

Location:Court 37
Royal Courts of
Justice, London**Date:**

20 January 2025

Time:

2pm

In	Mr Justice Fordham	Judge	("J")
attendance:	Myriam Stacey KC	Counsel	("MSKC")
	Evie Barden	Counsel	("EB")
	Andrew Todd	Eversheds Sutherland	("AT")
	Louise Casey	Eversheds Sutherland	("LC")

**WM Morrison Supermarkets Limited and Others v Persons Unknown
Return Day Hearing, 20 January 2025**

MSKC: I appear on behalf of the Claimants alongside Ms. Barden, you should have received a number of documents, can I check what you have, electronic bundles as well as hard copy bundles

J: give me one second as I am missing some stuff

MSKC: authorities bundle, there is a homemade one which I passed to Judge Collins Rice, we have a better version if you'd like

J: yes if you have one please, was there 1 authority raised which was missing

MSKC: in relation to section 12 of the Human Rights Act 1998, we didn't think it was relevant, we don't rely on Police and Criminal Evidence Act, so didn't think necessary to include

MSKC: [you will have] received a skeleton, marked up to show where the changes come in, a draft Order and two further witness statements

J: is someone taking a note

MSKC: yes, last hearing was on Thursday with Mrs Justice Collins Rice, an Order was granted for a very short period of time

J: it expires right now

AT: yes 2pm

MSKC: We are asking for a continuation

J: have they said how long they need, have you asked?

MSKC: No, we jumped on it to respond to the Court.

J: has there been any communication with the Defendants since?

MSKC: Only the Farming Forum contact page confirming that they [received the posting].

J: Somebody who didn't give their name said can we have some time and hasn't identified themselves?

MSKC: yes, we don't know who is behind that email address, there are references to the injunction on social media forums.

J: what are you asking me to do?

MSKC: Continuation of the injunction, we're asking for 12 months seeing as it is linked to the proposed parliamentary reforms, insofar as I have to apply a temporal hook.

J: you're not asking me to adjourn and continue it for 7 days?

MSKC: if you consider that an appropriate course, I won't oppose. I recognise that it has been very and it is an urgent matter and it has developed. I would ask you to consider a 7 day continuation as a bridge. I did raise with Mrs Justice Collins Rice that Monday was a very short amount of time. I'm not opposing if there are persons who want to instruct lawyers etc, if they genuinely want to do so.

J: if FTA thought the next weekend was critical and I were to proceed [to grant the injunctions] either for a period of 12 months or 7 days, they would have to use the liberty to apply?

J: would they get in front of me before the weekend?

MSKC: yes if they brought an application on an urgent basis I'd be surprised if they weren't able to. I don't know the inner workings of the court. Our primary position is that they are protected by those provisions. Doesn't close their possibility to being able to. If they were genuinely planning to take legal advice, they should be more specific in relation to what those plans are. If you are minded to proceed I will continue with my submissions.

J: all options are on the table – what are the actual prohibitions?

MSKC: Twin track my Lord. The first prohibition is against entering and the second deals with both public and private nuisance, all of which lead direct access to the site.

J: Can I test this by looking at pg. 167 of the exhibit AJT4 – on that pg. are 4 photos and somebody called Clive Bailye who I think you have identified of the FTA.

MSKC: he is the founder of the Farmers Forum

J: that's different?

MSKC: Yes.

J: and he is saying, it must be non-disruptive, 5-10 tractors across the UK in supermarket car parks today that was on 17 January?

MSKC: yes, that was on Friday.

J: is it your position that a tractor couldn't go and park in a Morrisons car park with a poster?

MSKC: no, we are not targeting any kind of protest in the supermarkets, we are seeking an injunction against the RDCs. We've taken a view about the supermarkets, we could argue that it falls outside of the implied licence but we are not preventing that kind of conduct. If you look at the prohibitions and the definition of the sites we are looking at commercial distribution centres. Page 3 of the order which identifies

the sites in question, schedule 1, the sites are listed, each of which are retail distribution centres, not supermarket carparks.

MSKC: This is dealt with specifically in Todd 1 in his witness statement which refers to protests within supermarkets.

