

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. QB-2022-001317

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

Defendants

EXHIBIT AA3/13



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Royal Courts Of Justice
The Strand
By CE filing and email

Our Ref: 271560/4. AHAD.AHAD
Your Ref: QB-2022-001317
By email and CE file: kbjudgeslistingoffice@justice.gov.
Date: 18 April 2024

FOR THE ATTENTION OF THE CLERK TO MRS JUSTICE COLLINS RICE

URGENT IN RELATION TO HEARING TOMORROW

Dear Sir / Madam

Thurrock Council and Essex Council v Madeline Adams and others and Persons Unknown
Claim No. QB-2022-001317

We act for Mr Martin Marston-Paterson, who is not a defendant to the above claim but is concerned by the scope of the injunction order.

There is a case management conference in this matter, listed at 10.30am tomorrow before Mrs Justice Collins Rice. Our client is not a party to the claim, though like everyone else in the world, is potentially affected by its terms. Since he is not a party, he does not intend to participate in this purely administrative hearing, and in not attending intends no disrespect to the claimant or court.

We enclose a copy letter to the Claimant dated 27 March 2024 which invited the Claimant to consider carefully whether the injunction should be maintained, in light of its ongoing duty to apply to discharge an injunction brought against persons unknown if there is a material change of circumstances (*Ineos v Persons Unknown* [2022] EWHC 684 (Ch)).

The Claimant did not respond to our letter, but served its application for directions in advance of tomorrow's hearing. The application does not refer to our letter, nor as far as we are aware has the Claimant subsequently brought it to the court's attention. That is potentially a serious matter, in that any applicant for an ex parte injunction (as this in relation to the persons unknown) is required to bring to the court's attention any factual or legal argument that would militate against the grant (or continuation) of an injunction. Indeed, so seriously is this obligation taken by the courts, there is a clear and consistent body of case-law that holds that non-compliance with this obligation is, of itself, a reason to refuse or discharge an injunction even if the court would still have granted the injunction had that information been made known to it.

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The obligation is to place material before the judge that militates against, as well as in favour, of the grant of the injunction. In *R (Golfrate Property Management) v Crown Court at Southwark*, the dictum of Hughes LJ in *Re Stanford International Ltd* [2011] Ch 33, a case concerning a restraint order, was set out, and approved, by Lord Thomas LCJ, at paragraph 24, and in these terms:

“It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge.

The fact that the initial application is likely to be forced into a busy list, with very limited time for the judge to deal with it, is a yet further reason for the obligation of disclosure to be taken very seriously. In effect a prosecutor seeking an ex parte order must put on his defence that and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge. This application is a clear example of the duty either being ignored, or at least simply not being understood.”

This is a suitably onerous obligation:

*“...there is a very heavy duty placed on the [applicant] to ensure that what is placed before the judge is clear and comprehensive so that the judge can rely on it and form his judgment on the basis of a presentation in which he has complete trust and confidence as to its accuracy and completeness: *R (Rawlinson and Hunter Trustees) v Central Criminal Court*, [2013] 1 WLR 1634, per judgment of President of QBD, at paragraph 88*

That failure to comply with the obligation is, of itself, a reason to discharge the injunction, is supported by authority: see *OJSC Ank Yugraneft* [2008] EWHC 2614 (Ch), where Christopher Clarke J said, at paragraph 104:

“The obligation of full disclosure, an obligation owed to the Court itself, exists in order to secure the integrity of the Court's process and to protect the interests of those potentially affected by whatever order the Court is invited to make. The Court's ability to set its order aside, and to refuse to renew it, is the sanction by which that obligation is enforced and others are deterred from breaking it. Such is the importance of the duty that, in the event of any substantial breach, the Court strongly inclines towards setting its order aside and not renewing it, so as to deprive the defaulting party of any advantage that the order may have given him. This is particularly so in the case of freezing and seizure orders.”

In these circumstances, while our client is not a party, it is a matter that he feels that the court ought to consider. Even if you do decide that, for some reason, the usual sanction of discharge of the injunction should not be imposed, you may feel that it is appropriate to order witness evidence on oath from the applicants as to why having received this letter they did not bring it to your attention on an application that they are bringing for directions and where the orders they seek to maintain are wide-ranging.

Further, in the meantime, we are aware that Hill J has ordered on 16 April 2024 that 195 of the named defendants be removed from the injunction and the claim against them be stayed. The Claimant did not serve us with this Order; our client provided a copy to us.

In any event, in our respectful submission it is apparent from the Claimant's application that there remains no compelling need to maintain the injunction sufficient to satisfy the requirements set out by the Supreme Court in *Wolverhampton v London Gypsies and Travellers* [2023] UKSC 47 (§167(i)). In particular:

1. Adewale Adesina, who provides a statement in support of the Claimant's application, asks for a slow timetable due to there being "262 named defendants". This is incorrect:
 - a) At the time of the application there were 222 named defendants and seven categories of persons unknown. Not only this but a separate application to remove 195 named defendants was outstanding. The Claimant does not mention this;
 - b) Hill J has now ordered that those 195 named defendants be removed. As a result there are currently only 27 named defendants to the claim;
 - c) The remaining defendants to the claim are seven categories of persons unknown. The alternative service provisions to the Order permit service to be effected on persons unknown by: placing the documents on the Claimant's website, emailing four addresses and placing signs in identified locations. This is not an "enormous use of resource" as asserted by Adewale Adesina; and
 - d) The Claimant's application to add 33 defendants has yet to be decided. If it is granted, there will be just 60 named defendants, which is not an "extraordinary number" as asserted by Adewale Adesina.¹
2. The Claimant gives no other reason why a slow timetable is justified, in circumstances where the injunction has been in place for nearly 24 months, since 27 April 2022. As pointed out in our letter, the Supreme Court in *Wolverhampton* considered it unlikely to be justifiable for a persons unknown injunction extending over the whole of a borough to be in place for more than a year (§225).
3. There remains no evidence as to why the injunction is still *required*, still less as a novel exercise of an equitable discretionary power (*Wolverhampton* §167). The statement of Adewale Adesina confirms that the latest protests took place in August 2022. It is plain from all the cases, including *Wolverhampton*, that injunctions restricting the rights of so many people are only to be granted where they are necessary.
4. The remaining points set out in our letter related to: (1) the new offences and harsher penalties under the Public Order Act 2023 that render the injunction unnecessary; (2) the financially precarious position of Thurrock Council which militates against it being excused from giving a cross undertaking; and (3) the vast geographical ambit of the injunction, which should be a particular concern in light of the Supreme Court's comments in *Wolverhampton*. We do not repeat those points here but they remain good.

¹ Our client understands that since Hill J's order a further seven of the original 222 named defendants and 15 of the 33 proposed new defendants have signed an undertaking. This would leave just 38 named defendants.

5. We would add that we are aware of two of the 222 named defendants who were in the vicinity of the protests that took place in April and August 2022 but were not participating in the protests, still less in any unlawful activity. They were arrested under the power of arrest and held for up to 24 hours before being released without being interviewed, then added to the injunction after their details were provided to the Claimant by the police without their knowledge. This illustrates the draconian effect of this injunction, which causes extreme distress and inconvenience to law abiding people.

We respectfully request that this letter be provided to Mrs Justice Collins Rice for her consideration in advance of tomorrow's hearing.

Yours faithfully

A handwritten signature in black ink that reads "Bindmans". The script is cursive and somewhat stylized, with the 'B' being particularly large and the 's' ending in a long, sweeping tail.

Bindmans