NHS Trust [2007] 1 AC 224. In that case, Lord Nicholls said at [30]:

> "Courts are well able to separate the wheat from the chaff at an early stage of the proceedings. They should be astute to do so. In most cases courts should have little difficulty in applying the "close connection" test. Where the claim meets that requirement, and the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 ."

> "If this was the aim, it is easy to see why the definition of harassment was left deliberately wide and open-ended. It does require a course of conduct, but this can be shown by conduct on at least two occasions (or since 2005 by conduct on one occasion to each of two or more people): section 7(3) . All sorts of conduct may amount to harassment. It includes alarming a person or causing her distress: section 7(2) . But conduct might be harassment even if no alarm or distress were in fact caused. A great deal is left to the wisdom of the courts to draw sensible lines between the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour."

54. Section 7(3) of the 1997 Act provides that: "a 'course of conduct' must involve ... (b) in the case of conduct in relation to two or more persons, conduct on at least one occasion in relation to each of those persons". Section 7(3A) of the 1997 Act provides that:

> "[a] person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another –
>
> (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
>
> (b). to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring."

55. Section 2 of the 1997 Act creates the crime of harassment. Sections 3 and 3A create the statutory tort. The only difference between the tort and the crime is in the standard of proof required: Ferguson v British Gas Trading Ltd [2009] 3 All ER 304. Sections 3 and 3A refer to the possibility of the court granting an injunction in relation to "an actual or apprehended breach" of sections 1(1) or 1(1A) and to the consequences of the grant of such an injunction.

Conspiracy

56. The type of conspiracy alleged by the Claimants is a conspiracy to injure by unlawful means. They do not seek to rely upon a conspiracy using lawful means, where the predominant intent is to injure the Claimants.

57. For there to be a conspiracy to injure by unlawful means, there must be:

(1) a combination by two or more persons;

58. The unlawful acts asserted by the Claimants are said to be criminal offences. It was not disputed before me that the criminal acts which are asserted by the Claimants in this case constitute unlawful acts for the purposes of this tort: see JSC BTA Bank v Ablyazov (No 14) [2017] QB 853 at [46]-[47] and [53]-[54].

59. The Claimants rely on the tort of conspiracy to deal with the problem, as they perceive it, that the unlawful acts intended to be committed by the protestors will have a direct impact upon the supply chain of goods and services to Ineos but where the real target of the acts will be Ineos itself. The tort of conspiracy allows a victim of a conspiracy to sue where the acts are aimed at that victim even where the unlawful behaviour has its most direct impact on a third party. The other value of the tort of conspiracy from the Claimants' point of view is that it enables them to claim a remedy in a civil court for breach of a criminal statute where the conduct in question does not, absent a conspiracy, lead to civil liability.

60. The criminal offences which are asserted by the Claimants are:

(1) intimidation by annoyance or violence contrary to section 241(1) of the Trade Union and Labour Relations (Consolidation) Act 1992;

(2) criminal damage contrary to section 1 of the Criminal Damage Act 1971;

(3) theft contrary to section 1 of the Theft Act 1968;

(4) obstruction of the highway contrary to section 137 of the Highways Act 1980; and

(5) causing danger to road-users contrary to section 22A of the Road Traffic Act 1988.

61. Section 241(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides:

> "(1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority –
>
> (a) uses violence to or intimidates that person or his spouse or civil partner or children, or injures his property,
>
> (b) persistently follows that person about from place to place,
>
> (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof

> (e) follows that person with two or more other persons in a disorderly manner in or through any street or road."

62. This offence is not confined to the context of industrial disputes, and can be committed by protestors: DPP v Todd [1966] Crim LR 344. The word "wrongfully" requires that the offending conduct under s.241(1) be independently unlawful as a civil wrong: Blackstone's Criminal Practice 2017 at B11.140, B11.144. The words "intimidates", "persistently follows" and "in a disorderly manner" are to be given their ordinary, natural meaning. The essence of "watching and besetting" is preventing access to and egress from somewhere: Blackstone's Criminal Practice 2017 at B11.144.

63. Criminal damage and theft do not require any exposition in this case.

64. Section 137(1) of the Highways Act 1980 is in these terms:

> "If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine …".

65. In order for there to be an offence under section 137 of the 1980 Act, it must be shown that:

(1) there is an obstruction of the highway which is more than de minimis; occupation of a part of a road, thus interfering with people having the use of the whole of the road, is an obstruction: Nagy v Weston [1965] 1 All ER 78 at 80 B-C;

(2) the obstruction must be wilful, i.e. deliberate;

(3) the obstruction must be without lawful authority or excuse; "without lawful excuse" may be the same thing as "unreasonably" or it may be that it must in addition be shown that the obstruction is unreasonable.

66. It is helpful to refer to four cases involving protest on the highway, namely, Hubbard v Pitt [1976] QB 142, Hirst and Agu v Chief Constable of West Yorkshire (1987) 85 CR App Rep 143, DPP v Jones [1999] 2 AC 240 and Birch v DPP [2000] Crim LR 301.

67. In Hubbard v Pitt, in relation to a claim for an interim injunction to restrain picketing outside an estate agency, Lord Denning held (applying Nagy v Weston) that the picketing was a reasonable use of the highway. There is an important passage in his judgment at pages 178-179, which I will not set out, which discussed the legal position (even before Articles 10 and 11) as to the right to demonstrate and the right to protest. He said that such demonstrations and protests were not prohibited "[a]s

68. In Hirst and Agu v Chief Constable of West Yorkshire, it was held that the phrase "without lawful authority or excuse" covered activities otherwise lawful in themselves which might be reasonable in all the circumstances. The court approved a passage in Nagy v Weston (not itself a case involving demonstrations or protests) which referred to the length of time taken up by the obstruction, the place where it occurred, the purpose for which it was done and whether it caused an actual obstruction rather than a potential obstruction. It was also said that the activity causing the obstruction must be inherently lawful. An obstruction caused by unlawful picketing in pursuance of a trade dispute would be "without lawful excuse".

69. In DPP v Jones, the issue was as to the scope of the public's rights of access to the public highway and whether those rights of access were restricted so that they precluded any right of peaceful assembly on the highway: see per Lord Irvine of Lairg at page 251D-E. The argument for the prosecutor in that case was that the public's right of access was restricted to a right to pass and repass and other incidental activities; any wider use of the highway was said to be a trespass. The argument arose in the context of section 14A of the Public Order Act 1986 which referred to a "trespassory assembly". This argument was rejected. Lord Irvine reviewed the cases where actions on the highway were held to exceed the public's rights of access to the highway. At page 254G-255A, he said:

> "The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the general public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a public right of peaceful assembly on the public highway."

70. Later in his speech in DPP v Jones, Lord Irvine considered section 137 of the Highways Act and the earlier cases including Hirst and Agu with which he obviously agreed. Lord Clyde agreed with Lord Irvine and he stated at page 281E-F:

> "I am not persuaded that in any case where there is a peaceful non-obstructive assembly it will necessarily exceed the public's right of access to the highway. The question then is, as in this kind of case it may often turn out to be, whether on the facts here the limit was passed and the exceeding of it established. The test then is not one which can be defined in general terms but has to depend upon the circumstances as a matter of degree. It requires a careful assessment of the nature and extent of the

Lord Hutton agreed with Lord Irvine.

