IN THE HIGH COURT OF JUSTICE Claim No.

KING’S BENCH DIVISION

IN THE MATTER OF A CLAIM FOR AN INJUNCTION

B E T W E E N :

**THE MAYOR AND BURGESSES OF**

**THE LONDON BOROUGH OF ENFIELD**

Claimant

- and -

1. **Persons Unknown who participate between the hours of 3 pm and 7 am in a gathering of 2 or more persons within the London Borough of Enfield, Map Exhibit MR1/1 (attached) at which some of those present engage in motor racing or motor stunts or other dangerous or obstructive driving.**
2. **Persons unknown who participate between the hours of 3 pm and 7 am in a gathering of 2 or more persons within the London Borough of Enfield, Map Exhibit MR1/1 with the intention or expectation that some of those present will engage in motor racing or motor stunts or other dangerous or obstructive driving.**
3. **Persons Unknown promoting organising publicising (by any means whatsoever) any gathering between the hours of 3 pm and 7 am of 2 or more persons with the intention or expectation that some of those present will engage in motor racing or motor stunts or other dangerous or obstructive driving within London Borough of Enfield, Map Exhibit MR1/1.**

Defendants

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**SKELETON ARGUMENT**

**ON BEHALF OF THE CLAIMANT**

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**INTRODUCTION AND SUMMARY**

1. The Claimant local authority, the Council of the London Borough of Enfield (‘**the Council**’) makes a Part 8 Claim for a prohibitory injunction preventing those Persons Unknown named in the application from participating in, organising, publicising or promoting activities that shall be referred to as ‘**Car Cruising**’ within the London Borough of Enfield (‘**Enfield**’ or ‘**the Borough**’ when referred to geographically). ‘Car Cruising’ is defined in the Particulars of Claim and the draft Order filed with this claim as ‘organised or impromptu events at which drivers of motor vehicles race, perform driving stunts, drive dangerously and/or drive in convoy. Such activities may be noisy, dangerous, and illegal, obstructing highways and the premises bordering them, damaging property, and putting the safety of spectators and other persons at risk.’
2. The application is made because of frequent instances of this behaviour within the Borough, but particularly on the A406 (a part of the London North Circular), the A10 and retail car parks. The behaviour had been prohibited by a Public Spaces Protection Order (‘**a PSPO**’) imposed by the Council in February 2021 (‘**the PSPO**’). Unfortunately, the imposition of the PSPO did not reduce the incidence of Car Cruising and it expired in February 2024. While the Claimant is engaging in a consultation before deciding whether to make a further PSPO, no such PSPO is currently in force.
3. The statutory grounds on which the Claimant relies in making the Claim are set out in the Particulars of Claim. The facts are set out in detail in the witness statement of Martin Rattigan, dated 13th November 2024. He relies upon evidence of complaints to the police and the Council that includes a schedule of complaints made by members of the public to the police and the Council between 3rd January 2021 and 28th October 2024. The evidence shows that there are, routinely and regularly, gatherings of youths with cars and of others gathering to watch them in which the former race cars, do stunts and other dangerous driving; that these activities take place at night and last until the early hours of the morning; that they often take place in residential areas; and that they are accompanied by anti-social behaviour including rowdiness, fighting, drug taking and sexual activity in cars.
4. The Claimant applies for an order dispensing with the requirement to serve the application and claim before considering it, on the grounds that the Persons Unknown cannot be reliably identified. However, it will, before the hearing, publish the Claim Form, Particulars, draft order, witness statement of Mr Rattigan and this skeleton argument on its website, together with the notification of a hearing once the latter is obtained. The draft order sought would dispense with the requirement of personal service for the same reason and direct that service may be made by an alternative method, namely by publishing the order through posters placed in places affected and through publicising it on the Council’s website, through social media and in motoring and other publications likely to be read by some of the participants.
5. This skeleton argument does not repeat the statutory framework that is set out in the Particulars of Claim. It addresses: (a) the circumstances in which the court may grant ‘newcomer injunctions’ against persons unknown who are both current and past wrongdoers and may be in the future; (b) injunctions on the grounds of Car Cruising; and (c) the grounds on which the Council submits that the considerations in *American Cyanamid v Ethicon* ([1975] A.C. 396) are met and that the Court should grant an interim injunction in the terms sought.
6. The Application Notice is accompanied by a draft Injunction Order that sets out the definition of what would become Prohibited Activities and the service provisions in detail, to which the Court is referred. It may be that the Court will be content to make an interim injunction without making directions for a trial of the claim for final injunctive relief, The Court is asked to list a return date in one year, with a direction that the Claimant file and serve (by publishing it on its website) updating evidence about the compliance and non-compliance with the Injunction and details of enforcement. The usual provisions would apply, allowing any person affected to apply at short-notice to vary or set it aside. This has been done in other injunctions against newcomers, as is set out below.

