

Case No: KB-2022-001142

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
[2024] EWHC 1015 (KB)

Royal Courts of Justice  
Strand  
London WC2A 2LL

Tuesday, 20 February 2024

BEFORE:

**MRS JUSTICE FARBEY**

BETWEEN:

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**EXOLUM PIPELINE SYSTEM LIMITED & ORS**

Claimant

- and -

**PERSONS UNKNOWN**

Defendant

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**MR T MORSHEAD, KC** appeared on behalf of the Claimant  
The Defendants did not appear and were not represented

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**JUDGMENT**

----- (Approved) -----

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## MRS JUSTICE FARBEY:

1. This is a review of the order of Bennathan J made on 29 April 2022. It is the second review. The claimants seek the continuation of the injunction with a further review in around 18 months' time.
2. The background is as follows. The claimants are importers, exporters and distributors of oil and chemical products. In order to carry out their business, they own and operate bulk liquid storage terminals in the United Kingdom. By a claim issued under CPR Part 8 on 11 April 2022, the claimants sought an injunction against persons unknown in relation to activities at seven of their terminals in England. The target of the injunction was and remains environmental protesters.
3. The claimant's injunction application followed a protest at and in the vicinity of the terminal at Grays. According to the evidence filed by the claimants, on 1 April 2022, protesters climbed on top of tankers they had stopped on the access road to the Grays site. Some of the protester chained or glued themselves to fuel tankers. Fuel tanker tyres were let down. By the next morning, the protesters had dug a tunnel under an access road, and some of the protesters were in the tunnel.
4. There was some further protester activity on 5 April 2022 of a lesser sort. According to the evidence, on 10 April 2022, protesters gained access to the Grays site by climbing over the boundary fence using ladders. They gained access to areas classed as hazardous under health and safety regulations because they may contain an explosive atmosphere. The protesters had with them mobile phones, which posed a risk of ignition and are therefore prohibited from being on the site. They glued themselves to each other or chained themselves to infrastructure. The protests continued through 11 April 2022. There were further protests at Grays on 13 and 15 April 2022.
5. I have seen copies of social media postings by Just Stop Oil on 10 and 11 April 2022, which publicise some of the activities at Grays. It is plain from the social media posts that the protesters were expressing their political beliefs. For example, one post says:

"The youth have been holding Grays oil depot for over 24 hours. Young people have had enough of the UK Government's criminal inaction on the climate crisis, which is ultimately going to shorten the lives of so many young people in our society."
6. The claimants were concerned that disruptive and dangerous activity would spread to their other sites and so sought relief in this court. The kind of injunction that the claimants sought has come to be known as a "newcomer" injunction because its terms operate against persons who at the time of the injunction were neither defendants nor identifiable and are described on the injunction simply as "persons unknown" (see *Wolverhampton City Council and Others v London Gypsies and Travellers and Others* [2023] UKSC 47, [2024] 2 WLR 45).