71. The issue in DPP v Jones related to what amounted to a trespass on the highway and the majority in the House of Lords stressed that the assembly in that case was not obstructive. Nonetheless, the majority did approve Hirst and Agu which had considered section 137 of the Highways Act 1980 and held that it is possible to have an obstruction of the highway which is reasonable and therefore has a lawful excuse for the purposes of that section.

72. In Birch v DPP, a peaceful demonstration involved protestors sitting on the road blocking the traffic. It was held that no one was permitted unreasonably to obstruct the highway and that there was no right to demonstrate in a way which did obstruct the highway.

73. Section 22A(1) and (2) of the Road Traffic Act 1988 provides:

> "(1) A person is guilty of an offence if he intentionally and without lawful authority or reasonable cause -
>
> (a) causes anything to be on or over a road, or
>
> (b) interferes with a motor vehicle, trailer or cycle, or
>
> (c) interferes (directly or indirectly) with traffic equipment,
>
> in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.
>
> (2) In subsection (1) above 'dangerous' refers to danger either of injury to any person while on or near a road, or of serious damage to property on or near a road; and in determining for the purposes of that subsection what would be obvious to a reasonable person in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused."

Articles 10 and 11

74. As I explained earlier, I have so far considered the causes of action relied upon by the Claimants without explicit regard being paid to Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is agreed that these Articles are engaged on the facts of this case even though none of the Claimants is a public authority.

75. Article 10 provides:

> (2). The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

76. Article 11 provides:

> "(1). Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> (2). No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the exercise of these rights by members of the armed forced, or the police, or of the administration of the State."

77. The demonstrations and protests in this case do involve the expressions of opinions and assembly and association with others. Both Articles confer qualified, rather than absolute, rights. Both Articles are qualified in relation to matters which involve public safety, matters needed for the prevention of disorder or crime and for the protection of the rights of others.

78. Ms Williams QC, for the Sixth Defendant made a number of submissions as to the significance of Articles 10 and 11 and cited a number of relevant authorities. In particular, she submitted:

(1) freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and the development of every man;

(2) freedom of expression is available for ideas which offend, shock or disturb the State or any sector of the population;

(3) although Article 11 refers to "peaceful assembly" the only type of assembly

(4) direct action protests can fall within Articles 10 and 11; such protests can include lock-ons, sit ins, protest camps and long term occupations;

(5) although Articles 10 and 11 do not justify criminality or breaches of the law, these Articles do extend to direct action protest activity which deliberately intends to cause annoyance, offence or disruption;

(6) whether the Articles confer a right to carry on direct action protest activity in a particular case will depend upon whether the rival right which is said to qualify Articles 10 and 11, for example the criminal law or the rights of others, satisfies the threefold test referred to below;

(7) the threefold test is that the matter relied upon to restrict or qualify the rights conferred by these Articles, must be:

a) prescribed by law; and

b) necessary in a democratic society; and

c) pursue one or more of the legitimate aims specified in Article 10(2) or 11(2), as the case may be.

(8) a matter is prescribed by law only if it satisfies the established principles as to certainty and legality;

(9) whether something is necessary in a democratic society requires the court to consider whether the interference with the Article 10 or Article 11 right corresponds to a pressing social need and whether it is proportionate to the legitimate aim pursued; restraints on freedom of expression are acceptable only to the extent that they are necessary and justified by compelling reasons; the need for restraint must be convincingly established; this submission applied not only as to whether Articles 10(2) and 11(2) restricted the rights to freedom of expression and assembly by reference to the rights of others but also extended to the question whether the rights of others should be protected by the criminal law or additionally protected by the grant of an injunction.

79. In addition to a number of leading Strasbourg cases which established the above propositions, Ms Williams cited a number of domestic decisions, namely, Westminster CC v Haw [2002] EWHC 2073 (QB), Tabernacle v Secretary of State for Defence [2009] EWCA Civ 23, Mayor of London v Hall [2010] EWCA Civ 817, [2011] 1 WLR 504 and City of London v Samede [2012] EWCA Civ 160, [2012] 2 All ER 1039 which are relevant in the present case as they concerned protests involving direct action.

80. In Westminster CC v Haw, the highway authority sought a final injunction to remove

81. In Tabernacle v Secretary of State for Defence, the Court of Appeal considered an application for judicial review of a bye-law made by the Secretary of State for Defence which would have the effect of banning a protest camp at Aldermaston. The court asked itself whether the Secretary of State had justified the bye-law in a way which satisfied the requirements of Articles 10 and 11. It was held that he had not done so as the suggested justification was limited to dealing with possible nuisance created by the camp. Laws LJ then said at [43]:

> "Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them. Sometimes they are wrong-headed and misconceived. Sometimes they betray a kind of arrogance: an arrogance which assumes that spreading the word is always more important than the mess which, often literally, the exercise leaves behind. In that case, firm but balanced regulation may be well justified. In this case there is no substantial factor of that kind. As for the rest, whether or not the AWPC's cause is wrong-headed or misconceived is neither here nor there, and if their activities are inconvenient or tiresome, the Secretary of State's shoulders are surely broad enough to cope."

82. In Mayor of London v Hall, the Court of Appeal refused permission to appeal to a group of protestors who were camping on Parliament Square against an order for possession and an injunction requiring their removal from the Square. The court regarded the location of the protest as significant (in the protestors' favour) for the purpose of Articles 10 and 11. The court was required to balance the protestors' rights to protest against other matters referred to in Articles 10(2) and 11(2), including the rights of others. The trial judge had referred to issues as to public health and the prevention of criminal damage; he also referred to the rights of others to use the Square. He held that the balancing exercise resulted in it being appropriate to make the order for possession and grant the injunction. The Court of Appeal added into the balancing exercise the rights of different protestors to demonstrate on the Square. The decision in Tabernacle was distinguished. A different result was reached in relation to Mr Haw and a supporter of his and their cases were remitted for further consideration.

83. In City of London v Samede, the Court of Appeal refused permission to appeal to a group of protestors against a possession order and an injunction requiring their removal from St Paul's Churchyard. The protestors relied on Articles 10 and 11 and submitted that the judge had reached the wrong conclusion when carrying out the balancing exercise required by Articles 10 and 11. Referring to the question, posed by the judge, as to the limits to the right of lawful assembly and protest on the highway, Lord Neuberger MR (giving the judgment of the court) said at [39]:

> protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public."

As to the extent to which the court should take into account the views being expressed by the protestors, Lord Neuberger said at [41]:

> " … we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom. In this case the judge accepted that the topics of concern to the Occupy Movement were "of very great political importance": para 155. In our view, that was something which could fairly be taken into account. However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important, or with which they agree."

The test for an interim injunction

84. I will now address the test which I should apply to an application for an interim injunction. Normally, the test is that stated in American Cyanamid Co v Ethicon Ltd [1975] AC 396 which requires that there be at least a serious question to be tried and then refers to the adequacy of damages for either party and the balance of justice (or convenience). The Defendants say that this does not identify the appropriate test in the present case and that the right test to apply is that laid down in section 12 of the Human Rights Act 1998 which provides:

> "12(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) If the person against whom the application for relief is made (*"the respondent"*) is neither present nor represented, no such relief is to be granted unless the court is satisfied— (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.
>
> (3) No such relief is to be granted so as to restrain publication

circumstances of the present case. I consider that in this case "likely" can simply be taken to mean "more likely than not".

