

**IN THE HIGH COURT OF JUSTICE**

**KINGS BENCH DIVISION**

**B E T W E E N :**

- (1) WM MORRISON SUPERMARKETS LIMITED**  
**(2) SAFEWAY STORES LIMITED**  
**(3) WM MORRISON PRODUCE LIMITED**

**Claimants**

**- and -**

**PERSONS UNKNOWN -**  
**[more fully described in the Claim Form]**

**Defendants**

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**CLAIMANTS' SKELETON ARGUMENT**

**Hearing: 12 May 2025 (1 hour)**

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*References in this Skeleton Argument:*

- *e.g. "[HB/50]" are references to page numbers in the Hearing Bundle.*
- *e.g. "[SB/20]" are references to page numbers in the Supplemental Hearing Bundle.*
- *e.g. "[AB/2]" are references to page numbers of the Authorities Bundle.*

**Suggested Pre-Reading: (Time Estimate: 3 hours) -**

- Sealed re-amended claim form [SB/3-13]
- Application Notice dated 15 January 2025 [HB/27-31]
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- Order of Collins Rice J dated 16 January 2025, amended on 20 January 2025 ("the Collins Rice J Order") [SB/81-101]
- Order of Fordham J dated 20 January 2025 ("the Fordham J First Order") [SB/137-157]
- The judgment of Fordham J dated 20 January 2025 [SB/193-198]
- Order of Fordham J dated 21 January 2025 ("the Fordham J Second Order") and the amended Fordham J Replacement Order amended on 24 January 2025 [SB/199-217]

- Order of HHJ Tindal (sitting as a Deputy High Court Judge) dated 29 January 2025 (“**the HHJ Tindal Order**”) [SB/253-273]
- Minute of HHJ Tindal’s ex tempore judgment dated 29 January 2025 [SB/309-315]
- Fifth Witness Statement of Andrew Todd (“**Todd 5**”) [SB/858-861]
- Sixth Witness Statement of Andrew Todd (“**Todd 6**”) [SB/868-880]

## **A. THE REVIEW HEARING**

1. This is the Claimants’ skeleton argument in relation to the review hearing of the Claimants’ application for injunctions granted by the HHJ Tindal Order pursuant to paragraph 8 of that Order [SB/257]. The rationale for listing the review hearing only 3 months after the injunctions were granted and for a time estimate of 1 hour can be discerned from the Minute of HHJ Tindal’s ex tempore judgment at [SB/310-311]. As is apparent from that Minute, the Claimants sought the injunctions for a period of 12 months from the return hearing and HHJ Tindal considered that the matter should be listed for an early, short, review on the basis it would enable a view to be formed as to the extent of the continuing risk which justified the continuation of the injunctions and the extent of that period, and that a short hearing would be sufficient if matters were not contested. As set out below, there has been no change in the UK Government’s position vis-à-vis the IHT changes (whether in the mini-budget or otherwise) and the primary objective of the FTA remains in place. A 12 month injunction following a reviewing hearing after 30 April 2025 would correspond with the implementation of the inheritance tax changes in April 2026.

## **B. INTRODUCTION**

2. The First Claimant is a supermarket chain that operates 1,700 retail sites, including supermarkets and convenience stores, across the United Kingdom (see Roberts 1 at [8]-[11] [HB/55]). The retail stores are supplied with goods delivered from retail distribution centres (“**RDCs**”). The RDCs also supply goods for the online business of the First Claimant’s group of companies and to wholesale business customers.
3. The Second and Third Claimants are wholly owned subsidiaries of the First Claimant. The Second Claimant produces and distributes a range of products sold in retail stores operated by the First Claimant. The Third Claimant purchases produce from third parties, such as farmers, and packs and distributes fresh produce.

4. By the claim, the Claimants have sought injunctions to restrain unlawful protest activity at eight of the RDCs (together “**the Sites**”) and access roads to the Sites, which are identified at Schedules 1 and 2 to the re-amended claim form [SB/11-13].
5. At this adjourned return date hearing, the Claimants will seek continuation of the injunctions granted by HHJ Tindal:
  - a. On the same terms (for a year or for such period as the Court considers fit) and with liberty to the Defendants to apply to set aside or vary, as set out in the proposed draft order filed with this skeleton argument;
  - b. On the basis that there continues to be a compelling justification and a sufficient threat which justifies the injunctions.

