

February 2023

Briefing

Persons Unknown Injunctions – Supreme Court Appeal

Key Points

- An appeal brought by 3 charities against injunctions that interfere with the way of life of nomadic Gypsies and Travellers is being heard at the Supreme Court on 8 and 9 February 2023. The charities are London Gypsies and Travellers; Friends, Families and Travellers; and Derbyshire Gypsy Liaison Group (the “Appellants”).
- The appeal concerns “persons unknown” injunctions (injunctions taken out against unknown and unidentifiable individuals), and the limits to which these controversial orders can be used by private companies and public authorities when fundamental human rights are engaged, such as the right to a private and family life, and the right to protest.
- In recent years, there has been a massive increase in the use of these injunctions, which have targeted the Gypsy and Traveller community, and environmental protestors.
- This is a complex and rapidly evolving area of law, and there are now conflicting Court of Appeal judgments on the circumstances in which these injunctions can be used. It’s the first time that the Supreme Court will consider this phenomenon, and it will be able to deliver a definitive ruling on these contentious orders.
- In total, there are 17 parties to this appeal. Friends of the Earth (“FoE”) and Liberty support the appeal and have been granted permission to intervene. Both NGOs will make submissions regarding how these injunctions can infringe on protest rights.
- The appeal is opposed by 10 local authorities, HS2 and the Secretary of State for Transport, Rt Hon Mark Harper MP.

What is the appeal about?

The appeal concerns the use of so-called ‘persons unknown’ injunctions targeting Gypsy and Traveller communities, as well as environmental protestors.

Injunctions are orders granted by a judge, that prohibit specific behaviour in a defined geographical area. Normally, they (like any other type of court order) have to be sought against identified individuals. That is important, as it ensures that the defendant has knowledge of the proceedings, and gives them the chance to defend themselves against them. However, a persons unknown injunction is granted against *unnamed* defendants, who are defined

according to the actions which are prohibited by the injunction (for example, entering a specified area of land without permission, or obstructing access to or from a site).

Since 2015, a large number of local authorities have obtained ‘borough-wide injunctions’ prohibiting people from stopping on their land. These orders, taken out against unknown and unidentifiable people, disproportionately impact nomadic Gypsies and Travellers, and contribute to the [long-standing shortage of sites and stopping places](#).

Persons unknown injunctions have in recent years also been increasingly used against environmental protestors, including by fossil fuel companies against a number of community-based campaigns opposing potential sites for fracking. They have in addition been secured over a range of sites subject to other types of environmental protest, including the entirety of the HS2 route and a controversial landfill site in Newcastle-under-Lyme, that has been subject to protests by local residents deeply concerned by the fumes from the site.

Who are the Parties to the Appeal?

This is a very big case. In total, 17 parties are participating in the appeal. As above, three Gypsy and Traveller charities are bringing the appeal.

There are 10 respondents: Wolverhampton City Council, Walsall Metropolitan Borough Council, London Borough of Barking and Dagenham, Basingstoke and Deane Borough Council and Hampshire County Council, London Borough of Redbridge, London Borough of Havering, Nuneaton & Bedworth Borough Council and Warwickshire County Council, Rochdale Metropolitan Borough Council, Test Valley Borough Council and Hampshire County Council, and Thurrock Council (“the Respondents”).

Finally, there are four legal interveners: FoE and Liberty, who are supporting the appeal, and HS2 Ltd and the Secretary of State for Transport, who are opposing it.

Why is Friends of the Earth involved in this appeal?

This is a very important case. For the first time, the Supreme Court will consider the law around these controversial orders since the massive increase in their use over the last few years.

The Respondents have taken out ‘borough-wide’ injunctions targeting the Gypsy and Traveller community. The Appellants are appealing the judgment of the Court of Appeal, handed down on 13 January 2022, that persons unknown injunctions against defendants who were unknown and unidentifiable *could* be granted in relation to unauthorised encampments and protest activities, including on a perpetual or final basisⁱ. In doing this, the Court of Appeal’s judgment reversed the decision of Mr Justice Nicklin in the High Courtⁱⁱ. It also departed from a Court of Appeal judgment in another recent case concerning an injunction taken out by the clothing company Canada Goose in relation to protests over its use of fur.ⁱⁱⁱ

FoE is intervening to support the appeal as we believe that the wide-ranging injunctions obtained by the Respondents are unlawful and amount to an impermissible infringement of the fundamental right of Gypsies and Travellers to maintain their unique, nomadic way of life. Their right to do this is protected under Article 8 (the right to respect for private and family life) of the European Convention of Human Rights (the “ECHR”).