86. The parties did not agree as to whether section 12(3) applies in this case. I am satisfied that it does. I have to ask whether the order I am asked to make "might" affect the exercise of the Convention right to freedom of expression. As I am not granting a final injunction after a trial and as I have not therefore made a final determination as to the extent of the Defendants' rights as to freedom of expression, an interim order which restricts demonstrations and protests "might" affect the Defendants' rights to freedom of expression.

Quia timet injunctions

87. The interim injunctions which are sought are mostly, but not exclusively, claimed on a quia timet basis. There are respects in which the Claimants can argue that there have already been interferences with their rights and so the injunctions are to prevent repetitions of those interferences and are not therefore claimed on a quia timet basis. Examples of interferences in the past are said to be acts on trespass on Site 1, theft of, and criminal damage to, seismic testing equipment and various acts of harassment. However, the greater part of the relief is claimed on the basis that the Claimants reasonably apprehend the commission of unlawful acts in the future and they wish to have the protection of orders from the court at this stage to prevent those acts being committed. Accordingly, I will approach the present applications as if they are made solely on the quia timet basis.

88. The general test to be applied by a court faced with an application for a quia timet injunction at trial is quite clear. The court must be satisfied that the risk of an infringement of the claimant's rights causing loss and damage is both imminent and real. The position was described in London Borough of Islington v Elliott [2012] EWCA Civ 56, per Patten LJ at 29, as follows:

> "29 The court has an undoubted jurisdiction to grant injunctive relief on a *quia timet* basis when that is necessary in order to prevent a threatened or apprehended act of nuisance. But because this kind of relief ordinarily involves an interference with the rights and property of the defendant and may (as in this case) take a mandatory form requiring positive action and expenditure, the practice of the court has necessarily been to proceed with caution and to require to be satisfied that the risk of actual damage occurring is both imminent and real. That is particularly so when, as in this case, the injunction sought is a permanent injunction at trial rather than an interlocutory order granted on *American Cyanamid* principles having regard to the balance of convenience. A permanent injunction can only be granted if the claimant has proved at the trial that there will be

injunction, the court acts with caution in view of the possibility that the contemplated unlawful act, or the contemplated damage from it, might not occur and a mandatory order, or the full extent of the mandatory order, might not be necessary. Even where the injunction claimed is a prohibitory injunction, it is not enough for the claimant to say that the injunction only restrains the defendant from doing something which he is not entitled to do and causes him no harm: see Paul (KS) (Printing Machinery) v Southern Instruments (Communications) [1964] RPC 118 at 122; there must still be a real risk of the unlawful act being committed. As to whether the contemplated harm is "imminent", this word is used in the sense that the circumstances must be such that the remedy sought is not premature: see Hooper v Rogers [1975] Ch 43 at 49-50. Further, there is the general consideration that "Preventing justice excelleth punishing justice": see Graigola Merthyr Co Ltd v Swansea Corporation [1928] Ch 235 at 242, quoting the Second Institute of Sir Edward Coke at page 299.

90. In the present case, the Claimants are applying for quia timet injunctions on an interim basis, rather than at trial. The passage quoted above from London Borough of Islington v Elliott indicated that different considerations might arise on an interim application. The passage might be read as suggesting that it might be easier to obtain a quia timet injunction on an interim basis. That might be so in a case where the court applies the test in American Cyanamid where all that has to be shown is a serious issue to be tried and then the court considers the adequacy of damages and the balance of justice. Conversely, on an interim application, the court is concerned to deal with the position prior to a trial and at a time when it does not know who will be held to be ultimately right as to the underlying dispute. That might lead the court to be less ready to grant quia timet relief particularly of a mandatory character on an interim basis.

91. I consider that the correct approach to a claim to a quia timet injunction on an interim basis is, normally, to apply the test in American Cyanamid. The parts of the test dealing with the adequacy of damages and the balance of justice, applied to the relevant time period, will deal with most if not all cases where there is argument about whether a claimant needs the protection of the court. However, in the present case, I do have to apply section 12(3) of the Human Rights Act 1998 and ask what order the court is likely to make at a trial of the claim.

92. I have dealt with the question of quia timet relief in a little detail because it was the subject of extensive argument. However, that should not obscure the fact that the decision in this case as to the grant of quia timet relief on an interim basis is not an unduly difficult one.

93. What is the situation here? On the assumption that the evidence does not yet show that protestors have sought to subject Ineos to their direct action protests, I consider that the evidence makes it plain that (in the absence of injunctions) the protestors will seek to do so. The protestors have taken direct action against other fracking operators and there is no reason why they would not include Ineos in the future. The only reason that other operators have been the subject of protests in the past and Ineos has

94. The next question is whether the risk of infringement of Ineos' rights is imminent. I have described earlier the sites where Ineos wish to carry out seismic testing and drilling. It seems likely that drilling will not commence in a matter of weeks or even months. However, there have been acts of trespass in other cases on land intended to be used for fracking even before planning permission for fracking had been granted and fracking had begun. I consider that the risk of trespass on Ineos' land by protestors is sufficiently imminent to justify appropriate intervention by the court. Further, there have already been extensive protests outside the depots of third party contractors providing services to fracking operators. One of those contractors is P R Marriott. Ineos uses and intends to use the services of P R Marriott. Accordingly, absent injunctions, there is a continuing risk of obstruction of the highway outside P R Marriott's depot and when that contractor is engaged to provide services to Ineos, those obstructions will harm Ineos.

95. To hold that the risk of an infringement of the rights of Ineos is not imminent with the result that the court did not intervene with injunctions at this stage would leave Ineos in a position where the time at which the protestors might take action against it would be left to the free choice of the protestors without Ineos having any protection from an order of the court. I do not consider that Ineos should be told to wait until it suffers harm from unlawful actions and then react at that time. This particularly applies to the injunctions to restrain trespass on land. If protestors were to set up a protest camp on Ineos' land, the evidence shows that it will take a considerable amount of time before Ineos will be able to recover possession of such land. In addition, Ineos has stated in its evidence on its application that it wishes to have clarity as to what is permitted by way of protest and what is not. That seems to me to be a reasonable request and if the court is able to give that clarity that would seem to be helpful to the Claimants and it ought to have been considered to be helpful by the Defendants. A clear injunction would allow the protestors to know what is permitted and what is not.

96. At this point, I will comment on a slightly different but related point. Was it premature for Ineos to seek ex parte relief in this case on 28 July 2017? The Defendants say that I was misled on the ex parte application into believing that an interference with Ineos's rights was so imminent that it was appropriate for Ineos to apply to the court on an urgent ex parte basis. In fact, I did not grant the injunction ex parte on the basis of alleged urgency. I did not form the view that the order had to be made on 28 July 2017 and could not wait for a day or so to allow the Defendants to be given notice of the hearing. Instead, I took the view that the giving of notice of the application to the Defendants would tip them off as to what might happen at a hearing of the application which might have led them to take some of the action which the injunctions which were sought were intended to prevent. The evidence did show that it was possible for protestors to trespass on land and set up protest camps on short notice.

The likely result at a trial

98. I have considered above the test to be applied for the grant of an interim injunction ("more likely than not") and the test for a quia timet injunction at trial ("imminent and real risk of harm"). I will now address the question as to what a court would be likely to do if this were an application for a final injunction and the court accepted the evidence put forward by the Claimants.