#### C. HOUSEKEEPING

6. All documents relating to the proceedings have been uploaded to the Morrisons’ website address. They have also been sent to an email address affiliated with an action group known as “Farmers to Action” (“FTA”). The Claimants’ solicitors have received no correspondence in relation to the application since the hearing before HHJ Tindal.

#### D. THE THREAT

7. The background is set out in Todd 1 at [63] – [87] [HB/110-121]. In short, the threat which provoked the claim was a set of demands by the FTA (Todd 1 at [66]), which manifested in disruptive protest at one of the Sites under the banners of FTA (and at other RDCs not owned or occupied by the Claimants) on 10 January 2025. The FTA describes itself as: “Dedicated to defending Farmers and Citizens across Great Britain” (Todd 1 at [63] and [66] [HB/110-111]). Its current demands are (1) for fairness in food pricing, (2) for national food security, and (3) the abolition of changes to inheritance tax (“IHT”) and the restoration of agricultural property relief and/or business property relief (the “Demands”). The FTA is affiliated with another action group known as “Together Declaration” (“Together”) (together “**the Protest Groups**”).

8. Essentially, some or all of the Protest Groups, appear to be committed to a campaign of protest in order to bring about the demands identified at [66] of Todd 1 [HB/111-112]. Since the initial protest action in January 2025, there has been clear and consistent rhetoric from supporters of members of the FTA that further action was intended until the Demands, in particular Demand (3), were met.

***The original threat***

9. The factual allegations and the basis on which the claim and application were made are set out in Todd 1 at [63] – [87.2] [HB/110 – 121], Todd 2, Todd 3 and Roberts 1 at [15] – 49] [HB/57-67]. On 10 January 2025, the Protest Groups arranged a number of roadblocks and ‘go-slow’ drives which occurred at or near the Sites [HB/114-115]:
  - a. Protestors blockaded the Willow Green RDC between the hours of 19:30pm on 10 January 2025 to 8:30am on 11 January 2025 by parking 50-70 tractors at access points to the Site (whether on the First Claimant’s land or on public highways) [HB/116-117 at [79] – [80]]. The impact of the blockade at Willow Green was significant and gave rise to health and safety concerns as set out in Sections 4 and 7 of Roberts [HB/59-61, 64-68], including empty shelves at a supermarket in Taunton [HB/191].
  - b. A number of tractors carried out a ‘go-slow’ drive on the A38 and 80 tractors carried out a three-hour ‘go-slow’ drive on the A303. Both of these roads are the near the Willow Green Site.
  - c. A ‘go-slow’ convoy occurred around the roads in Northampton near the Swan Valley, Latimer Park and Corby RDCs.
  - d. 50 tractors carried out a ‘go-slow’ drive on the A530 and 30 tractors carried out a similar drive on the A5. Both of these roads are the near the Gadbrook Site.
10. The action on 10 January 2025, in particular the blockade at Willow Green, appeared to galvanise the Protest Groups and generate support for FTA’s aims and means of protest by direct action [HB/116 – 118 at [80] – [83]; 119 –120 at [86.1] – [86.3]; 187-191, 199-201; 203;239 – 240 at [8] – [9]; 242; 245; 247].

11. On 12 January 2025, Sophie Throup, Head of Agriculture for the First Claimant, produced a video “*message of support to the whole of the farming community*” [HB/239 at [6]], in which she stated that the First Claimant shared the farmers’ concerns about the impact of the IHT changes on the long term future of farms and stating that the First Claimant was “here to help”. The video was posted on X as part of the First Claimant’s response to the protest action on 10 January 2025. The FTA’s reaction was to enhance its focus on Morrisons by posting a photograph of the empty supermarket shelves in Taunton with the caption: “@Morrisons...The time to show you back Farmers is now.” [HB/191]

***Threat before hearing on 29 January 2025***

12. Following the Collins Rice J Order, the Fordham J First Order and Fordham J Second Order, there was no unlawful activity at any of the RDCs [SB/731. at Roberts 2 [13]].
13. Although the FTA did not contest the injunction, users of Farming Forum, Instagram and Tiktok came out in support of direct action at RDCs, and, in some cases, encouraging covert protest “*strategically in order to avoid court injunction*” [SB/526 at Todd 4 at [44]] and there was evidence that there continued to be protesters who were committed to the cause and committed to the means of protest by blockading.
14. In light of that, HHJ Tindal was satisfied that there were certain people who were not dissuaded by the injunctions who might intend to protest at RDCs rather than at the supermarkets operated by the First Claimant, which meant there was a compelling justification for the continuation of the injunctions.
15. A minute of the ex tempore judgment of HHJ Tindal is at [SB/312-313]<sup>1</sup> which includes the following:

*“The current position between 20 January and today is dealt with in the statements of Mr Todd and Mr Roberts, it is clear that the official email account of Farmers to Action have taken the injunction onboard and have respected the injunction and have posted complimentary things about Morrisons, they confirmed they would not be contesting the injunction.*”

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<sup>1</sup> The Claimants’ solicitors made a request for a copy of the ex tempore judgment on 3 February 2025. As yet, that has not been received.

*On that footing it appears that the original organisers and planners for Farmers To Action are happy to respect the injunction, they have not taken opportunity to make representations in writing, I will say that they were very courteous in their response, it is clear from other social media posts that that position from FTA by no means is universal for example since the hearing before Mr Justice Fordham, comments have included the quote “fuck your injunction” someone else said “ignore the injunction it’s nonsense...” “chain their gates shut”, “if we all go to Morrisons... they can’t arrest us all” “we can move to a location 100 ft away” and the most considered and significant was by one user “thanks to the FTA at Bridgwater we’ve discovered a powerful tool .....” This, if I may say so, is a quintessential, thoughtful and considered view about the use of protests as part of a “carrot and stick” to achieve their objectives, something this country is built on, its life blood and part and parcel of law and democracy - as one can pick up from protest outside court today.*

*The point is, it is clear there are certain people who are not dissuaded by the injunction who may well intend to protest and in particular at RDCs rather than at the 1700 different Morrisons shops. It is for that reason that it seems to me there is a compelling justification for an injunction, I use that phrase deliberately.”*

### **Ongoing threat**

16. The basis of the Claimants’ view that there continues to be a real and imminent risk of serious harm is set out in Todd 6.
17. Although there has been no direct action at or near RDCs since the HHJ Tindal Order, that is consistent with the injunctions having proved an effective deterrent, rather than undermining their need. As Linden J put it in *Esso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB) at [67] [AB/365]:

*“it appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course, not invariably so. If, therefore, an injunction is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume.”*
18. The FTA remain committed to their campaign until “*the proposed farm tax is scrapped or significantly altered*”, with statements being released as recently as 14 April 2025 urging farmers to “*get involved to show their opposition to Labour’s IHT plans*” “*before it’s [sic] too late*” with the need to “*step up, stand up and push hard*” and “*get this sorted by November, otherwise this will start to take effect by April*”: Todd 6 at [12] – [13] [SB/870-871].

19. Notably, statements on Farming Forum<sup>2</sup> by members, Facebook and Instagram indicate a continuing intention by persons affiliated with the Demands to achieve those aims by confrontational direct action activities of the nature which led to the grant of the injunctions and that the Claimants remain key targets for unlawful action. Examples of these statements targeted specifically at the First Claimant and/or RDCs include:
- 1 February 2025: *“Supermarkets and government wake up when you block food distribution centres and if the supermarkets and government aren't corrupt they agree with what is morally and legally right. If supermarkets and government are corrupt then it won't take many further blockades to force change.”* [SB/876 at [32]]
  - 4 February 2025: *“Protests probably won't force change...Blocking food distribution centres will force change, I'm guessing court injunction can't be imposed until at least one food distribution blockade per distribution centre. Then if there is any way of covertly or strategically continuing blockade without prosecution from court injunction then we are in business...”* [SB/874-875 at [27]]
  - 7 February 2025: *“It won't take many to block a food distribution centre...”* [SB/876 at [31]]
  - 7 February 2025: *“To get it written in law potent tools at our disposal such as blocking food distribution centres will bring it about” ... “we have every right to fight and force change with food distribution blockades and other potent tools at our disposal”* [SB/877 at [33] and [34]]
  - 7 February 2025: *“The fuel blockade worked not really because of how effective it was but because of the panic buying. That's the way we could still force their hand with distribution centres (especially now Morrisons lawyers have drawn us a load of great maps\* 🤔🤔 😊)- the panic would spread as people worried about not having food to shove into their gobs...”* [SB/872-873 at [21]]

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<sup>2</sup>A platform which allows members to engage in conversations via chat threads. Chris Fellows, a director of the company that operates the platform, has clarified that the operator of the platform had no involvement in the protest at Willow Green RDC or commercial relationship with FTA [SB/523 at 31.2].

