

IN THE HIGH COURT OF JUSTICE

Claim No: KB-2024-002361

KINGS BENCH DIVISION

ROYAL COURTS OF JUSTICE

BETWEEN:

DRAX POWER LIMITED

Claimant

and

- (1) PERSONS UNKNOWN WHO IN CONNECTION WITH RECLAIM THE POWER, AXE DRAX OR OTHER ENVIRONMENTAL CAMPAIGN ENTER OCCUPY OR REMAIN ON THE LAND SHOWN SHADED BLUE ON PLAN 1 OR LAND SHOWN SHADED BLUE ON PLAN 2 BEING LAND WITHIN OR ADJOINING DRAX POWER STATION, SELBY AND ITS ASSOCIATED PUMPING STATION WITHOUT THE CONSENT OF THE CLAIMANT**

- (2) PERSONS UNKNOWN WHO IN CONNECTION WITH RECLAIM THE POWER, AXE DRAX OR OTHER ENVIRONMENTAL CAMPAIGN CONGREGATE OR ASSEMBLE ON THE LAND SHOWN SHADED RED ON PLAN 1 AND PLAN 2 INCLUDING:**
 - (A) THE VERGE AND FOOTWAY ON THE WESTERN SIDE OF NEW ROAD, SELBY AND**
 - (B) VERGE TO THE NORTH OF THE FOOTWAY ON THE A645 AND**
 - (C) PUBLIC FOOTPATH TO THE NORTH AND WEST OF AND PASSING IN A FENCED CHANNEL THROUGH DRAX POWER STATION**

- (3) PERSONS UNKNOWN WHO IN CONNECTION WITH RECLAIM THE POWER, AXE DRAX OR OTHER ENVIRONMENTAL CAMPAIGN OBSTRUCT AND/OR INTERFERE WITH OR ATTEMPT TO OSBTRUCT AND/OR INTERFERE WITH ACCESS TO OR EGRESS FROM DRAX POWER STATION ON FOOT, BY VEHICLE OR BY RAIL BY THE CLAIMANT, ITS AGENTS, EMPLOYEES, CONTRACTORS OR OTHER LICENSEES**

- (4) PERSONS UNKNOWN CAUSING OR PERMITTING THE FLYING OF A DRONE OR DRONES ABOVE THE LAND SHOWN SHADED BLUE AND SHADED RED ON PLAN 1 BEING DRAX POWER STATION AND ADJOINING LAND.**

Defendants

NOTE OF “WITHOUT NOTICE” HEARING
BEFORE MR JUSTICE RITCHIE
LISTED FOR 25 JULY 2024 AT 10.30

The hearing commenced at 10.30. Appearing for the Claimant Timothy Morshead KC ("TM") and Jacqueline Lean ("JL") before Mr Justice Ritchie ("J").

J had read the evidence and the Claimant's skeleton argument and had received the authorities bundle.

The Hearing Bundle refers to that original listing on its face.

Opening

1. TMKC introduced the application as an urgent application made urgently on an ex parte without notice basis. TMKC explained that the application was necessarily ex parte because:
 - a. there are no named Defendants, and
 - b. due to the risk of tipping off potential protestors resulting in direct action taking place prior to the injunction being obtained.

Preliminary matters

2. TMKC indicated that the text of an updated warning notice and draft order would be handed up to the Court, but indicated that that could be reserved until J's decision on an order in principle.
3. TMKC referred to paragraph 42 of the Skeleton Argument regarding the distinction drawn between 'notification' of the application / order to 'Persons Unknown' and 'service' on identifiable persons. As a point of accuracy, TMKC highlighted that in the injunctions recently approved by the Court in respect of similar injunctions at London City Airport, Heathrow Airport, and Gatwick Airport, slightly different approaches were taken in respect of service and notice. In London City and Heathrow, the Court dispensed with service and set out steps for notice. In Gatwick the order was alternative service. TMKC proffered that it made no practical difference but suggested this issue be dealt with if J was minded to grant the requested injunction.
4. TMKC proposed to structure submissions as follows:
 - a. Identifying of the injunction area
 - b. Going through the evidence focussing on the threat and the need for relief
 - c. The legal framework
 - d. Going through the draft Order, if J was minded to grant the injunction
5. J agreed to the proposed approach

Identity of the injunction area

6. By reference to the First Witness Statement of Martin Sloan, TMKC explained the Claimant's landholding surrounding the Drax Power Station, highlighting that whilst the Claimant is not aware where the planned Action Camp is going to be, there is a strong possibility that it will be on Drax's landholding. TMKC highlighted that Drax has sought an injunction on the minimum terms only and does not cover the entirety of the Claimant's landholding. TMKC took J to the

title documents exhibited to Martin Sloan's witness statement, in particular the title plan at page 107 of the Hearing Bundle which showed the extent of the Claimant's landholding in relation to the Power Station. [A marked up version of the plan, with the boundaries of the land included in the title shown more clearly demarcated was handed up later in the hearing in response to a request from J].