MSKC: if you turn to Pg 119 of the hearing bundle, start at 118. Para 85 of Todd 1 refers to a thread posted on the FF re 6 January coordinating national action at a local supermarket, para 85, continuing to target the Claimant's more generally and the wider supermarket industry referring to RDCs at para 53b of skeleton – we consider appropriate to limit to the RDCs despite potential supermarket protests.

J: apart from somebody looking through the order and looking at the word distribution, does this order in clear terms communicate that it is nothing to do with supermarkets.

MSKC: not on the front face of the document, it could be brought to the fore if your Lordship thought appropriate. We could amend the reference to state RDCs instead of sites.

J: the portal is Morrisons corporate website that says we've got an injunction, here is everything you need to know about it. It says protests and we've got an injunction.

MSKC: we can easily change that.

J: is it intended that, without any court order, all of the new materials would be uploaded to that website?

MSKC: Yes the order refers to future service at paragraph...

J: the order which has just expired, it dealt with future documents.

MSKC: yes paragraph 14 under further directions.

J: sorry to be pedantic is that an order saying if you were to do X and Y you will have complied with your obligations.

MSKC: CPR 6.16 at a date in the future will be the date in which we are deemed to have validly served.

J: Are you under an obligation in this court order to upload future documents to your website or are you being given a shield so that if you upload them no one can say you haven't?

MSKC: Strictly speaking a shield, it is permission to serve by alternative means what we served. It is us at risk if we didn't serve because if we did not do so in accordance with that provision, persons would say that they had not been validly served. It is not an obligation but permission for our own interests if we want to take things further

J: you would be willing to give an undertaking to do that so that it became an obligation?

AT/MS: yes absolutely

J: as I sit here your skeleton is on website?

MSKC: yes all been done this morning. As and when documents are produced they are on the website, with the exception possibly of Todd 3.

J: not waiting for me to do that

MSKC: only Todd 3 has not been uploaded.

J: where has this left redaction?

MSKC : skeleton with note in unredacted form has been served.

J: have witness statements documents been served unredacted?

MSKC: not yet. We intend to clean and complete everything save for one thing which is Todd 3. Todd 3 contains an image and contains a name which forms a part of evidence, name not considered material to what they are trying to show

J: redacted in the exhibit?

MS: Yes

J: No application is required to include that redaction, an order would be required for you to bring it in

MSKC: I can take it a step back and walk through the submissions made to Mrs Justice Collins Rice.

J: what would help most is if we focused on current imminent threat, just pressing pause, the National Farmers Union, as I understand it are documented as having said don't block. A day of unity this coming weekend, very important and you've disclosed that as part of full and frank disclosure because you recognise that if that were evidential picture across the board you would be in difficulty. Your position, as I understand it, is that you can't get that from FTA, you don't see FTA saying don't block - is that fair?

MSKC: one has to look at it as a piece, we don't know who is behind FTA, how many participants we only know that it exists, it is not the whole of the protest. We have informed the court of the expression of support but we have other comments which say that this is not going away, references to having to block distribution centres including Morrisons.

MSKC: then turn to Todd 3, "Morrisons what have you done we thought you supported us".

J: is there scope for misunderstanding what Morrisons have actually done?

MSKC: you may be very well right about that, frankly we didn't spot that point, we are targeting RDCs only, some participants that as part of a disruptive campaign must target RDCs we maintain there is a continuing ongoing risk which justified

J: were talking about blocking RDCs, not standing on a public path with a placard.

MSKC: tightly drafted in line with human rights, on that basis Mrs Justice Collins Rice was satisfied.

J: Current threat to blockade RDCs either generally or Morrisons because of your injunction, one of your points as I understand it is that the fact nothing happened last weekend isn't evidence the injunction isn't needed. It could be evidence that the order has worked.

MSKC: One must assume that orders will be complied with.

J: you would say nothing happened last weekend therefore the order worked, not that it is unnecessary.