99. Before addressing the legal points which arise, I will make my findings as to which of the risks apprehended by the Claimants would be considered to be imminent and real. I consider that on the evidence before me there is an imminent and real risk of:

(1) trespass on the Claimants' land;

(2) interference with equipment on the Claimants' land;

(3) substantial interference with the private rights of way enjoyed by some of the Claimants;

(4) action to prevent the Claimants leaving their land and passing and repassing on the highway; and

(5) action to prevent third party contractors leaving their land and passing and repassing on the highway.

100. I referred earlier to the police report as to the types of direct action which the police have noted in the past. Based on how matters are there described, I consider that there is an imminent and real risk of specific actions such as:

(1) trespass on land;

(2) slow walking;

(3) protestors placing themselves and things such as bicycles and cars and other objects in the path of vehicles;

(4) placing placards in front of drivers' windscreens;

(5) climbing onto vehicles;

(6) parking across site gates;

(7) the impeding of site workers;

(8) lock-on blockades of site entrances;

(9) lock-ons to the underside of vehicles; and

(2) damage to, and theft of, equipment on the Claimants' land;

(3) actionable interference with an easement;

(4) interference with the common law right to access the highway from private land;

(5) obstruction of the highway as an actionable public nuisance; and

(6) conspiracy to injure Ineos by means of the matters in (1) to (5) above in relation to third party contractors supplying goods and services to Ineos.

102. For the reasons which I will give later in this judgment, I do not favour the grant of an injunction against "harassment" largely because of the lack of clarity of that term for the purposes of being included in an injunction. Further, if it is appropriate to grant injunctions against the specific matters referred to in paragraphs 99 and 100 using the causes of action referred to in paragraph 101 above, then that is preferable to an injunction designed to restrain "harassment" without further specification. I take a similar view in relation to some of the generally expressed terms of section 241(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

103. As regards the cause of action in trespass, the right to freedom of expression and the right of assembly under Articles 10 and 11 are relevant. However, there is clear authority as to how those Articles should be applied in cases where the claim is for trespass to private land. I was referred to Appleby v United Kingdom (2003) 37 EHHR 783, School of Oriental and African Studies v Persons Unknown [2010] EWHC 3977 (Ch) and Sun Street Property Ltd v Persons Unknown [2011] EWHC 3432 (Ch). Although the law is quite clear and the result of applying it in the present case was not really in dispute before me, I will refer further to the last of these three cases as it is relevant to submissions I will later deal with as to whether I was misled when I granted injunctions ex parte on 28 July 2017.

104. In Sun Street, the judge (Roth J) referred to Articles 10 and 11 and to the earlier cases of Appleby and School of Oriental and African Studies. He also referred to Mayor of London v Hall and quoted two paragraphs ([37] and [38]) from that case which referred to a number of relevant matters when balancing competing rights for the purposes of Articles 10 and 11. Roth J then contrasted the position of a prominent public space with private land. On the facts of the particular case, Roth J said at [32] in relation to submissions as to Article 10:

> "Those submissions confuse the question of whether taking over the bank's property is a more convenient or even more effective means of the Occupiers expressing their views with the question whether if the bank, or, more accurately, its subsidiary, recovered possession, the Occupiers would be

> resources or the practices of one or more banks without being in occupation of this building complex. No one is seeking to prevent them from coming together to campaign or promulgate those views. I need hardly add that the fact that the occupation gives them a valuable platform for publicity cannot in itself provide a basis for overriding the respondent's own right as regards its property."

105. In the present case, if a final injunction were sought on the basis of the evidence presented on this interim application, the court is (to put it no higher) likely to grant an injunction to restrain the protestors from trespassing on the land of the Claimants. The land is private land and the rights of the Claimants in relation to it are to be given proper weight and protection under Articles 10(2) and 11(2). The Claimants' rights are prescribed by law, namely the law of trespass, and that law is clear and predictable. The protection of private rights of ownership is necessary in a democratic society and the grant of an injunction to restrain trespass is proportionate having regard to the fact that the protestors are free to express their opinions and to assemble elsewhere. There would also be concerns as to safety in the case of trespass on the Claimants' land at a time when that land was an operational site for shale gas exploration.

106. I take the same view as to the claim in private nuisance to prevent a substantial interference with the private rights of way enjoyed in relation to Sites 3 and 4. I would not distinguish for present purposes between the claim in trespass to protect the possession of private land and the claim in private nuisance to protect the enjoyment of a private right of way over private land.

107. The Claimants' claim in relation to obstruction of the highway outside Sites 1 to 8 is put in public nuisance. However, as indicated earlier, based on the passage in Clerk & Lindsell referred to above, the Claimants have a private common law right to access the highway from their land which fronts upon the highway but I will assume in favour of the protestors that if they were carrying on a reasonable use of the highway which impacted on the Claimants' right to access the highway, that would not be an infringement of the right of access to the highway.

108. Two matters need to be considered as to the use of the highway. The first is as to whether the actions of the protestors amount to a reasonable use of the highway and the second is as to the application of Articles 10 and 11. I will proceed on the basis that these matters should be dealt with in the same way for the purposes of the law as to public nuisance as they do in relation to the criminal offence under section 137 of the Highways Act 1980.

109. It is clear from the authorities that, to some extent, demonstrations and protests on the highway can be a reasonable use of the highway. The question is whether direct action of the kind used in the present case would be held to be reasonable use. The

vehicle and all of the traffic backed up behind it was forced to proceed at the pace of the walkers. The "walking" by the protestors was at an unnaturally slow pace. Anyone who was out for a walk or who wanted to get somewhere would not have walked at the pace shown in the video evidence. The pace of the walking was as slow as possible so as not to amount to the protestors being stationary on the highway. Another example of slow walking shown by the video evidence was where the protestors walked in front of vehicles trying to leave a depot of one of the fracking operators. Again, the pace of the walking was the bare minimum so as not to amount to the protestors being stationary on the highway.

111. It is perhaps implicit in the protestors' wish not to remain stationary on the highway that they recognised that to do so would have amounted to an unreasonable use of the highway. In any event, I think that it is likely that on an application for a final injunction, a court would take the view that standing still in order to block the passage of vehicles on the highway because the vehicles are being used for a purpose to which the protestor objects would not be a reasonable use of the highway. If so, I simply do not see that the somewhat token amount of movement involved in slow walking would change the legal assessment of the protestors' actions.

112. The lock-ons in the present case involve protestors being locked-on to each other or to something which cannot easily be moved. The idea is that when the police wish to remove the protestors, the process of removal will take much longer because of the need to cut through the means by which the protestors are locked-on. If the protestors are lying on the highway in a way which obstructs the traffic then the additional element of locking-on is designed to prolong the period of such obstruction. On an application for a final injunction, I think that it is likely that a court would hold that the act of lying in the road to obstruct traffic particularly with the additional delay in removal caused by locking-on to someone else or to something would not be regarded as a reasonable use of the highway.

113. I reach these conclusions as to what would amount to reasonable use of the highway by paying proper attention to the facts of the earlier cases which accepted that demonstrations and protests on the highway could be considered to be a reasonable use of the highway. The degree of obstruction of the highway which was contemplated in those cases as being potentially reasonable was strikingly more limited than what has been involved in the direct action protests of the anti-fracking protestors in this case.