‘**NEWCOMER’ INJUNCTIONS**

1. The Supreme Court considered circumstances in which ‘newcomer’ injunctions may be imposed in *Wolverhampton City Council and others London Gypsies and Travellers and others* ([2023] UKSC 47; [2024] 2 WLR). The Court was concerned in that case with ‘newcomers’ in the sense of trespassers entering land after an injunction was granted. While that is not the case here, the judgment has relevance because it considered the common law basis on which the Court could bind persons – called ‘newcomers’ in the context of injunctions preventing trespassers ‘coming onto’ land – who were unaffected by the injunction at the date it was granted; and because of the useful test it sets out for courts to impose before imposing injunctions against ‘newcomers’.
2. The following exposition of the law by their Lordships is of general application:
	1. That an injunction against newcomers is only likely to be justified as a novel exercise of an equitable discretionary power if (at para 167):

(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws)….

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong *prima facie* objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226—231 below); and the most generous provision for liberty (i e permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are 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.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.

* 1. Newcomer injunctions are not constitutionally improper and ‘so far as the local authorities are seeking to prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law.’ (Para 170).
	2. That (at para 172):

In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment.

* 1. The Court set down the following considerations as guidance to court’s asked to consider imposing newcomer injunctions (as summarised in the headnote of the Weekly Law Report of the case, altering the numbering to improve clarity):

…such an injunction was only likely to be justified as a novel exercise of the court’s equitable discretionary power if the applicant:

(a) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies),

(b) built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it,

(c) complied in full with the disclosure duty which attached to the making of a without notice application and

(d) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made;

(e) that, if so justified, any injunction made by the court had to

(i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct,

(ii) extend no further than the minimum necessary to achieve the purpose for which it was granted,

(iii) be subject to strict temporal and territorial limits,

(iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court’s power to grant the impugned injunctions at all failed

(post, paras 142—146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

1. In his judgment handed down on 24th May 2024 in *High Speed Two (HS2) Ltd and another v Persons Unknown and others* [‘***HS2***’] ([2024] EWHC 1277 (KB), at para 30), Ritchie J applied the test to be applied in applications for interim ‘newcomer’ injunctions that he had set out in *Valero Energy v Persons Unknown [‘****PUs****’] & Bencher & Ors* [‘***Valero Energy***’] ([2024] EWHC 134, at para 57, excluding the first four that apply only to applications for summary judgment), which in turn took into account :

**Balance of convenience - compelling justification**

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to Wolverhampton, this balance is angled against the applicant to a greater extent than is required usually, so that there must be a “compelling justification” for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23, if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

**Damages not an adequate remedy**

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

**(B) Procedural Requirements - Identifying PUs**

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

**The terms of the injunction**

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

**The prohibitions must match the claim**

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

**Geographic boundaries**

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

1. Ritchie J extended the injunction against PUs, including newcomers, in *HS2*, albeit not in respect of some recently acquired land (see para 62). He found, at para 58, that it was not necessary to require the claimant to establish its case at trial given that the injunction was against persons unknown; and that it would be reasonable to extend the injunction for lengthy periods, with regular reviews.