FoE is participating in the appeal given its experience of defending protest rights (see below) and to provide evidence as to the impact that these orders can have on peaceful, lawful protest (protected under Articles 10 and 11 of the ECHR and the common law). In addition, as a social and environmental justice organisation, we support the right of Gypsies and Travellers to maintain their way of life. We recognise that the numerous, wide-ranging injunctions taken out

by the Respondents threaten the centuries-old culture of an already marginalised community. The injunctions also do not address the fundamental issue, which is that there are insufficient allocated sites for the community to stop in, and it is the State's responsibility to ensure that there are.

Why is Friends of the Earth concerned about injunctions?

FoE is deeply concerned at the massive expansion over recent years in the use of persons unknown injunctions where fundamental rights are engaged. The Supreme Court appeal brings together two examples of the misuse, in our view, of these injunctions: those targeting the Gypsy and Traveller community, and those targeting protestors. As well as injunctions in relation to so-called "unauthorised encampments", there has been a trend by companies, and more recently, public authorities as well, to use the civil law to obtain what is in effect their own, bespoke public order laws. In FoE's view, this is highly dangerous. Our key concerns over these injunctions are as follows:

1. **They can have a chilling effect on peaceful, lawful protest.** They can be and have been granted on broad and sometimes ambiguous terms. When that happens, it can be unclear what is and what is not prohibited by the order. This can mean that people who wish to engage in lawful protest are deterred from doing so, because they are worried about the consequences of being found in breach of an injunction. FoE saw this, for example, when injunctions were taken out by the oil and gas industry in relation to onshore fossil fuel developments, including fracking, which were strongly opposed by local communities. For example, when an 'anti-protest' injunction was obtained by Cuadrilla in June 2018, far fewer people continued protesting at the fracking site at Preston New Road in the immediate aftermath, because they were worried about breaching the injunction. Injunctions against fracking protests were taken out in relation to a number of other sites in England, including by the firm Ineos.
2. **They are a misuse of a civil law mechanism, which is ill-equipped to deal with complex human rights issues.** In taking out these injunctions, private entities and public authorities are creating a parallel system of law enforcement to that in the criminal justice system, but one which lacks the safeguards of the latter. For example, the decision to enforce an injunction is taken by the entity who obtained the injunction, not by the Criminal Prosecution Service (CPS), which by contrast, has been appointed by Parliament to make those decisions independently in the criminal law system. Furthermore, no public interest test is applied as part of the decision to take enforcement proceedings (contempt of court proceedings), as happens in prosecutions brought by the CPS. In addition, some of the activities which are prohibited by injunctions are not themselves criminal actions. And even where they are, then unlike in Crown Court proceedings under the criminal law, the trial for contempt of court will take place before a judge, not a jury, even though the person accused could be handed a prison sentence.
3. **The penalties for breaching an injunction can be very serious.** Breaching an injunction can amount to a contempt of court, which can result in imprisonment of up to 2 years and/or an unlimited fine. It is notable that these penalties under the civil law are sometimes *more* severe than the comparable offence under the criminal law. For example, the offence of obstruction of the highway carries a maximum sentence of 51 weeks imprisonment and/or a fine not exceeding £1k. FoE therefore considers that it is wholly inappropriate for entities, including private companies, to be able to obtain this type of injunction in order to address public order issues. FoE considers that public order issues can and should be addressed through the criminal law.

4. **It is very difficult to challenge these injunctions, because cost protection is not available in civil law proceedings.** This means that ordinary citizens can be priced out of court, and unable to get an injunction removed, or reduced in size. In 2019, FoE sought to reduce the scope of an injunction obtained by Cuadrilla, but had to withdraw from the case, as Cuadrilla threatened FoE with costs of £85k if we lost. When injunctions have been challenged, it has tended to mean that concerned, public-spirited citizens have taken on considerable financial risk in order to this. That is what happened in the appeal against Ineos' injunction, in which the appellants were Joe Boyd and Joe Corre (see below).

Friends of the Earth's role in defending protest rights

Back in 2017, FoE became increasingly concerned at a trend by the oil and gas industry to take out persons unknown injunctions in relation to protest activities. In particular, firms engaged with fracking and other unconventional extraction techniques, such as Ineos, UKOG, Igas, or Angus Energy^{iv} all took out similar injunctions in a short space of time. These injunctions were broadly and ambiguously drafted, so it was unclear which activities were prohibited and which were not.

These injunctions included bans on protest activities such as slow walking in the road, which can be legal. The overall effect was to deter protest from happening, whether lawful or not.

FoE worked with community groups and concerned citizens to push back against these injunctions, and helped to secure significant reductions in their scope. For example, we intervened to support the appeal taken by Joe Corr  and Joe Boyd against Ineos' injunction, [which succeeded and resulted in a significant reduction in the scope of that injunction](#).