114. Accordingly, if on the application for a final injunction, it is likely that a court would hold that the direct action protests on the highway amounted to a public nuisance and a criminal offence under section 137 of the Highways Act 1980, what then would be the result of an application of Articles 10 and 11? As explained in Mayor of London v Hall and Samede, that question is fact sensitive. The court has regard to number of factors which include the extent to which the continuation of the protest would breach domestic law, the importance of the location of the protest to the protestors, the

fracking operators in an attempt to make them stop their fracking activities. It would not be surprising in such a case that the court would take the view that balancing the entitlement to freedom of expression and assembly against the rights of others, the balance should be struck in favour of protecting the rights of others from a direct interference with those rights. As to the location of the protests, the location of the direct action is chosen as the best place to interfere with the activities of the fracking operators rather than (as in Parliament Square or St Paul's Churchyard) the best place to express opinions to the general public. As to the duration of the obstruction of the highway and the interference with the rights of others, the duration is intended to be long enough to have an adverse impact on the activities of the fracking operators.

115. As explained above, there are a number of ingredients to the tort of conspiracy to injure by unlawful means. I will start by considering the unlawful means. Theft and criminal damage are plainly unlawful means. There is clear evidence as to criminal offences under section 137 of the Highways Act 1980 aimed at third party contractors providing services to fracking operators. There is also evidence which shows that there have been activities contrary to section 22A of the Road Traffic Act 1988. Locking-on to a vehicle is an interference with the vehicle which is dangerous.

116. As to the combination by protestors to commit unlawful acts, there is clear evidence as to such a combination. In particular, the offences under section 137 of the Highways Act 1980 involved a number of protestors acting together in a way which must have been planned and were not coincidence. Further, the evidence shows that the protestors intended to injure the fracking operator whether the protests took place in relation to the premises and vehicles of the operator or of the third party contractors.

Persons unknown

117. I am asked to grant interim injunctions against five categories of "Persons Unknown". In paragraphs 8 - 12 above, I have set out the descriptions of the first five sets of Defendants, variously described as Persons Unknown.

118. The Claimants submit that the joinder of parties as "Persons Unknown" is now an established and permissible way to proceed. Accordingly, they submit that they are able to use that procedure in this case and no special justification for using it needs to be shown. They say that they do not have to show that it is impossible for them to ascertain the names of any of the protestors who might be involved in the conduct which is to be restrained by the injunctions. They say that they do not have to use the different procedural rules whereby a claimant can sue a named defendant as a representative of others with the same interest: see CPR rule 19.6.

119. At the inter partes hearing in September 2017, I heard submissions from the Defendants on the procedure used by the Claimants in this respect. I was concerned at the idea that the court might be asked to grant a quia timet injunction against persons

trespass on Site 1). Proceeding in this way would seem to produce the result that at the time when the court made its order there were no persons within the defined category of Persons Unknown. How then, later, did some persons come within that category and become subject to the court's order? Did they become parties by their unilateral action which was action forbidden by the court's order?

120. The first case which permitted a claimant to sue persons unknown defined by other words of description (without specific statutory authority for that procedure) was Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd [2003] 1 WLR 1633. In that case, the judge (Sir Andrew Morritt V-C) said at [21] that it was not material that the description of persons unknown might apply to no one. In Hampshire Waste Services Ltd v Intended Trespassers [2004] Env LR 196, the same judge granted a quia timet injunction to restrain future trespass by protestors. The judge amended the description of the persons unknown in that case so that it referred to persons entering or remaining on the relevant land without the consent of the owner of it. The judge did not favour a description which involved a legal concept such as "trespass" nor did he favour a description which involved a person's subjective state of mind, for example, his intentions. These two cases were discussed with approval by Lord Rodger of Earlsferry in Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] 1 WLR 2780 at [2].

121. Before the development of the law in Bloomsbury Publishing, in 1991, Parliament had introduced a new section, section 187B, into the Town and Country Planning Act 1990 which provided for the making of rules of court so as to permit a local authority in certain cases to obtain injunctive relief against persons unknown. Those powers were considered by the Court of Appeal in South Cambridgeshire DC v Gammell [2006] 1 WLR 658. At [32], Sir Anthony Clarke MR described the position where an injunction had been granted against persons unknown of a certain description and following that order a person had done the thing which the order provided should not be done. It was held that when that person did the thing forbidden by that order, that person became a party to the proceedings and committed a breach of the order. It was not necessary to make a further order of the court adding that person as a party.

122. Although, in Hampshire Waste, the judge did not favour a description of persons unknown which included a reference to their intentions (and the same view was taken in South Cambridgeshire DC v Persons Unknown [2004] EWCA Civ 1280) there have been later cases where words such as "intending" or "proposing" have been used.

123. Since Bloomsbury Publishing, there have been many cases where the courts have been asked to grant, and have granted, injunctions against persons unknown. As it happens, many of these involved injunctions against various kinds of protestors. I consider that the position has now been reached that the procedure adopted by the Claimants in the present case is a course which was open to them. Although the Defendants made detailed submissions calling into question the use of this procedure, the Defendants did not focus on the words of description which were used in this case

The duty of candour on an ex parte application

124. Before considering whether to grant injunctions in this case and, if so, the terms of any injunctions, it is necessary to consider the submission made by the Defendants which criticised the Claimants' conduct of the ex parte application made to the court on 28 July 2017. The Defendants submitted that the Claimants had not conducted that application in a fair way, informing the court in a full and frank way of the points which were available to the Defendants and which could have been put forward by the Defendants if they had been given proper notice of that hearing.

125. There was no real dispute as to the relevant legal principles. The problem, as always in this area, was said to arise in relation to the application of those principles. The Claimants said that there had been no breach of the duty of candour in relation to the ex parte application. The Defendants said that there were several grave breaches of the duty of candour and that the right response from the court would be to discharge the ex parte injunctions (and the continuation of them in September 2017) and to refuse to grant to the Claimants any injunctive relief prior to the trial of the action.

126. Although there was no real dispute as to the legal principles which are well known, it is helpful to set out an often quoted summary of the principles together with some more recent comments since that summary was first provided. The summary is in the judgment of Mr Boyle QC sitting as a Deputy High Court Judge in The Arena Corporation Ltd v Schroeder [2003] EWHC 1089 (Ch) at [213] in these terms:

> "(1) If the court finds that there have been breaches of the duty of full and fair disclosure on the ex parte application, the general rule is that it should discharge the order obtained in breach and refuse to renew the order until trial.
>
> (2) Notwithstanding that general rule, the court has jurisdiction to continue or re-grant the order.
>
> (3) That jurisdiction should be exercised sparingly**,** and should take account of the need to protect the administration of justice and uphold the public interest in requiring full and fair disclosure.
>
> (4) The Court should assess the degree and extent of the culpability with regard to non-disclosure. It is relevant that the breach was innocent, but there is no general rule that an innocent breach will not attract the sanction of discharge of the order. Equally, there is no general rule that a deliberate breach will attract that sanction.
>
> (5) The Court should assess the importance and significance to

> (6) The Court can weigh the merits of the plaintiff's claim, but should not conduct a simple balancing exercise in which the strength of the plaintiff's case is allowed to undermine the policy objective of the principle.
>
> (7) The application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice.
>
> (8) The jurisdiction is penal in nature and the court should therefore have regard to the proportionality between the punishment and the offence.
>
> (9) There are no hard and fast rules as to whether the discretion to continue or re-grant the order should be exercised, and the court should take into account all relevant circumstances."

