

**IN THE SUPREME COURT OF THE UNITED KINGDOM**

**ON APPEAL FROM THE COURT OF APPEAL, CIVIL DIVISION (ENGLAND AND WALES)**

**BETWEEN:**

**LONDON GYPSIES AND TRAVELLERS  
FRIENDS, FAMILIES AND TRAVELLERS  
DERBYSHIRE GYPSY LIAISON GROUP**

**Appellants/  
First, Second, and Third Interveners**

**and**

**WOLVERHAMPTON CITY COUNCIL**

**Claimants/  
Respondents**

**and**

**PERSONS UNKNOWN**

**Defendants/  
Respondents**

**and**

**HIGH SPEED TWO (HS2) LIMITED  
BASILDON BOROUGH COUNCIL**

**Interveners**

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**GROUND ON WHICH THE APPLICATION IS MADE**

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**Introduction**

1. The Appellants are seeking permission to appeal the decision of the Court of Appeal to allow the appeal of the Claimant/Respondent Wolverhampton City Council (“Wolverhampton”) and restore the injunction obtained by Wolverhampton against Persons Unknown.
2. The Appellants are applying for:

- i. An extension of time (if required);
- ii. A protective costs order; and
- iii. Permission to serve this application and the application for permission to appeal on Persons Unknown by alternative methods (and to serve such applications after they have been filed).

### **Summary of proposed appeal**

3. On 16 October 2020, Nicklin J brought together 37 different cases in which councils had obtained wide injunctions prohibiting unauthorised encampments by Persons Unknown in their areas. On 12 May 2021, Nicklin J handed down judgment ruling that final injunctions could not be granted against persons who were unknown and unidentified as at the date of the order (“Newcomers”). 12 of those councils appealed to the Court of Appeal.<sup>1</sup> The Court of Appeal allowed their appeals and reinstated the injunctions discharged by Nicklin J: *London Borough of Barking and Dagenham and others v Persons Unknown and others* [2022] EWCA Civ 13 (“the judgment”). The Appellants, who were the First, Second, and Third Interveners below, seek to appeal the decision made in Wolverhampton’s case as a test case.
4. This appeal raises the fundamental question: other than injunctions against the world, can a final injunction be granted against a person who is not a party to proceedings by the date of the final order? In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303, [2020] 1 WLR 280 (“*Canada Goose*”), the Court of Appeal held that it could not. In these proceedings, the Court of Appeal held that it could. The law is thus in a state of confusion, with two contradictory Court of Appeal decisions having been reached within two years, by tribunals both involving (successive) Masters of the Rolls.
5. The Appellants’ case is set out in its Grounds of Appeal but may be briefly summarised as follows:
  - i. It is a “*fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable*

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<sup>1</sup> In fact, the appeals involved 15 councils, but some of those councils brought joint claims and thus there were 12 active cases before the Court.

*him to be heard*”: *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6, [2019] 1 WLR 1471 (“*Cameron*”) at §17.

- ii. The act by which the defendant is subjected to the Court’s jurisdiction is service of the originating process: *Barton v Wright Hassall LLP* [2018] UKSC 12, [2018] 1 WLR 119 at §8.
  - iii. The Court may dispense with service of the claim form, but this will only be appropriate if there is reason to believe that the defendant is aware that proceedings have been or are likely to be brought: *Cameron* at §25.
  - iv. The Court may also grant interim relief before proceedings have been served, “*but that is an emergency jurisdiction which is both provisional and strictly conditional*”: *Cameron* at §14.
  - v. A person “*who is not just anonymous but cannot be identified with any particular person, cannot be sued under a pseudonym or description, unless the circumstances are such that the service of the claim form can be effected or properly dispensed with*”: *Cameron* at §26.
  - vi. A person who is unknown and unidentifiable as at the date of the final order cannot be (and will not have been) served with the claim form and, in the absence of evidence that the person is seeking to evade the proceedings, it will not be appropriate to dispense with service. They will therefore not be a party to the proceedings. As such, they will not be bound by the injunction, because a final injunction binds only those who are parties to the proceedings: *Attorney General v Times Newspapers Ltd (No. 3)* [1992] 1 AC 191 at 203, 224. In the present case, the Court of Appeal erred in holding that such persons would be bound by a final order.
6. There is no conceptual or legal difficulty in serving a person who is anonymous but identifiable: *Cameron* at §15. However, in recent years there has been a proliferation of orders made which bind or purport to bind Newcomers. These orders have been made in a wide variety of contexts, from unauthorised encampments (as in Wolverhampton’s case) to planning, protests, urban exploring, and unauthorised punting. Despite the frequency with which they have been made, the legal and jurisdictional basis of such orders had not been expressly considered by the Court of Appeal until *Canada Goose*, and has never directly risen for decision in the Supreme Court (save to the extent that the issue was considered in *Cameron*, which is a question in dispute in this case). It has now recently been considered twice by the Court of Appeal – but with contradictory results.