**INJUNCTIONS PROHIBITING CAR CRUISING**

1. In *Sharif v Birmingham City Council* ([2020] EWCA Civ 1488; [2021] 1WLR 685) the Court of Appeal dismissed an appeal against an injunction prohibiting ‘street cruising’. This was described by the trial judge (and set out in para 3 of the judgment of the Court of Appeal) as follows:

1. ‘Street cruise’ means a congregation of the drivers of two or more motor vehicles (including motor cycles) on the public highway or at any place to which the public have access within the claimants local government area… at which any person, whether or not a driver or rider, performs any of the activities set out at paragraph 2 below, so as, by such conduct, to cause any of the following: (i) excessive noise; (ii) danger to other road users (including pedestrians); (iii) damage or the risk of damage to private property; (iv) litter; (v) any nuisance to another person not participating in the street cruise.

 2. The activities referred to at paragraph 1, above, are: (i) driving or riding at excessive speed, or otherwise dangerously; (ii) driving or riding in convoy; (iii) racing against other motor vehicles; (iv) performing stunts in or on motor vehicles; (v) sounding horns or playing radios; (vi) dropping litter; (vii) supplying or using illegal drugs; (viii) urinating in public; (ix) shouting or swearing at, or abusing, threatening or otherwise intimidating another person; (x) obstruction of any other road-user.

1. The Court will note from reading the draft order that this definition has been adapted for use in this case, albeit reflecting the evidence filed by the Claimant.
2. The appeal in *Sharif* was against the committal of a defendant for contempt, the injunction having been granted without any defendants being represented. The defendant had applied to discharge the injunction on the grounds that ‘Parliament had provided for PSPOs, to combat the very type of behaviour complained about and, therefore, the courts should give effect to Parliament’s intention and only in very rare circumstances would it be appropriate for the court to grant injunctive relief’ (para 9). This argument was rejected by the trial judge and the Court of Appeal, which dismissed his appeal.
3. The CA considered the statutory background to PSPOs, introduced by the Anti-social Behaviour, Crime and Policing Act 2014 (paras 14-21). It took into account (at para 25) the judgment of Bingham LJ (as he then was) in *City of London Corporation v Bovis Construction Ltd (No 2)* [1992] 3 All ER 697, at 714) in which he held (in that case in respect of nuisance injunctions) that:

‘…the essential foundation for the exercise of the court’s discretion to grant an injunction is not that the offender is deliberately and fragrantly flouting the law but the need to draw the inference that the defendant’s unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them…’

1. The CA noted (at para 34 in *Sharif*) Jackson LJ’s observation, in *Birmingham City Council v James* [2014] 1 WLR 23 ‘that there are many situations in which, on the facts, two different pre-emptive orders are available and that there is no “closest fit” principle which cuts down the court’s statutory powers to make pre-emptive orders’ and noted (and followed) his cautionary note that ‘in future cases the Court of Appeal should not be invited to trawl through the legislation in some quest for the closest fit’.
2. The CA rejected the submission of counsel to the defendant that its judgment in *Birmingham City Council v Shafi* [2009] 1 WLR 1961 suggested that the Court should not impose injunctions when there was an alternative statutory means under statute, such as a PSPO, by which the activity prohibited by an injunction. Rather*, Shafi*, was authority for the proposition that where a statutory remedy – in that case an Anti-Social Behaviour Order – was available, that would grant ‘identical or almost identical’ terms and means of punishment of those in breach, that means should be adopted. As the CA held in *Sharif*, that was not the case with a PSPO, which (a) could only be imposed by a local authority after a lengthy consultation process (para 37); and (b) imposed no more than a financial penalty on those breaching its terms and so was likely to be ineffective (para 39).
3. Injunctions against Persons Unknown described in almost identical terms to the Defendants in this claim have since been granted by Julian Knowles J in *Wolverhampton CC v Persons Unknown; Birmingham CC v Persons Unknown* ([2024] EWHC 2273 (KB)), which followed *Sharif*.

**APPLICATION OF THE *AMERICAN CYNAMID* CONSIDERATIONS**

1. In summary and in general terms, the evidence of Mr Rattigan establishes – at least on a *prima facie* basis pending trial – that persons unknown have repeatedly:
	1. Raced other cars at high speeds and dangerously;
	2. Used car parks and other areas to do dangerous stunts;
	3. Engaged in that behaviour in residential areas;
	4. Caused gatherings of people;
	5. Done these activities at night and created a high volume of noise, including until the early hours of the morning;
	6. Engaged in sexual activity in cars;
	7. Fought with each other; and
	8. Caused a considerable nuisance to local residents, including vulnerable and elderly people and families with young children.