127. That summary was cited by Christopher Clarke J in Re OJSC ANK Yugraneft [2008] EWHC 2614 (Ch), [2010] BCC 475 and he added his own comments at [103]-[106], as follows:

> "103 I regard that as a helpful review of the applicable principles, subject to the overriding principle, reflected in proposition (9), that the question of whether, in the absence of full and fair disclosure, an order should be set aside and, if so, whether it should be renewed either in the same or in an altered form, is pre-eminently a matter for the court's discretion, to which (as Mr Boyle observes at [180]) the facts (if they be such) that the non-disclosure was innocent and that an injunction or other order could properly have been granted if the relevant facts had been disclosed, are relevant. In exercising that discretion the court, like Janus, looks both backwards and forwards.
>
> 104 The court will look back at what has happened and examine whether, and if so, to what extent, it was not fully informed, and why, in order to decide what sanction to impose in consequence. The obligation of full disclosure, an obligation owed to the court itself, exists in order to secure the integrity of the court's process and to protect the interests of those potentially affected by whatever order the court is invited to make. The court's ability to set its order aside, and to refuse to renew it, is the sanction by which that obligation is enforced and others are deterred from breaking it. Such is the importance of the duty that, in the event of any substantial breach, the court

> 105 As to the future, the court may well be faced with a situation in which, in the light of all the material to hand after the non-disclosure has become apparent, there remains a case, possibly a strong case, for continuing or re-granting the relief sought. Whilst a strong case can never justify non disclosure, the court will not be blind to the fact that a refusal to continue or renew an order may work a real injustice, which it may wish to avoid.
>
> 106 As with all discretionary considerations, much depends on the facts. The more serious or culpable the non-disclosure, the more likely the court is to set its order aside and not renew it, however prejudicial the consequences. The stronger the case for the order sought and the less serious or culpable the non-disclosure, the more likely it is that the court may be persuaded to continue or re-grant the order originally obtained. In complicated cases it may be just to allow some margin of error. It is often easier to spot what should have been disclosed in retrospect, and after argument from those alleging non-disclosure, than it was at the time when the question of disclosure first arose."

128. Thus, if the court finds that an applicant has obtained ex parte relief but has failed to comply with the duty or candour or of full and frank disclosure, the court can respond in a number of ways. One response is to discharge the ex parte order which was obtained. If the court does discharge the ex parte order, the court needs to consider whether to grant the same or a similar order following an inter partes hearing. The fact that the court has discharged the ex parte order by reason of the non-disclosure can be enough to persuade the court not to make an inter partes order to which the applicant would otherwise be entitled but a refusal to make an inter partes order does not automatically follow from a decision to discharge the ex parte order.

129. Ms Williams on behalf of the Sixth Defendant made the following principal submissions:

(1) The relief sought on an ex parte basis was in wide sweeping terms;

(2) There was no genuine urgency;

(3) The Claimants had spent an enormous amount of time in preparing the application;

(4) The voluminous extent of the exhibits meant that the court would be heavily reliant on the Claimants' summaries of what the evidence showed;

a) The Claimants did not inform the court that there would only be an actionable obstruction of the highway, or the criminal offence of obstruction of the highway, if the use of the highway was unreasonable;

b) The Claimants' description of the three-pronged test to be applied pursuant to Articles 10 and 11 was inadequate; and

c) The Claimants failed to identify the correct test as to the right to protest on public land;

(7) The Claimants misled the court in relation to factual assertions, as follows:

a) The court was misled as to the alleged urgency of the application;

b) The evidence materially overstated the allegedly imminent risk of injury death or harm and the nature of Ineos' duties in that respect;

c) The selections from social media were unrepresentative;

d) The court was played an unrepresentative 10 minutes of video evidence;

e) The Claimants did not make it clear that the vast majority of anti fracking protests were peaceful and lawful;

f) The Claimants did not make it clear that peaceful protest activity had already taken place in relation to Sites 1 and 2;

g) Mr Fellows' witness statement was unfair in its description of what happened at a meeting in January 2017 in relation to Site 1;

h) Mr Pickering overstated the extent to which there was a consensus that fracking was safe;

i) The Claimants did not make it clear that there was usually, but not always, a delay between the grant of planning permission for drilling on land and the occupation of that land;

j) The experiences of other fracking companies was misdescribed in Mr Talfan Davies' second witness statement; and

k) There were other examples of the facts being misdescribed.

130. Ms Harrison QC for the Seventh Defendant made the following submissions on this part of the case:

(2) The material provided to the court at the ex parte hearing was very extensive; the draft order ran to many pages; there was a 37-page skeleton argument; there were seven witness statements with three lever arch files of exhibits; there was six hours of video footage;

(3) The court was heavily dependent on the material put before it by the Claimants so that the duty of candour on the Claimants was particularly high;

(4) The Claimants misled the court into thinking there was an imminent threat of tortious conduct;

(5) The Claimants referred to "militant protestor activity" and "a recent escalation of unlawful activity";

(6) The Claimants should have told the court that there had been peaceful protests;

(7) The Claim Form stated that the case did not raise any issues under the Human Rights Act 1998;

(8) The court was misled as to the position in relation to Articles 10 and 11;

(9) The court was misled as to the right to protest on the highway and DPP v Jones was not cited;

(10) There was no mention of Article 8;

(11) The description of the position under the Protection from Harassment Act 1997 was inadequate;

(12) The Claimants misrepresented the controversial nature of fracking;

(13) Ineos did not tell the court of its safety failings at other sites;

(14) The Claimants did not explain the rural nature of the drilling sites and the effect of fracking on the local community;

(15) The Claimants falsely alleged that the police supported the application for injunctions; and

(16) The Claimants did not tell the court that posting up notices of the injunction would be a criminal offence of fly-posting.

131. As can be seen, the Defendants' criticisms of the Claimants' conduct of the ex parte application are very extensive. I am quite clear that as regards many of the matters which are now raised by the Defendants, I was not misled. As regards some of the other contentions that the court was misled as to the facts, I consider that it is not

the trees. Further, an application to discharge an ex parte injunction on the ground of non-disclosure ought to be capable of being dealt with reasonably concisely. One of the things which normally cannot be done is to determine what the disputed facts are in order to assess whether the court was misled as to the facts. The position is otherwise if the facts are truly so plain that they can be readily and summarily established. The resolution of disputes as to the facts is normally a matter for the trial rather than for an application to discharge an ex parte injunction. In making the comments in this paragraph, I have followed the guidance given in Kazakhstan Kagazy plc v Arip [2004] EWCA Civ 381 at [36].

132. I will now deal with the allegation that I was misled as to the facts in accordance with the above guidance. By this stage, I have spent a considerable amount of time absorbing what is said in the various witness statements and the exhibits so that I am familiar with all of that material. I have re-read the 37-page skeleton argument which was before me on 28 July 2017. I have also read a transcript of that hearing. The ex parte application was a heavy application. The court was provided with an enormous amount of material. However, the witness statements themselves were not unmanageable, although still lengthy. Whether the exhibits fully supported the statements made by the witnesses is not a question which can be adjudicated upon on the applications to discharge the ex parte injunctions. It is certainly not plain and obvious that they did not. I have of course considered in a general way the allegations of misleading facts but my overall assessment is that the court was not misled.