7. TMKC explained the features of the land which would be subject to the injunction if granted by reference to the Plans annexed to Martin Sloan's witness statement (in particular, Plans 1 and 6), and explained that the areas shown blue on Plan 1 were broadly those areas within the perimeter fence, with some 'flattening out' of areas, such as areas where there were gatehouse/entrances
8. To answer J's query regarding the spur of railway covered by the injunction area on Plan 1, TMKC clarified that (1) this was in the Claimant's ownership and (2) the British Transport Police had requested that the area be covered by the proposed injunction and that British Transport Police have an interest in protecting railways whether on private land or otherwise.
9. TMKC then explained the areas which fell within the red shaded areas of Plan 1 (the 'buffer zone'). To answer J's query regarding the permissive footpath and public footpath surrounding Drax Power Station, TMKC clarified that the Claimant does own the land over which the permissive footpath and the public footpath pass. TMKC clarified that the Claimant intends to close the permissive footpath during the planned Action Camp.
10. To answer J's query in relation to the land on the edge of the highway to the east (New Road), where the shaded red area extended to the metalled edge of the carriageway, TMKC highlighted that this would include the paved footway, and commented that it is not clear if the verge had been retained by the Claimant. J highlighted the need to consider the necessity/proportionality of the request for an injunction over this land, which would stop people using the public highway. TMKC clarified that the Claimant did not seek to stop people going onto the highway but was limiting the reach of the injunction to the persons described as the Second Defendants.
11. J highlighted the need to consider the potential hassle to potential groups of members of the public caused by the proposed injunction covering areas of public right of way, highlighting that members of the public are unlikely to want to make an application to the Court to discharge any order.
12. J queried whether it would be more proportional to have the Claimant's security staff patrol the grounds to watch out for protestors. TMKC explained that due to the site, patrolling every area would not be practicable and that if protestors are permitted to congregate near the fence, there is the potential that actions to breach or otherwise interfere with the fence would be obscured from the CCTV surveillance by the number of people at the fence. TMKC also referred to the potential, given what was in the evidence about the camp being a set up as a camp from which to launch coordinated action, of assembly/congregation near one part of the site, security being deployed to that area, with another group being in place at the opposite side of the site.
13. TMKC explained the National Powergrid site situated within the perimeter fence and highlighted that in order for relief to be effective and to protect the Claimant from nuisance it was important to protect the National Powergrid site.
14. TMKC explained Plan 2 and the Pumping Station as a critical piece of equipment to the running of the Claimant's Power Station.

15. TMKC explained the protest zone set aside for protestors shown in green on Plan 1 by reference to the explanation set out in the First Witness Statement of Martin Sloan, and explained that this is an area which has been agreed with the Police where protest can take place close to the Power Station as close to the site as has been judged operationally safe. TMKC confirmed in response to a question from J that this was a site that had been specifically set aside to specifically facilitate freedom of speech and assembly.

Threat and compelling need

16. TMKC provided a summary of the threat as set out in MS1 and NM1. TMKC set out that the evidence shows that the site is an established target, has a high level of background risk and has extensive security measures.
17. TMKC provided a summary of the websites and social media posts exhibited to MS1 and NM1 highlighting the intended direct action at the Claimant's property.
18. TMKC highlighted by reference to MS1 that the police have asked the Claimant to consider applying for an injunction, which he submitted would be material in terms of considering whether the injunction will be necessary on top of the general law in terms of protecting the Claimant's property.
19. In considering whether alternative remedies are sufficient TMKC highlighted the Memorandum submitted to parliament in 2008 exhibited to MS1. This was part of a representation to include power stations within 128 of SOCPA. As part of the Claimant's full and frank disclosure, if Persons Unknown were here they might be saying to the court that the Claimant's submission then was that statutory powers and criminal offences were needed and also that they were sufficient. The argument would continue that now there is the Public Order Act 2023 which protects national infrastructure and this is within the definition of national infrastructure.
20. TMKC submitted that experience has shown criminal law is not effective at dealing with protest activity. It kicks in after the event and the arrests are sometimes seen as trophies rather than a deterrent. TMKC reiterated that the Claimant is acting under police advice in seeking the injunction.
21. TMKC referred to the protest zone which goes to the proportionality of what the Claimant is seeking. The Claimant has paid careful thought to what is the minimum needed to protect this critical asset.

Legal framework

22. TMKC summarised the legal framework The Supreme Court in *Wolverhampton* has established that the Court is exercising an equitable jurisdiction where substance is more important than form and the key is flexibility to ensure that the remedy matches the threatened wrong. The test/feature that attracts the eye of equity is compelling need. Those and other important principles of substance/procedure were summarised in *Valero v Persons Unknown* [2024] EWHC 134 (KB).
23. TMKC also referred to the judgment of Sir Anthony Mann in *Jockey Club Racecourses Ltd v Kidby* [2024] EWHC 1786 (Ch). TMKC highlighted that the reference (in para 18(ii) and (iii)) "the applicant must show that all reasonable alternatives to an injunction have been exhausted,

including negotiation” and “It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of” t could be seen as thresholds rather than factors which weigh in the discretion. J commented that this arises from no effective alternative remedy derived from balance of convenience in *American Cyanamid*. If have effective remedy don’t need to come to court. TMKC commented that when Mann J applied those consideration in *Jockey Club* he was not doing anything other than putting it into the mix correctly as part of the test of whether there is a compelling need.