7. By order dated 6 April 2022, Johnson J granted an interim injunction prohibiting persons unknown, as further described in two different ways in the title of the order, from doing a number of things. On the return date, Bennathan J granted injunctive relief, albeit that he reduced the number and scope of the prohibitions within the injunction. He made a separate non-party disclosure order against various Chief Constables in order that anyone arrested in the course of protesting at or in the vicinity of the claimants' terminals would have their details passed by the police to the claimants with a view to naming them as defendants in the claim.
8. On 23 January 2023, Soole J reviewed Bennathan J's order. Mr Morshead KC appeared on behalf of the claimants. No one else appeared. Soole J was satisfied that the injunction should not be discontinued. He ordered that it should be reviewed again in February 2024. That is how the matter comes before me today.
9. Soole J's order imposed various procedural requirements on the claimants, which were intended to bring the proceedings and this second review to the notice of those who might wish to resist the continuation of the injunction. I am satisfied on the evidence before me that those procedural requirements have been met. The court is not aware of any person who wishes to argue that Bennathan J's order should be discontinued. Like Soole J, I have heard from Mr Morshead, and no one else has appeared.
10. Soole J was provided with updating evidence of developments since Bennathan J's order. Among other things, there was evidence before Soole J that despite the injunction there was further disruptive and dangerous activity at Grays on 23 August 2022, when five protesters gained entry. On 3 May 2022, less than four days after the injunction was made, protesters went to the Clydebank site of Exolum Storage Limited and took actions similar to those taken at Grays.
11. I have likewise been provided with evidence of developments since Soole J's review. These developments are set out in the fourth witness statement of Mark O'Neill, who has since last year been promoted to being the North West Europe Operations and Maintenance Lead at Exolum International (UK) Limited. He confirms that service and maintenance of the injunction signage around the terminals has continued. Additional security measures have been put in place to make access to the terminals more difficult for the defendants. These measures are intended to ensure the safety of the claimants' staff and visitors as well as the defendants and other members of the public who may be in the vicinity of the terminals.
12. Mr O'Neill says that the claimants continue to provide assistance to the police in relation to the prosecution of protesters in respect of the protest activity at Grays terminal in April 2022. For example, Mr O'Neill has given evidence to the Magistrates' Court when needed. The claimants wish to use the third-party disclosure order to add named defendants to the injunction order in the event that sufficient evidence can be obtained to do so.
13. Mr O'Neill confirms that the email address advertised on the injunction signs continues to be monitored for enquiries in respect of the injunction. A request for copies of the claim documents referred to in the injunction order was made in July 2023, but there

have been no emails or other forms of communication objecting to the injunction. There has been no further disruption at any of the terminals that are subject to the injunction since the 2023 order.

14. Mr O'Neill describes the importance of maintaining the injunction in the following terms:

"38. I believe that the injunction has been an effective deterrent to further protest activity, and the fact that there has not been such activity at the terminals since the 2023 order also supports this belief.

39. Given the fact that Just Stop Oil appear committed to further protest activity until their objective is reached, I consider that it is important for the injunction to continue.

40. The claimants also remain committed to protecting the terminals by all legal means possible, by the additional security measures, assisting the police with prosecutions, and seeking to continue the injunction at the review hearing."

15. In his submissions, Mr Morshead emphasises that the Scottish protest shows that the protesters are well organised and have sought to disrupt the claimant's business where it is not protected by the injunction.
16. Since the last review in this case, the Supreme Court has given its judgment in the *Wolverhampton* case. In his judgment in that case, with which the other members of the court agreed, Lord Reed observed at paragraph 167(iv) that newcomer injunctions are "constrained by territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon" for their making.
17. At paragraph 235, Lord Reed cautioned against treating as prescriptive in other contexts (such as protester cases) the principles about newcomer injunctions in traveller cases. He went on to state that, in protester cases, the judge must be satisfied that there is a "compelling need" for the order. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the principles explained by the court.
18. In the context of newcomer traveller injunctions, Lord Reed referred at paragraph 237 to the prospect of appropriate and early review. I do not regard that reference as limited to traveller injunctions in the sense that reviews cannot or should not take place in other cases. I agree with Mr Morshead that it remains good practice to provide for a periodic review even when a final order is made (see *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13, [2022] 2 WLR 946, paragraph 108, per Sir Geoffrey Vos MR, with whom the other members of the court agreed).