- 19 February 2025: *“No. We need the element of surprise. It’s better if they don’t know where we will be protesting next.  
“Also what about flying pickets. We don’t need to have 100 s tractors at a distribution centre just 8 or ten like at MK but with a couple of hundred bodies to assist. No excuse then about too far to travel on a tractor. 🤖” [SB/875-876 at [30]]*
- 26 February 2025: *“I will put my ass on the line. Somebody close to a distribution centre leave a tractor and trailer conveniently loaded with fym with the keys in and I will “steal it”. The deal is give me enough time to get close before phoning it in and then refuse to press charges due to it not being damaged.” [SB/873-874 at [25]]*
- 26 February 2025: *“...Target roads around distribution centres far enough away to negate morrison’s injunctions. As soon as you shout shortages the vultures will empty the shelves within 24 hours and within 48 hours Rachel from accounts will back down. Stop being nice it hasn’t worked in the last 50 years and won’t now.” [SB/875 at [29]]*
- 26 February 2025: *“Pressure on the supply site ... it’s the distribution, involving others in the food supply other than Farmers And if that will upset the public ... cant make an omlet without cracking a few eggs” [SB/878 at [35]]*
- 26 February 2025: With an image of empty supermarket shelves, *“Until this happens we are getting no where.” [SB/880 at [42]]*
- 1 March 2025: *“Only one answer block the distribution and empty shelves” [SB/875 at [28]]*
- 2 March 2025: *“There are plenty of other ways and places to protest  
They will find it very hard to ban every farmer because there is no one single organisation or company to serve injunctions on  
If they pick on any individual of group another will fill it’s place  
There are 10 of thousands of address with farm in the name many not owned by farmers even the supermarkets have brands with farm in the name” [SB/874 at [26]]*



20. As set out at paragraph 18 above, although the FTA did not oppose the injunctions statements made in April 2025 also confirm the FTA’s commitment on a continuing basis to their core objective, namely a protest movement to pressurise the UK Government to abolish the IHT reforms [Todd 6 at [12] and [13] **[SB/870]**].
21. It is also understood that ‘closed’ WhatsApp groups are being used by farmers’ groups to coordinate the localised groups [**HB/239-240 at [8] and 9]**) which the Claimants do not have general access to.

### ***Harm***

22. The Collins Rice J Order [**SB/83**], the Fordham J Second Order [**SB/140-141**] and the HHJ Tindal Order [**SB/255**] set out that the Courts have, on three occasions, been satisfied that real harm would be caused by direct action by obstructing and/or blocking access to some or all of the Sites. See also [10] of Fordham J’s judgment [**SB/196**], and HHJ Tindal’s judgment [**SB/314**]. In summary:
  - a. Operational disruption at the RDCs would pose a risk to food security nationally, including to vulnerable members of society: Roberts 2 at [17] – [36] [**SB/732-734**].
  - b. Safeguarding / health and safety risks to persons at the Site: Roberts 1 at [46] [**HB/64**].
  - c. A particular vulnerability comes from the presence of fuel, from the fuelling stations located at each Site: Roberts 1 at [46.4] [**HB/64-65**].
  - d. The Claimants have suffered loss and damage by the protest at Willow Green RDC: Roberts 1 at [30] [**HB/61**].

### **E. THE LAW**

23. The Supreme Court’s decision in *Wolverhampton CC v London Gypsies and Travellers* [2024] 2 WLR 45 [AB/2-81] (“*Wolverhampton CC*”) clarified the principles and guidance for the grant of injunctions against persons unknown, although it is the Claimants’ case that *Wolverhampton CC* has not materially affected the test to be applied

when granting an injunction in the context of protests against persons unknown (including newcomers).