MSKC: I rely on all of the evidence referred to in the last hearing which summarises what Todd, Roberts and Throup say, we've updated skeleton at section 6 and Todd 2 and Todd 3 say: There have been no protests at the Claimants' RDCs, there have been protests at supermarkets, c. 500 other supermarkets nationwide para 462. Todd 2 paragraphs 47-57: comments on Farming Forum since the injunction was granted and protestors got wind of injunction - we might need to move to RDCs included

Morrisons -NFU day and the alarming post in Todd 3 with Keir Starmer as a hangman specifically referring to Morrisons and using Morrisons' branding.

MSKC: That shows a few things: there is a desire, at least on the part of some, to keep the pressure up; there are people affiliated who consider disruption at RDCs is the right course of action and the Claimant should be targeted

MSKC: referring to Throup's statement, there are closed chat groups. We only have the open facing piece, not the closed facing piece. Care needs to be taken in assuming we have all of the evidence because everything we have managed to obtain does not represent the full picture.

Particularly given the effects on the Critical National Infrastructure and the food chain, there is a serious and imminent risk

J: can we look at people who consider targeting RDCs is the way forward?

MSKC: look at Todd 2, section 6, para 45 – protest action since the last hearing, 45 is what is said about no protest took place, 45.1 is the reference to protest at RDC at Lidl being identified. Section 7: conversations and emails aware of protest activity at supermarkets. Next, Bridlington, 50 at Gamston, Morrisons are still at their sites. 42 protests at other supermarkets, 500 nationwide. Section 8 paragraph 47, since the grant, the Claimant is aware of following planned protest activities supermarket meet – "Morrisons have made themselves target no 1". Paragraph 49, from the Farming Forum "we need to keep the pressure on and make clear this isn't going away." "Farmers Forum chain titled "Fragile supply chain", "maybe RDC next, encourage change of mind". Then paragraph 51 "better to blockade distribution centres" - they know the distinction between the roles of the supermarket and the RDCs. Paragraph 52 reference to a post referring to "a small percentage of those could shut down their distribution centres I suggest they do so".

MSKC: The National Farmers Union are encouraging members to organise events. Refer to at paragraph 57 to full and frank disclosure, they are directing not to block public roads. What this doesn't deal with is the Todd 3 reference which we should look at next, paragraph 5 of Todd 3 reference to the screenshot which we spoke about a moment ago, which is summarised in paragraph 6.

J: and that's FTA?

MSKC: Yes, they deleted it. I won't draw any inferences though perhaps they recognised it wasn't such a good idea. In the skeleton we deal specifically and directly with the gratitude and support expressed by FTA. At paragraph 53c – it cannot safely be assumed that the FTA speaks for all individuals. Throup's statement suggests that there are closed groups where not all members are aligned with the views of the public facing forum.

J: Farming Forum, just a place where people can state their views?

MSKC: it is a chat room.

J: The FTA is specific to the current action?

MS: it is and it isn't, we're not limiting the injunction to the FTA.

J: I can see the National Farmers Union saying something, Farming Forum and the FTA, not everything in exhibit is from FTA? Is there an FTA equivalent?

MSKC: not that we're aware of.

J: FTA has an X and an email – I've seen one screenshot and one email from that email address. Farming Forum is say what you've got to say.

MS: at page 110 of the hearing bundle Mr Todd sets out what FTA are 63 of Todd 1 – deals with Together Declaration which is the other lobby group we're aware of.

J: website and forum? You've not given me any exhibits from FTA's forum, the forum I see is Farming Forum

MSKC: yes the FTA's accounts are social media pages with a "contact us" option.

J: there is no information that you have access to that gives me FTA's position on the National Farmers Union, page 164 of new exhibit,

MSKC: no we've seen no response to that

J: No message from FTA, do or don't block, we have NFU saying don't block, you would have to show me that, I'm taking it there is no message from FTA. There are people who consider disruption of RDCs targeting Morrisons as a way forward.

MSKC: no one consistent view, all members. The mere fact that there are statements of support cannot be taken comments suggesting otherwise.

MSKC: those who've posted on Farming Forum in a negative manner, we don't know if they are members of the FTA or not.

J: Not case against FTA? The FTA are identified as the best route for making these proceedings and procedural rights known to those [protesting]?

MSKC: it's a means of notifying, the FTA is there for that reason and part of the evidential package, not everyone needs to be a member of the FTA

J: can infer that FTA provisionally has a position because they have said we have lots of docs to think about.