24. TMKC summarised that the Claimant had considered whether there are other matters that should be brought to the Court's attention. TMKC stated that there is no doubt that the proposed buffer zone does interfere with the rights of people to protest on the verge of the highway
25. J highlighted that it is important that lawful walking along the pathway is allowed and not within scope of injunction.
26. J queried whether those who are giving evidence for the Power Station have looked at the announcements and posts by Axe Drax and Reclaim the Power since the 5-year prison sentence given to JSO founders. TMKC confirmed that the Claimant was not aware of any changes to the publications by these organisations but could not confirm whether the witnesses who had given the statement had specifically looked into that point.

Summary of Judgement

27. A summary of the Judgment is set out below. A detailed note of the Judgment is set out in Schedule 1.
28. This is an ex parte application dated 23 July 2024 against PU for an injunction to protect a power station situated in England and for a direction to effect alternative service.
29. J summarised the evidence in MS1 and NM2.
30. **The cause of action:** trespass, public/private nuisance. There is no claim for an economic tort or conspiracy.
31. **Sufficient evidence:** the ownership of the area is proven to my satisfaction.
32. **Full and frank disclosure:** Full and frank disclosure has been provided. The Claimant has done the best they can to set out alternative remedies and security arrangements. The claimant has done its best to disclose matters discussed before parliament in 2009. In light of this, I did think whether the claimant should rely on Criminal Law. There may be a time that Public Offences Act 2023 may mean that there are less compelling reasons to grant an injunction.
33. **A realistic defence:** There is no realistic defence in relation to the claimant's land which is far more extensive that the proposed injunction. The Claimant has carefully constrained themselves to the Power Station plus a buffer one. I do not consider that the defendants have defence in relation to the buffer zone given the stated aims in the evidence presented. There is no defence to criminal damage to fencing or equipment on the Claimant's property.
34. **Balance of convenience / compelling justification:** Compelling justification is far trickier to prove than balance of convenience. The balance is against granting an injunction unless there is compelling evidence. Ther is a long history of direct action associated with the site and serious direct threats of direct action which are now only three weeks away. I have taken into

account the specific protest zone marked out near to the power station. I have also considered section 7 of POA which is new but is being put into practice by police for example in relation to the M25 protestors. I am yet to understand how much of a deterrent effect the POA has had, but it has not prevented protestors threatening direct action at Drax, airports and oil refineries. The security put in place at the site is useful but has limits. The Claimant would need a large number of security guards to investigate the perimeter fence, not practical, nor a prospective protection. Accordingly, the alternative remedies available are not sufficient and there is a compelling justification to grant the injunction.

35. **Damages an adequate remedy:** The potential harm is set out well in evidence by MS. I am very concerned about the risks presented including the risk of explosion, stopping energy production stopping deliveries. I am also concerned about traffic accidents and rail incidents I am concerned about the serious risk of physical harm to protestors and the Claimant's staff. This sort of harm to protestors and staff is not properly compensable by money. There is no indication that the crowd funding for the camp has had a part set aside to provide compensation. There is also no historic way of justifying the assertion that PU would have sufficient money to pay for damages caused. Seems to me damages would not a remedy for the sort of harm potentially caused. Therefore, damages are not an adequate remedy.
36. **Geographical boundaries:** Wish to highlight one of Valero factors – third party land in relation to the justification for an injunction seeping over into impacting on lawful activity. That is a sensitive area which I must be alive to. It is difficult to do so without representations from PU. Mr Morshead has fulfilled the role of providing arguments that could be raised by PU. I don't know who uses the public footpaths around the site. I don't know whose rights may be infringed and will need to look at very carefully the wording of any order. Normal members of public do not want to come to court to dispute an injunction. I was troubled by a buffer zone as this could be the thin edge of the wedge. However, all of the land is owned by claimant other than the verge on the side of the highway. consider that to make the injunction, which I intend to grant, effective, it is necessary to keep the protestors away from a small piece of land around the fence governed by red shading on plans 1 and 2. The claimant has kept matter proportionate in requesting buffer zone.
37. **Temporal limits:** Annual review is sufficient, safe and fair way to protect rights of PU.
38. **Service:** Need for service of the application can be dispensed with. A fiction to give service by notification in arrears. Proposals trailed in the draft order for notification by the solicitor's website are not sufficient. The solicitor's website is not the place for notification. The Claimant is to set up a simple to find website linked on its homepage. I do consider website, notices on fence, and email satisfactory to be sufficient. The Injunction Order is also to be sent to the judicial press office for publication on the website.
39. **Right to vary or set aside:** Any party affected should have wide ranging rights to review and set aside the Order.

