Neutral Citation Number: [2022] EWCA Civ 13

Appeal Nos. See Appendix 1 to [2021] EWHC 1201 (QB) Case Nos: See Appendix 1 to [2021] EWHC 1201 (QB)

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION
Mr Justice Nicklin
[2021] EWHC 1201 (QB)

Date: 13/01/2022

Before:
SIR GEOFFREY VOS, MASTER OF THE ROLLS LORD JUSTICE LEWISON
and
LADY JUSTICE ELISABETH LAING

BETWEEN:
(1) London Borough of Barking and Dagenham
(2) Other Local Authorities (listed in Appendix 1 at [2021] EWHC 1201 (QB))
Claimants/Appellants
-and –
(1) Persons Unknown
(2) Other named Defendants (listed in Appendix 1 at [2021] EWHC 1201 (QB))
Defendants/Respondents
-and -
(1) London Gypsies and Travellers (2) Friends, Families and Travellers (3) Derbyshire Gypsy Liaison Group

(4) High Speed Two (HS2) Limited (5) Basildon Borough Council
Interveners

Caroline Bolton and Natalie Pratt (instructed by Sharpe Pritchard LLP and LB Barking & Dagenham Legal Services) for the 1st, 6th, 11th, 16th, 26th, 28th, 33rd and 34th claimants (London Borough of Barking and Dagenham, London Borough of Havering, London Borough of Redbridge, Basingstoke and Deane Borough Council and Hampshire County Council, Nuneaton and Bedworth Borough Council and Warwickshire County Council, Rochdale Metropolitan Borough Council, Test Valley Borough Council, and Thurrock Council)

Ranjit Bhose QC and Steven Woolf (instructed by South London Legal Partnership) for the 7th and 12th claimants (London Borough of Hillingdon, and London Borough of Richmond- Upon-Thames)

Nigel Giffin QC and Simon Birks (instructed by Walsall Metropolitan Borough Council Legal Services) for the 35th claimant (Walsall Metropolitan Borough Council)
Mark Anderson QC and Michelle Caney (instructed by Wolverhampton City Council Legal Services) for the 36th claimant (Wolverhampton County Council)

Marc Willers QC, Tessa Buchanan and Owen Greenhall (instructed by Community Law Partnership) for the first three interveners (London Gypsies and Travellers, Friends, Families and Travellers, and Derbyshire Gypsy Liaison Group)
Richard Kimblin QC (instructed by Eversheds Sutherland (International) LLP) for the 4th intervener (HS2)

Wayne Beglan (instructed by Basildon Borough Council Legal Services) for the 5th intervener (Basildon Borough Council) (making written submissions only)
Tristan Jones (instructed by the Attorney General) as Advocate to the Court Hearing dates: 30 November and 1 and 2 December 2021

JUDGMENT
"Covid-19 Protocol:

This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am, Thursday 13 January 2022."

Judgment Approved by the court for handing down. London Borough of Barking and Dagenham v. Persons Unknown
Sir Geoffrey Vos, Master of the Rolls:
Introduction

1. This case arises in the context of a number of cases in which local authorities have sought interim and sometimes then final injunctions against unidentified and unknown persons who may in the future set up unauthorised encampments on local authority land. These persons have been collectively described in submissions as "newcomers". Mr Marc Willers QC, leading counsel for the first three interveners, explained that the persons concerned fall mainly into three categories, who would describe themselves as Romani Gypsies, Irish Travellers and New Travellers.

2. The central question in this appeal is whether the judge was right to hold that the court cannot grant final injunctions that prevent persons, who are unknown and

unidentified at the date of the order (i.e. newcomers), from occupying and trespassing on local authority land. The judge, Mr Justice Nicklin, held that this was the effect of a series of decisions, particularly this court's decision in Canada Goose UK Retail Ltd. v. Persons Unknown and another [2020] EWCA Civ 202, [2020] 1 WLR 2802 (Canada Goose) and the Supreme Court's decision in Cameron v. Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau Intervening) [2019] UKSC 6, [2019] 1 WLR 1471 (Cameron). The judge said that, whilst interim injunctions could be made against persons unknown, final injunctions could only be made against parties who had been identified and had had an opportunity to contest the final order sought.

3. The 15 local authorities that are parties to the appeals before the court contend that the judge was wrong,1 and that, even if that is what the Court of Appeal said in Canada Goose, its decision on that point was not part of its essential reasoning, distinguishable on the basis that it applied only to so-called protester injunctions, and, in any event, should not be followed because (a) it was based on a misunderstanding of the essential decision in Cameron, and (b) was decided without proper regard to three earlier Court of Appeal decisions in South Cambridgeshire District Council v. Gammell [2006] 1 WLR 658 (Gammell), Ineos Upstream Ltd v. Persons Unknown and others [2019] EWCA Civ 515, [2019] 4 WLR 100 (Ineos), and Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12, [2020] PTSR 1043 (Bromley).

4. The case also raises a secondary question as to the propriety of the procedure adopted by the judge to bring the proceedings in their current form before the court. In effect, the judge made a series of orders of the court's own motion requiring the parties to these proceedings to make submissions aimed at allowing the court to reach a decision as to whether the interim and final orders that had been granted in these cases could or should stand. Counsel for one group of local authorities, Ms Caroline Bolton, submitted that it was not open to the court to call in final orders made in the past for reconsideration in the way that the judge did.

5. In addition, there are subsidiary questions as to whether (a) the statutory jurisdiction to make orders against persons unknown under section 187B of the Town and Country Planning Act 1990 (section 187B) to restrain an actual or apprehended breach of planning control validates the orders made, and (b) the court may in any circumstances like those in the present case make final orders against all the world.

6. I shall first set out the essential factual and procedural background to these claims, then summarise the main authorities that preceded the judge's decision, before identifying the judge's main reasoning, and finally dealing with the issues I have identified.

7. I have concluded that: (i) the judge was wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order, from occupying and trespassing on land, and (ii) the procedure adopted by the judge was unorthodox. It was unusual insofar as it sought to call in final orders of the court for revision in the light of subsequent legal developments, but has nonetheless enabled a comprehensive review of the law applicable in an important field. Since most of the orders provided for review and nobody objected to the process at the time, there is now no need for further action. (iii) Section 37 of the Senior Courts Act 1981 (section 37) and section 187B impose the same procedural limitations on applications for injunctions of this kind. (iv) Whilst it is the court's proper function to give procedural guidelines, the court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

8. This area of law and practice has been bedevilled by the use of Latin tags. That usage is particularly inappropriate in an area where it is important that members of the public can understand the courts' decisions. I have tried to exclude Latin from this judgment, and would urge other courts to use plain language in its place.
The essential factual and procedural background

9. There were 5 groups of local authorities before the court, although the details are not material. The first group was led by Walsall Metropolitan Borough Council (Walsall), represented by Mr Nigel Giffin QC. The second group was led by Wolverhampton City Council (Wolverhampton), represented by Mr Mark Anderson QC. The third group was led by the London Borough of Hillingdon (Hillingdon), represented by Mr Ranjit Bhose QC. The fourth and fifth groups were led respectively by the London Borough of Barking and Dagenham (Barking) and the London Borough of Havering (Havering), represented by Ms Caroline Bolton. The cases in the groups led by Walsall, Wolverhampton, and Barking related to final injunctions, and those led by Hillingdon and Havering related to interim injunctions.

10. The injunctions granted in each of the cases were in various forms broadly described in the detailed Appendix 1 to the judge's judgment. Some of the final injunctions provided for review of the orders to be made by the court either annually or at other stages. Most, if not all, of the injunctions allowed permission for anyone affected by the order, including persons unknown, to apply to vary or discharge them.

11. It is important to note at the outset that these claims were all started under the procedure laid down by CPR Part 8, which is appropriate where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact (CPR 8.1(2)(a)). Whilst CPR 8.2A(1) contemplates a practice direction setting out circumstances in which a claim form may be issued under Part 8 without naming a

defendant, no such practice direction has been made (see Cameron at [9]). Moreover, CPR 8.9 makes clear that, where the Part 8 procedure is followed, the defendant is not required to file a defence, so that several other familiar provisions of the CPR do not apply and any time limit preventing parties taking a step before defence also does not apply. A default judgment cannot be obtained in Part 8 cases (CPR 8.1(5)). Nonetheless, CPR 70.4 provides that a judgment or order against "a person who is not a party to proceedings" may be enforced "against that person by the same methods as if he were a party".

