

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/09/2021

Before:

MR JUSTICE LAVENDER

Between:

THE LONDON BOROUGH OF HACKNEY

Claimant

- and -

CAUL GRANT and Others

Defendants

Kuljit Bhogal (instructed by **London Borough of Hackney Legal Services**) for the **Claimant**
The **First and Thirty-First Defendants** in person

Hearing date: 14 September 2021

JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. The London Borough of Hackney (“Hackney”) applies for a final injunction prohibiting a number of defendants until 13 September 2022 from engaging in various activities which are said to constitute anti-social behaviour and/or public nuisance in any public space in the borough. Hackney applies for this injunction because there was an unauthorised encampment on part of Hackney Downs between 13 or 14 July and 13 August 2021 and the individual defendants are said to have been part of that encampment.

(2) Background

2. The encampment on Hackney Downs was one of a series of encampments this summer by a group of people seeking to protest, inter alia, about Government policy in response to the Covid-19 pandemic. Membership of the group appears to have fluctuated, but three individuals appear to have played a leading role throughout. They are Caul Grant, the first defendant, Ms Paige Dennis, the second defendant, and a man who goes by the name of Namaste, the thirty-first defendant.
3. Mr Grant controls a company called Campaign for Truth and Justice Limited, the eleventh defendant (albeit named as “Campaign for Truth and Justice”). Ms

Dennis and Namaste appear to be leading participants in “Lovedown Campaigners”, which is named as the tenth defendant, but which is not a legal entity.

(2)(a) *Shepherd’s Bush Green*

4. The first encampment of which I am aware was on Shepherd’s Bush Green, also known as Shepherd’s Bush Common. According to the statement of Mark White, Hackney’s Parks Operations Manager, this caused a significant disturbance.
5. The London Borough of Hammersmith and Fulham brought a possession claim (number QB-2021-002211) against Ms Dennis and “Persons Unknown” and on 11 June 2021 Master Eastman made an order for possession. I note that Mr Grant and Ms Dennis appeared at the hearing before Master Eastman. They and their colleagues were evicted from Shepherd’s Bush Green on 17 June 2021. According to Mr White’s statement, a number of arrests were made and the Green had to be closed off so that it could be cleaned.

(2)(b) *Clapham Common*

6. Following that eviction, on 18 June 2021 an encampment was set up on Clapham Common. There were originally about 30 tents and about 25 individuals. The number of tents increased at one stage to 63 and then fell to about 32 or 33. There were many complaints to the London Borough of Clapham (“Clapham”), who brought a possession claim (number QB-2021-002448) against Mr Grant, someone called Kaylee and “Persons Unknown”.
7. On 12 July 2021 Chamberlain J made an order for possession for the reasons set out in his judgment of that date: [2021] EWHC 1962 (QB). I note that the defendants to that claim were represented at the hearing before Chamberlain J by Mr Grant, Ms Dennis and Namaste. They and their colleagues were evicted from Clapham Common on 12 July 2021.

(2)(c) *Hackney Downs*

8. Following that eviction, the encampment on Hackney Downs was set up on 13 July 2021 or in the early hours of 14 July 2021. According to Mr White’s statement, the encampment originally consisted of about 11 tents and 20 people and grew to about 24 tents.

(2)(c)(i) *Mr Grant’s Letter*

9. On 14 July 2021 Hackney’s Corporate Contact Centre and Events Team received by email a letter dated 13 July 2021 from Mr Grant on the Campaign for Truth & Justice letterhead. The letter began as follows:

“IN ACCORDANCE WITH CLAUSE 61 OF THE MAGNA CARTA 1215 AND ARTICLE 7 OF THE HUMAN RIGHTS ACT 1998

The area of land, here in Hackney Downs, currently occupied by the LOVEDOWN Campaigners has been lawfully seized by Campaign for

Truth & Justice as partial remedy for the ongoing violation of the law committed by the Judiciary and other branches of the State.

Any attempt to enter the above property without an invitation will carry serious consequences and could result in injury to the person.”

10. The letter ended as follows:

“Let it be known that any attempt to interfere with any member, their family or their property will be in direct contravention of the Rule of Law and will be met with any resistance deemed necessary by ourselves.

Ignorance of the law is no defence.

you have been WARNED”

11. It appears from paragraph 4 of Chamberlain J’s judgment that a similar letter from Mr Grant had been given to Clapham’s Parks Operations Manager.