133. I turn then to consider the submissions that I was misled as to the law to be applied. I deal first with the submission that I was misled as to the civil and criminal law as to what amounts to an obstruction of the highway and the extent to which protests on the highway are lawful. The skeleton argument prepared for the ex parte hearing referred to the law as to public nuisance and, separately, as to section 137 of the Highways Act 1980. In relation to section 137, the skeleton argument referred to the defence of lawful authority and excuse and separately to the question whether a defendant's use of the highway was reasonable, citing both Westminster CC v Haw and Nagy v Weston. The former of those cases cited both Hurst and Agu and DPP v Jones. I consider that the skeleton adequately directed me to the point that some protest activity on the highway could be a reasonable use of the highway. I considered at the ex parte hearing that it was likely (see section 12(3) of the Human Rights Act 1998) that at trial the Claimants would establish that the obstructions of the highway complained of in this case were actionable and an infringement of section 137. Following the three day inter partes hearing, I plainly have an even deeper understanding of what the case law says about non-obstructive protests on the highway but I remain of the view that the present case is a clear one that the direct action protests on the highway in this case go well beyond lawful reasonable use of the highway.

134. As to the position under the Human Rights Act 1998, the ex parte application was

> 23. For the purpose of the present application only, Cs accept that the court must be satisfied that any relief granted by it would not amount to a disproportionate interference with Ds' Convention rights under Articles 10 and 11 of the European Convention, when balanced against Cs' rights to peaceful enjoyment of their possessions (including their real property, personal property and corporate goodwill) under Article 1 of Protocol 1 of the European Convention ("A1P1"). These rights are all qualified rights.
>
> 24. A corporate entity's goodwill and intangible assets are possessions which qualify for protection under A1P1, albeit that an entity's expected or anticipated future income is not a possession: Clayton and Tomlinson, *The Law of Human Rights* (2nd Ed, 2009) at 18.22, citing R (Countryside Alliance) v Attorney-General [2008] 1 AC 719; [2007] UKHL 52 at 747C-G ([22]), per Lord Bingham.
>
> 25. Cs' case is that Ds' have no defence to this application based on their Convention rights, as:
>
> a. in the balancing exercise between Cs' A1P1 rights and Ds' Convention rights, Article 10 has no presumptive priority over other qualified Convention rights, including A1P1: Thames Cleaning and Support Services Ltd v United Voices of the World [2016] EWHC 1310 (QB) at [35], per Warby J.
>
> b. when a private landowner's A1P1 rights are to be balanced against protesters' rights under Articles 10 and 11 of the European Convention, the latter will only be capable of altering the position which would obtain under domestic law where the failure to restrict the landowner's property rights would prevent any effective exercise of freedom of expression, or where the essence of the right would be destroyed: Appleby v United Kingdom (2003) 37 EHRR 38 at [47], applied in Sun Street Property Ltd v Persons Unknown [2011] EWHC 3432 at [32]-[33], per Roth J; and Manchester Ship Canal Developments Ltd v Persons Unknown [2014] EWHC 646 (Ch) at [37], per HHJ Pelling QC.
>
> c. there can be no argument that the injunction sought by Cs would have this effect, as Cs seek no more than to prevent Ds engaging in activities which are unlawful under domestic law."

135. In Thames Cleaning, the judge (Warby J) dealt with Articles 10 and 11 and section

136. At the ex parte hearing, I was specifically taken to the decision in Sun Street where the judge (Roth J) set out the full text of Articles 10 and 11 and the decision in Appleby. Sun Street also referred to Mayor of London v Hall and I was provided with a copy of the decision at first instance in that case. Earlier in this judgment, I have described what was decided in that case. It was argued at the inter partes hearing that the decision in Sun Street only deals with the right to possession of private land and therefore has nothing to say about the right to protest on the highway. Although this was not argued before me, it may be that Sun Street is a potentially relevant authority even when the "rights of others" referred to in Article 10(2) or 11(2) are the rights of a private operator, who is not a public authority, to carry on a lawful business (with or without goodwill) and so that the authority is not restricted to a case where the right in question is a right to the possession of private land.

137. Of course, after three days of an inter partes hearing with lengthy skeleton arguments, the citation of many authorities and oral submissions from four leading counsel, my understanding as to the operation of Articles 10 and 11 is now deeper than it was on 28 July 2017. However, on 28 July 2017, I was not misled as to the importance of the rights conferred by Articles 10 and 11. Further, much of the case law on these Articles to which I was referred by Ms Williams is an elaboration of the words of the Articles and many of the principles are clear enough from the wording of Articles 10(2) and 11(2). Further, I was aware from the authorities cited to me on 28 July 2017 that Articles 10 and 11 extended to direct action protests and involved a fact sensitive assessment. I also bear in mind that after the detailed exposition from the Defendants as to Articles 10 and 11, the case remains a clear one where I consider that it is not open to the Defendants to rely on Articles 10 and 11 in an attempt to justify direct action for the purpose of harming the Claimants with a view to forcing them to give up their lawful business. I consider that I was not misled as to the basic principles as to Articles 10 and 11 by reason of any breach by the Claimants of their duty of candour.

138. For the sake of completeness, the fact that the Claimants' solicitor ticked the box on the Claim Form saying that there were no issues under the Human Rights Act 1998 has no significance, particularly in the light of the way matters were described in the skeleton argument.

139. As to the position under the Protection from Harassment Act 1997, the matter was not very clearly presented initially at the ex parte hearing but during the hearing, I was taken to the basic provisions of the 1997 Act and the distinction between a case where the victim of the harassment is an individual and a case was made within section 1(1A) and section 3A. Also, I raised the question whether it was appropriate to grant an injunction against "harassment" without further specification and with some hesitation, I made such an order.

140. Having considered the applications to discharge the ex parte injunction and the order in September 2017 which continued it, I am not persuaded that the Claimants did

That would have led me to grant an injunction until trial even if the facts of this case had crossed the line into being a breach of the duty of candour.

The need for clarity and precision

141. It is important in this case that any injunction granted must be expressed in clear and precise terms. There is a general requirement to that effect, as explained in A-G v Punch Ltd [2003] 1 AC 1046 per Lord Nicholls at [35]:

> "35 Here arises the practical difficulty of devising a suitable form of words. An interlocutory injunction, like any other injunction, must be expressed in terms which are clear and certain. The injunction must define precisely what acts are prohibited. The court must ensure that the language of its order makes plain what is permitted and what is prohibited. This is a well established, soundly-based principle. A person should not be put at risk of being in contempt of court by an ambiguous prohibition, or a prohibition the scope of which is obviously open to dispute. An order expressed to restrain publication of "confidential information" or "information whose disclosure risks damaging national security" would be undesirable for this reason."

Should I grant injunctions and if so, in what terms

142. I have held that there is an imminent and real risk that, in the absence of injunctions, the Defendants will interfere with the legal rights of the Claimants. Further, in the absence of injunctions, it is unlikely that the Claimants will receive any legal redress or compensation for the infringement of their rights. Ineos's business activities are lawful. The Defendants wish Ineos to stop carrying on those activities and wish to put pressure on Ineos to stop. However, on my findings in this judgment, the Defendants' means of putting pressure on Ineos involve unlawful behaviour on their part, including criminal acts. I have also held, applying section 12(3) of the Human Rights Act 1998, that it is likely that the court following a trial would grant a permanent injunction to restrain the interferences with the Claimants' legal rights. The normal response of a court to this state of affairs would be to grant similar interim injunctions without further ado.