12. These proceedings seem to have their origins from 2 October 2020 when Nicklin J dealt with an application in the case of London Borough of Enfield v. Persons Unknown [2020] EWHC 2717 (QB) (Enfield), and raised with counsel the issues created by Canada Goose. Nicklin J told the parties that he had spoken to the President of the Queen's Bench Division (the PQBD) about there being a "group of local authorities who already have these injunctions and who, therefore, may following the decision today, be intending or considering whether they ought to restore the injunctions in their cases to the Court for reconsideration". He reported that the PQBD's current view was that she would direct that those claims be brought together to be managed centrally. In his judgment in Enfield, Nicklin J said that "the legal landscape that [governed] proceedings and injunctions against Persons Unknown [had] transformed since the Interim and Final Orders were granted in this case", referring to Cameron, Ineos, Bromley, Cuadrilla Bowland Ltd v. Persons Unknown [2020] 4 WLR 29 (Cuadrilla), and Canada Goose.

13. Nicklin J concluded at [32] in Enfield that, in the light of the decision in Speedier Logistics v. Aadvark Digital [2012] EWHC 2276 (Comm) (Speedier), there was "a duty on a party, such as the Claimant in this case who (i) has obtained an injunction against Persons Unknown without notice, and (ii) is aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, to restore the case within a reasonable period to the court for reconsideration". He said that duty was not limited to public authorities.

14. At [42]-[44], Nicklin J said that Canada Goose established that final injunctions against persons unknown did not bind newcomers, so that any "interim injunction the Court granted would be more effective and more extensive in its terms than any final order the court could grant". That raised the question of whether the court ought to grant any interim relief at all. The only way that Enfield could achieve what it sought was "to have a rolling programme of applications for interim orders", resulting in "litigation without end".

15. On 16 October 2020, Nicklin J made an order expressed to be with the concurrence of the PQBD and the judge in charge of the Queen's Bench Division Civil

List. That order (the 16 October order) recited the orders that had been made in Enfield, and that it appeared that injunctions in similar terms might have been made in 37 scheduled sets of proceedings, and that similar issues might arise. Accordingly, Nicklin J ordered without a hearing and of the court's own motion, that, by 13 November 2020, each claimant in the scheduled actions must file a completed and signed questionnaire in the form set out in schedule 2 to the order. The 16 October order also made provision for those claimants who might want, having considered Bromley and Canada Goose, to discontinue or apply to vary or discharge the orders they had obtained in their cases. The 16 October order stated that the court's first objective was to "identify those local authorities with existing Traveller Injunctions who [wished] to maintain such injunctions (possibly with modification), and those who [wished] to discontinue their claims and/or discharge the current Traveller Injunction granted in their favour".

16. Mr Giffin and Mr Anderson emphasised to us that they had not objected to the order the court had made. The 16 October order does, nonetheless, seem to me to be unusual in that it purports to call in actions in which final orders have been made suggesting, at least, that those final orders might need to be discharged in the light of a change in the law since the cases in question concluded. Moreover, Mr Anderson expressed his client's reservations about one judge expressing "deep concern" over the order that had been made in favour of Wolverhampton by 3 other judges. By way of example, Jefford J had said in her judgment on 2 October 2018 that she was satisfied, following the principles in Bloomsbury Publishing Group Ltd v. News Group Newspapers Ltd [2003] EWHC 1205, [2003] 1 WLR 1633 (Bloomsbury) and South Cambridgeshire District Council v. Persons Unknown [2004] EWCA Civ 1280 (South Cambridgeshire), that it was appropriate for the application to be made against persons unknown.

17. The 16 October order and the completion of questionnaires by numerous local authorities resulted in the rolled-up hearing before Nicklin J on 27 and 28 January 2021, in respect of which he delivered judgment on 12 May 2021. As a result, the judge made a number of orders discharging the injunctions that the local authorities had obtained and giving consequential directions.

18. Nicklin J concluded his judgment by explaining the consequences of what he had decided, in summary, as follows:

i) Claims against persons unknown should be subject to stated safeguards.

ii) Precautionary interim injunctions would only be granted if the applicant demonstrated, by evidence, that there was a sufficiently real and imminent risk of a tort being committed by the respondents.

iii) If an interim injunction were granted, the court in its order should fix a date for a further hearing suggested to be not more than one month from the interim order.

iv) The claimant at the further hearing should provide evidence of the efforts made to identify the persons unknown and make any application to amend the claim form to add named defendants.

v) The court should give directions requiring the claimant, within a defined period:
(a) if the persons unknown have not been identified sufficiently that they fall within Category 1 persons unknown,2 to apply to discharge the interim injunction against persons unknown and discontinue the claim under CPR 38.2(2)(a),
(b) otherwise, as against the Category 1 persons unknown defendants, to apply for (i) default judgment;3 or (ii) summary judgment; or (iii) a date to be fixed for the final hearing of the claim, and, in default of compliance, that the claim be struck out and the interim injunction against persons unknown discharged.

This was a reference to the two categories set out by Lord Sumption at [13] in Cameron, as to which see As I have noted above, default judgment is not available in Part 8 cases.

vi) Final orders must not be drafted in terms that would capture newcomers.

19. I will return to the issues raised by the procedure the judge adopted when I deal with the second issue before this court raised by Ms Bolton.

The main authorities preceding the judge's decision

20. It is useful to consider these authorities in chronological order, since, as the judge rightly said in Enfield, the legal landscape in proceedings against persons unknown seems to have transformed since the injunction was granted in that case in mid-2017, only 41⁄2 years ago.

Bloomsbury: judgment 23 May 2003

21. The persons unknown in Bloomsbury had possession of and had made offers to sell unauthorised copies of an unpublished Harry Potter book. Sir Andrew Morritt VC continued orders against the named parties for the limited period until the book would be published, and considered the law concerning making orders against unidentified persons. He concluded that an unknown person could be sued, provided that the description used was sufficiently certain to identify those who were included and those who were not. The description in that case [4] described the defendants' conduct and was held to be sufficient to identify them [16]-[21]. Sir Andrew was assisted by an advocate to the court. He said that the cases decided under the Rules

of the Supreme Court did not apply under the Civil Procedure Rules: “the overriding objective and the obligations cast on the court are inconsistent with an undue reliance on form over substance” [19]. Whilst the persons unknown against whom the injunction was granted were in existence at the date of the order and not newcomers in the strict sense, this does not seem to me to be a distinction of any importance. The order he made was also not, in form, a final order made at a hearing attended by the unknown persons or after they had been served, but that too, as it seems to me, is not a distinction of any importance, since the injunction granted was final and binding on those unidentified persons for the relevant period leading up to publication of the book.

Hampshire Waste Services Ltd v. Intending Trespassers Upon Chineham Incinerator Site [2003] EWHC 1738, [2004] Env. L. R. 9 (Hampshire Waste): judgment 8 July 2003

22. Hampshire Waste was a protester case, in which Sir Andrew Morritt VC granted a without notice injunction against unidentified “[p]ersons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites ... in connection with the ‘Global Day of Action Against Incinerators’”. Sir Andrew accepted at [6]-[10] that, subject to two points on the way the unknown persons were described, the position was in essence the same as in Bloomsbury. The unknown persons had not been served and there was no argument about whether the order bound newcomers as well as those already threatening to protest.

South Cambridgeshire: judgment 17 September 2004

23. In South Cambridgeshire, the Court of Appeal (Brooke and Clarke LJJ) granted a without notice interim injunction against persons unknown causing or permitting hardcore to be deposited, or caravans being stationed, on certain land, under section 187B.

24. At [8]-[11], Brooke LJ said that he was satisfied that section 187B gave the court the power to “make an order of the type sought by the claimants”. He explained that the “difficulty in times gone by against obtaining relief against persons unknown” had been remedied either by statute or by rule, citing recent examples of the power to grant such relief in different contexts in Bloomsbury and Hampshire Waste.

Gammell: judgment 31 October 2005

25. In Gammell, two injunctions had been granted against persons unknown under section 187B. The first (in South Cambridgeshire) was an interim order granted by the Court of Appeal restraining the occupation of vacant plots of land. The second (in Bromley London Borough Council v. Maughan) (Maughan) was an order made until further order restraining the stationing of caravans. In both cases, newcomers who

violated the injunctions were committed for contempt, and the appeals were dismissed.

26. Sir Anthony Clarke MR (with whom Rix and Moore-Bick LJJ agreed) said that the issue was whether and in what circumstances the approach of the House of Lords in South Bucks District Council v. Porter [2003] UKHL 26, [2003] 2 AC 557 (Porter) applied to cases where injunctions were granted against newcomers [6]. He explained that, in Porter, section 187B injunctions had been granted against unauthorised development of land owned by named defendants, and the House was considering whether there had been a failure to consider the likely effect of the orders on the defendants' Convention rights in accordance with section 6(1) of the Human Rights Act 1998 (the 1998 Act) and the European Convention on Human Rights and Fundamental Freedoms (the Convention).

