

## Note of "Without Notice" Hearing

Attending Mrs Justice May (**JM**)  
John Litton KC (**JL**), Michael Feeney (**MF**) (**Counsel for the Claimant**)  
DLA Piper (**Solicitors for the Claimant**)  
**National Highways Limited (Claimant)**

Date 26 July 2024 – Royal Courts of Justice, Courtroom 37

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### QB-2021-003576 National Highways v Persons Unknown

Clerk This is a hearing on the matter of QB-2021-003576 – National Highways v Persons Unknown.

JL Good afternoon My Lady, I appear today with my learned friend Mr Feeney, and the Defendants as persons unknown are not represented. Can I please express my gratitude at accommodating us on such short notice.

JM You may be less grateful when I tell you I have not read anything.

JL That was my next question and may determine how we go about this. My Lady, are you aware National Highways over the years have obtained injunctions preventing climate protestors from obstructing the roads in particular. My Lady, may I remain seated?

JM Yes, of course.

JL In particular, it is to discuss the M25 and the SRN through Kent to prevent climate protestors from obstructing those roads. 9 airports have obtained injunctions preventing protestors from protesting and trespassing on their private land. The purpose of this is to fill in the gap between the existing road injunctions and the unprotected roads from any order. The danger is that now those airports are protected by the injunctions, it may allow protestors to see neighbouring National Highways roads as the next best way to disrupt airports.

The best idea is if I take you to tab 21 of the bundle. This is a consolidated order made by Cotter, J on 5 May of last year and this consolidates a number of earlier orders related to different parts of the road network. Your Ladyship will see it was against persons unknown and quite a few named Defendants. If I take you though the order it will give you a flavour of today, it was by Collins Rice J page 73 of the bundle you will see the recitals made, then definitions, named Defendants and 24 Defendants. On page 731, the roads are defined as comprising of the M25, A2, A20, A2070, M2 and the M20, which are essentially the Kent roads. It then includes part of the A1 running north and a number of other feeder roads into the M25. This extends beyond the carriageway to the hard shoulder etc, and you will see there were amendments to the claim sanctioned by Cotter J and on pages 732-733, the injunction is expressed to be by way of variation to an earlier order that was made by Bennathan J and reviewed in the Court of Appeal, and then there's a section that deals with alternative service on persons unknown and Your Ladyship will see that certain order were made regarding the order being posted on National Highways website, sending notification of existing order to the press association, social media and emailing the injunction to a number of associations, of most significance being Just Stop Oil. At page 734 there are service provisions and service by alternative method of named Defendants. That is not an issue here as there are no named Defendants. Then there was third party disclosure made by the court to allow the police to disclose the identity of protest in their duty and provide to national highways which has been used to bring contempt proceedings and bring named Defendants to the hearing and personally serve. On page 737, there are then further directions. At paragraph 19, there is the requirement that the court would reconsider the Cotter Order at Friday 26 April at this year to determine whether the injunction should continue. That is

the starting point of my application. There is then the further backstory of the interim orders but this essentially consolidated those.

Can I ask you to turn to tab 24, which is the order made by Collins Rice J that Cotter J had ordered for 26 April this year. This order followed the review hearing she undertook to determine whether the Cotter Order should continue. You will see at page 781, and over to page 782, it identifies the material that Collins Rice J took into account. My Lady will see the second of those is the judgment of Cotter J in relation to the decision he made. This is in the authorities bundle at tab 7. I don't propose to take you to it, as it is a judgment that runs 30-40 pages but the point is there is reference to the Cotter J judgment at tab 7. This is the judgment Cotter J gave when he made the order.

My Lady, I wasn't going to ask you to look but for present purposes I wanted to say that Collins Rice J had reviewed Cotter J's judgment and this was particularly taken into account at the review hearing.

The second recital was that she noted having reviewed all the material there was a continued threat that determined the injunction should continue. She made an order in very similar terms to Cotter J at page 783, where the definition of roads are the same, there are some amendments on 784 to remove named Defendants and to substitute some words of the Cotter Injunction Order. And then the injunction itself at paragraph 3 prohibiting the Defendant from endangering etc, the surface of the roads or any part of the road. Paragraph 4 details alternative service of persons unknown and the requirement of posting on the National Highways website, the Press Association, on social media and emailing the order to 16 different email addresses for a number of organisations including Just Stop Oil. In the same way as the Cotter Order, it was served on named Defendants, noted third party disclosure on 787 and further directions including liberty to apply to vary or discharge the injunction. So, as recently as April this year, the court was satisfied that there remained a sufficiently compelling threat to justify the continuation of the order.

JM How long was the Collins Rice J hearing?

JL [JL checked with MF] It was around 1-2 hours, My Lady.

JM It's tab 25 for the transcript of that hearing.

JL Yes and the transcript is the best record we have of that hearing. The hearing was closer to an hour, Mr Feeney says.

JM What was the evidence that the threat was continuing?