(2)(c)(ii) Alleged Public Nuisance and/or Anti-Social Behaviour

12. Mr White has given details in his statement of, and has exhibited anonymised copies of, complaints made by members of the public about the encampment on Hackney Downs. Many complaints concerned the message which the members of the encampment wished to convey, but others concerned noise, litter, the smoke and the risk from fires lit in the encampment, the smell of cannabis and the loss to the public of the opportunity to use that part of Hackney Downs occupied by the encampment. Mr White also says in his statement that:

- (1) there was an increase in litter in the area, which required more resources to manage;
- (2) placards were stuck into the ground;
- (3) bunting and banners were hung from the tress, in one case causing access problems for the gardeners’ vehicles; and
- (4) gardeners were abused on one occasion when they asked for bunting to be removed.

13. Gavin Avey-Hebditch is employed by Hackney as an enforcement team leader and he has given details in his witness statement of further complaints, including reports of human faeces on the opposite side of the road from the encampment and a complaint by a local resident about noise and about an incident when a group tried to intimidate the resident and knock their telephone out of their hand when they used it to film or photograph the encampment.

14. Mr Avey-Hebditch also said in his statement that one of the members of the encampment parked a car near to the tents.

(2)(c)(iii) The Possession Claim

15. Hackney brought a possession claim (number QB-2021-003059) against Mr Grant, Ms Dennis, seven other named defendants, Lovedown Campaigners, Campaign for Truth and Justice and “Persons Unknown”. On 12 August 2021 Master Cook made an order for possession. The occupants of the encampment were evicted on 13 August 2021. The eviction was peaceful, but the individuals being evicted would not give their names to council officials.

(2)(c)(iv) The Commencement of the Present Action

16. Meanwhile, the Part 8 claim form in the present action was issued on 11 August 2021. The defendants were the same as in the possession claim, save that the twelfth defendant was not merely “Persons Unknown”, but:

“PERSONS UNKNOWN LABELLED (A) – (T) AND IDENTIFIED
IN THE PHOTOGRAPHS ATTACHED TO THE WITNESS
STATEMENT OF GAVIN HEBDITCH”

17. The details of claim were as follows:

“The Claimant seeks an injunction pursuant to s.1 of the Anti-Social Behaviour, Crime and Policing Act 2014 and/or S.222 of the Local Government Act 1971 to prevent acts of anti-social behaviour in Hackney. The Claimant also seeks a power of arrest pursuant to s.1 of the 2014 Act and/or s.27 of the Police and Justice Act 2006.”

18. Paragraph 14 of the Particulars of Claim stated as follows:

“The presence of people at these gatherings represents a risk to public health as well as to the environment. The said conduct also constitutes a public nuisance and the Claimant considers that an injunction is expedient for the promotion and/or protection of the interest of the inhabitants of its area.”

19. Josephine Sterakides, Hackney’s senior lawyer for “General Litigation and Public Realm”, made a statement on 12 August 2021, after Master Cook had made his order for possession. In paragraphs 3 and 4 of that statement, Ms Sterakides said as follows:

“4. There has been police intelligence provided (email attached and exhibited to the statement of Mark White) that once the Defendants leave Hackney Downs, they intend to set up an encampment elsewhere in a green space in Hackney. This would mean that we would be required to start the High Court possession proceedings all over again at great time and cost to the Council and its officers.

5. We are requesting a hearing for an urgent without notice injunction for the following reasons: a) The Defendants have been lighting open fires in the land at great risk to both the park and other users of the land. This is despite being asked not to do so; b) The Defendants have been damaging the land by lighting

fires, littering and there has been evidence of defecation on the land; c) The Defendants have been intimidating members of the public; d) If we give the defendants any notice of our intention to apply for an injunction, it is likely the defendants will move onto another green space quickly (and therefore we would have to obtain another possession order); and e) We do not have addresses to enable us to serve all of the Defendants with injunction papers and therefore need to do so before they are evicted from the land.”

20. Mr White said in paragraph 11(a) of his statement that the defendants had made it clear that they would move to another open space in Hackney if they were moved from Hackney Downs. Mr White also exhibited an email dated 20 July 2021 from Inspector James Mellon of the Metropolitan Police Service, in which Inspector Mellon said as follows:

“I have spoken with our Public order intelligence unit, one of this unit’s roles is to monitor and develop intelligence from protest groups across London and further afield. I have explained to them the current situation with this group calling themselves “lovedown” and that the Local authority intended to use court proceedings to remove the group, the intel unit advised me that they had extensive knowledge of this group and were of the opinion if they are evicted from Hackney Downs site they would immediately attempt to occupy a nearby site within a park or open space in Hackney, the intelligence units advice was that we seek an order preventing them from occupying other green spaces in Hackney.”