And that they have thus:

* 1. Been responsible for anti-social behaviour; and
	2. Caused a public nuisance.
1. The above is easily sufficient to establish a serious issue to be tried. Indeed, no unknown person could have an arguable defence to the imposition of an injunction against them, albeit it is accepted that the Claimant must surmount a more onerous test if it is to persuade the Court to impose an injunction on newcomers.
2. For reasons outlined by the Court of Appeal in *Sharif*, the Court should not hesitate to grant the injunction because that there has been a PSPO prohibiting these activities, it was not extended and it may be imposed again. Indeed, in this case there is direct evidence that goes further than the general point that a PSPO is unlikely to create sufficient deterrence to reduce Car Cruising because of the non-custodial penalties for breaches, which is that one *was* imposed and *was* ineffective. Indeed, Mr Rattigan’s evidence, supported by the volume of complaints set out in the schedule he produces, is that occurrences of this behaviour have increased since the PSPO was first imposed in 2021.
3. It is submitted that the narrow balance of convenience easily justifies an injunction against Car Cruising, including injuncting newcomers. Addressing and applying the tests set out in *Wolverhampton*.
	* + 1. A compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies.

*The Council has a lawful right to control the public highway, protect its residents from anti-social behaviour and from the risk of personal injury and death that Car Cruising poses.*

* + - 1. Built into the application and the injunction sought, procedural protection for the rights (including rights under the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (‘**the Convention**’)) of those persons unknown who might be affected by it.

*First, no Convention rights could conceivably be engaged. The right to a private and family life protected by Article 8 does not extend to anti-social behaviour with others; and this behaviour is not a part of association for the means of campaigning or protesting about matters of public interest that might engage Article 11.*

*This application and hearing date will have been publicised on the Council’s website by the date of the hearing and the Court is asked to make an order that would require the Council to publish the order, claim form, application notice, evidence in support, notification of the return date and notification of the right of any person affected to apply to set aside or vary the order: (i) within the area in which this disorder occurs; (ii) on a page of the Council’s website, the link to which must be advertised on the above notification; (iii) on social media; and (iv) in the type of publications likely to be read by those with a thirst for daredevil behaviour with cars.*

* + - 1. Complied in full with the disclosure duty which attached to the making of a without notice application.

*Insofar as it might be relevant to the Court’s assessment or otherwise, Mr Rattigan sets out the recent history of the attempts by the Council to enforce this behaviour by a PSPO. The Council is unaware of any other disclosure that may affect the Court’s assessment of the tests to be applied in applications for newcomer injunctions; and, in particular, those prohibiting Car Cruising. It will, of course, keep this under review.*

* + - 1. Showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made.

*See para 18-20 above.*

* + - 1. That, if so justified, any injunction made by the court had to:
1. Spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct.

*The wording of the injunction follows closely that of those prohibiting Car Cruising that have been upheld by the High Court and the Court of Appeal; and sets out in detail the activities that are prohibited, where and when.*

(ii) Extend no further than the minimum necessary to achieve the purpose for which it was granted.

 *It is submitted that the activities of Car Cruising are sufficiently varied to justify an injunction as wide as this one.*

(iii) Be subject to strict temporal and territorial limits.

*The injunction will, if granted, be restricted to the Borough.*

(iv) Be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents.

 *See under (b), in this paragraph, above.*

(v) Include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court’s power to grant the impugned injunctions at all failed.

 *The proposed order would allow an application to vary and discharge provided that it was on five working days’ notice, which it is submitted is a reasonable period. Moreover, it will last for no more than a year before the Court will have an opportunity to review it, following the precedent of* HS2.

1. As a London Borough Council, the Council will be able to satisfy any damages awarded to the Defendants should these injunctions be set aside or not granted on a final basis. Further and in any event, Whipple J (as she then was) found, in *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), that it was unnecessary for cross-undertakings in damages to be made where an interim injunction was imposed on the application of a claimant local authority. It is, in any event, inconceivable that damages could be given to a person for being unable to engage in the activities prohibited.
2. In the premises, the Court is invited to grant the Council the interim injunction sought and to list this matter for a further hearing on a return date.

14th November, 2024

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