JL There was the witness statement of Mr Martell at tab 5 of this bundle, page 334 of this bundle. Titled basis and maintenance for the need for this injunction'. This details different activities and disruption caused by Just Stop Oil and affiliated groups to a variety of targets – Wimbledon, Ashes Test, GB News at paragraph 41, there as then a series of slow marches through London, which resulted in TfL obtaining a series of injunctions and a variety of different protest activities undertaken by Just Stop Oil. And that runs through to the end of that witness statement on page 342. There were exhibits that went with that at tab 6, comprising a variety of screenshots from social media, press releases from Just Stop Oil and the press. My Lady, in the sense Mr Martell picked up the story where he left off in his second witness statement in his third witness statement at tab 2. He does recount some of those incidents that already occurred, taking you through to paragraph 36 on page 15. Then he has a sub-heading 'the basis for variation of the Rice Order'.

JM The Rice Order was very recent, what has been changed between now and then? Other than people being sent to jail for 5 years.

JL There has been a lot that's happened, My Lady. The airports have been granted injunctions due to threatened protester action by Just Stop Oil and the threatened "Summer Campaign" of theirs. On page 15 of the bundle it talks about 'previous airport disruption' - there were incidents in November 2022, Farnborough, Luton and Germany. This is also picked up in paragraph 45 at page 16 where Mr Martell says Just Stop Oil have been consistently and repeatedly threatening

airports and that they will be taking action at sites of key importance to the fossil fuel industry. At page 94 there is the Just Stop Oil fundraising page and over the page, in the last paragraph, it reads that the airports will continue to be the focus of disruption until the Government meets Just Stop Oil's demands. Then, you will see that there are various press reports: The Standard at page 98 reports that Just Stop Oil will be targeting Heathrow, then page 100 at the top of the page, reads "Just Stop Oil's Phoebe Plummer reportedly warned of disruption on a scale that has never seen before at a meeting attended by undercover journalist. The group has been critical of the airline industry over its carbon footprint". And then I can take Your Ladyship to page 104, where there is a social media post saying "Just Stop Oil declares airports as sites of civil resistance this summer". I can take you through these in detail but I will take you to the most significant articles.

On page 114, there is the quotation of "this summer, areas of key importance to the fossil fuel economy will be declared sites of civil resistance around the world" and then, Your Ladyship, the most significant of all is at page 120, which is a letter that Just Stop Oil sent to the Prime Minister on 16 July and congratulates Keir Starmer. At the bottom of the page it says "we last wrote to you in your role as leader of the Labour Party on 24 June to demand that, should you become our next Prime Minister, you immediately commit the UK government to working with other nations to establish a legally binding treaty to stop extracting and burning oil, gas and coal by 2030 as well as supporting and financing other countries to make a fair and just transition. We indicated that unless such assurances were provided by 12 July, we would be forced to take action to protect our communities by engaging in a campaign of non-cooperation against fossil fuel use, at airports across the country. We are writing now to let you know that since no such assurances have been received, we remain in civil resistance and are preparing to take action, but that, as ever, we remain open to dialogue".

On page 125 - from a Just Stop Oil press release on 22 July - it goes on to say that Just Stop Oil has won its initial demand calling for the UK government to end all new oil, gas and coal licences. It again says that Just Stop Oil wrote to all party leaders that the UK government must commit to or else Just Stop Oil will be forced to enter into a campaign of non-cooperation and will be taking action at airports this summer. In the next paragraph, Just Stop Oil writes that supporters are trained in nonviolence and will undertake all possible steps to ensure that the safety of those using airports, as well as those in the air, will not be compromised by our actions.

My Lady, I take it you are aware of this, but on Wednesday of this week there has been action in Europe and also at Heathrow two days ago by Just Stop Oil activists. It would seem that the threat of a summer campaign has started to materialise. The injunctions obtained by airports, which are included in the bundle at page 142, the earliest being London City airport in June of this year, protects the airport premises. The other injunctions relating to Manchester, East Midlands Airport, Gatwick, Leeds Bradford and Stansted all do the same thing – protect airport premises. The concern, the real concern, is that where airport premises are protected, and one assumes people will not act in breach of those injunctions, then the next obvious target to cause disruption to those airports is to block the access and egress of those airports and we have seen that at airport gates. When the roads injunction was obtained those airport injunctions were not in place and so the concern about displacement onto the roads because of the injunction at airports wasn't a material concern. With those now in place, National Highways is rightly concerned that the attention of those wishing to protest will be on those roads not covered by existing roads not covered by their injunction. Having said that, the extension we seek today is only in relation to parts of the SRN that service Luton and Stansted. That is because for both Gatwick and Heathrow, the existing roads injunctions protect the roads up to where to airport injunctions start. So, they are already protected.

JM Please can you point to the roads that are not covered?