24. In this context, there is no meaningful difference between interim and final injunctive relief: *Wolverhampton CC* [139], [143(vii), [178] and [234] [AB/55, 57, 70] and, more recently in the protest context, *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB) [18] (Ritchie J) [AB/165].
25. The key substantive test for the grant of an injunction against Persons Unknown is that set out in [218] of *Wolverhampton CC*:

*“any [claimant] applying for an injunction against persons unknown, including newcomers ... must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought ... There must be a strong probability that a tort ... is to be committed and that this will cause real harm. Further the threat must be real and imminent”*

26. Imminence means the absence of prematurity: see e.g. Julian Knowles J in *London City Airport Ltd v Persons Unknown* [2024] EWHC 2557 (KB) at [29] [AB/180].
27. Following the ruling of the Supreme Court<sup>3</sup>, the seven *Canada Goose* guidelines remain good law, and other factors have been added: see e.g. *Valero Energy Ltd v Persons Unknown* [2024] EWHC 1277 (KB) at [57] – [58] [AB/111-114]. Those factors are materially the same as those laid down in the protest cases of *Ineos v Persons Unknown* [2019] 4 WLR 100 at [34] [AB/142], and then developed in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 at [82] [AB/152-153].
28. Ritchie J in *Valero* identified 13 guidelines at [57] – [58] [AB/111-114] as relevant to the grant of an injunction. Those guidelines are set out in an annex to this skeleton argument. That framework guided the approaches taken by Collins Rice J, Fordham J and HHJ Tindal in making the orders granting the injunctions in this case.
29. It is relevant to draw the attention of the Court to a number of recent decisions considering and applying the Supreme Court judgment in *Wolverhampton CC*.

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<sup>3</sup> See in particular at [167], and then expanded upon at [188]-[189] and [218]-[232] [AB/64, 69-70, 76-79].

30. First, very recently Nicklin J in *MBR Acres Limited v Curtin and Persons Unknown* [2025] EWHC 331 (KB) [AB/188, 269-277, 282] – a protest case, in which the Claimants sought final orders against named defendants and persons unknown. At [9] – [10], [339] – [362] and [390], Nicklin J considered the description of those who are to be restrained by a ‘newcomer’ injunction following *Wolverhampton CC* and held that the effect of *Wolverhampton CC* is as follows:
- a. On the basis that these were truly *contra mundum* orders, it was “no longer necessary, nor appropriate” to restrain particular categories of defendants and Persons Unknown did not need to be, and ought not to be, defined in any way:: [340], [356], [360] and [361] [AB/269, 275 – 276].
  - b. In order to grant a *contra mundum* injunction, the Court must consider what other (and potentially better) solutions may be available, particularly in the context of protests. In the context of protest cases, the Court is entitled to and must have regard to (a) the extensive powers the police have to deal with protest activities, including, from 28 June 2022, the new statutory offence of public nuisance in s.78 Police, Crime, Sentencing and Courts Act 2022; and (in relation to potential exclusion zones) (b) the powers of local authorities to impose public space protection orders under the Anti-social Behaviour, Crime and Policing Act 2014: [347] – [348] [AB/272].
  - c. In litigation brought solely *contra mundum* there can be no expectation or requirement to serve the claim form on the putative defendant because there is, in reality, no defendant and, if the Court is satisfied that it is appropriate to proceed without a defendant, the Court can dispense with service of the claim form: [355] and [359] [AB/275]. They are sufficiently protected by the ability to apply to set aside or vary the order.
  - d. All *contra mundum* injunctions, particularly those in protest cases, should include a requirement that the Court’s permission be obtained before a contempt application can be instituted [AB/280].

31. As regards the Supreme Court’s comments in *Wolverhampton CC* regarding the definition of the respondents to an injunction application, at [221] [AB/76] the Court held:

*“The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in **Cameron** [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.”*

32. The approach of Nicklin J in *MBR Acres* at paragraph 30.a above was followed by Fordham J at the first hearing of an interim injunction application in *The Chancellor, Masters and Scholars of the University of Cambridge v Persons Unknown* [2025] EWHC 454 (KB) at [27] [AB/301]. However, it was not followed by Soole J on its return date in *The Chancellor, Masters and Scholars of the University of Cambridge v Persons Unknown* [2025] EWHC 724 (KB) [AB/308]. Rather, Soole J reverted to the more conventional approach of making the order against persons unknown identified by reference to defined conduct.