MSKC: I do not think you could go beyond that.

J: is there any reason I shouldn't have a pause for an email to be sent to the FTA asking what they mean by time, to say the judge wants to know what you mean when you say you need time?

MSKC: no reason not to, but what would the objective to be, there is liberty to apply?

J: to say as you know the case is in front of the judge this afternoon, judge has given you the opportunity to promptly clarify, if you wish to, what do you mean you need time and what do you wish to say to the suggestion of an additional 7 days' time?

MSKC: yes, there are two things to consider

1. Ensure that we are not drifting; and
2. We would want to keep the case before your Lordship.

J: I am the duty judge Monday – Friday this week, a 7 day deferral will mean a third judge that receives the case, I wouldn't want you to be under a misapprehension. If they had been saying can we have 48 hours I might put it to you shall this case come back on Friday.

MS: it shouldn't be batted off for any lengthy [period], they aren't in any worse position under the liberty to apply provision. I suggested to Mrs Justice Collins Rice that she might consider there not to be a return date. If you're with me and there should be a continuation. It would benefit the defendants and their counsel not to have to jump straight into it. It would only be if you consider liberty to apply doesn't afford them sufficient comfort.

J: yes, thank you.

J: I would like an email to be sent please. To give the person on the other end an opportunity promptly to explain to me what they meant by more time and to respond, if they wish to, the suggestion that has been made openly this morning

about continuation for 7 days. The only thing I'm pausing to wonder is whether, in your submission, the email from your solicitor could also say and to provide any response if you wish to the idea of the case being heard on Friday. I haven't decided anything but I am deciding whether it would be a good idea.

MSKC: If I may take instructions.

MSKC: On the assumption that we bridge the injunction until then, then this would be acceptable.

J: I'm thinking about the Court's options.

J: Add that so they are being given an option to respond promptly to 3 questions if they wish to do so, within the next ten minutes.

J: I am sitting in Court thinking about what to do not knowing what they mean by more time, not knowing if they have a position on your 7 days, not contemplating that a long delay.

J: We will adjourn and re-convene while you send that email to the Defendants

Do I have scope to act today and give reasons tomorrow?

MSKC: You can make the order. That happens in these cases sometimes. You can then give your reasons afterwards.

J: Have a think of the design of the order in light of the points made. Provisionally, you need to spell out in headline clarity that the injunction is for RDCs. In that name of the Defendants "AT DISTRIBUTION CENTRES". "Agricultural protests" is less of a concern. The other thing I raised was future court documents going onto the website as a matter of obligation, whether that is as an undertaking or an order.

ADJOURNEMENT

Hearing re-commenced at 15:54

MSKC: my Lord we sent the email and then a follow up, I hope it's reached you. A chaser was sent after around 20 mins but no response has been received. We've sent amended versions of the order and amended claim form, needs to be amended as a consequence of the amendment to Persons Unknown definition.

J: Can I just look at how you dealt with the two points I'd raised?

J: Can I try an alternative, thank you for the Order. If it said persons unknown, any of the distribution centres which are defined as the sites in schedule 1, second one says to the said Distribution Centres which are the sites in D2, protest outside the distribution centres which are the sites and then definition was sites mean the Distribution Centres comprising the land.

J: In order to avoid all of the knock on amendments, the drafting is really clear and helpful and if we were starting from scratch, but since we are trying to limit the number of changes and changes to the claim form. Fewer changes.

MSKC: yes, we need to change definition of Persons Unknown regardless, not proposing to make any changes to Claim Form other than one point of correction, change to Persons Unknown, amending to read Regional Distribution centres, not retail.

J: it's a fresh order anyway, the previous order is gone.

MSKC: open to your Lordship's suggestions.

J: I want to come back to the Friday idea with your assistance, I understand, of course, and it is appreciated, fewer judges who have to start afresh the better, I

don't need any persuading of that as a good idea. However, 7 days have been ventilated as not being opposed albeit they have now been given an opportunity which they haven't taken, they knew we were in court.

