



Protest Injunctions and Contempt of Court

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Protest, Injunctions and Contempt of Court

Injunctions, Claims and Parties

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Changing Landscape

- Everything has changed
- Used to see who was being sued and why
- Consider the pleaded case, and what torts alleged
- Consider the evidence in support of the Claimants' case, and see what challenges if any were appropriate
- Rely on the fact that the rights of protest are protected by Article 10 and Article 11 ECHR

That not happening - procedurally, substantively significant additional hurdles.

That is leaving aside the changes in criminal law.



Torts

The torts used as the basis for contemporary injunctions are:

- Trespass
- Private Nuisance
- Public Nuisance- and its statutory quasi little brother in section 222 LGA 1972
- Harassment under the Prevention of Harassment Act 1997
- Trade Union and Labour Relations (Consolidation) Act 1992 s241.
- Economic Torts



Trespass

Mayor of London v Hall [2011] 1 WLR 504

City of London v Samede [2012] AllER 1039

Each of those permits orders to be made against those not party to the proceedings.



Private Nuisance

- Tort of private nuisance requires that any interference with private rights of entry/access to land be both substantial and unreasonable: *Bamford v Turnely* (122 E.R. 25 (1860) 3B & S 62.
- Any right of entry/access which is directly on to the public highway is to be treated under the tort of public nuisance and requires a higher threshold of an obstruction than mere interference and which also has to be without lawful excuse and/or unreasonable: *Hiscox Syndicates Ltd v The Pinnacle Ltd* [2008] EWHC 1386 (QB)

Public Nuisance

- Public nuisance reflects the criminal offence in s137 of the Highways Act 1980 and is subject to lawful excuse and/or unreasonable requirements: Nagy v Weston [1965] 1 ALL ER 78.
- An if an obstruction is caused, it may still be disproportionate on the facts to prohibit and penalise such conduct by threat of imprisonment/fine through contempt proceedings, because the conduct is in the context of the exercise of fundamental rights to freedom of speech and assembly which public authorities have a duty to facilitate:
 - Ineos Upstream Ltd v Persons Unknown [2019] EWCA Civ 515 at [39-40].
 - DPP v Ziegler [2019] EWHC 71 (Admin) at [69], [80] and [94]. See also [68] – [81].
 - (see now DPP v Cucuriean [2022] EWHC 736 (Admin), [2022] 3 WLR 446, at [89])
 - Fact-sensitive issue in which a High Court Judge in injunctions proceedings is not best placed to make: R (Laporte) v Chief Constable of Gloucestershire [2006] UKHL 55; [2007] 2 AC 105 at [34-37] and [46].



Public Nuisance (Cont.)

Canada Goose UK Retail Limited and Others v Persons Unknown and Others [2020] EWCA Civ 303 at [93] upholding the judgment of Nicklin J [2019] EWHC 2459 (QB) at [101-04].

- “difficulties and limits of trying to fashion civil injunctions into quasi-public order restrictions” and that “police officers making decisions on an assessment on the ground are immeasurably more likely to strike the proper balance between demonstrators rights of freedom of expression/assembly, and the legitimate rights of others than a Court attempting to frame a civil injunction prospectively against unknown protestors”.
- “invoking the civil jurisdiction as a means of permanently controlling ongoing public demonstrations and the use of private litigation to prevent what the Court sees as public disorder is not appropriate”. “Private law remedies are not well suited to the task”.

HOWEVER - that is not what the courts have done since.

Public Nuisance and Local Authority roles

North Warwickshire v Persons Unknown (judgment – but not enforcement - awaited)

- Local authority relying on taking proceedings as part of its claimed responsibilities under section 222 of the Local Government Act 1972 to enforce the criminal law.
- *Thurrock Council and Essex County Council v Adams and others* [2022] EWHC 1324 (QB):
 - Decision of HHJ Simon – he determined that the local authorities were required to bring proceedings to prevent public nuisance on the Highway, due to their functions under section 130 of the Highways Act 1980 and section 222 above. He made draconian orders affecting protests over huge swathes of Essex.

s241 of the TRADE UNION and LABOUR RELATIONS (Consolidation) ACT 1992

Intimidation or annoyance by violence or otherwise:

- Intimidation or annoyance by violence or otherwise. Distinction between “*dissuasion rather than one of compulsion*”: *DPP v Fiddler* [1992] 1 WLR 91;
- Conduct must, independently of s. 241, constitute either a criminal offence or a tort. *Thomas and Others v National Union of Mineworkers (South Wales Area) and Others* [1985 T. No. 60] (secondary picketing);
- Reasonable justification: *J. Lyons & Sons v. Wilkins* [1899] 1 Ch. 255, 267;
- *UKOG v Persons Unknown* [2018] EWHC 2252(Ch) – no order made because too uncertain.