JL Yes My Lady, tab 4 of the draft order. In that draft order you will see on page 260 in the definitions section there is inserted into the Rice order the definition of additional parts on page 260, paragraph 1B. Then the relevant plans relating to the additional roads are contained within appendix 4 to the draft order, starting at page 287. There's then an overview plan on page 287. There's the red dotted lined of existing injunction, then you will see the M1 and M11 serving Luton and Stansted and some of the blue A roads are the proposed extension to the Rice Order.

There are detailed plans that follow and show the roads we want covered as an extension to the Rice order. Why those roads are covered in Sean Martell's third witness statement, page 22, paragraph 67.1. He explains the rationale for including those parts of the road network in relation to Luton. It comprises of a section through to junction 11 because if it's any less than that, someone could be prevented from getting off the road to get to the airport as there is no alternative route.

JM I'm just looking at the transcript, there was obviously a discussion about how named people come on and go off the list. Do you propose any alterations to the list of named Defendants?

JL No, this is solely for a persons unknown injunction order.

JM Why?

JL We have not been able to identify those who would undertake this particular protest interest.

JM Didn't you take me to a "Phoebe" in the bundle earlier?

JL Yes, I did – on page 100 – where Just Stop Oil Phoebe Plummer reports that the proposed disruption will be on a scale never seen before. That's the rationale for extending the injunction to cover those parts of SRN serving Stansted and Luton airports. There are airports outside of London – Manchester, East Midlands Airport and Newcastle but we are not seeking an order to extend those airport approaches at the moment because there is a greater difficulty in identifying precisely the extent of those roads and it's not then an extension to this because this simply extends where the existing injunction leaves off, in comparison to all the way up the M1 which would not be proportionate.

JM But is the order in every other respect exactly the same as it was before?

JL Yes.

JM I can see by looking at the transcript there was a long discussion on how people came to be named and whether it was necessary to come back to court when people are identified but then it doesn't seem to make provision for that. Where does that come in?

JL The draft order, My Lady. All the named Defendants in the Cotter Order that remained were removed in the Rice Order and so it is now just persons unknown. There are however some additional email addresses proposed in the draft order at page 262, Extinction Rebellion and Scientist Rebellion have been added to the list. We have went from 16 emails to 22 email addresses, but this is not necessarily due to additional, separate organisations. We do not seek to extend the termination date of the Rice Order – paragraph 12 of the draft order shows it reconvenes 26 April next year. What is different in Cotter v Rice Order, Rice considered it could be considered on papers rather than hearing which is considered paragraph 13. At paragraph 14, anyone can apply to vary or discharge by giving notice to claimant's solicitors. We are not seeking any orders as to cost.

My Lady, I have not taken you at all to the law in relation to this, it is set out in the skeleton argument in paragraph 10 in the Wolverhampton judgment. I am happy to take My Ladyship through that?

JM I am pretty familiar with the Wolverhampton Order.

JL Then there is Zeigler. There didn't appear to be any consideration by Cotter or Collins Rice regarding human rights or article 10 or 11. But I wasn't involved at all until this application. It seems right that I should address My Lady in relation to that because consideration should be given to those rights as this seeks to extend the territorial rights of this injunction. I have set out paragraphs of the Zeigler judgment and earlier judgments in this case where the matter was considered.

JM The terms of this order continue. They can line up with signs along the side of the A road, they just can't slow march down the A road?

JL Yes, and they can't glue themselves to the road.

JM I'm looking at paragraph 38, am I right that the Respondents could have been notified of this hearing and came to defend themselves?

JL Yes, but then it would have alerted them to the areas to target and draw attention to the very thing we are trying to prevent. I'm reminded by Mr Feeney that the review hearing that was notified 28 days beforehand and no one turned up.

JM Yes, okay. And the disclosure of documents is in the draft order?

JL Yes, in the draft order at paragraph 7 it specifies that police officers are to disclose email addresses and names of people involved in protest. There are limited purposes that these details can be used for.

JM Yes, and they have to give not less than 48 hours notice to the persons they are disclosing.

JL Yes, this is covered in paragraph 8 to 10.

JM Yes, okay. I'm satisfied in reference to airport protest activity that there is a threat to airports and it's necessary therefore for the additional parts in the road network to be included where it affects Stansted and Luton and that the order should be made. The only change to Collins Rice J order is to add further sections of the road system, principally the M11 and M1 as identified in the draft order and appendix 4 to the draft order. In every other effect the order remains in the effect of the order Rice Collins J made. This is with the exception of the additional email addresses for services by alternative method.

Mr Litton has drawn my attention to Zeigler-type concerns and the right to gather and protest. In my view, these small additions would not compromise that right in such a way that would prevent me making the order and the order continues to confirm it does not prevent lawful protest or protest that does not affect the free flow of traffic. I'm grateful for you to putting together such comprehensive evidence. Is that the only amendment to the existing order?

JL There are also some date amendments to be made.

JM Can you tell me now?

JL Rather than hold you up, My Lady, I will send those to you later.

JM Thank you, I have another hearing so I am waiting here.