27. Sir Anthony noted at [10] that in Porter, the defendants were in occupation of caravans in breach of planning law when the injunctions were granted. The House had (Lord Bingham at [20]) approved [38]-[42] of Simon Brown LJ's judgment, which suggested that injunctive relief was always discretionary and ought to be proportionate. That meant that it needed to be: "appropriate and necessary for the attainment of the public interest objective sought - here the safeguarding of the environment - but also that it does not impose an excessive burden on the individual whose private interests - here the gipsy's private life and home and the retention of his ethnic identity - are at stake". He cited what Auld LJ (with whom Arden and Jacob LJJ had agreed) had said in Davis v. Tonbridge & Malling Borough Council [2004] EWCA Civ 194 (Davis) at [34] to the additional effect that it was "questionable whether Article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B", and that the jurisdiction was to be exercised with due regard to the purpose for which it was conferred, namely to restrain breaches of planning control. Auld LJ at [37] in Davis had explained that Porter recognised two stages: first, to look at the planning merits of the matter, according respect to the authority's conclusions, and secondly to consider for itself, in the light of the planning merits and any other circumstances, in particular those of the defendant, whether to grant injunctive relief. The question, as Sir Anthony saw it in Gammell, was whether those principles applied to the cases in question [12].

28. At [28]-[29], Sir Anthony held, as a matter of essential decision, that the balancing exercise required in Porter did not apply, either directly or by analogy, to cases where the defendant was a newcomer. In such cases, Sir Anthony held at [30]-[31] that the court would have regard to statements in Mid-Bedfordshire District Council v. Brown [2004] EWCA Civ 1709, [2005] 1 WLR 1460 (Brown) (Lord Phillips MR, Mummery and Jonathan Parker LJJ) as to cases in which defendants occupy or continue to occupy land without planning permission and in disobedience of orders of the court. The principles in Porter did not apply to an application to add

newcomers (such as the defendants in Gammell and Maughan) as defendants to the action. It was, in that specific context, that Sir Anthony said what is so often cited at [32] in Gammell, namely:

In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Thus in the case of [Ms Maughan] she became a person to whom the injunction was addressed and a defendant when she caused her three caravans to be stationed on the land on 20 September 2004. In the case of [Ms Gammell] she became both a person to whom the injunction was addressed and the defendant when she caused or permitted her caravans to occupy the site. In neither case was it necessary to make her a defendant to the proceedings later.

29. In dismissing the appeals against the findings of contempt, Sir Anthony summarised the position at [33] including the following: (i) Porter applied when the court was considering granting an injunction against named defendants. (ii) Porter did not apply in full when a court was considering an injunction against persons unknown because the relevant personal information was, ex hypothesi, unavailable.

That fact made it "important for courts only to grant such injunctions in cases where it was not possible for the applicant to identify the persons concerned or likely to be concerned". (iii) In deciding a newcomer's application to vary or discharge an injunction against persons unknown, the court will take account of all the circumstances of the case, including the reasons for the injunction, the reasons for the breach and the applicant's personal circumstances, applying the Porter and Brown principles.

30. These holdings were, in my judgment, essential to the decision in Gammell. It was submitted that the local authority had to apply to join the newcomers as defendants, and that when the court considered whether to do so, the court had to undertake the Porter balancing exercise. The Court of Appeal decided that there was no need to join newcomers to an action in which injunctions against persons unknown had been granted and knowingly violated by those newcomers. In such cases, the newcomers automatically became parties by their violation, and the Porter exercise was irrelevant. As a result, it was irrelevant also to the question of whether the newcomers were in contempt.

31. There is nothing in Gammell to suggest that any part of its reasoning depended on whether the injunctions had been granted on an interim or final basis. Indeed, it was essential to the reasoning that such injunctions, whether interim or final, applied in their full force to newcomers with knowledge of them. It may also be noted that there was nothing in the decision to suggest that it applied only to injunctions

granted specifically under section 187B, as opposed to cases where the claim was brought to restrain the commission of a tort.

Secretary of State for the Environment, Food and Rural Affairs v. Meier [2009] UKSC 11, [2009] 1 WLR 2780 (Meier): judgment 1 December 2009

32. In Meier, the Forestry Commission sought an injunction against travellers who had set up an unauthorised encampment. The injunction was granted by the Court of Appeal against "those people trespassing on, living on, or occupying the land known as Hethfelton Wood". The case did not, therefore, concern newcomers. Nonetheless, Lord Rodger made some general comments at [1]-[2] which are of some relevance to this case. He referred to the situation where the identities of trespassers were not known, and approved the way in which Sir Andrew Morritt VC had overcome the procedural problems in Bloomsbury and Hampshire Waste. Referring to South Cambridgeshire, he cited with approval Brooke LJ's statement that "[t]here was some difficulty in times gone by against obtaining relief against persons unknown, but over the years that problem has been remedied either by statute or by rule".4

Cameron: judgment 20 February 2019

33. In Cameron, an injured motorist applied to amend her claim to join "[t]he person unknown driving [the other vehicle] who collided with [the claimant's vehicle] on [the date of the collision]". The Court of Appeal granted the application, but the Supreme Court unanimously allowed the appeal.

34. Lord Sumption said at [1] that the question in the case was in what circumstances it was permissible to sue an unnamed defendant. Lord Sumption said at [11] that, since Bloomsbury, the jurisdiction had been regularly invoked in relation to abuse of the internet, trespasses and other torts committed by protesters, demonstrators and paparazzi. He said that in some of the cases, proceedings against persons unknown were allowed in support of an application for precautionary injunctions, where the defendants could only be identified as those persons who might in future commit the relevant acts. It was that body of case law that the majority of the Court of Appeal (Gloster and Lloyd- Jones LJJ) had followed in deciding that an action was permissible against the unknown driver who injured Ms Cameron. He said that it was "the first occasion on which the basis and extent of the jurisdiction [had] been considered by the Supreme Court or the House of Lords".

35. After commenting at [12] that the CPR neither expressly authorised nor expressly prohibited exceptions to the general rule that actions against unnamed parties were permissible only against trespassers (see CPR Part 55.3(4), which in fact only refers to possession claims against trespassers), Lord Sumption distinguished at [13] between two kinds of case in which the defendant cannot be named: (i) anonymous

defendants who are identifiable but whose names are unknown (e.g. squatters), and (ii) defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction was that those in the first category were described in a way that made it possible in principle to locate or communicate with them, whereas in the second category it was not. It is to be noted that Lord Sumption did not mention a third category of newcomers.

Lord Rodger noted also the discussion of such injunctions in Jillaine Seymour, "Injunctions Enjoining Non-Parties: Distinction without Difference" (2007) 66 CLJ 605-624.

36. At [14], Lord Sumption said that the legitimacy of issuing or amending a claim form so as to sue an unnamed defendant could properly be tested by asking whether it was conceptually possible to serve it: the general rule was that service of originating process was the act by which the defendant was subjected to the court's jurisdiction: Barton v. Wright Hassall LLP [2018] 1 WLR 1119 at [8]. The court was seised of an action for the purposes of the Brussels Convention when the proceedings were served (as much under the CPR as the preceding Rules of the Supreme Court): Dresser UK Ltd v. Falcongate Freight Management Ltd [1992] QB 502 per Bingham LJ at page 523. An identifiable but anonymous defendant could be served with the claim form, if necessary, by alternative service under CPR 6.15, which was why proceedings against anonymous trespassers under CPR 55.3(4) had to be effected in accordance with CPR 55.6 by placing them in a prominent place on the land. In Bloomsbury, for example, the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction. Lord Sumption then referred to Gammell as being a case where the Court of Appeal had held that, when proceedings were brought against unnamed persons and interim relief was granted to restrain specified acts, a person became both a defendant and a person to whom the injunction was addressed by doing one of those acts. It does not seem that he disapproved of that decision, since he followed up by saying that "[i]n the case of anonymous but identifiable defendants, these procedures for service are now well established, and there is no reason to doubt their juridical basis".

37. Accordingly, pausing there, Lord Sumption seems to have accepted that, where an action was brought against unknown trespassers, newcomers could, as Sir Anthony Clarke MR had said in Gammell, make themselves parties to the action by (knowingly) doing one of the prohibited acts. This makes perfect sense, of course, because Lord Sumption's thesis was that, for proceedings to be competent, they had to be served. Once Ms Gammell knowingly breached the injunction, she was both aware of the proceedings and made herself a party. Although Lord Sumption mentioned that the Gammell injunction was "interim", nothing he said places any

importance on that fact, since his concern was service, rather than the interim or final nature of the order that the court was considering.

38. Lord Sumption proceeded to explain at [16] that one did not identify unknown persons by referring to something they had done in the past, because it did not enable anyone to know whether any particular persons were the ones referred to. Moreover, service on a person so identified was impossible. It was not enough that the wrongdoers themselves knew who they were. It was that specific problem that Lord Sumption said at [17] was more serious than the recent decisions of the courts had recognised. It was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard.

39. Pausing once again, one can see that, assuming these statements were part of the essential decision in Cameron, they do not affect the validity of the orders against newcomers made in Gammell (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating those orders (see [32] in Gammell).