Draft Order

40. J considered the definition of PU in relation to Defendant 2 to be complicated and requested that the wording be separated by subparagraphs for clarity.
41. J considered the definition of PU in relation to Defendant 3 to be unclear and requested amended wording to simplify the definition.

Permission to amend CF and POC.

Schedule 1 - Full Note of Judgment

This is an application dated 23 July 2024 made ex parte against Persons Unknown for an injunction to protect a power station situated within England and for directions relating to alternative service because the Defendants are Persons Unknown.

The claim form was issued on the 23 July 2024 to restrain trespass and nuisance on the claimant's land and land close to it. The Particulars of Claim issued with the claim form set out three classes of unknown persons. All classes were connected with Reclaim the Power (**RTP**), a protest organisation, or Axe Drax a protest organisation, or other environmental campaign.

The first class of unknown person was the person entering or occupying or land covered by the injunction. The second was a class of persons assembling on the verge or footway of 2 roads near the Power Station or the footways around and through the Power Station. The third class of persons were those obstructing or attempting to obstruct access to or egress from the Power Station by foot, vehicle or rail by C, their agents, employees, contractors or other licenses.

I correct what I said earlier. There are in fact 4 classes of persons not 3. The fourth is a class of person flying drones over or above the power station.

It is pleaded that C owns the power station and I have been provided with a helpful map to show they own quite a lot of land around the power station the boundaries of which are well beyond the boundaries of the proposed injunction.

They have leased out a substation within the boundaries of the power station and they also own a pumping station some distance from the power station. It was pleaded that the level of risk to the land owned by the C on which the power station and the pumping station sit had risen in the last few months. It was pleaded that the Cs have concern that protests on the footpaths surrounding the power station may mask fence penetration by protestors and the Cs seek a buffer zone encompassing those footpaths adjoining the power station. Indeed, one footpath goes through the precincts of the power station albeit fenced off. In relation to the rail infrastructure although it was pleaded that it was private and on the Cs' land it was asserted that the Cs fear that obstruction will interfere with their operations. In relation to the highways nearby it was stated that obstruction of access and egress would likewise interfere with their operations. And in relation to drones it was pleaded that C has concerns that use of drones by protestors would be to scope out how to disrupt by direct action or by dropping things onto the power station and its equipment.

The threats to the Cs power station were pleaded. The first organisation was RTP who have advertised the setting up of a mass direct action camp targeting the power station "to crash Drax's profits". It is pleaded that is scheduled to occur between the 8th and 13th August 2024 and it is pleaded that the website threatens or promises direct action.

Causes of action pleaded against the Ds are trespass and nuisance; well-known causes of action in tort. It is pleaded that the protestors have no consent from the Cs to enter the power station or the pumping station or the private railway line.

In relation to third party land which is identified as the lease to the National Power substation within the perimeter of the power station, the footpaths round the power station and alongside the highway that runs along the east side of the power station it was pleaded that it was necessary and proportionate to give effect to the injunction for the injunction to cover that third party land by way of a buffer zone.

It was pleaded that a specific area of land adjoining the power station and a public highway had been set up by the Cs specifically with the agreement by the local police for protest between the 6 and 15 August 2024. In relation to defences it is pleaded that no persons unknown have the right to enter the Cs land and in relation to public highway it is pleaded that the injunction covering the public footpaths

adjoining the power station would be necessary and proportionate by way of intrusion on the public's right of passage to protect the power station and efficacy of the injunction

In support of the claim and the application there are 2 witness statements: the first from Martin Sloan, dated 23 July 2024 and the second from Nicholas McQueen dated 23 July 2024.

Mr Sloan is the security director at the Drax power station. He gives evidence that coal ceased to be used in March 2003. Now this power station generates 4% of the UK's electricity and 8% of the UK's renewable energy. Mr Sloan asserts that any interruption may threaten the continuity of power supply in the UK. He sets out that Drax has annual revenue of £6790 M and that the fuel currently used in the power station is of wood and agricultural products delivered by road and rail daily

Turning to the history of the direct action by which I understand him to mean physical action interfering with C's land or equipment or staff or business, he refers to activities in August 2006, where a camp was set up aiming for mass trespass to close the power station. An interim injunction was obtained against named and unnamed defendants covering the power station and paths adjoining it. 600 marchers attended and 38 were arrested for criminal damage, aggravated trespass and assault on the police.

The next historical direct action listed by MS was action by a group called 'Earth First' who hijacked a train carrying coal to the power station for 16 hours causing delays on network rail. An injunction was obtained.

The next direct action evidenced by MS was in July 2019 when RTP carried out direct action against a coal mine involving mass trespass and halted operations there. I should say that it is not suggested in the witness statement that the C owned the coal mine.

The next direct action in July 2019, so the same month, involved protestors chaining themselves to railings in central London. They thought the building outside which they were situated was the headquarters of the Cs, however they were mistaken because it was the wrong building.