(2)(c)(v) The Interim Injunction

21. As I have said, the occupants of the encampment on Hackney Downs were evicted on 13 August 2021, which was also the day on which Ellenbogen J made an interim injunction in the present action, without notice to the defendants. By that interim injunction, the defendants were prohibited until the return date of 16 September 2021 from:

“Organising or participating in any of the following activities in the Prescribed Area shown on the attached map marked Schedule 1:

- i. using or threatening to use violence against any other person
- ii. erecting any tent or other structure used for the purposes of sleeping overnight save in areas designated for such purposes such as camp sites
- iii. the destruction or damage of trees, shrubs, plants or any other flora, fauna, woodland or wildlife, such as (by not limited to), affixing bunting or erecting stakes in the ground
- iv. the playing of loud amplified music

- v. the lighting of fire, stoves, barbeques and/or naked flames (with the exception of a cigarette lighter) on any equipment or entertainment device save in an area designated for such purposes (such as, but not limited to a campsite)
 - vi. leaving litter, other than in receptables provided for such purpose, or for the disposal of waste
 - vii. urinating or defecating other than when making use of toilet facilities designed for such use;
 - viii. parking cars save in a designated parking area or car park”
22. The Prescribed Area was the entire Borough of Hackney. A power of arrest was attached to the prohibition on using or threatening violence.
23. An order was made for service of the claim form by an alternative means, in the following terms:
- “The steps proposed to be taken to serve the Claim Form, Particulars of Claim, N16A application for an injunction, N244 Application Notice, the draft order and power of arrest and the witness statements in support, by emailing copies to those Defendants whose email addresses are known to the Claimant and posting copies of the interim injunction and power of arrest (only) in various locations in and around the Prescribed Area and the posting of the interim injunction order and the power of arrest (only) on the Claimant’s Facebook and Twitter accounts, are adequate steps to constitute service of the claim form by alternative means pursuant to CPR 6.15(2) and of documents other than the Claim Form pursuant to CPR 6.27.”
24. An order was made dispensing with the requirement in CPR 81.8 that the interim injunction be served personally and providing instead that it could be served:
- (1) by placing it at all official entry and exit points to the parks and open spaces in the borough;
 - (2) by posting copies to Campaign for Truth and Justice at the address shown on Mr Grant’s letter;
 - (3) by posting copies on Hackney’s Facebook and Twitter accounts and on Hackney’s website; and
 - (4) by emailing copies of the interim injunction, the claim form and other documents to those defendants whose email addresses were known.
- (2)(c)(vi) Service of the Claim Form and the Interim Injunction*
25. Hackney served the claim form and the interim injunction in the manner provided for in the interim injunction. In addition, the interim injunction was served personally on Mr Grant and was served on some defendants by direct message on Instagram.

(2)(c)(vii) No Response from the Defendants

26. None of the Defendants filed an acknowledgment of service or any written evidence or submissions.

(2)(d) Brighton

27. When they were evicted from Hackney Downs, the defendants and their colleagues did not attempt to set up a new encampment in Hackney. Instead, the next encampment was set up in Brighton. It remains there. I am not aware of what, if any, claims have been brought by Brighton & Hove City Council against the occupants of that camp.

(3) The Present Application

28. By the present application, I am asked to continue the prohibitions contained in the interim injunction and the power of arrest until 13 September 2022. Although Ms Bhogal's skeleton argument referred in error to *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, she acknowledged that what was being sought was a final injunction. If I grant that injunction, it does not appear to be intended that any further steps will be taken in this action. I was also invited to order that the description of those who originally constituted the twelfth defendant be amended and to make provision for the service of my order.
29. Mr Grant and Namaste attended the hearing and made submissions opposing the order sought. Ms Bhogal invited me to add Namaste as a defendant to the action and he did not oppose that.
30. Ms Bhogal helpfully redrafted the proposed order twice in the light of observations which I made during the course of the hearing.
31. Ms Bhogal submitted on a number of occasions that the purpose of the present application was to explore what was appropriate on applications for such injunctions in the light of Nicklin J's important decision in *London Borough of Barking and Dagenham v Persons Unknown* [2021] EWHC 1201 (QB) ("*Barking and Dagenham*"). In those circumstances, I decided to take time to consider my judgment. To maintain the status quo, I made a further interim injunction (with a power of arrest) until 28 September 2021, directing that I would hand down judgment today and, since Ms Bhogal is unable to attend today, consider any consequential matters on 28 September 2021. I also dealt with certain issues relating the parties to the action and to the provisions for service of my order.