40. At [19], Lord Sumption explained why the treatment of the principle that a person could not be made subject to the jurisdiction of the court without having notice of the proceedings had been "neither consistent nor satisfactory". He referred to a series of cases about road accidents, before remarking that CPR 6.3 and 6.15 considerably broadened the permissible modes of service, but that the object of all the permitted modes of service was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain its contents or was reasonably likely to enable him to do so. He commented that the Court of Appeal in Cameron appeared to "have had no regard to these principles in ordering alternative service of the insurer". On that basis, Lord Sumption decided at [21] that, subject to any statutory provision to the contrary, it was an essential requirement for any form of alternative service that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant. The Court of Appeal had been wrong to say that service need not be such as to bring the proceedings to the defendant's attention. At [25], Lord Sumption commented that the power in CPR 6.16 to dispense with service of a claim form in exceptional circumstances had, in general, been used to escape the consequences of a procedural mishap. He found it hard to envisage circumstances in which it would be right to dispense with service in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought. He concluded at [26] that the anonymous unidentified driver in Cameron could not be sued under a pseudonym or description, unless the circumstances were such that the service of the claim form could be effected or properly dispensed with.

Ineos: judgment 3 April 2019

41. Ineos was argued just 2 weeks after the Supreme Court's decision in Cameron. The claimant companies undertook fracking, and obtained interim injunctions restraining unlawful protesting activities such as trespass and nuisance against persons unknown including those entering or remaining without consent on the claimants' land. One of the grounds of appeal raised the issue of whether the judge had been right to grant the injunctions against persons unknown (including, of course, newcomers).

42. Longmore LJ (with whom both David Richards and Leggatt LJJ agreed) first noted that Bloomsbury and Hampshire Waste had been referred to without disapproval in Meier. Having cited Gammell in detail, Longmore LJ recorded that Ms Stephanie Harrison QC, counsel for one of the unknown persons (who had been identified for the purposes of the appeal), had submitted that the enforcement against persons unknown was unacceptable because they "had no opportunity, before the injunction was granted, to submit that no order should be made" on the basis of their Convention rights. Longmore LJ then explained Cameron, upon which Ms Harrison had relied, before recording that she had submitted that Lord Sumption's two categories of unnamed or unknown defendants at [13] in Cameron were exclusive and that the defendants in Ineos did not fall within them.

43. Longmore LJ rejected that argument on the basis that it was "too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued". Nobody had suggested that Bloomsbury and Hampshire Waste were wrongly decided. Instead, she submitted that there was a distinction between injunctions against persons who existed but could not be identified and injunctions against persons who did not exist and would only come into existence when they breached the injunction. Longmore LJ rejected that submission too at [29]-[30], holding that Lord Sumption's two categories were not considering persons who did not exist at all and would only come into existence in the future (referring to [11] in Cameron). Lord Sumption had, according to Longmore LJ, not intended to say anything adverse about suing such persons. Lord Sumption's two categories did not include newcomers, but "[h]e appeared rather to approve them [suing newcomers] provided that proper notice of the court order can be given and that the fundamental principle of justice on which he relied for the purpose of negating the ability to sue a "hit and run" driver" was not infringed (see my analysis above). Lord Sumption's [15] in Cameron amounted "at least to an express approval of Bloomsbury and no express disapproval of Hampshire Waste". Longmore LJ, therefore, held in Ineos that there was no conceptual or legal prohibition on suing persons unknown who were not currently in existence but would come into existence when they committed the prohibited tort.

44. Once again, there is nothing in this reasoning that justifies a distinction between interim and final injunctions. The basis for the decision was that Bloomsbury and Hampshire Waste were good law, and that in Gammell the defendant became a party to the proceedings when she knew of the injunction and violated it. Cameron was about the necessity for parties to know of the proceedings, which the persons unknown in Ineos did.

Bromley: judgment 21 January 2020

45. In Bromley, there was an interim injunction preventing unauthorised encampment and fly tipping. At the return date, the judge refused the injunction preventing unauthorised encampment on the grounds of proportionality, but granted a final injunction against fly tipping including by newcomers. The appeal was dismissed. Cameron was not cited to the Court of Appeal, and Bloomsbury and Hampshire Waste were cited, but not referred to in the judgments. At [29], however, Coulson LJ (with whom Ryder and Haddon-Cave LJJ agreed), endorsed the elegant synthesis of the principles applicable to the grant of precautionary injunctions against persons unknown set out by Longmore LJ at [34] in Ineos. Those principles concerned the court's practice rather than the appropriateness of granting such injunctions at all. Indeed, the whole focus of the judgment of Coulson LJ and the guidance he gave was on the proportionality of granting borough-wide injunctions in the light of the Convention rights of the travelling communities.

46. At [31]-[34], Coulson LJ considered procedural fairness "because that has arisen starkly in this and the other cases involving the gipsy and traveller community". Relying on article 6 of the Convention, Attorney General v. Newspaper Publishing plc [1988] Ch 333 and Jacobson, Coulson LJ said that "the principle that the court should hear both sides of the argument [was] therefore an elementary rule of procedural fairness".

47. Coulson LJ summarised many of the cases that are now before this court and dealt also with the law reflected in Porter, before referring at [44] to Chapman v. United Kingdom 33 EHRR 18 (Chapman) at [73], where the European Court of Human Rights (ECtHR) had said that the occupation of a caravan by a member of the Gypsy and Traveller community was an integral part of her ethnic identity and her removal from the site interfered with her article 8 rights not only because it interfered with her home, but also because it affected her ability to maintain her identity as a gipsy. Other cases decided by the ECtHR were also mentioned.

48. After rejecting the proportionality appeal, Coulson LJ gave wider guidance starting at [100] by saying that he thought there was an inescapable tension between the "article 8 rights of the Gypsy and Traveller community" and the common law of trespass. The obvious solution was the provision of more designated transit sites.

49. At [102]-[108], Coulson LJ said that local authorities must regularly engage with the travelling communities, and recommended a process of dialogue and communication. If a precautionary injunction were thought to be the only way forward, then engagement was still of the utmost importance: "[w]elfare assessments should be carried out, particularly in relation to children". Particular considerations included that: (a) injunctions against persons unknown were exceptional measures because they tended to avoid the protections of adversarial litigation and article 6 of the Convention, (b) there should be respect for the travelling communities' culture, traditions and practices, in so far as those factors were capable of being realised in accordance with the rule of law, and (c) the clean hands doctrine might require local authorities to demonstrate that they had complied with their general obligations to provide sufficient accommodation and transit sites, (d) borough-wide injunctions were inherently problematic, (e) it was sensible to limit the injunction to one year with subsequent review, as had been done in the Wolverhampton case (now before this court), and (f) credible evidence of criminal conduct or risks to health and safety were important to obtain a wide injunction. Coulson LJ concluded with a summary after saying that he did not accept the submission that this kind of injunction should never be granted, and that the cases made plain that "the gipsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another": "[a]n injunction which prevents them from stopping at all in a defined part of the UK comprised a potential breach of both the Convention and the Equality Act 2010, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise".

50. It may be commented at once that nothing in Bromley suggests that final injunctions against unidentified newcomers can never be granted.

Cuadrilla: judgment 23 January 2020

51. In Cuadrilla, the Court of Appeal considered committals for breach of a final injunction preventing persons unknown, including newcomers, from trespassing on land in connection with fracking. The issues are mostly not relevant to this case, save that Leggatt LJ (with whom Underhill and David Richards LJJ substantively agreed) summarised the effect of Ineos (in which Leggatt LJ had, of course, been a member of the court) as being that there was no conceptual or legal prohibition on (a) suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort, or (b) granting precautionary injunctions to restrain such persons from committing a tort which has not yet been committed [48]. After further citation of authority, the Court of Appeal departed from one aspect of the guidance given in Ineos, but not one that is relevant

to this case. Leggatt LJ noted at [50] that the appeal in Canada Goose was shortly to consider injunctions against persons unknown.

Canada Goose: judgment 5 March 2020

52. The first paragraph of the judgment of the court in Canada Goose (Sir Terence Etherton MR, David Richards and Coulson LJJ) recorded that the appeal concerned the way in which, and the extent to which, civil proceedings for injunctive relief against persons unknown could be used to restrict public protests. On the claimants' application for summary judgment, Nicklin J had refused to grant a final injunction, discharged the interim injunction, and held that the claim form had not been validly served on any defendant in the proceedings and that it was not appropriate to make an order dispensing with service under CPR 6.16(1). The first defendants were named as persons unknown who were protestors against the manufacture and sale at the first claimant's store of clothing made of or containing animal products. An interim injunction had been granted until further order in respect of various tortious activities including assault, trespass and nuisances, with a further hearing also ordered.