In addition, RTP climbed upon and occupied a crane at Keadby 2 gas power station in Lincolnshire stopping construction for 15 hours and also blockaded the entrance.

MS set out that on 12 November 2021, Axe Drax put on their website that they believed that disruption of the C company was one of their guiding objectives. Karen Wildin of Extinction Rebellion in that month climbed onto a train carrying biomass to the power station. She was subsequently convicted and fined £3000.

Five months later on 27 April 2022, Axe Drax carried out a direct-action attack by painting orange paint on the Government Department of Energy building in London.

Coming forward two years, in April 2024 Axe Dax disrupted the AGM of the C, crowding the entrances with protestors and banners.

In relation to his assertion that there is a real and immediate threat MS gave evidence that there was a planned protest camp 8-13 August 2024 near the power station and that RTP and Axe Drax had issued an open invitation on their websites to attend the camp. They did not then and have not now announced the location. MS gave his opinion that he considered it likely that protestors would commit direct action before the 8 August 2024. He relied upon information talks by RTP which took place on the 24 February, 1 June and 29 June 2024 around the country announcing blockades and occupations of the infrastructure and supply chain sources of the Cs and the setting up of action focused camp. In addition, on the website of these two organisations they proudly boast that they make interventions with their bodies. This is so stated in one of their principles. Further, a video was issued on 20 April 2024, aiming to stop the biomass power station showing videos of trespass upon a cooling tower and trespassing upon a delivery lorry.

MS set out his concerns which he asserted were real of protestors from the camp cutting fences and locking on and hiding their activities of cutting fences by assembling on the footpaths adjoining the power station and also by blocking access by road and rail. He set out 6 named persons associated with Axe Drax who were Karen Wildin, Meredith Dickinson, Joseph Irving, Diane Warner, Fergus Eakin and Molly Griffith Jones. MS had received police information that drones are used to assess where security is on site with a view to assisting direct action and to dropping things on the site.

In relation to the potential harms, MS set out that there are a lot of moving parts in a power station including moving vehicles and rail vehicles which would cause a risk to staff and protestors if interfered with. He also set out there are PPE areas where PPE is required to protect staff and visitors, which no doubt protestors would not wear. He informed the court that there are large volumes of oil and diesel fuel stored on the site which would be dangerous if interfered with. He stated that the cooling water system and overhead power cables carrying 400kV would be a source of danger to protestors and staff if interfered with and mentioned that the biomass domes contain nitrogen which cannot be breathed by human beings safely. He also pointed out risk of climbing onto equipment and falling off it.

He set out the disruption that would be caused if supply was interfered with and the potential environmental damage caused by the release of noxious gases. He set out that the financial implications of having to stop the generation of power if protestors invaded certain sensitive areas would be huge. He set out the Cs measures to protect themselves which involved mainly high specification fencing and gate houses and security around their private railway. He informed the court that BTP had asked the C to extend an injunction that they might obtain along the line towards or out of the power station. He stated that to self-protect Cs would close the permission for use by the public of the orange path of the pathway to the south and west of the power station between 6-15 August and he gave his opinion that there is a compelling need for the injunction because of previous targeting by direct action; announcement of protest camp focused on direct action; protestors willing to break the criminal law; injunctions being effective deterrents; damages not being an adequate remedy: because of health danger to protestors and staff; disruption of national electricity supply; harm to environment; financial losses and protestors being unable to pay damages.

Many exhibits to his witness statements which I have read, looked at and rely upon but are too numerous to list in this extempore judgment.

The second witness statement is of Nicholas McQueen, a partner in Walker Morris LLP. He described the geographical area of the injunction shown in Plans 1 and 2 and specifically that the land shaded blue was within the power station and that land shaded red was adjoining to it but within the 'buffer zone' that the Cs sought to include in the scope of the injunction to prevent attack directly into the power station through the fencing.

He set out further evidence about RTP which he said was formed in 2012 and had carried out historical action at West Burton power station. He set out evidence about Axe Drax who expressly state on their publications that they oppose Drax power station and aim to disrupt their activity which they regard as a crucial part of their purpose. On their website Axe Drax asset they have raised 99% of Crowdfunding necessary for direct action and on 24 April 2024 boasted that they will take mass direct action against Cs. On 10 May 2024, they boasted that they consistently pull off radical direct action. And on 10 July 2024, stated that the camp at Drax will take direct action to "crash Drax's profits". I stop here to say that there is no pleading by the Cs that there has been or will be a conspiracy to interfere with their valid economic activities, so no economic torts have been pleaded, so I restrict my consideration to trespass and nuisance.