#### **F. THE APPROPRIATE TEST**

33. Collins Rice J, Fordham J and HHJ Tindal were each satisfied that the substantive and procedural requirements set out in the Annex to this Skeleton Argument were met so as to justify injunctive relief against Persons Unknown. The stated purpose of this hearing is to review the position and consider whether the injunction should be continued (see the HHJ Tindal Order at [8] [SB/257]).
34. At [225] of *Wolverhampton CC* [AB/77], the Supreme Court identified the approach to be taken at a review hearing, namely that such review:

*“...will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been;*

*whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.”*

35. Ritchie J in ***High Speed Two (HS2) Limited v Persons Unknown*** [2024] EWHC 1277 (KB) at [32] [AB/337] explained that, on a review of an interim injunction against persons unknown, the Court is not starting de novo:

“...The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, *it is vital to understand why they were made*, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then *it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.*

33. On the other hand, *if material matters have changed*, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, *to determine anew, whether the scope, details and need for the full interim injunction should be altered.* To do so, the original thresholds for granting the interim injunction still apply. (emphasis added)”

36. Similarly, in ***Arla Foods v Persons Unknown*** [2024] EWHC 1952, when granting a 5-year injunction with annual reviews in relation to animal rights’ protestors, Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) observed the following [AB/397]:

*“128... The annual review will allow a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate and the five year maximum adds an appropriate end-point. In my judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review.”*

37. See also ***Shell v Persons Unknown*** [2023] EWHC 1229 (KB) per Hill J at [100]-101], [111] [AB/421-423], which makes the point that where a review hearing is not contested, a narrower approach is to be adopted than a complete rehearing of the matter.

38. As a result, the Claimants invite the Court to take the following approach:

- a. Having considered the grounds on which the Collins Rice J Order, the Fordham J First Order, the Fordham J Second Order and the HHJ Tindal Order were made and

the evidence before the Court for the hearing on 12 May 2025, to determine whether there has been any material change in circumstances since 29 January 2025.

- b. If the risk still exists as before and the Claimants remain justifiably fearful of unlawful attacks and the injunction is an effective deterrent, to grant a longer injunction so long as procedural and legal rigour has been observed and fulfilled.
  - c. If material matters have changed, the Court must analyse the changes and determine the application anew.
39. As to whether any further injunction granted on review should be ‘interim or ‘final’, the distinction between interim and final injunctions is of no practical significance for “newcomer” injunctions following *Wolverhampton CC*. The key substantive test is as set out at paragraph 25 above (which is a higher test than that set out in *American Cyanamid*). Service of the injunction orders has been validly effected on the Defendants by the methods set out and endorsed by the court (see paragraphs 54 and 55 below) and the necessary notifications to persons unknown to bring this hearing before the Court have been followed. The Court is invited to grant an injunction for 12 months with provision for review thereafter. To the extent that the Court considers that any further injunction can only be granted on an ‘interim’ basis at this stage, directions can be made for the Claimants to progress the matter to a final hearing after the expiry of the 12 month period and seek further relief if there continues to be a sufficient risk.

## **G. SUBMISSIONS**

### Position since 29 January 2025

40. There have been no material changes since 29 January 2025. Most notably, there have been no alterations to the UK Government’s position vis-à-vis the IHT changes (whether in the mini-budget or otherwise) and the primary objective of the FTA remains in place [SB/870-872 at [12] – [13] and [18]].
41. Importantly, Nicklin J’s decision, summarised in paragraph 30(b) above, does not represent a material change in circumstances: this was considered and addressed by HHJ Tindal in his judgment [SB/314].

42. For the avoidance of doubt, the solutions set out in paragraph 30(b) above do not constitute adequate protection against the risk set out below:
- a. The Public Order Act 2023 was already in force when the the direct action first emerged took place, which demonstrates that the potential of criminal sanctions under that Act is not an effective deterrent. The previous judges rightly considered that the threat was sufficient to grant injunctive relief and nothing has materially changed since then.
  - b. Potential criminal prosecution is directed towards punishing offenders for past crimes whereas an anticipatory injunction is granted to prevent identifiable future harm: see Dexter Dias J in *Shell U.K. Limited v Persons Unknown* [2024] EWHC 3130 (KB) at [139]- [140] [AB/414].
  - c. Further, any such action would not be within the control of or insisted upon by the Claimants.
  - d. In respect of public space protection orders under the Anti-social Behaviour, Crime and Policing Act 2014, such an order could only be made in respect of a “public place” meaning, by section 74, “any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission” i.e., only in respect of the access roads and not the Sites themselves or any private access roads such as at Willow Green RDC. Such protection, if made, would therefore be inadequate to protect against the identified risk.