143. The Defendants submit that this is not a proper case in which the court should intervene by granting interim injunctions. It is said that the civil courts should leave it to the criminal law and to the police to deal with any criminal behaviour which arises. Put that way, I am not attracted to that submission. The fact that the same conduct might involve criminal offences as well as wrongdoing which is actionable in a civil court is not usually a reason to deny a claimant in a civil court an injunction to restrain interference with his legal rights. The detection and prosecution of alleged

be that there would be less need for the police to be involved. If the injunctions are not complied with and the police are involved, then they will be free to form their own decisions as to the appropriate response to the situation as they find it. It is not appropriate for me to try to predict whether any injunctions which are granted will be obeyed. I was not asked to refuse to grant injunctions on the ground that they would not be obeyed and it would not be right to refuse relief on that ground. Equally, it is not appropriate for me to speculate as to the ease or difficulty which the Claimants would have in seeking to enforce any clearly expressed injunction.

144. I conclude that I ought to grant injunctions in this case provided that they can be expressed in clear terms having regard to the matters emphasised in Attorney General v Punch Ltd.

145. In relation to the injunctions to restrain trespass on Sites 1, 3, 4, 5, 6 and 8 (where there are no public footpaths) are concerned, it is a straightforward matter to grant an injunction in terms which prevent the Defendants entering or remaining on that land without the consent of the relevant Claimants. The Defendants say that such an order would go too far as it would prevent the Defendants attending on such a site, for example the offices of Ineos, to hand in a petition against fracking. The Defendants say that they are entitled to enter Ineos' offices for such a purpose as part of their rights under Articles 10 and 11. They also submit that they are entitled to go on to Ineos' land to stand there with a placard. I do not agree with these submissions. At the lowest, I consider that it is likely that a court asked to grant a final injunction against trespass would hold that the Defendants were not so entitled.

146. In the case of Sites 2 and 7, there is a public footpath across the sites. The orders granted in July and September 2017 provided that the injunction was not to prevent a member of the public using those footpaths. The Defendants made a number of practical points about what is involved in using a public footpath. A public footpath will have a particular width in legal terms although there may be a lack of clarity both in fact and in law as to what that width is. Further, there will be occasions when a walker will leave the footpath without causing any harm to anyone but yet leaving the footpath will result in an act of trespass and a breach of an order restraining trespass. An obvious example would be where the walker is pulled off the path by his dog or he goes off the path to retrieve his dog. My view is that the order should continue to provide as it did in July and September 2017. It is not sensible to start drafting elaborate wording dealing with various practical problems which walkers face when asked to keep to a public footpath. Conversely, it is not sensible to refuse to grant an injunction against trespassing on Sites 2 and 7 on account of what is suggested to be a particular difficulty in this respect.

147. Another point raised as to the public footpaths is that it was submitted that the legal principles as to reasonable use of a highway should apply equally to reasonable use of a public footpath. Thus, it is submitted, if the public are entitled to protest on a highway, they are entitled to protest on a public footpath. I consider that I do not need

148. I will also grant injunctions to restrain the Defendants from causing damage to, or removal of, equipment on Sites 1, 2, 3, 4 and 7. It will not be necessary to join a new class of Defendants for this purpose as they will be the First Defendants because they have entered upon those Sites.

149. As regards the injunctions to restrain interference with the private rights of way in the case of Sites 3 and 4, I will grant the injunctions in the terms granted in September 2017. The injunctions will prevent "substantial interference" with the rights of way. I was not asked to include any definition of what would amount to substantial interference and I do not think that it is appropriate to do so. The concept of substantial interference with a right of way is simple enough and is well established.

150. I now turn to consider what restrictions, if any, should be placed on protestors' activities on the highway. In September 2017, the injunction referred to the Defendants “unreasonably interfering and/or interfering without lawful authority or excuse” with the right to pass and repass. I consider that it is appropriate for any order to be more clear as to what is not allowed. I will restrain any obstruction which prevents the Claimants accessing the highway from any of their Sites, with the intention of causing inconvenience and delay. Given that there has been argument about slow walking on the highway, I consider that the injunctions should expressly state that walking in front of vehicles with the object of slowing then down and with the intention of causing inconvenience and delay is not permitted. Other activities which are not to be permitted are blocking the highway with persons or things when done with a view to slowing down or stopping the traffic and with the intention of causing inconvenience and delay. Similarly, I will restrain the climbing by protestors on to vehicles being used by the Claimants (which would be a trespass to such vehicles).

151. There will also be an injunction to restrain a combination, with the intent of causing injury to Ineos, where the combination is to commit any of the modes of obstructing access to the highway or use of the highway referred to above, the access and use in question being by a third party contractor engaged to supply goods or services to Ineos. The injunction will name the contractors intended to be embraced by this order.

152. That brings me finally to the injunctions sought in relation to harassment. The principal injunction which is sought in respect of harassment relates to the corporate claimants rather than the individuals. In relation to the corporate claimants, the ingredients of the statutory tort are a little complicated and require a claimant to show that a defendant has carried on a course of conduct (as defined in section 7) with the relevant knowledge (as defined in section 1(2)) which involves harassment of two or more persons by which he intends to persuade any person not to do something which he is entitled or required to do or to do something that he is not under an obligation to do. Accordingly, any injunction granted to prevent the commission of the statutory tort would have to be expressed to refer to all of the necessary ingredients of the tort. Such an injunction would involve a considerable measure of complication.

defendant would not know in advance what the court's decision would ultimately be. This is a particularly acute problem where the courts have explained that behaviour which is annoying and irritating may not be harassment. In the present context, of protest on a matter of public importance, there are likely to be strongly expressed objections to fracking. The expression of those objections may lead to the making of abusive and insulting comments about Ineos (and indeed about the individual Claimants who have made their land available to Ineos) where there might be real difficulty in knowing whether the conduct amounts to harassment. It would be unfortunate if any order made by the court did not enable a Defendant to know what was being restrained. If the order is not clear, a Defendant might commit a breach of it whilst believing that he was complying with the order. There would also be the risk of a chilling effect if a Defendant felt constrained not to do something which he was lawfully entitled to do for fear of finding himself in breach of a court order.

154. The order put forward by the Claimants does not provide any information as to what is and is not permitted beyond the use of the word "harassment". The draft order does contain a qualification as to the intention with which the "harassment" is done but a Defendant who does wish to harm Ineos still has to know whether his intended conduct will or will not amount to harassment and breach the order.

155. In Majrowski, Lady Hale referred to an injunction under the 1997 Act "specifying" the matters to be restrained by the injunction. I was shown a large number of cases where courts have granted injunctions restraining harassment. Many of these cases involved injunctions against protestors wishing to pursue various kinds of protests. In many of these cases, the orders granted spelt out the behaviour which was to be restrained. It is true that in such cases, it was normal for the order to add a general prohibition on "harassment" although I have some reservations as to the appropriateness of doing so. In Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB), the judge (Swift J) declined to grant an injunction against harassment under the 1997 Act in a case involving public protest: see at [99]. She was influenced, as I am, by the lack of clarity as to what is forbidden and what is not forbidden by such an order.

156. In the present case, I have identified what the Claimants have established in relation to an imminent and real risk of harm. The matters established primarily relate to trespass on land and obstructions of the highway. If those matters are restrained, as I hold that they can be, by an order which is clear and precise, I do not consider that the Claimants have demonstrated a need for the court to make an order against harassment within the Protection from Harassment Act 1997, where there is no clear definition to what is restrained and what is permitted. I consider than such an order could have undesirable consequences which the court would wish to avoid. However, I will give the Claimants permission to apply in the future for an injunction against harassment expressed in clear and precise terms specifying the matters which are restrained by such an order if the Claimants can demonstrate that there is a need for such an order in addition to the other orders which are in force.