As to previous injunctions, NMCQ sets out 8 sets of proceeding for injunctions to protect fossil fuel infrastructure, namely Valero, Esso, Exxon, Essar, Stanlow, Infranorth, Navigator, Exolum and Shell. He asserted that injunctions protecting the commercial premises of these organisations were effective

and he was unaware of any breaches. He also set out applications for injunctions by North Warwickshire and by Thurrock Councils and by HS2 which likewise he stated were effective. I should say that this evidence clashes with my own judicial knowledge that in HS2 approximately 8 protestors breached the injunctions, and I imprisoned I think 2 or 3 of them

Continuing, the names of the potential future tortfeasors is not known to Drax according to NMCQ, but he did set out that there are individuals publicly associated with Axe Drax who would be notified of the injunction if obtained. He asserted that it was appropriate to make ex parte because of the 'tipping off' concern which is a concern that if the organisations are notified of the application, they would move forward their direct action. He also set out by way of hearsay his worries feeding off the back of the concern of Cs witness. He asserted that full and frank disclosure had taken place and he fulfilled that in part by referring to Public Order Act 2023 s.7. He asserted that within his knowledge the POA had not been a deterrent so far. I take with pinch of salt because 1 solicitor cannot be taken to have a 360 view as what protestors up and down the country intend to do as a result of the Act. Then referred to other injunctions. Valero, not relevant because occurred before Act JSO in 2023 which involved a publication on social media by a member of JSO asserting that injunctions made protest impossible. He opined that criminal charges only arise after the event and would take a long time to go to trial and so are not as much a deterrent as C would hope for. He also opined that the maximum punishments for some offences of interfering with national infrastructure is only one year in prison and referred to a Daily Mail report that JSO protestors actively compete for the title of protestor with the most arrests. Article published in October 2023.

In relation to alternative service, he suggests that the solicitors' firm's website should be used – return in a minute. I do not consider that alternative service or notification should take place at a solicitors' firm website. It seems to me that responsibility is carried by the party, namely by the C, and it should be on Drax's not a solicitors firm's. Also set out the suggestion of notices on stakes around the power station and emails sent to the two protest organisations.

I then turn to the law in relation to the granting of ex parte injunctions. CPR r.25.1 confirm the Court's power to grant interim injunctions or even quasi-interim or quasi final injunction depending on how one wishes to term injunctions against persons unknown, and the Supreme Court also creates that power.

Turning then to the caselaw, I will summarise firstly the general case law and then to more specifically concerned with persons unknown.

Will start the story if I may with unlimited power and where that has been identified. It was nicely summarised in *Broad Idea International Ltd v Convoy Collateral Ltd* [1991] PC 24 as being an equitable power exercised where it is just and equitable so to do: that summary by Lord Leggatt. Despite this being a Privy Council authority, it is a ruling that is more than just persuasive, as was confirmed by the Court of Appeal in *Re G* [2022] EWCA Civ 1312 at 54-58 and 61. It's the case that injunctions are usually only ordered if they accord with an existing practice, and this was noted in *Wolverhampton v London Gypsies* [2023] UKSC 47. So, what is the existing practice that has built up and how is it relevant to this application for an injunction against Persons Unknown? The classic test is set out in *American Cyanamid*. It had 7 sub factors within it which included whether there is a serious question to be tried thereby excluding frivolous questions, noting that interim injunctions are generally temporary, taking into account that where there are contested factors at the interim stage the facts are generally assumed in the applicant's favour, imposing generally a balance of convenience test applied by the court, although I put in parentheses that that is not the test in persons unknown cases.

That balance of convenience test involving balancing the injustice or harm caused by (a) granting or (b) not granting the injunction. Then for quia timet injunctions which are injunctions where C fears something will happen that will cause harm, C must prove a real and immediate risk that unless restrained Ds will cause damage in breach of C's rights or by tortious activity. Reference there

historically is to s *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 and the judgment of Smith J.

Next factor that is taken into account is that the C should put before the Court evidence to show that damages would not be an adequate remedy and hence the injunction is required.

And finally, cases where the injunction would affect a potential D's freedom of speech or assembly under Article 10 or 11 ECHR requires the court to assess necessity and proportionality of the injunction sought before considering granting it to extend to those matters.

Jurisdiction in relation to Persons Unknown has developed more recently and could be described in different ways. Appear neither to be interim nor final. I call them quasi final. They are by definition against people C cannot identify. And so, because they cannot be identified they cannot be served, or not served in traditional ways. And so, such injunctions are often made without prior notice but by subsequent advertisement, publication and hence notice. The importance of considering the ECHR Convention rights is greatly increased because the persons unknown are not before the court. And it's recognised that persons unknown injunctions based on a *quia timet*, in other words what we fear basis, are akin to a form of an enforcement of establishment rights rather than enforcement of rights pending the trial of asserted but disputed rights.

So they are less designed to enhance or protect court proceedings and more designed to protect established indisputable rights.

So, such protestors or Persons Unknown injunctions were considered in *Ineos v Persons Unknown* [2019] EWCA Civ 515 and Longmore L.J. set out 6 rough requirements for them. The first is there had to be a real and imminent risk of tort. The second was it had to be impossible to name the persons unknown, that is in effect inherent within the title 'injunctions against persons unknown' as it has within it the requirement that, if possible to name Ds, then they should be named. The third is that the Court should be alive to construct or require effective notice of the injunction and I shall come back to that in a bit. The fourth is that the injunction must be in clear terms, means non legal terms, and must correspond to the torts claim. The fifth is that there must be clear geographical and temporal limits, and the sixth must be that the prohibition wording should be non-legal, and that folds neatly into the fourth.