7. This appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time. The Court’s jurisdiction (or lack thereof) to make orders which bind unknown and unidentifiable defendants is one of substantial wider significance. The Court of Appeal recognised that this was “*an important field*” of law: judgment at §7. Precisely because the claims are brought against anonymous and unidentifiable defendants, the vast majority of cases are not defended and only rarely result in a trial. Opportunities for the issues to be considered by the appellate courts are yet more infrequent. The fact that such orders have not yet been comprehensively considered by the Supreme Court, despite having been made in increasing numbers over the last twenty years, demonstrates the difficulty in bringing these matters to appellate attention. It is unlikely that the Supreme Court will have the opportunity to consider these claims again soon.

### **The Appellants’ standing to seek permission to appeal**

8. The Appellants are three small charities which represent the interests of Gypsies and Travellers. In the Courts below, they acted as the First, Second, and Third Intervenors.
9. The Supreme Court Rules (“SCR”) define an “*appellant*” as “*a person who files an application for permission to appeal or who files a notice of appeal*”: SCR 3(2). There is nothing in this definition which requires the appellant to have been a claimant or defendant (or even a party) in the proceedings below.
10. The Civil Procedure Rules (“CPR”) contain a similarly broad definition of an “*appellant*” as “*a person who brings or seeks to bring an appeal*”: CPR 52.1(3)(d). In *George Wimpey UK Ltd v Tewkesbury Borough Council* [2008] EWCA Civ 12, [2008] 1 WLR 1649, the Court of Appeal rejected an argument that this definition should be qualified by the words “*who was a party to the proceedings in the lower court*”: §17. The Court held that the definition should be given its “*plain and ordinary meaning*”: §17. It was wide enough to include a person who was not a party to the proceedings at first instance.
11. In *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9, [2020] 1 WLR 1373, the appellant withdrew from the proceedings after having been granted

permission to appeal. The Supreme Court allowed the Intervener (the Equality and Human Rights Commission) to step into his shoes, holding that:

*The Rules do not expressly state that the court may permit an intervener in effect to stand in the shoes of an appellant. However, they do provide that if any procedural question arises which is not dealt with in the Rules, the court may adopt any procedure that is consistent with the overriding objective, the Constitutional Reform Act 2005 and the Rules (rule 9(7)). The overriding objective is to secure that the court is accessible, fair and efficient (rule 2(2)). Where an important question of law, which may well have been wrongly decided by the Court of Appeal, is raised in an appeal, it is clearly open to the court to consider that the question should be fairly decided even though one of the parties no longer wishes to pursue it.*

12. The Appellants are all parties to the proceedings and have been so since 17 December 2020, when their application for permission to intervene was granted. The case is of significant importance to Gypsies and Travellers, whose interests they represent. In filing this application for permission to appeal, they fall within the definition of an appellant as defined in both the CPR and the SCR. The Court therefore has the power to grant them permission to appeal.

#### **Application for an extension of time (if required)**

13. Pursuant to rule 11(1) of the SCR, “*an application for permission to appeal must be filed within 28 days from the date of the order or decision of the court below*”. Paragraph 1.2.9 of Practice Direction 1 states that “*The time limit for applying for permission to appeal in civil cases (other than civil contempt of court or habeas corpus) is 28 days from the date of the order appealed from*”. Paragraph 2.1.12.a of Practice Direction 2 states that “*This period runs from the date of the substantive order appealed from, not from the date on which the order is sealed or the date of any subsequent procedural order (e.g. an order refusing permission to appeal)*”. Further reference is made to “*the substantive order appealed from*” at paragraph 3.1.7 and to “*the order appealed from*” or “*the order appealed against*” at rules 14(1), 19(3), 25(1) and (2), 34(2), and 27 and at paragraphs 2.1.12.b, 3.1.7, 3.2.1, 4.3.2, 5.1.5, 6.4.4, 8.3.1, 8.12.4, 8.14.1, and 12.3.7 of the Practice Directions (emphasis added). In addition, Form 1 – Permission to Appeal refers, at page 6, to the “*Order being appealed*” and

asks the Appellant to specify whether the Supreme Court is being asked to set it aside or vary it, a question which can only apply to an order (rather than a judgment).