(3)(a) Parties

32. I ordered that Lovedown Campaigners be removed as a defendant. It is not a legal entity. It is at best an unincorporated association, but it is not association, such as a sports or social club, which has a set of rules and maintains a list of members. Namaste described it as an "action". It is not an entity against which the court could sensibly grant an injunction.

33. Since he did not object, and since he accepted that he was part of the encampment, I ordered that Namaste be added as a defendant.
34. Hackney applied for permission to amend the description of the 19 individuals who made up the twelfth defendant as originally described. I permitted the amendment of the claim form so as to list those individuals separately and to refer to them by reference to their photograph and, where available, what appeared to be their Instagram account. Thus, for example:

(1) The twelfth defendant is now identified as:

“THE PERSON IDENTIFIED IN THE PHOTOGRAPH LABELLED “A” AS EXHIBITED TO THE WITNESS STATEMENT OF GAVIN AVEY-HEBDITCH DATED 10 AUGUST 2021”

(2) The sixteenth defendant is now identified as:

“THE PERSON IDENTIFIED IN THE PHOTOGRAPH LABELLED “E” AS EXHIBITED TO THE WITNESS STATEMENT OF GAVIN AVEY-HEBDITCH DATED 10 AUGUST 2021, ALSO KNOWN AS “Aka_trev_kay” ON INSTAGRAM”

35. It is established that a final order can be made against a defendant whose name is not known, but who can be identified by a photograph: see *Barking and Dagenham*, at paragraphs 24(9) and 199.
36. I do not need to decide whether it would be sufficient for the purposes of a final order that a defendant whose name was not known could be identified by his or her Instagram account alone.

(3)(b) Service

37. Hackney invited me to dispense with personal service of my order for the purposes of CPR 81.8 and to direct that the order be served:
- (1) by post, in the case of Campaign for Truth and Justice Limited;
 - (2) by email, in the case of those defendants whose email address was known;
 - (3) by sending a link to the order via direct message on Instagram or other social media platform in the case of those 10 defendants whose Instagram account was known; and
 - (4) by posting a copy of the order on Hackney’s website and Facebook and Twitter accounts.
38. I did not consider that this latter alternative was an acceptable substitute for personal service of my order and Ms Bhogal did not contend otherwise. Indeed, it transpired that, although the drafting of the order suggested otherwise,

Hackney had not intended that this should be the only method of effecting service of my order on an individual defendant. I directed Hackney to post a copy of my order on its website and Facebook and Twitter accounts, but I did not direct that this would constitute service of my order.

39. There were several defendants on whom Hackney was not currently able to serve my order, because it did not have a postal address, email address or Instagram account name for those defendants. Hackney proposed that I should deal with those defendants by making the following order:

“Any Defendants who have not been served by post, email, Instagram, or other social media platform, or where personal service has not been effected upon them cannot be committed for an alleged breach of this order until 24 hours after service of the sealed order, sealed power of arrest and bundle of documents as per the index at Page 18a is effected. Such service shall be effected by personal service, post, email, WhatsApp, or direct message via Instagram or other social media platform, and shall be deemed to constitute adequate steps to constitute service of documents other than the Claim Form pursuant to CPR 6.27 and CPR 81.5.”

40. I did not consider that it was appropriate to make such an order, which would have amounted, in effect, to an order permitting service by unspecified electronic means on unspecified defendants, made without any evidence to support it.

(4) Decision

41. Given that the stated purpose of this application was to explore what was appropriate in the light of the judgment in *Barking and Dagenham*, I cannot help observing that Hackney does not appear to have heeded everything which Nicklin J said in that judgment. For instance, the second defendant to Hackney’s possession claim was “Persons Unknown”, despite what Nicklin J said in paragraphs 49 to 52 of his judgment about the need to describe “Persons Unknown”.