I am mindful of the fact that there is a day of unity this weekend, this Saturday the 25th and that what the NFU have been saying, if it were being said more universally, and in particular if it were being said by the FTA, might make a difference to the contours of necessity and justification in a situation where they have asked for more time and haven't said what they need. In part that could be accommodated by making you come back on Friday but it might be better accommodated in a return day next Monday or Tuesday.

I'm putting it to you because in fairness I should see if you have more you want to say about it particularly because we know this weekend has a day of unity coming up, if the court were to be Friday - is that on or not, is the Order going to be discharged, which would be very last minute over the weekend, whereas continuing the order making clear its RDCs only would make clear over the weekend.

MSKC: I have 4 points to make

1. The reference to the Saturday event, we don't fix our evidence to that date. As I said in my submissions to Mrs Justice Collins Rice, we were anticipating a protest on 17 Jan, that has rolled forward to 25 Jan. It is a moving process, moving feast, rapidly evolving, it is not open to the court to infer that it starts and stops on the 25 Jan;
2. Yes the court can consider what, if anything, any defendant had to say on Friday, though what is the likelihood that representative would make submissions which would affect our broader right to an injunction, we are not fixing against the FTA, - given that the protests are linked to the autumn budget unlikely that campaign will come to an end before the end of 12 months so the likelihood of a sufficient change to discharge the injunction is unlikely;
3. If we adjourn for a short period, it puts any organisation that wishes to make representations under more pressure; they would need to instruct someone, consider their position, assemble evidence; and
4. There is provision under the liberty to apply for them to come before the Court at a time of their choosing without those constraints

Therefore would urge you to deal with this today, they know it's going on, they can come back to the Court in due course if they are minded to do so.

J: I will rise for a few mins to think about that. If I come down with a return day for next week notwithstanding what you've said, is Tuesday better than Monday? Thinking practically again.

MSKC: yes.

ADJOURNMENT

Hearing recommences at 16:20

J: Firstly, I am hereby ordering for the avoidance of doubt that the use by the Court of voice recognition software is used for providing a prompt judge approved set of reasons for the parties.

J: I intend to give my reasons in some fuller detail in a written judgment which will be available in the next day or so. For today I will explain the Order that I am making today and what will happen in this case in the coming days.

JUDGMENT

I am today ordering the continuation of an injunction order made in these proceedings by Mrs Justice Collins Rice on 16 January 2025 and subsequently sealed by the court on 17 January 25.

The effect of what I have just announced is that those injunctions which would otherwise have lapsed this afternoon pursuant to para 5 continue until varied, discharged or extended by further order.

I am however, today, varying for obvious reasons, the return date of 20 January 2025, and will order a replacement return date for a further hearing of Tuesday 28th January 2025 provisionally 10:30 am, with an indication of a time estimate of half day to a day.

The terms of the injunction which continue will however be revisited and finalised tomorrow, because of some changes which I will be making in the design of the order. I, therefore, order that there will be a replacement order made by me and sealed by the Court to replace the order which I have just continued.

I take that course for the pragmatic reason that it is practical to produce today a short order and tomorrow the replacement full order. I will revisit if necessary at the end of this brief oral ruling of the practicalities of all of that. I am taking this course in a context where the Claimants have asked the Court today to continue the injunction for 12 months, emphasising the liberty to apply which is built into it.

And which the organisation known as the FTA, Farmers to Action.Org, or any other persons effected by the Order would be able to invoke in order to ask the Court to vary or discharge the order or any of its terms. I am mindful of communications this morning from an unnamed person at the FTA, email address, see schedule 4 to the order, who asked for time to consider the Court documents including whether to instruct counsel, aware of the return date hearing this afternoon. To which an open response from the Claimants' solicitors sensibly communicated that the Claimants, for their part, would not oppose continuation for 7 days. Despite all endeavours this afternoon, it has proved impossible to illicit from the author of this morning's FTA email what was meant by more time and what the FTA's position is in relation to that open suggestion.

In open justice terms, I emphasise today that by virtue of the terms of the Order made by Mrs Justice Collins Rice and the steps taken by the Claimants' solicitors there is a designated openly available web page at Morrisons corporate describing the injunction on which there are links to all of the relevant court documents including witness statements and skeleton arguments. Any person wanting further information about the nature of the claim being made and the nature of the evidence relied upon can find those resources readily by making an internet search. Once of the changes which will be made in the revised, replacement order and which is sensibly not opposed by the Claimants and their representatives is to secure that by way of obligation through an undertaking given to the Court all documents filed with the court will be uploaded to that publicly accessible website.