14. It is also noted that the commentary at paragraph 52.06 of the Civil Procedure Rules states as follows:

***Appeals are against orders, not reasoned judgments***

*In a number of cases it has been has [sic] stated that the function of an appeal court, in particular of the Court of Appeal, is to deal with “judgments”, “orders” or “determinations”, that is to say, to deal with the “result” or “outcome” (to use non-technical terms) of the hearing in the lower court, and not with “findings” or “reasons” given in the judgment; see e.g. Compagnie Noga d’Importation et d’Exportation SA v Australia and New Zealand Banking Group Ltd (No. 3) [2002] EWCA Civ 1142; [3003] 1 W.L.R 307, CA; Morina v Secretary of State for Work and Pensions [2007] EWCA Civ 749; [2007] 1 W.L.R 3033, CA, at para.6 per Maurice Kay LJ...*

15. It is the Appellants’ understanding that the time for appealing runs from 1 February 2022. This is the date on which the Court of Appeal made the order allowing Wolverhampton’s appeal and reinstating its injunction. This is the outcome which the Appellants seek permission to appeal and it is this order which they will invite the Court to set aside or vary.
16. If the Appellants are correct in this understanding, then no extension of time is required. However, it has been contended by the solicitor for some of the councils who were a party to the proceedings below (although not Wolverhampton) that time in fact began to run from 13 January 2022, the date on which judgment was handed down. The point was first raised with the Appellants at 14:42 on 10 February 2022, when the councils’ solicitor wrote stating that he understood the deadline to be 4pm that day. The Appellants were not able to serve and file an appeal in the 1 hour 20 minutes which remained before that deadline (if it was the deadline). It was, further, not until 16 February 2022 that the council’s solicitor provided the authority he relied on in support of his position, *McDonald v Rose* [2019] EWCA Civ 4, [2019] 1 WLR 2828. This authority relates to the position under the CPR, which refer to “*the date of the decision of the lower court which the appellant wishes to appeal*” (CPR 52.12), rather than the SCR, which refer to the “*order or decision*” (SCR 11(1)). In addition, whilst under the CPR appellants are not obliged to seek, and wait for, a decision from the lower court on permission to appeal, appellants to the Supreme Court are required to do so. This,

combined with the fact that it is not possible to seek a prospective extension of time under the SCR (Practice Direction 2.1.14), means that if time did not begin to run from the date of the substantive order, appellants may find themselves (as would be the case here) with just a few working days in which to bring an appeal. Nevertheless, in case they are wrong in their understanding, the Appellants are now applying for an extension of time on a precautionary basis. If the Appellants' understanding of the SCR is incorrect, and time for permission to appeal did in fact begin to run from 13 January 2022, then they and their representatives sincerely apologise and respectfully request that they are granted an extension of time to file their application until 28 February 2022. They rely on the witness statement of their solicitor, Christopher Johnson, in respect of this application.

17. The need for an extension of time (if one is needed) arose from a genuine mistake. It was the understanding of those who represent the Appellants, based on the wording of the SCR and Practice Directions, that time began to run from the date of the order appealed from, which in this case was 1 February 2022. They sincerely apologise if they have misunderstood the position.
18. No prejudice arises to Wolverhampton (or any other party) from the error. The Appellants are late by just a few days. They have always made it clear that they intend to seek permission to appeal. The position regarding the continuation of any of the present injunctions will not be affected in any material way by a short extension of time to seek permission to appeal.
19. The Appellants lodged their application to the Court of Appeal for permission to appeal to the Supreme Court on 12 January 2022, within 2 days of the provision of the embargoed judgment, as required by the Court. The councils sought and were granted a 7-day extension and did not file their submissions in response to the application until 19 January 2022. The Court of Appeal did not then hand down its final order, which allowed the councils' appeals and included its decision on permission, until 1 February 2022 and although it is accepted that time does not begin to run from when permission to appeal was refused, the combination of these factors did mean that, if time began to run from 13 January 2022, then the Appellants had only a short time in which to formulate an application for permission to appeal. In this time, they have had to seek instructions from their Boards to proceed and have also instructed new leading Counsel.