(4)(a) Service of the Claim Form

42. Moreover, despite what was said by Nicklin J in paragraphs 45 to 48 of his judgment in *Barking and Dagenham*, the provision in the interim injunction permitting service of the claim form by posting copies of the interim injunction and power of arrest “in various locations in and around” the Borough of Hackney and on Hackney’s Facebook and Twitter accounts does not appear to have been one which could reasonably be expected to bring the proceedings to the notice of all of the defendants:
43. Indeed, I do not see how posting copies of the interim injunction and the power of arrest anywhere could be said to amount to service of the claim form by an alternative means. If that is right, then the claim form has not been served on

many of the defendants. However, I did not raise this point at the hearing and so I do not base my decision on it.

(4)(b) Resolving Disputed Issues of Fact

44. In paragraph 163 of his judgment in *Barking and Dagenham*, Nicklin J said as follows:

“When the Court grants a final injunction, it is (or is part of) the *remedy* to which the Court considers the claimant has demonstrated an entitlement, in respect of those against whom judgment is granted (“the Trial Defendants”), based upon a cause of action or other entitlement following either a trial on the merits or other judgment in his/her favour (for example default or summary judgment). ...”

45. In this case, I was being asked to make a final injunction, but the draft order proposed by Hackney did not contain any order for judgment against the defendants. Had it done so, there might have been more focus at the hearing before me on the question of how I could and should decide disputed issues of fact. In particular:

- (1) CPR 12.2(b) provides that a claimant may not obtain a default judgment where he uses the procedure set out in Part 8.
- (2) CPR 8.1(2)(a) provides that a claimant may use the Part 8 procedure where he seeks a decision on a question which is unlikely to involve a substantial dispute of fact.
- (3) CPR 8.1(3) provides that the court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure. An alternative is to amend the Part 8 procedure, as Warby J did in *Birmingham City Council v Afsar* [2020] 4 WLR 168, a case in which there was a 5 day trial of a local authority’s application for an injunction against protestors outside a school.
- (4) Although the defendants in this case had filed no written evidence, CPR 8.6(1)(b) provides that the court may give permission for written evidence to be relied on at the hearing of the claim.
- (5) CPR 8.6(2) provides that the court may require or permit a party to give oral evidence at the hearing and CPR 8.6(3) provides that the court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

46. These are all matters which may require consideration in a future case where a similar injunction is sought. As it is, Ms Bhogal confirmed that Hackney’s case was not that each of the 29 individual defendants had done each of the things which Hackney sought to prohibit them from doing, but rather that each of them had been a member of the unauthorised encampment and that one or more members of that encampment had done each of those things.

47. Master Cook has decided by his order that the individual defendants to the possession claim committed the tort of trespass on Hackney Downs and I accept that the defendants to the present action did so. Whether they also committed the tort of public nuisance or engaged in anti-social behaviour is a separate issue, however. Consideration will have to be given in any such case in future to the question of how that issue is to be determined. For example, in the present case:
- (1) The most serious misconduct alleged is that of using or threatening violence. As to that:
 - (a) The only evidence of actual violence is contained in Mr White's evidence of an anonymised complaint to Hackney. Any court will be cautious about relying on hearsay from an anonymous source.
 - (b) On the other hand, Mr Grant's letter contains what I regard as a threat of violence against anyone who impedes the protesters.
 - (2) Namaste denied that any of the protestors had defecated in a public place. He asserted that a council employee had provided them with a key to the public toilets in Hackney Downs. He did not file written evidence to this effect and so it would be open to the court to say that he was precluded from making such a factual assertion. As to that:
 - (a) On the one hand, the defendants are litigants in person and might on that account be afforded some latitude.
 - (b) On the other hand, they are experienced in relevant aspects of legal procedure and did not invite me to hear any oral evidence.
48. I draw attention to these matters, but again I do not base my decision on them.

(4)(c) *Trespass*

49. As I have said, I accept that the defendants committed the tort of trespass, but that is not in itself relied on as a basis for making the order sought in this action. Nor could it be, since the Prescribed Area includes land which does not belong to Hackney. Indeed, Hackney originally proposed that the Prescribed Area should include the whole of the borough. It was only when I pointed out to Ms Bhogal that this included much privately-owned property that the definition of the Prescribed Area was revised to read:
- ““Prescribed Area” means the public spaces to which the public have access, whether on payment or otherwise, as of right or by virtue of express or implied permission, within the London Borough of Hackney as shown by the red boundary on the attached map.”
50. Mr Grant and Namaste submitted to me that they had a right to protest and that their occupation of part of Hackney Downs was lawful. Mr Grant also relied on Magna Carta and on Article 7 ECHR. These arguments were rejected by

Chamberlain J in his judgment in *London Borough of Lewisham v Grant* and they fall to be rejected in this case for the same reasons.