53. The grounds of appeal were based on Nicklin J's findings on alternative service and dispensing with service, the description of the persons unknown, and the judge's approach to the evidence and to summary judgment. The appeal on the service issues was dismissed at [37]-[55]. The Court of Appeal started its treatment of the grounds of appeal relating to description and summary judgment by saying that it was established that proceedings might be commenced, and an interim injunction granted, against persons unknown in certain circumstances, as had been expressly acknowledged in Cameron and put into effect in Ineos and Cuadrilla.

54. The court in Canada Goose set out at [60] Lord Sumption's two categories from [13] of Cameron, before saying at [61] that that distinction was critical to the possibility of service: "Lord Sumption acknowledged that the court may grant interim relief before the proceedings have been served or even issued but he described that as an emergency jurisdiction which is both provisional and strictly conditional" [14]. This citation may have sown the seeds of what was said at [89]-[92], to which I will come in a moment.

55. At [62]-[88] in Canada Goose, the court discussed in entirely orthodox terms the decisions in Cameron, Gammell, Ineos, and Cuadrilla, in which Leggatt LJ had referred to Hubbard v. Pitt [1976] 1 QB 142 and Burris v. Azadani [1995] 1 WLR 1372. At [82], the court built on the Cameron and Ineos requirements to set out refined procedural guidelines applicable to proceedings for interim relief against persons unknown in protester cases like the one before that court. The court at [83]-[88]

applied those guidelines to the appeal to conclude that the judge had been right to dismiss the claim for summary judgment and to discharge the interim injunction.

56. It is worth recording the guidelines for the grant of interim relief laid down in Canada Goose at [82] as follows:

(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the “persons unknown”.

(2) The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant’s rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.

57. The claim form was held to be defective in Canada Goose under those guidelines and the injunctions were impermissible. The description of the persons unknown was also impermissibly wide, because it was capable of applying to persons who had never been at the store and had no intention of ever going there. It would have included a "peaceful protester in Penzance". Moreover, the specified prohibited acts were not confined to unlawful acts, and the original interim order was not time limited. Nicklin J had been bound to dismiss the application for summary judgment and to discharge the interim injunction: "both because of non-service of the proceedings and for the further reasons ... set out below".

58. It is the further reasons "set out below" at [89]-[92] that were relied upon by Nicklin J in this case that have been the subject of the most detailed consideration in argument before us. They were as follows:

A final injunction cannot be granted in a protester case against "persons unknown" who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the "persons unknown" and who have not been served with the claim form. There are some very limited circumstances, such as in Venables v. News Group Newspapers Ltd [2001] Fam 430 [Venables], in which a final injunction may be granted against the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: Attorney-General v. Times Newspapers Ltd [1992] 1 AC 191, 224 [Spycatcher]. That is consistent with the fundamental principle in Cameron (at [17]) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.

90. In Canada Goose's written skeleton argument for the appeal, it was submitted that Vastint Leeds BV v. Persons Unknown [2018] EWHC 2456 (Ch), [2019] 4 WLR 2 (Marcus Smith J), is authority to the contrary. Leaving aside that Vastint is a first instance decision, in which only the claimant was represented and which is not binding on us, that case was decided before, and so took no account of, the Court of Appeal's decision in Ineos and the decision of the Supreme Court in Cameron. Furthermore, there was no reference in Vastint to the confirmation in [Spycatcher] of the usual principle that a final injunction operates only between the parties to the proceedings.

That does not mean to say that there is no scope for making "persons unknown" subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's Category 1 in Cameron, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at [159]) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in Birmingham City Council v. Afsar [2019] EWHC 3217 (QB) at [132].

92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to Ineos, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.

The reasons given by the judge

59. The judge began his judgment at [2]-[5] by setting out the background to unauthorised encampment injunctions derived mainly from Coulson LJ's judgment in Bromley. At [6], the judge said that the central issue to be determined was whether a final injunction granted against persons unknown was subject to the principle that final injunctions bind only the parties to the proceedings. He said that Canada Goose held that it was, but the local authorities contended that it should not be. It may be noted at once that this is a one-sided view of the question that assumes the answer. The question was not whether an assumed general principle derived from Spycatcher or Cameron applied to final injunctions against persons unknown (which if it were a general principle, it obviously would), but rather what were the general principles to be derived from Spycatcher, Cameron and Canada Goose.

60. At [10]-[25], the judge dealt with three of the main cases: Cameron, Bromley and Canada Goose, as part of what he described as the "changing legal landscape".

61. At [26]-[113], the judge dealt in detail with what he called the Cohort Claims under 9 headings: assembling the Cohort Claims and their features, service of the claim form on persons unknown, description of persons unknown in the claim form and in CPR 8.2A, the [mainly statutory] basis of the civil claims against persons unknown, powers of arrest attached to injunction orders, use of the interim applications court of the Queen's Bench Division (court 37), failure to progress claims after the grant of an interim injunction, particular Cohort Claims, and the case management hearing on 17 December 2020: identification of the issues of principle to be determined.

62. On the first issue before him (what I have described at [4] above as the secondary question before us), the judge stated his conclusion at [120] to the effect that the court retained jurisdiction to consider the terms of the final injunctions. At [136], he said that it was legally unsound to impose concepts of finality against newcomers, who only later discovered that they fell within the definition of persons unknown in a final judgment. The permission to apply provisions in several injunctions recognised that it would be fundamentally unjust not to afford such newcomers the opportunity to ask the court to reconsider the order. A newcomer could apply under CPR 40.9, which provided that: "[a] person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied".

63. On the second and main issue (the primary issue before us), the judge stated his conclusion at [124] that the injunctions granted in the Cohort Claims were subject to the Spycatcher principle (derived from page 224 of the speech of Lord Oliver) and applied in Canada Goose that a final injunction operated only between the parties to the proceedings, and did not fall into the exceptional category of civil injunction that could be granted against the world. His conclusion is explained at [161]-[189].

64. On the third issue before him (but part of the main issue before us), the judge concluded at [125] that if the relevant local authority cannot identify anyone in the category of persons unknown at the time the final order was granted, then that order bound nobody.

65. The judge stated first, in answer to his second issue, that the court undoubtedly had the power to grant an injunction that bound non-parties to proceedings under section 37. That power extended, exceptionally, to making injunction orders against the world (see Venables). The correct starting point was to recognise the fundamental difference between interim and final injunctions. It was well-established that the court could grant an interim injunction against persons unknown which would bind all those falling within the description employed, even if they only became such persons as a result of doing some act after the grant of the interim injunction. He said that the key decision underpinning that principle was Gammell, which had decided that a newcomer became a party to the underlying proceedings

when they did an act which brought them within the definition of the defendants to the claim. The judge thought that there was no conceptual difficulty about that at the interim stage, and that Gammell was a case of a breach of an interim injunction. At [173], the judge stated that Gammell was not authority for the proposition that persons could become defendants to proceedings, after a final injunction was granted, by doing acts which brought them within the definition of persons unknown. He did not say why not. But the point is, at least, not free from doubt, bearing in mind that it is not clear whether Ms Maughan's case, decided at the same time as Gammell, concerned an interim or final order.

66. At [174], the judge suggested that a claim form had to be served for the court to have jurisdiction over defendants at a trial. Relief could only be granted against identified persons unknown at trial: "[i]t is fundamental to our process of civil litigation that the Court cannot grant a final order against someone who is not party to the claim". Pausing there, it may be noted that, even on the judge's own analysis, that is not the case, since he acknowledged that injunctions were validly granted against the world in cases like Venables. He relied on [92] in Canada Goose as deciding that a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently become one. In my judgment, as appears hereafter, that statement was at odds with the decision in Gammell.

67. At [175]-[176], the judge rejected the submission that traveller injunctions were "not subject to these fundamental rules of civil litigation or that the principle from Canada Goose is limited only to 'protester' cases, or cases involving private litigation". He said that the principles enunciated in Canada Goose, drawn from Cameron, were "of universal application to civil litigation in this jurisdiction". Nothing in section 187B suggested that Parliament had granted local authorities the ability to obtain final injunctions against unknown newcomers. The procedural rules in CPR PD 20.4 positively ruled out commencing proceedings against persons unknown who could not be identified. At [180] the judge said that, insofar as any support could be found in Bromley for a final injunction binding newcomers, Bromley was not considering the point for decision before Nicklin J.

68. The judge then rejected at [186] the idea that he had mentioned in Enfield that application of the Canada Goose principles would lead to a rolling programme of interim injunctions: (i) On the basis of Ineos and Canada Goose, the court would not grant interim injunctions against persons unknown unless satisfied that there were people capable of being identified and served. (ii) There would be no civil claim in which to grant an injunction, if the claim cannot be served in such a way as can reasonably be expected to bring the proceedings to an identified person's attention. (iii) An interim injunction would only be granted against persons unknown if there were a sufficiently real and imminent risk of a tort being committed to justify

precautionary relief; thereafter, a claimant will have the period up to the final hearing to identify the persons unknown.