### Risk

43. As set out in paragraphs 7 to 15 above, the evidence before Collins Rice J, Fordham J and HHJ Tindal showed a pattern of unlawful activity being used as part of protests carried out by those in connection with the Protest Groups and provided sufficient evidential foundation for the conclusion of a risk future direct action in respect of RDCs operated by the Claimants.

44. The evidence in paragraphs 16 to 19 above indicates that there are those involved with the protests consider that: (1) the need for protest activity remains; and (2) protest activity must occur imminently or it will be futile. Further, there is evidence that there continues to be a faction of supporters of the protest movement who hold a third view, namely that such protest activity will also be futile unless it is disruptive and aimed at RDCs (“*blockade*”, “*force their hand with distribution centres*”, “*blocking food distribution centres will force change*”).
45. Critically, the Claimants’ knowledge of what intentions and/or plans there are for protests, including those by blockades / direct action, is limited to what is publicly available, but that information is likely only to be the tip of the iceberg in view of: (1) the strategy, behind the more disruptive end of the protest movement, of operating “*covertly*” [SB/874 at [27]; and (2) as set out in paragraph 21 above, the organisation of protests, particularly those of a disruptive nature, appears to occur on private, inaccessible WhatsApp groups.
46. Although the Claimants cannot identify what locations might be the target of future direct action, what is known is the identification of the Sites through the plans annexed to the orders and claim form has caused some protesters to see the Claimants’ RDCs as ‘easy targets’ [SB/872 at [21]].

#### Full and Frank Disclosure

47. Between 7 April and 27 April 2025, the FTA appears to have arranged protests in various locations which did not include RDCs and appear to have been peaceful.
48. This is the sort of activity which is not captured by the injunctions already granted. The Claimants do not seek to restrain this sort of protest and do not rely on it for the purposes of risk. There is a body of evidence, however, which makes clear that the advocates for disruptive action are aware of the distinction between the peaceful protests at supermarkets, which the orders do not capture, and those at RDCs.
49. There is also evidence that certain protesters are aware of the limits of the injunctions (“*Target roads around distribution centres far enough away to negate morrison*s



*injunctions*”). The fact that there may be protesters who are prepared to thwart the efficacy of the injunctions does not eliminate the risk facing the Claimants – in fact, the converse is true i.e., the Claimants may need greater assistance from the Court at a future stage if the limitations are exploited or in order to secure enforcement of the orders. The recent statements therefore militate in favour, rather than against, relief being granted at this stage.

#### Compelling justification for continuation of injunction

50. Given the evidence before the Court, the Claimants remain justifiably concerned of imminent risk of serious harm and continue to require the protection of the injunctions. The evidence shows that the injunctions have, thus far, operated as an effective deterrent but the injunctions have also highlighted to protesters where they might carry out blockades of the sort the Claimants are concerned i.e., if there are no injunctions protecting the Sites, the Claimants are even more likely to face the sort of unlawful direct action about which they are concerned.

#### Identification of Defendants

51. The Claimants invite the Court to follow the more conventional approach of Soole J in *Chancellor, Masters and Scholars of the University of Cambridge v Persons Unknown* and suggest no amendment to the description of the Defendants given they are capable of being identified by reference to their conduct (in line with [225] of *Wolverhampton CC*).

#### Temporal limits of the proposed continuation

52. The Claimants seek continued protection for a further year on the basis that the evidence shows that the protest movement remains tied to the IHT changes i.e., until 6 April 2026 [SB/871-872 at [13]]. The Claimants’ proposal for a review in 12 months’ time will ensure that the matter is reconsidered by the Court shortly after implementation of those reforms.
53. The Court will note that HHJ Tindal acknowledged at the last hearing that a further 12 months might be the appropriate period to grant at the review hearing if there had been no change in Government policy (see Minute of HHJ Tindal’s *ex tempore* judgment at [SB/315]):

*“Firstly, these are particular protests about particular issues, they are likely to spike an injunction needed at particular times, most obvious is spring statement at the end of March, where the Treasury may or may not affirm its policy on IHT. There is also Easter to get through which is a challenging time for supermarkets and coincides with challenging time for farmers so I can see importance of lasting over Easter. A three month order would cover both of those things without going off further into distance. 3 months is long enough for Morrisons to review and say it’s no longer needed or that it should be extended, by then it could arguably be extended for a year which would cover next tax year.”*

### Service

54. The HHJ Tindal Order, skeleton argument for that hearing and evidence relied upon was sent to the FTA’s email address, as well as being uploaded to the Claimants’ website and affixed at the Sites [SB/859-861 at [11] – [17.4]. The notice of the hearing of 12 May 2025 was also sent by email and uploaded to the website [SB/871-872 at [17].
55. The steps taken by the Claimants in order to comply with the requirements of section 12(2) of the Human Rights Act 1998 meet also the procedural requirements for service set out in *Wolverhampton CC*, insofar as they are separate requirements.