20. The appeals raise a question of general public importance. As has been stated above, orders against Newcomers have been made on many occasions and in an increasingly wide variety of contexts, but have never yet been directly addressed by the Supreme Court (save to the extent that they were considered in *Cameron*). Because of the nature of such orders – in that they are very rarely defended, as they are not brought against identifiable defendants – it is unlikely that the Court will have the opportunity to consider them again soon. These injunctions, in terms of Gypsies and Travellers, directly affect the large number of Gypsies and Travellers who, due to the lack of authorised stopping places, have no alternative but to stop on unauthorised encampments.
21. Wolverhampton have been asked to confirm their position on the extension of time but have not, as at the time of writing, responded.

#### **Application for a protective costs order**

22. The Appellants ask that the Court make a protective costs order pursuant to which there will be no order as to costs as between the Appellants and Wolverhampton (or any other parties) regardless of the outcome of the appeal.
23. Under rule 46 of the SCR, the Supreme Court has a broad discretion to make any order as to costs that it considers just at any stage of proceedings. Paragraph 2.2 of the Practice Directions makes clear that this extends to a costs capping order or a protective costs order.
24. The Appellants rely on the witness statements of Sarah Mann (Friends, Families and Travellers), Dr Siobhan Spencer (Derbyshire Gypsy Liaison Group), and Debby Kennett (London Gypsies and Travellers).
25. As set out in those witness statements, the Appellants are all small charities with very limited means. They do not have the income or reserves to meet a costs order against them. The Appellants' representatives are all acting at significantly reduced rates. The proceedings in the High Court and Court of Appeal were conducted on the basis of a mutual undertaking that there should be no order as to costs, but unfortunately the Appellants' request for that undertaking to be continued in the Supreme Court was refused. If no protective costs order



is made, the Appellants will have to withdraw the appeal (and in those circumstances they would invite the Court to order that there should be no order as to costs).

26. This case raises an issue of general public importance. Orders against Persons Unknown which extend to Newcomers have been very wide-ranging, as described above. By way of example, this case alone originally concerned 37 different injunctions. The injunction made in Wolverhampton's case covers some 59 parcels of land and the injunctions granted to the other councils, who were parties below, cover over 1,000 parcels of land.
27. The Appellants do not have any personal interest in the outcome. They seek to bring this appeal in the public interest and on behalf of the Gypsy and Traveller community whose interests they represent. These injunctions have a hugely detrimental effect on those Gypsies and Travellers whose pursuit of a nomadic way of life is an expression of their ethnic identity. These injunctions effectively drive travelling Gypsies and Travellers out of whole local authority areas. Individual Gypsies and Travellers whose interests are affected by these injunctions are unable to bring this claim due to the financial and practical implications of such litigation. Individual litigants, unlike the Appellants, are also unable to present arguments on behalf of the wider Gypsy and Traveller community and Persons Unknown.
28. The law as it stands is in a state of confusion. There are two Court of Appeal judgments, handed down within 2 years of each other, given by successive Masters of the Rolls, which reach contradictory conclusions. There is a compelling need for clarification by the Supreme Court. If these proceedings are not able to be pursued, it is unlikely that there will be another opportunity for the Supreme Court to consider the issue soon.

#### **Application for permission to effect service by an alternative method**

29. The Appellants also seek permission to serve this application, and the application for permission to appeal, on Persons Unknown by an alternative method, namely placing the application forms on their website, on the website of their solicitors, and on the website of Travellers' Times. They also seek permission to file the applications prior to serving them on Persons Unknown, as it is necessary to obtain permission for alternative service before the applications can be served on Persons Unknown (and in respect of the application for permission to appeal, the Appellants are mindful that the Court may not have the opportunity

to deal with their application for permission to serve by alternative methods prior to the deadline for filing this). This application is supported by the witness statement of Christopher Johnson.

30. The Appellants cannot practicably serve the applications in any other way. It is clearly impossible to effect personal service, or service by way of post or DX, on “Persons Unknown”. The Appellants do not have the resources – or the right – to affix the application to each of the 59 parcels of land which form the subject of Wolverhampton’s injunction. The Appellants themselves stand in the place of “Persons Unknown” and therefore no prejudice is likely to occur from this method of service.

31. The difficulty of effecting service on Persons Unknown is an issue at the heart of this appeal. The problems with serving Persons Unknown is a reason why permission to appeal should be granted, not a reason which should be permitted to frustrate the appeal.

### **Conclusion**

32. The Court is respectfully invited to grant the Appellants’ applications.

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LANDMARK CHAMBERS**

**MARC WILLERS QC  
TESSA BUCHANAN  
OWEN GREENHALL**

**GARDEN COURT CHAMBERS**

**21 FEBRUARY 2022**