69. The judge said that a final injunction should be seen as a remedy flowing from the final determination of rights between the claimant and the defendants at trial. That made it important to identify those defendants before that trial. The legitimate role for interim injunctions against persons unknown was conditional and to protect the existing state of affairs pending determination of the parties' rights at a trial. A final judgment could not be granted consistently with Cameron against category 2 defendants: i.e. those who were anonymous and could not be identified.

70. Between [190]-[241], Nicklin J considered whether final injunctions could ever be granted against the world in these types of case. He decided they could not, and discharged those that had been granted against persons unknown. At [244]-[246], the judge explained the consequential orders he would make, before giving the safeguards that he would provide for future cases (see [17] above).
The main issue: Was the judge right to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order (i.e. newcomers), from occupying and trespassing on local authority land?
Introduction to the main issue

71. The judge was correct to state as the foundation of his considerations that the court undoubtedly had the power under section 37 to grant an injunction that bound non- parties to proceedings. He referred to Venables as an example of an injunction against the world, and there is a succession of cases to similar effect. It is true that they all say, in the context of injuncting the world from revealing the identity of a criminal granted anonymity to allow him to rehabilitate, that such a remedy is exceptional. I entirely agree. I do not, however, agree that the courts should seek to close the categories of case in which a final injunction against all the world might be shown to be appropriate. The facts of the cases now before the court bear no relation to the facts in Venables and related cases, and a detailed consideration of those cases is, therefore, ultimately of limited value.

72. Section 37 is a broad provision providing expressly that "the High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so". The courts should not cut down the breadth of that provision by imposing limitations which may tie a future court's hands in types of case that cannot now be predicted.

73. The judge in this case seems to me to have built upon [89]-[92] of Canada Goose to elevate some of what was said into general principles that go beyond what it was necessary to decide either in Canada Goose or this case.

74. First, the judge said that it was the “correct starting point” to recognise the fundamental difference between interim and final injunctions. In fact, none of the cases that he relied upon decided that. As I have already pointed out, none of Gammell, Cameron or Ineos drew such a distinction.

75. Secondly, the judge said at [174] that it was “fundamental to our process of civil litigation that the Court cannot grant a final order against someone who is not party to the claim”. Again, as I have already pointed out, no such fundamental principle is stated in any of the cases, and such a principle would be inconsistent with many authorities (not least, Venables, Gammell and Ineos). The highest that Canada Goose put the point was to refer to the “usual principle” derived from Spycatcher to the effect that a final injunction operated only between the parties to the proceedings. The principle was said to be applicable in Canada Goose. Admittedly, Canada Goose also described that principle as consistent with the fundamental principle in Cameron (at [17]) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard, but that was said without disapproving the mechanism explained by Sir Anthony Clarke in Gammell by which a newcomer might become a party to proceedings by knowingly breaching a persons unknown injunction.

76. Thirdly, the judge suggested that the principles enunciated in Canada Goose, drawn from Cameron, were “of universal application to civil litigation in this jurisdiction”. This was, on any analysis, going too far as I shall seek to show in the succeeding paragraphs.

77. Fourthly, the judge said that it was important to identify all defendants before trial, because a final injunction should be seen as a remedy flowing from the final determination of rights between identified parties. This ignores the Part 8 procedure adopted in unauthorised encampment cases, which rarely, if ever, results in a trial. Interim injunctions in other fields often do protect the position pending a trial, but in these kinds of case, as I say, trials are infrequent. Moreover, there is no meaningful distinction between an interim and final injunction, since, as the facts of these cases show and Bromley explains, the court needs to keep persons unknown injunctions under review even if they are final in character.

78. With that introduction, I turn to consider whether the statements made in [89]-[92] of Canada Goose properly reflect the law. I should say, at once, that those paragraphs were not actually necessary to the decision in Canada Goose, even if the court referred to them at [88] as being further reasons for it.

[89] of Canada Goose

79. The first sentence of [89] said that “a final injunction cannot be granted in a protester case against “persons unknown” who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the “persons unknown” and who have not been served with the claim form”. That sentence does not on its face apply to cases such as the present, where the defendants were not protesters but those setting up unauthorised encampments. It is nonetheless very hard to see why the reasoning does not apply to unauthorised encampment cases, at least insofar as they are based on the torts of trespass and nuisance. I would be unwilling to accede to the local authorities’ submission that Canada Goose can be distinguished as applying only to protester cases.

80. Canada Goose then referred at [89] to “some very limited circumstances” in which a final injunction could be granted against the whole world, giving Venables as an example. It said that protester actions did not fall within that exceptional category. That is true, but does not explain why a final injunction against persons unknown might not be appropriate in such cases.

81. Canada Goose then said at [89], as I have already mentioned, that the usual principle, which applied in that case, was that a final injunction operated only between the parties to the proceedings, citing Spycatcher as being consistent with Cameron at [17]. That passage was, in my judgment, a misunderstanding of [17] of Cameron. As explained above, [17] of Cameron did not affect the validity of the orders against newcomers made in Gammell (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating them (see [32] in Gammell).

Moreover at [63] in Canada Goose, the court had already acknowledged that (i) Lord Sumption had not addressed a third category of anonymous defendants, namely people who will or are highly likely in the future to commit an unlawful civil wrong (i.e. newcomers), and (ii) Lord Sumption had referred at [15] with approval to Gammell where it was held that “persons who entered onto land and occupied it in breach of, and subsequent to the grant of, an interim injunction became persons to whom the injunction was addressed and defendants to the proceedings”. There was no valid distinction between such an order made as a final order and one made on an interim basis.

82. There was no reason for the Court of Appeal in Canada Goose to rely on the usual principle derived from Spycatcher that a final injunction operates only between the parties to the proceedings. In Gammell and Ineos (cases binding on the Court of Appeal) it was held that a person violating a “persons unknown” injunction became a party to the proceedings. Cameron referred to that approach without disapproval.

There is and was no reason why the court cannot devise procedures, when making longer term persons unknown injunctions, to deal with the situation in which persons violate the injunction and makes themselves new parties, and then apply to set aside the injunction originally violated, as happened in Gammell itself. Lord Sumption in Cameron was making the point that parties must always have the opportunity to contest orders against them. But the persons unknown in Gammell had just such an opportunity, even though they were held to be in contempt. Spycatcher was a very different case, and only described the principle as the usual one, not a universal one. Moreover, it is a principle that sits uneasily with parts of the CPR, as I shall shortly explain.

[90] of Canada Goose

83. In my judgment both the judge at [90] and the Court of Appeal in Canada Goose at [90] were wrong to suggest that Marcus Smith J's decision in Vastint Leeds BV v. Persons Unknown [2018] EWHC 2456 (Ch) (Vastint) was wrong. There, a final injunction was granted against persons unknown enjoining them from entering or remaining at the site of the former Tetley Brewery (for the purpose of organising or attending illegal raves). At [19]-[25], Marcus Smith J explained his reasoning relying on Bloomsbury, Hampshire Waste, Gammell and Ineos (at first instance: [2017] EWHC 2945 (Ch)). At [24], he said that the making of orders against persons unknown was settled practice provided the order was clearly enough drawn, and that it worked well within the framework of the CPR: "[u]ntil an act infringing the order is committed, no- one is party to the proceedings. It is the act of infringing the order that makes the infringer a party". Any person affected by the order could apply to set it aside under CPR 40.9. None of Cameron, Ineos, or Spycatcher showed Vastint to be wrong as the court suggested.

[91] of Canada Goose

84. In the first two sentences of [91], Canada Goose seeks to limit persons unknown subject to final injunctions to those "within Lord Sumption's Category 1 in Cameron, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to [that] date". This holding ignores the fact that Canada Goose had already held that Lord Sumption's categories did not deal with newcomers, which were, of course, not relevant to the facts in Cameron.

85. The point in Cameron was that the proceedings had to be served so that, before enforcement, the defendant had knowledge of the order and could contest it. As already explained, Gammell held that persons unknown were served and made parties by violating an order of which they had knowledge. Accordingly, the first two

sentences of [91] are wrong and inconsistent both with the court's own reasoning in Canada Goose and with a proper understanding of Gammell, Ineos and Cameron.

86. In the third sentence of [91], the court in Canada Goose said that the proposed final injunction which Canada Goose sought by way of summary judgment was objectionable as not being limited to Lord Sumption's category 1 defendants, who had already been served and identified. As I have said, that ignores the fact that the court had already said that Lord Sumption excluded newcomers and the Gammell situation.

87. The court in Canada Goose then approved Nicklin J at [159] in his judgment in Canada Goose, where he said this:

158. Rather optimistically, Mr Buckpitt suggested that all these concerns could be adequately addressed by the inclusion of a provision in the final order permitting any newcomers to apply to vary or discharge the final order.