### **H. CONCLUSION**

56. For the reasons set out above, the Claimants invite the Court to continue the HHJ Tindal Order on the terms set out in the draft order.

**MYRIAM STACEY K.C.**

**EVIE BARDEN**

**LANDMARK CHAMBERS**

**8 May 2025**

## ANNEX

### **(A) Substantive requirements**

- a. Cause of action: There must be a civil cause of action identified in the claim form and particulars of claim. The usual quia timet (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.
- b. Full and frank disclosure by the claimant: The applicant must make full disclosure to the Court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the Court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This obligation is a continuing one: see *Wolverhampton* at [167(ii)] and [219] [**AB/64 and 76**].
- c. Sufficient evidence: There must be sufficient and detailed evidence to justify the Court finding there is a compelling need for the protection of civil rights: see *Wolverhampton* at [167(i)] and [188] [**AB/64 and 69-70**]. There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. The threat must be real and imminent: *Canada Goose* at [82(4)] [**AB/153**]; *Wolverhampton* at [218] [**AB/76**].
- d. Defences: The nature of the proceedings are “ex-parte” in Persons Unknown cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them.
- e. Compelling justification: There must be a “compelling justification” for the injunction against PUs to protect the claimant’s civil rights. The Court must take into account that which is set out by the Supreme Court in *DPP v Ziegler* [2021] 3 WLR 179 if the Persons Unknown’s rights under the European Convention on Human Rights (“ECHR”) are engaged and restricted by the proposed injunction: *Wolverhampton* at [167(ii)] [**AB/64**]. The injunction must be necessary and proportionate to the need to protect the claimant’s rights. Section 12(3) of the Human Rights Act 1998 also provides that no relief affecting the exercise of

Convention rights is to be granted “so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed”.

- f. Damages are not an adequate remedy: The claimant must show that damages would not be an adequate remedy.

**(B) Procedural requirements**

- g. Identifying the defendants: “Persons Unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings: *Canada Goose* at [82(1)] [AB/152-153]. The class of “persons unknown” must be framed as precisely as possible, in non-technical language by reference to the torts to be prohibited which is capable of being understood by those who could potentially be subject to it.
- h. Terms of the injunction: The prohibited acts must be clearly expressed in everyday terms: *Canada Goose* at [82(5)-(6)] [AB/153]; *Wolverhampton* at [222] [AB/77]. Even lawful conduct may be restrained where it is necessary to afford adequate protection to the rights of the claimant because there is no other proportionate way of doing so: *Wolverhampton* at [222] [AB/77].
- i. Scope of the injunction: The prohibited acts must correspond to the actual threatened conduct.
- j. Geographic boundaries: The prohibitions must be defined by clear geographic boundaries, if that is possible: *Canada Goose* at [82(7)] [AB/153]; *Wolverhampton* at [225] [AB/77]. The injunction should be constrained by both territorial (and temporal) limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon: [167(iv)] [AB/64].
- k. Temporal limits: The duration of the order should be only such as is proven to be reasonably necessary to protect the claimant’s legal rights in light of the evidence of past tortious activity and future feared activity.
- l. Service: An applicant of this kind should take reasonable steps to draw the application to the attention of persons likely to be affected in sufficient time prior to the hearing. The steps taken and the responses received should be explained to the Court: *Wolverhampton* at [226] [AB/77-78]. The applicant must, under section

12 of the Human Rights Act 1998, show that it has taken all practicable steps to notify the respondents: *Wolverhampton* at [167(ii)] and [230] [AB/64 and 78].

- m. The right to set aside or vary: The “Persons Unknown” must be given the right to set aside or vary the injunction on generous terms: *Wolverhampton* at [232] [AB/78-79].
- n. Review: Provision must be made for reviewing the injunction in the future, the regularity of which depends on the circumstances: *Wolverhampton* at [225] [AB/77].