Following discussion with leading counsel for the Claimants at today's hearing and also accepted by the Claimants, I propose to make revisions in tomorrow's replacement order which spell out in very clear and headline terms that these injunctions are concerned only with distribution centres. They are not concerned with supermarkets or supermarket car parks.

The materials before the court include photographs of tractors in supermarket car parks in what appear to be peaceful protests which do not block or impede access. Activities of that kind are unaffected by the terms of the injunction. As are peaceful protest activities on public highways included within the defined sites as access roads to regional distribution centres provided that those protests do not involve blockades, obstructions of traffic or otherwise impeding, preventing or interfering with passage by the Claimants employees and others see para 6b, 7b of the Order of Collins Rice J.

The Distribution Centres are all clearly defined in schedule 1 to the Order.

I record that I have been satisfied on the evidence and submissions that the Claimants have taken all practicable steps for the purposes of s 12 of the Human Rights Act 1998. I am satisfied that the Claimants have today discharged their

undertaking regarding steps to identify persons falling within the categories of defendants and considering if a joinder to the proceedings is appropriate under schedule 3 para 2.

I record that no applications for redactions of names of witnesses were made for the purposes of schedule 3 of paragraph 3.

I record that I was for my part satisfied as to cause for action, likelihood of success at trial, compliance with full and frank disclosure duties, the existence of a real and imminent threat of a tortious act which would lead to harm, the absence of defence, and the inadequacy of damages as a remedy.

I am satisfied that the procedural requirements have been established and that there is appropriate clarity that there will be the revisions to which I have referred in the replacement order.

I am accepting the undertakings and am satisfied that it is just and convenient to grant a continuance through to next week's return date of these injunctions.

I repeat the recital recorded in the Orders that the Claimants have confirmed that the injunction is not intended to prohibit any unlawful protest outside RDCs insofar as that protest does not restrict pedestrian or vehicular entrance into the centres. It does not effect and is not intended to effect supermarkets or supermarket car parks

I prefer having discussed the matter in open court, a return date of next Tuesday rather than Monday and am satisfied that is justified as necessary and appropriate. It strikes a fair balance and will enable the court to have the assistance it needs when it comes to consider, in the light of updating evidence and any response that by then has been put forward by the FTA or anyone else, the invitation to continue this injunction for the 12 months sought or some lesser period. I intend to add to these brief reasons some further matters in the approved written judgment that I will provide, I do not require attendance at a further hearing for the purposes of receiving those further reasons. I will finalise the replacement Order as soon as possible hopefully during tomorrow, Tuesday.

And I will be open to considering any procedural directions. That concludes the ruling I give in open court today.

MSKC: I'm very grateful

J: does it work if I do very short order today and full order tomorrow?

MSKC: Junior Counsel has drafted the form of Order.

J: having been addressed on the practical implications for next Tuesday's hearing I am persuaded that there is good reason for a later start than 10:30 and will say 12'o' clock with the intention that that will give the Court the time that you need.

J: The Order of Mrs Justice Collins Rice is available at the website. I want the order to say it is made on the on terms of the Order and a replacement order that will be made tomorrow. Subject to paragraphs 2 and 3 below, the Order continues in effect, paragraph 2 will state that there is a return date next Tuesday at 12 and paragraph 3 stating that the Order will be replaced tomorrow

J: I will need a full replacement order which does what we discussed and I will do the replacement order tomorrow, can I please insist that you get it to me promptly?

MSKC: Clarify on whether or not we change references to the sites

J: as we are doing a replacement order anyway, the clearer the better.

J: I am open to directions – I'll leave that with you – we could have a direction for timing of next update or response, no time needed on it now. Perhaps a proposed procedural direction re pinning anyone down draw attention to anything haven't seen.

J: I'd like to give thanks on the same basis of Mrs Justice Collins Rice for the evidence and documents provided.

End of hearing.