19. In his helpful written and oral submissions, Mr Morshead submits that the Supreme Court's judgment in the *Wolverhampton* case has clarified the conceptual framework to be applied to the making of newcomer injunctions. The judgment is notable for its shift from the approach in *American Cyanamid Co v Ethicon* [1975] AC 396 to the consideration of a new kind of injunction requiring a different approach. In such cases, the primary question is: what is needed for the court to intervene in cases where the practical reality is that the persons unknown are not likely to be present in court?
20. Mr Morshead submits that there are two principal considerations that arise from the *Wolverhampton* case. First, the court will only grant relief if there is a compelling need, sufficiently demonstrated by the evidence, in order to protect the claimant's rights (*Wolverhampton* paragraph 167(i)). Mr Morshead properly accepts that is a high threshold and is indeed a higher test than the balance of convenience under *American Cyanamid*. He submits that the threshold is to be flexibly applied on a case-specific basis. There may be a compelling need for the court to order injunctive relief in relation to a small risk of future disruption if the consequences of the risk materialising are serious. Conversely, if the harm that the claimants anticipate is very slight, the court may consider that there is no compelling need for an injunction, even if the risk of the harm materialising is great. Convention rights of putative protesters will always be considered (*Wolverhampton*, paragraph 167(ii)) and it is open to the court to conclude that Convention rights must prevail in circumstances where the interference caused by the injunction would be disproportionate.
21. Mr Morshead submits that the court may in the absence of any named defendants protect the rights of protesters in two ways. First, it may impose strict procedural requirements of notice of the injunction and any review, which may enable anyone affected to apply to the court for the injunction to be discharged or varied. Secondly, the court will consider the evidence that is before it and, in the absence of any defendant, may probe the claimant to satisfy itself that the duties of the court and the duties of a party appearing without an opponent are discharged.
22. Even if that approach is wrong, Mr Morshead submits that, in any event, I need not and should not at this stage apply the various familiar limbs of the full *American Cyanamid* test as if this were a fresh application for an injunction. That exercise has already been conducted on other occasions. He submits that for present purposes it is sufficient and proportionate for me to consider whether there has been a change of circumstances since the last review.
23. He accepts that I will need to balance the legal rights of the claimants against the rights of free speech (Article 10 of the Convention) and free assembly (Article 11 of the Convention) of the putative protesters. He makes the point that Johnson J and Bennathan J gave full weight to Article 10 and Article 11 rights. He submits that the evidence of continuing disruptive protests by climate change activists in various parts of England demonstrates a continued need for the injunction in the terms that have been ordered. However, in the circumstances of this case, he submits that it is difficult to conceive how any application of *American Cyanamid* would impose any higher threshold than the test of compelling need.

24. I agree with Mr Morshead. I have kept firmly in mind the high public interest in the right to express beliefs and to engage in legitimate public protest. If the *American Cyanamid* principles apply, I accept that there is and remains a good arguable case for relief and that damages are not an adequate remedy. I see no reason at this juncture to take a different view to Soole J in these regards.
25. I accept that the test of balance of convenience would add nothing to the test of compelling need. If the test of compelling need is met, then on the facts of this case the full panoply of the *American Cyanamid* requirements is met.
26. I am prepared to accept that, unless restrained, there is at least some risk, and probably a high risk, that some activity would resume at some point within an imminent period. There is at least some risk, and probably a high risk, that if protest activities were to take place at the claimants' sites there would be damage. There would not only be damage to property but also a risk to life and limb. The protesters would not know which tankers were full of explosive material and which were empty. They would not know whether even an empty tanker was clean or retained residual inflammable material. They would not know which parts of the claimants' infrastructure were dangerous and which were safe. In dangerous parts of the site, they may not know that the use of mobile phones, which has been an integral part of some of the protests in order to publicise the activities on social media, is a danger to life.
27. In terms of the court's duty to protect the protesters' Convention rights, the claimants have complied with the steps set down by the court to bring the injunction and today's hearing to the attention of those who may want the injunction discontinued. The court has sought to protect the right to protest through the full use of its case management powers.
28. The review is not a rubber stamp but has involved the court probing counsel as to its concerns for the purpose of ensuring that the continuation of the injunction is proportionate and that its duration is no longer than is necessary.
29. I have been provided with no reason to discontinue or vary the order made by Bennathan J. On the other hand, it is notable, as I have said, that the evidence is that the protesters breached the Grays perimeter, went onto its property and acted in a dangerous way that could have led to an explosion with risk to property and ultimately with risk to life and limb. There is, in my judgment, a compelling need for the order to be continued.
30. I will order that the injunction is to continue in force until the next review. I am concerned that a review period of 18 months may lead to drift. The next review will be listed on the first available date after 20 February 2025. There will be notice requirements as set out in the draft order supplied by the claimants.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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(This judgment has been approved by the judge)