In 2020 the Court of Appeal considered *Cuadrilla v Persons Unknown* [2020] EWCA Civ 9 in which Leggatt LJ reinforced the need for clear terms in the wording of the injunction and that the boundaries of the injunction should be carefully defined and considered if they impinge on lawful conduct. Specifically, at para 50 Legatt LJ gave same guidance that lawfully conduct may be affected by such an injunction protecting established rights but only if necessary to afford effective protection to the core injunction restraining against the unlawful conduct.

What is and what is necessary to provide effective protection has not been well or deeply examined by the Courts since 2020. It is something I am going to think about a little in this judgment

I also take into account the following cases: *Shell v Persons Unknown* [2022] EWHC 1215 (QB); *DPP v Cuciurean* [2022] EWHC 736 (Admin); *Wolverhampton v London Gypsies* [2023] UKSC 47; and my own judgment in *Valero v Persons Unknown* [2024] EWHC 134 (KB) at para 58 and 15 factors set out therein.

I wish to highlight one of those factors here before turning to consider them. Factor of third-party land which impinges on the factor set out by Longmore LJ and considered by Lord Leggatt in relation to the justification for an injunction seeping over into prohibiting or interfering with lawful activity.

That which impinges directly on Article 10/11 rights is a sensitive area which I remind myself I must be alive to in such applications. It's difficult, I've got to say, when examining this area in the absence of someone representing the Unknown Persons. The Court is always assisted by 2 advocates: 1 for C

and 1 for D, so it an onerous task for C's advocate to predict [what D might argue] but of course Mr Morshead has fulfilled that with his usual acuity and professionalism.

Even in discussion quite tricky, e.g. in this case [highway] on the eastern side of the power station and the public footpaths, or permissive paths, on the west side. I don't know who uses them. It could be twitchers (bird watchers), dog walkers, running clubs: could be a wide range of members of the public and I don't know whose rights might be interfere with, if granted. And for that reason, I will look very carefully at the wording of the injunction if I permit it to cover these public areas such that no person will be interfered with inappropriately by such wording if I permit it. I take into account that members of the public who carry out normal lawful activities do not want to come to court to vary or set aside acts which interfere with them. Easy for lawyers to say. Different for members of the public who may not want to or be funded to.

Factors in this case

I do consider that this ex parte application is justified within the rules concerning the making of ex parte applications. Think real and imminent threat action which could have consequences been advertised and Persons Unknown are likely to answer the call, and take place soon, very soon, at the C's power station and I consider that the fear of tipping off these organisations by giving notification to them so they could have attended is a real fear. It would be so much better, in my judgment, if these organisations could publicise that if their targets were to undertake injunctions they wish to know and would undertake not to take any direct action until application had been heard. Then have option to come to court and make submission. Ds haven't, and made threat in this case which implies desire to get around the criminal law and to crash the profits of the C and do that through trespass and nuisance.

I am satisfied the ex parte application is justified.

As to causes of action pleaded, trespass and nuisance. Cs ownership of land is proven to my satisfaction and this criteria is therefore satisfied.

As to full and frank disclosure, I consider C have done the best they can to set out the alternative remedies available to them, and I'll come to them under compelling justification, and also their own self-protection mechanisms through CCTV, come to under compelling justification, and the Public Order Act alternative remedies, which I shall come to under compelling justification. I also consider that they have done their best to disclose to me matters that occurred in Parliament in 2008, which could be seen to be contrary to their argument because they argued in favour of a change to the criminal law so would not have to get injunctions and I did think carefully in respect of that whether it should be said Cs should rely on criminal law. And it may be there is a time when POA 2023 settles in, and effects of criminal sentencing are acknowledged by protestors that full and frank disclosure will show that there is less justification. But I don't think that tipping point has been reached in the evidence before me.

Looked to evidence of ownership already, dealt with ownership and come to evidence.

As to 'no realistic defence', I do not consider any of the Ds have a realistic defence in relation to C land which interestingly is far larger than that over which they seek an injunction and they have carefully restrained themselves to the injunction geographically being within their power station boundaries and pumping station boundary only with a small buffer zone around the outside. As to buffer zone, I do not think protestors have much of a realistic defence because stated aim is not to walk up and down pavement with banners avoiding direct action, but to set up camp on an unknown area and take direct action which by definition is unlawful and I do not consider that they have a realistic defence to unlawful acts, namely trespass and nuisance, and at worse no defence to criminal damage of C's fencing or any equipment or matter within the boundaries of the power station or pumping station.