(4)(d) Anti-Social Behaviour

51. Hackney’s primary case was that I should make an order under section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014, which provides as follows:

- “(1) A court may grant an injunction under this section against a person aged 10 or over (“the respondent”) if two conditions are met.
- (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.
- (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.
- (4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour—
 - (a) prohibit the respondent from doing anything described in the injunction;
 - (b) require the respondent to do anything described in the injunction.
- (5) Prohibitions and requirements in an injunction under this section must, so far as practicable, be such as to avoid—
 - (a) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;
 - (b) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.
- (6) An injunction under this section must—
 - (a) specify the period for which it has effect, or
 - (b) state that it has effect until further order.

In the case of an injunction granted before the respondent has reached the age of 18, a period must be specified and it must be no more than 12 months.
- (7) An injunction under this section may specify periods for which particular prohibitions or requirements have effect.
- (8) An application for an injunction under this section must be made to—
 - (a) a youth court, in the case of a respondent aged under 18;

(b) the High Court or the county court, in any other case.

Paragraph (b) is subject to any rules of court made under section 18(2).”

52. Anti-social behaviour is defined in section 2, which, insofar as is relevant, provides as follows:

- “(1) In this Part “anti-social behaviour” means—
 - (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
 - (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
 - (c) ...
- (2) Subsection (1)(b) applies only where the injunction under section 1 is applied for by—
 - (a) a housing provider,
 - (b) a local authority, or
 - (c) a chief officer of police.”

53. In a suitable case, an injunction can be granted under section 1 against protestors. In paragraphs 111 to 113 of his judgment in *Birmingham City Council v Asfar*, Warby J said as follows:

“111. I do not consider that citation of such cases as *Gouriet v Union of Post Office Workers* [1978] AC 435 is pertinent. Nor am I persuaded that the grant of the injunctions that are presently in place, or those that I propose to grant, involves the breach of any legal curb on the court's powers or discretion. The 2014 Act expressly confers on the Council the power to seek injunctions against anti-social behaviour which, for reasons I have given, must be taken to encompass protest. I see no reason to conclude that these statutory powers are exercisable only where the behaviour under scrutiny can be categorised as criminal. That forms no part of the case for the Council. In any such case, a local authority would bear the heavy legal, evidential, and persuasive burdens imposed by the Convention, and the related jurisprudence. The court would be bound to apply an intense focus to the facts before it. Those, I think, are sufficient protections for the rights of free thought, conscience, speech and assembly and, if engaged, the rights to hold and manifest one's religious views.

112. I have considered whether the use of the term “harassment” in this statute imports the tests which have been held to apply to that term in the context of the Protection from Harassment Act 1997. I do not believe it does. The 1997 Act creates a statutory tort and a crime which are of precisely the same scope. The 2014

Act does not. Harassment, alarm and distress, in that context, bear their ordinary and natural meanings. In the case of harassment this is “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress”: *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935 at para 1 (Lord Sumption).

113. In general terms, I can accept Mr de Mello's submission that the 2014 Act creates a “high hurdle”. The court should not be too ready to grant injunctions prohibiting activities which citizens would ordinarily be free to undertake in a public place, or restricting the way they express themselves in such places. Injunctions under the 2014 Act should not be lightly granted, and their terms should be carefully framed to ensure that they do not involve unnecessary or excessive interference with the rights of others. These considerations will be especially potent in the context of protests, and all the more so where the protest relates to the conduct of a public authority, such as a School or local education authority, and issues of policy with a religious or ethical flavour. But I reject the submission that the court is powerless to grant, or should always refrain from granting, an order protecting fellow citizens from alarm or distress, or other consequences of harassment or anti-social behaviour, falling short of that which would justify prosecution. Other remedies are available in principle. But in this case, the Council considered whether lesser measures might suit the factual situation confronting it and decided, in my judgment legitimately, that interim relief under the 2014 Act was required due to the urgency of the matter. Having taken that decision, it was and is entitled to press the civil claim to its final conclusion, rather than falling back on other measures available under the 2014 Act, or other legislation.”