159. Put bluntly, this is just absurd. It turns civil litigation on its head and bypasses almost all of the fundamental principles of civil litigation: see paras 55—60 above. Unknown individuals, without notice of the proceedings, would have judgment and a final injunction granted against them. If subsequently, they stepped forward to object to this state of affairs, I assume Mr Buckpitt envisages that it is only at this point that the question would be addressed whether they had actually done (or threatened to do) anything that would justify an order being made against them. Resolution of any factual dispute taking place, one assumes, at a trial, if necessary. Given the width of the class of protestor, and the anticipated rolling programme of serving the "final order" at future protests, the court could be faced with an unknown number of applications by individuals seeking to "vary" this "final order" and possible multiple trials. This is the antithesis of finality to litigation.

88. This passage too ignores the essential decision in Gammell.

89. As I have already said, there is no real distinction between interim and final injunctions, particularly in the context of those granted against persons unknown. Of course, subject to what I say below, the guidelines in Canada Goose need to be adhered to. Orders need to be kept under review. For as long as the court is concerned with the enforcement of an order, the action is not at end. A person who is not a party but who is directly affected by an order may apply under CPR 40.9. In addition, in the case of a third-party costs order, CPR 46.2 requires the non-party to be made party to the proceedings, even though the dispute between the litigants themselves is at an end. In this case, as in Canada Goose, the court was effectively concerned with the enforcement of an order, because the problems in Canada Goose all arose because of the supposed impossibility of enforcing an order against a non-

party. Since the order can be enforced as decided authoritatively in Gammell, there is no procedural objection to its being made. The CPR contain many ways of enforcing an order. CPR 70.4 says that an order made against a non-party may be enforced by the same methods as if he were a party. In the case of a possession order against squatters, the enforcement officer will enforce against anyone on the property whether or not a newcomer. Notice must be given to all persons against whom the possession order was made and "any other occupiers": CPR 83.8A. Where a judgment is to be enforced by charging order CPR 73.10 allows "any person" to object and allows the court to decide any issue between any of the parties and any person who objects to the charging order. None of these rules was considered in Canada Goose. In addition, in the case of an injunction (unlike the claim for damages in Cameron), there is no possibility of a default judgment, and the grant of the injunction will always be in the discretion of the court.

90. The decision of Warby J in Birmingham City Council v. Afsar [2019] EWHC 3217 (QB) at [132] provides no further substantive reasoning beyond [159] of Nicklin J. Paragraph [92] of Canada Goose

91. The reasoning in [92] is all based upon the supposed objection (raised in written submissions following the conclusion of the oral hearing of the appeal) to making a final order against persons unknown, because interim relief is temporary and intended to "enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1". Again, this reasoning ignores the holding in Gammell, Ineos and Canada Goose itself that an unknown and unidentified person knowingly violating an injunction makes themselves parties to the action. Where an injunction is granted, whether on an interim or a final basis for a fixed period, the court retains the right to supervise and enforce it, including bringing before it parties violating it and thereby making themselves parties to the action. That is envisaged specifically by point 7 of the guidelines in Canada Goose, which said expressly that a persons unknown injunction should have "clear geographical and temporal limits". It was suggested that it must be time limited because it was an interim and not a final injunction, but in fact all persons unknown injunctions ought normally to have a fixed end point for review as the injunctions granted to these local authorities actually had in some cases.

92. It was illogical for the court at [92] in Canada Goose to suggest, in the face of Gammell, that the parties to the action could only include persons unknown "who have breached the interim injunction and are identifiable albeit anonymous". There is, as I have said, almost never a trial in a persons unknown case, whether one involving protesters or unauthorised encampments. It was wrong to suggest in this context that "[o]nce the trial has taken place and the rights of the parties have been determined, the litigation is at an end". In these cases, the case is not at end until the injunction has been discharged.

The judge's reasoning in this case

93. In my judgment, the judge was wrong to suggest that the correct starting point was the "fundamental difference between interim and final injunctions". There is no difference in jurisdictional terms between the grant of an interim and a final injunction. Gammell had not, as the judge thought, drawn any such distinction, and nor had Ineos as I have explained at [31] and [44] above. It would have been wrong to do so.

94. The judge, as it seems to me, went too far when he said at [174] that relief could only be granted against identified persons unknown at trial. He relied on Canada Goose at [92] as deciding that a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently become one. But, as I have said, that misunderstands both Gammell and Ineos. Ineos itself made clear that Lord Sumption's two categories of defendant in Cameron did not consider persons who did not exist at all and would only come into existence in the future. Ineos held that there was no conceptual or legal prohibition on suing persons unknown who were not currently in existence but would come into existence when they committed the prohibited tort.

95. I agree with the judge that there is no material distinction between an injunction against protesters and one against unauthorised encampment, certainly insofar as they both involve the grant of injunctions against persons unknown in relation to torts of trespass or nuisance. Nor is there any material distinction between those cases and the cases of urban exploring where judges have granted injunctions restraining persons unknown from trespassing on tall buildings (for example, the Shard) by climbing their exteriors (e.g. Canary Wharf Investments Ltd v. Brewer [2018] EWHC 1760 (QB) and Chelsea FC v. Brewer [2018] EWHC 1424 (Ch)). One of those cases was an interim and one a final injunction, but no distinction was made by either judge.

96. As I have explained, in my judgment, the judge ought not to have applied [89]-[92] of Canada Goose. Instead, he ought to have applied Gammell and Ineos. Bromley too had correctly envisaged the possibility of final injunctions against newcomers. The judge misunderstood the Supreme Court's decision in Cameron.
The doctrine of precedent

97. We received helpful submissions during the hearing as to the propriety of our reaching the conclusions already stated. In particular, we were concerned that Cameron had been misunderstood in the ways I have now explained in detail. The question, however, was, even if Cameron did not mandate the conclusions reached by the judge and [89]-[92] of Canada Goose, whether this court would be justified in

refusing to follow those paragraphs. That question turns on precisely what Gammell, Ineos and Canada Goose decided.

98. In Young v. Bristol Aeroplane Co Ltd

First, the Court of Appeal can decide which of two conflicting decisions of its own it will follow. Secondly, the Court of Appeal is bound to refuse to follow a decision of its own which cannot stand with a subsequent decision of the Supreme Court, and thirdly, the Court of Appeal is not bound to follow a decision of its own if given without proper regard to previous binding authority.

99. In my judgment, it is clear that Gammell decided, and Ineos accepted, that injunctions, whether interim or final, could validly be granted against newcomers. Newcomers were not any part of the decision in Cameron, and there is and was no basis to suggest that the mechanism in Gammell was not applicable to make an unknown person a party to an action, whether it occurred following an interim or a final injunction. Accordingly, a premise of Gammell was that injunctions generally could be validly granted against newcomers in unauthorised encampment cases. Ineos held that the same approach applied in protester cases. Accordingly, [89]-[92] of Canada Goose were inconsistent with Ineos and Gammell. Moreover, those paragraphs seem to have overlooked the provisions of the CPR that I have mentioned at [89] above. For those reasons, it is open to this court to apply the first and third exceptions in Young. It can decide which of Gammell and Canada Goose it should follow, and it is not bound to follow the reasons given at [89]-[92] of Canada Goose, which even if part of the court's essential reasoning, were given without proper regard to Gammell, which was binding on the Court of Appeal in Canada Goose.

100. This analysis is applicable even if [89]-[92] of Canada Goose are taken as explaining Gammell and Ineos as being confined to interim injunctions. The Court of Appeal can, in that situation, refuse to follow its second decision if it takes the view, as I do, that [89]-[92] of Canada Goose wrongly distinguished Gammell and Ineos (see Starmark Enterprises Ltd v. CPL Distribution Ltd [2001] EWCA Civ 1252, [2002] Ch. 306 at [65]-[67] and [97]).

Conclusion on the main issue

101. For the reasons I have given, I would decide that the judge was wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order (newcomers), from occupying and trespassing on local authority land.

The guidance given in Bromley and Canada Goose and in this case by Nicklin J

102. We did not hear detailed argument either about the guidance given in relation to interim injunctions against persons unknown at [82] of Canada Goose (see [56] above), or in relation to how local authorities should approach persons unknown injunctions in unauthorised encampment cases at [99]-[109] in Bromley [see [49] above). It would, therefore, be inappropriate for me to revisit in detail what was said there. I would, however, make the following comments.

103. First, the court's approach to the grant of an interim injunction would obviously be different if it were sought in a case in which a final injunction could not, either as a matter of law or settled practice, be granted. In those circumstances, these passages must, in view of our decision in this case, be viewed with that qualification in mind.

104. Secondly, I doubt whether Coulson LJ was right to comment that: (i) there was an inescapable tension between the article 8 rights of the Gypsy and Traveller community and the common law of trespass, and (ii) the cases made plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another.