Factor 6 compelling justification. As I set out before this is far trickier to prove than balance of convenience for C. Balance is against granting the injunction unless there is a compelling reason. I have set out the evidence of history of direct action by these protest groups which goes back a long way to 2006 when the power station was invaded. Also, I have set out the serious direct threats of direct action by these two organisations which are now only 3 weeks away. I have taken into account that the Cs have set up a specific protest zone marked out for the protestors near to the power station which they can occupy to carry out their lawful protest. I have considered s.7 POA 2023 and the other sections which is new protection that is being put into practice by the police who, for instance, have arrested the organisers of the M25 protest and those who intended to protest at airports. I am as yet unable to say how much of a deterrent effect that Act has had on protestors. Certainly, it has not prevented protestors from threatening direct action at the C's power station or at airports or at oil terminals and so it is difficult to judge whether that is an alternative remedy to an injunction that makes the need for an injunction unconvincing. What is for sure is that the criminal law doesn't provide evidence of prospective protection that injunctions have provided over the last 10 years or so. Even though evidence before me is a bit scant – one quote from JSO – it is stronger when one looks to the paucity /scarcity of applications for committal for breach of injunction. Say paucity because there is some. I consider CCV and self-guarding is useful, but it has its limits. Cs would need a large number of protective security guards who could go out and investigate assemblies on footpaths around power station to see whether people in between the CCTV and dark area behind were using bolt cutters to get through fences. Not sure practical. Nor is it prospective. CCTV acts as a deterrent, however, whether it causes protection in this case for the 1 week when protestors likely to be in camp and starting their direct action is unknown, particularly if they carry out false moves or decoy moves. Thus, have come to the conclusion that the alternative remedies are not sufficient to provide an answer to the threat.

I then come to the question of whether damages are an adequate remedy. Having considered that there is compelling justification for the protection of the power station, workers in the power station, suppliers to the power station and the railway and lorry drivers who go in and out of the power station and licensees thereof. And harm that could be caused at power station is set out well in evidence by MS. I am concerned about risk of explosion. I am concerned about the risk of stopping electricity production. I am concerned about the risk of stopping biomass being delivered to the power station so that the power station does not have the necessary fuel to generate electricity. I am concerned about the deadly gas, and I am concerned about traffic accidents and climbing onto vehicles stuffed with biomass or explosive diesel. I am concerned about protestors climbing onto water towers or breaking into electricity substations which are dangerous places. These sort of harms not only to protestors but also to staff is not properly compensatable just by money. A human being would rather keep their facial skin, hair, arms, legs, ability to do sport or family live than having a lump sum given to them for being lost. Secondly, no indication that the Crowdfunding of £5100 has had a part set aside to provide compensation to anyone injured or disadvantaged by the direct action. In addition, as yet there's no historic way of justifying the assertion that unknown persons will have sufficient money to pay for damage they intend to cause because they are unknown persons. So, it seems to me not only not an adequate remedy but there wouldn't be adequate damages.

Coming then to the terms of the injunction, I am going to deal with those with counsel if I grant the injunction, but I am going to ensure they are absolutely clear and simple and tied to trespass/nuisance causes of action. I am going to make sure the prohibitions match the claim. I am going to make sure that the geographical boundaries are absolutely clear in relation to Cs's land and any third-party land covered. So, I shall now deal with third party land and the buffer zone.

I was troubled by whole idea of the buffer zone as it seems to me to be the thin end of wedge and might lead to application creep, but the fact is here all land is owned by C except potentially pavement that runs along the road on the east side of the power station. So, in fact only application creep in relation to their own land and only affects firstly permissive footpath which it will withdraw permission from for

a week or two and then a public right of way which leads only around the north and west side of the power station and it also as I say covers a verge and pavement on the east side of the power station. I do consider that to make the injunction which I intend to grant, because there is compelling justification, it is necessary to keep protestors away from a small piece of land all around the fence and that is governed by the red shading on Plans 1 and 2. I think that is necessary. I think it is proportionate within para 50 of *Cuadrilla*. I do not consider it unnecessary or disproportionate as it seems to me on the evidence C have thought carefully about keeping it proportionate when asking for buffer zone and so I do consider it is a sensible addition to the scope of the injunction.

Notification and service. I consider that the need for service can be dispensed with in this case because it is a bit of a fiction saying that knowing that persons unknown have not been served will pretend they will be served by giving notification instead. Seems to me more straightforward way is to dispense with but to ensure tight notification provisions after order made.

Already trailed do not consider solicitors' website is the right place for notification, should be a website of Drax. I am going to order Drax set up a simply defined part of their website and it needs to be on the front page of their website so easily findable. Subject to that I do consider that notification on Drax's website, notices attached to sakes around power station and email is sensible and also consider that Reuters should be provided with a copy of the injunction

[Then clarified it should be Judicial website via Judicial Press Office rather than Reuters]

As for the right to set aside shall ensure when order is drafted with counsel that any party affected will have wide ranging rights to review and/or set aside so that any adverse effect on somebody who is not intent on committing a tort on C will be able to alleviate adverse effect quickly. As for review, I think the order currently seeks review on an annual basis, which I consider appropriate, and I have dealt with service which is to be dispensed with.