54. As to the parties against whom such an injunction can be granted, in paragraph 68 of his judgment in *Barking and Dagenham*, Nicklin J said as follows:

“Whether or not a court could grant an injunction, under s.1 ASBCPA, against a person whose name was not known, but who could be identified, is a point that would require further argument. Whilst I can see force in the argument, for example, that it would be difficult to conduct any meaningful consultation with the local youth offending team if the respondent cannot be identified by name, it is not a point I need to determine.”

55. Ms Bhogal submitted that there is no reason in principle why, in an appropriate case, an injunction should not be granted under section 1 against a defendant who could only be identified by a photograph, at least if:

- (1) the defendant is over 18 (and so the consultation requirements in section 14 do not apply); and

- (2) the injunction contains a prohibition or prohibitions, but no requirements (and so section 3(1) does not apply and does not require the injunction to specify who is to be responsible for supervising compliance with any requirement).
56. I see force in the argument that if, in such circumstances, an injunction were otherwise justified, then the question whether the court should grant an injunction should not be determined by whether the defendant had or had not been willing to give his or her name to representatives of the local authority. However, like Nicklin J, I do not have to decide the point.
57. Of the activities which Hackney sought to prohibit, it seems that only the playing of loud amplified music was capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, so as to constitute anti-social behaviour of the kind described in subsection 2(1)(b).
58. While some of the other activities which Hackney sought to prohibit are no doubt capable of causing harassment, alarm or distress, so as to constitute anti-social behaviour of the kind described in subsection 2(1)(a), not all of them are. I do not see, for instance, how the parking of one car on Hackney Downs could be said to have caused harassment, alarm or distress to anyone. Other activities, such as an excess of litter, or the tying of bunting to trees, might have caused annoyance, but I doubt whether they caused harassment, alarm or distress.
59. I also note that, save for the one instance of the anonymous individual who complained of the attempt to knock their telephone out of their hands, the complainants whose complaints are exhibited to Mr White's statement did not write in terms which suggested that they were harassed, distressed or alarmed, as opposed to merely irritated or annoyed. One complainant, for example, said that the encampment made it "uncomfortable" for vulnerable people to walk through the park. Discomfort is not the same as harassment, alarm or distress.
60. I am prepared to accept that there was some anti-social behaviour, particularly in the form of noise, and perhaps also the single instance of violence, but I do not consider that at this stage it is just and convenient to grant an injunction for the purpose of preventing the defendants from engaging in anti-social behaviour. I reach this conclusion because:
 - (1) There is no evidence that any of the defendants are currently in Hackney, let alone camped in a public space in Hackney.
 - (2) As appears from Miss Sterakides' statement, the reason for seeking the interim injunction was the risk, supported by Mr White's evidence and Inspector Mellon's email, that when evicted from Hackney Downs the defendants would immediately attempt to occupy another park or open space in Hackney. That did not happen.
 - (3) Those defendants who are still engaged in the protest are now in Brighton and have been there for over a month.

- (4) I have no evidence as to when the individuals encamped in Brighton will be evicted, but I assume that it is likely that they will be. Mr Grant and Namaste appeared to expect that.
 - (5) Hackney has no specific evidence, such as up-to-date police intelligence, to suggest that any of the defendants are likely to return to Hackney when evicted from their current site in Brighton.
 - (6) Mr Grant and Namaste pointed to the pattern of their conduct. Each of the four encampments has been in a different local authority's area.
 - (7) While not indicating any specific plans, they claimed that their next move might be to another city altogether, such as Manchester.
 - (8) Ms Bhogal submitted that there was a risk that the defendants might return to Hackney, but she could not point to any evidence which made that risk any greater in the case of Hackney than in the case of any other urban area in the country.
61. I do not say that the interim injunction was unjustified. On the contrary, there was at that stage some evidence that the defendants might move elsewhere in Hackney. But there is no longer any such evidence.

(4)(e) Public Nuisance

62. For the same reasons, I do not consider that it would be appropriate to grant an injunction to prevent a threat of public nuisance. Assuming for these purposes that the defendants caused a public nuisance when they were in Hackney Downs, the threat of them repeating that conduct in Hackney is not such as to justify a *quia timet* injunction. In the words of Longmore LJ in paragraph 34(1) of his judgment in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, there is not a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief.

(5) Conclusion

63. For these reasons, I dismiss Hackney's application for a final injunction and I discharge paragraph 6 of the order which I made on 14 September 2021. As directed in that order, I will hear any consequential matters on 28 September 2021.