105. On the first point, it is not right to say that either "the gipsy and traveller community" or any other community has article 8 rights. Article 8 provides that "[e]veryone has the right to respect for his private and family life, his home and his correspondence". In unauthorised encampment cases, unlike in Porter (and unlike in Manchester City Council v. Pinnock [2010] UKSC 45, [2011] UKSC 6, [2011] 2 AC 104), newcomers cannot rely on an article 8 right to respect for their home, because they have no home on land they do not own. They can rely on a private and family life claim to pursue a nomadic lifestyle, because Chapman decided that the pursuit of a traditional nomadic lifestyle is an aspect of a person's private and family life. But the scheme of the HRA 1998 is individualised. It is unlawful under section 6 for a public authority to act incompatibly with a Convention right, which refers to the Convention right of a particular person. The mechanism for enforcing a Convention right is specified in section 7 as being legal proceedings by a person who is or would be a victim of any act made unlawful by section 6. That means, in this context, that it is when individual newcomers make themselves parties to an unauthorised encampment injunction, they have the opportunity to apply to the court to set aside the injunction praying in aid their private and family life right to pursue a nomadic lifestyle. Of course, the court must consider that putative right when it considers granting either an interim or a final injunction against persons unknown, but it is not the only consideration. Moreover, it can only be considered, at that stage, in an abstract way, without the factual context of a particular person's article 8 rights. The landowner, by contrast, has specific Convention rights under article 1 protocol 1 to the peaceful enjoyment of particular possessions. The only point at which a court can test whether an order interferes with a particular person's private and family life, the

extent of that interference, and whether the order is proportionate, is when that person comes to court to resist the making of an order or to challenge the validity of an order that has already been made.

106. Secondly, it is not, I think, quite clear what Coulson LJ meant by saying that the Gypsy and Traveller community had an enshrined freedom to move from one place to another. Each member of those communities, and each member of any community, has such a freedom in our democratic society, but the communities themselves do not have Convention rights as I have explained. Individuals' qualified Convention rights must be respected, but the right to that respect will be balanced, in short, against the public interest, when the court considers their challenge to the validity of an unauthorised encampment injunction binding on persons unknown. The court will also take into account any other relevant legal considerations, such as the duties imposed by the Equality Act 2010.

107. Nothing I have said should, however, be regarded as throwing doubt upon Coulson LJ's suggestions that local authorities should engage in a process of dialogue and communication with travelling communities, undertake, where appropriate, welfare and equality impact assessments, and should respect their culture, traditions and practices. I would also want to associate myself with Coulson LJ's suggestion that persons unknown injunctions against unauthorised encampments should be limited in time, perhaps to one year at a time before a review.

108. It will already be clear that the guidance given by the judge in this case at [248] (see [18] above) requires reconsideration. There are indeed safeguards that apply to injunctions sought against persons unknown in unauthorised encampment cases. Those safeguards are not, however, based on the artificial distinction that the judge drew between interim and final orders. The normal rules are applicable, as are the safeguards mentioned in Bromley (subject to the limitations already mentioned at [104]-[106] above), and those mentioned below at [117]. There is no rule that an interim injunction can only be granted for any particular period of time. It is good practice to provide for a periodic review, even when a final order is made. The two categories of persons unknown referred to by Lord Sumption at [13] in Cameron have no relevance to cases of this kind. He was not considering the position of newcomers. The judge was wrong to suggest that directions should be given for the claimant to apply for a default judgment. Such judgments cannot be obtained in Part 8 cases. A normal procedural approach should apply to the progress of the Part 8 claims, bearing in mind the importance of serving the proceedings on those affected and giving notice of them, so far as possible, to newcomers.

The secondary question as to the propriety of the procedure adopted by the judge to bring the proceedings in their current form before the court

109. In effect, the judge made a series of orders of the court's own motion requiring the parties to these proceedings to make submissions aimed at allowing the court to reach a decision as to whether the interim and final orders that had been granted in these cases could or should stand. Counsel for one group of local authorities, Ms Caroline Bolton, submitted that it was not open to the court to call in final orders made in the past for reconsideration in the way that the judge did.

110. In my judgment, the procedure adopted was highly unusual, because it was, in effect, calling in cases that had been finally decided on the basis that the law had changed. We heard considerable argument based on the court's power under CPR 3.1(7), which gives the court a power "to vary or revoke [an] order". This court has recently said that the circumstances which would justify varying or revoking a final order would be very rare given the importance of finality (see Terry v. BCS Corporate Acceptances [2018] EWCA Civ 2422 at [75]).

111. As it seems to me, however, we do not need to spend much time on the process which was adopted. First, the local authorities concerned did not object at the time to the court calling in their cases. Secondly, the majority of the injunctions either included provision for review at a specified future time or express or implied permission to apply. Thirdly, even without such provisions, the orders in question would, as I have already explained, be reviewable at the instance of newcomers, who had made themselves parties to the claims by knowingly breaching the injunctions against unauthorised encampment.

112. In these circumstances, the process that was adopted has ultimately had a beneficial outcome. It has resulted in greater clarity as to the applicable law and practice.

The statutory jurisdiction to make orders against person unknown under section 187B to restrain an actual or apprehended breach of planning control validates the orders made

113. The injunctions in these cases were mostly granted either on the basis of section 187B or on the basis of apprehended trespass and nuisance, or both.

114. Section 187B provides that: (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part. (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. (3) Rules of court may provide for such an injunction to be issued against a person

whose identity is unknown. (4) In this section “the court” means the High Court or the county court.

115. CPR 8APD.20 provides at [20.1]-[20.6] in part as follows: 20.1 This paragraph relates to applications under – (1) [section 187B]; 20.2 An injunction may be granted under those sections against a person whose identity is unknown to the applicant. ... 20.4 In the claim form, the applicant must describe the defendant by reference to – (1) a photograph; (2) a thing belonging to or in the possession of the defendant; or (3) any other evidence. 20.5 The description of the defendant under paragraph 20.4 must be sufficiently clear to enable the defendant to be served with the proceedings. (The court has power under Part 6 to dispense with service or make an order permitting service by an alternative method or at an alternative place). 20.6 The application must be accompanied by a witness statement. The witness statement must state – (1) that the applicant was unable to ascertain the defendant’s identity within the time reasonably available to him; (2) the steps taken by him to ascertain the defendant’s identity; (3) the means by which the defendant has been described in the claim form; and (4) that the description is the best the applicant is able to provide.

116. In the light of what I have decided as to the approach to be followed in relation to injunctions sought under section 37 against persons unknown in relation to unauthorised encampment, the distinctions that the parties sought to draw between section 37 and section 187B applications are of far less significance to this case.

117. In my judgment, sections 37 and 187B impose the same procedural limitations on applications for injunctions of this kind. In either case, the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place. These safeguards and those referred to with approval earlier in this judgment are as much applicable to an injunction sought in an unauthorised encampment cases under section 187B as they are to one sought in such a case to restrain apprehended trespass or nuisance. Indeed, CPR 8APD.20 seems to me to have been drafted with the objective of providing, so far as possible, procedural coherence and consistency rather than separate procedures for different kinds of cases.

118. There is, therefore, no need for me to say any more about section 187B.
Can the court in any circumstances like those in the present case make final orders against all the world?

119. As I have said, Nicklin J decided at [190]-[241] that final injunctions against persons unknown, being a species of injunction against all the world, could never be granted in unauthorised encampment cases. For the reasons I have given, I take the view that he was wrong.

120. I have already explained the circumstances in which such injunctions can be granted at [102]-[108]. Beyond what I have said, however, I take the view that it is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as section 37. Injunctions against the world have been granted in the type of case epitomised by Venables. Persons unknown injunctions have been granted in cases of unauthorised encampment and may be appropriate in some protester cases as is demonstrated by the authorities I have already referred to. I would not want to lay down any further limitations. Such cases are certainly exceptional, but that does not mean that other categories will not in future be shown to be proportionate and justified. The urban exploring injunctions I have mentioned are an example of a novel situation in which such relief was shown to be required.

121. I conclude that the court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

Conclusions

122. The parties agreed four issues for determination in terms that I have not directly addressed in this judgment. They did, however, raise substantively the four issues I have dealt with.

123. I have concluded, as I indicated at [7] above, that the judge was wrong to hold that the court cannot grant final injunctions against unauthorised encampment that prevent newcomers from occupying and trespassing on land. Whilst the procedure adopted by the judge was unorthodox and unusual in that he called in final orders for revision, no harm has been done in that the parties did not object at the time and it has been possible to undertake a comprehensive review of the law applicable in an important field. Most of the orders anyway provided for review or gave permission to apply. The procedural limitations applicable to injunctions against person unknown are as much applicable under section 37 as they are to those made under section 187B. The court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

124. I would allow the appeal. I am grateful to all counsel, but particularly to Mr Tristan Jones, whose submissions as advocate to the court have been invaluable. Counsel will no doubt want to make further submissions as to the consequences of

this judgment. Without pre-judging what they may say, it may be more appropriate for such matters to be dealt with in the High Court.

Lord Justice Lewison:

125. I agree.

Lady Justice Elisabeth Laing:

126. I also agree.