Last year, there was a surge of injunctions taken out in relation to various protest activities. These included a route-wide injunction obtained by HS2, which has been strongly criticised by the [Wildlife Trusts](#) given the potential implications for protest rights and also nature reserve visitors, and an [injunction](#) obtained by Walleys Quarry Ltd in connection with its [controversial land fill site](#)^v near Newcastle-under-Lyme. Local residents have complained about the noxious emissions from the site. Significant parts of the road network have also been subject to high profile persons unknown injunctions.

What does Friends of the Earth hope the appeal will achieve?

The widespread use of injunctions is happening in a context in which the right of civil society to express dissent is increasingly threatened on multiple fronts. The recently enacted Police Crime Sentencing and Courts Act 2022 has already restricted the right to protest, and created a criminal offence for residing on or intending to reside on land without consent or with a vehicle. The Government's draconian Public Order Bill, which would create further offences relating to protest activities, was criticised by five UN Special Rapporteurs (including those concerned with human rights and climate change) in [a letter to the UK Government](#) in December 2022. They warned that the Bill could result in "*grave restrictions on the exercise of the rights to freedom of peaceful assembly and of association, as well as of expression*".

FoE is participating in the appeal to support the Appellants in their defence of an already marginalised community, and to stand up for the right to protest. FoE believes that citizens must be able to voice their concerns over government inaction on the climate and nature crises.

FoE opposes the use of persons unknown injunctions when employing them undermines fundamental human rights, including those of the Gypsy and Traveller community. FoE believes that the current, widespread use of injunctions conflicts with natural justice, and is not lawful.

We hope that the Supreme Court will be able to provide a definitive ruling on this complex and rapidly evolving area of law. It is an opportunity for the Court to effectively press the re-set button, and restore what is in our view the sensible, orthodox position: that injunctions against unknown and unidentifiable defendants can only be taken out in *very* limited circumstances: to protect the person seeking the order from substantial and irreparable infringement of their fundamental rights (e.g. where such an order is necessary to safeguard someone's life).^{vi} Injunctions in relation to protest or to target the Gypsy and Traveller community do not fall into that exceptional category.

We hope that a judgment will bring an end both to the recent trend for local authorities to seek these injunctions in relation to the Gypsy and Traveller community, a phenomenon once described as a "*something of a feeding frenzy*" by the Court of Appeal^{vii}, and to their use as the apparently default mechanism to address public order issues, including by private companies.

Further information

The Supreme Court hearing will be before a five-judge bench, consisting of Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Briggs, and Lord Kitchin. The court listing is available [here](#). All the interveners are participating in the hearing, as well as providing written submissions. In addition, FoE has given written evidence as to the impact of these injunctions on peaceful protest through its experience as a campaigning organisation.

The Appellants are represented by Richard Drabble KC of Landmark Chambers, Marc Willers KC, Tessa Buchanan and Owen Greenhall all of Garden Court Chambers, and by the Community Law Partnership. FoE is represented by Stephanie Harrison KC, Stephen Clark and Fatima Jichi all of Garden Court Chambers, the law firm Hodge Jones and Allen, and its own in-house legal specialists.

For further information, please contact the Friends of the Earth Media team on 020 7566 1649 or email: media@foe.co.uk

Katie de Kauwe – Interim Head of Legal
Flora Hausammann – Phil Michaels Legal Scholar
Dave Timms – Head of Political Affairs, Legal and Planning

ⁱ Interim injunctions by contrast, are temporary measures. They are granted before a full trial takes place to try to preserve the status quo/existing state of affairs. Final injunctions are only granted once there has been a trial.

ⁱⁱ *London Borough of Barking and Dagenham & others v Persons Unknown and others* [2021] EWHC 1201 (QB)

ⁱⁱⁱ *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303. Canada Goose announced in June 2021 that it would stop using fur by the end of 2022 <https://www.theguardian.com/world/2021/jun/24/canada-goose-fashion-brand-to-stop-using-fur-by-end-of-2022>

^{iv} UKOG employed a technique called acidisation <https://www.wealdactiongroup.org.uk/acidisation-2/>

^v Whilst the BBC article states that the injunction was taken out against 26 protestors, the order is clear that the injunction is against named individuals and persons unknown.

^{vi} Orders were made, for example, to prevent the disclosure of the identities of the killers of Jamie Bulger when they were released from prison after serving their sentences, given that their lives would be at risk if their identities and whereabouts were publicly known.

^{vii} *Bromley London Borough Council v Persons Unknown* [2020] EWCA Civ 12 at para 11.