Harassment (Cont.)

s 1(3)(a-c) defences

- (a) that it was pursued for the purpose of preventing or detecting crime,
- (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) that in the particular circumstances, the pursuit of the course of conduct was reasonable

s 2 creates a criminal offence;

s 3 provides for civil remedy of an injunction;

s 3(6) breach of injunction can constitute an arrestable offence:

Heathrow Airport Ltd v Garmen and Others [2007] EWHC 1957(QB) (no order made)

Ineos Upstream Ltd and Others v Person Unknown and Others [2017] EWHC 2945 (no order made)

Harassment

S1 prohibits harassment

A person must not pursue a course of conduct —

- (a) which involves harassment of two or more persons, and
- (b) which he knows or ought to know involves harassment of those persons, and
- (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
 - (i) not to do something that he is entitled or required to do, or
 - (ii) to do something that he is not under any obligation to do.



The Claimants want the broadest injunctions, with the most uncertainty for those opposed to it

How do they try to achieve this objective?

- Proceed in novel causes of action
- Include claims in the tort of harassment, since then there will be a power of arrest
- Try not to have any opposition
- Try not to name anyone or use any named individuals as defendants

Economic Interference

- Withdrawn in *UKOG v Persons Unknown* [2018] EWHC 2252(Ch)



No “defendants”: the use of “persons unknown” injunctions

Companies began bringing claims by simply setting out their allegations in evidence and not serving anyone affected. The position in INEOS at first instance was that the judge permitted the claimants to obtain:

- An order that affected potentially everyone;
- On evidence alone, without any formulated pleaded case;
- While serving no- one; AND further
- Obtaining permission from the court to keep the initial hearing secret!



Economic Torts

Conspiracy to Injure: Combining Together

JSC BTA v Alyazov (No 14) (SC) [2018] 2 WLR 1125

Ineos Upstream at [40]

Proof of damage for pure economic loss. Claimants must be able to prove that the loss to those companies was intended, as opposed to being just a consequence of campaigning/protesting against them.

OBG v Allan [2007] UKHL 21, [2008] AC 1

JSC BTA v Ablyazov (No. 14) [2018] 2 WLR 1125, at 1132 H- 1133A and 1135B.

Ineos Upstream at [40]

Caudrilla at [81]



If nobody turns up, the order stays in place.

See also section 12 (2) HRA: ought to be compelling reasons.

- The court was prepared to grant interim remedies on that basis, and essentially to leave it to anyone who wished to oppose this course to apply to the court to be joined to the proceedings.
- When people did turn up, the order made was substantially different: *INEOS v Persons Unknown* (at **first instance** [2017] EWHC 2945): included getting rid of claim in harassment which knocked out the power of arrest and on appeal [2019] EWCA Civ 515, got rid of public nuisance and conspiracy to injure.



But if you do go, you can probably make effective arguments about the strength of the claim and seek to limit any relief granted

- See *Boyd v INEOS* [2019] EWCA Civ 515, especially at 39-40, emphasising the fact-specific nature of many of the economic torts pursued, e.g. claims for damages for conspiracy to cause damage by unlawful means AND whether an injunction is necessary, e.g. whether the quia timet test is made, and/or fact-specific matters relating to the places and circumstances in which the protests are taking place.
- Nicklin J's decision that a *final* injunction unavailable against "persons unknown" who have not been served was upheld on appeal in *Canada Goose* [2020] EWCA Civ 303, and the Court of Appeal's decision has now been over-ruled by *London Borough Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13, which although a decision about people coming onto land, purports to be of wider application. THIS IS NOW UNDER APPEAL TO SUPREME COURT



If no proper pleadings, it is harder for the claimant to make out their case

- Generally, it ought to be appropriate for a claimant to proceed using CPR Part 7, i.e. to proceed on the basis that allegations are disputed.
- If served with a “Part 8” claim, contest the appropriateness and say the facts are disputed.
- Argue that if no particulars of the claim, the claimant is not setting out the facts as required and therefore the court should conclude that there is no proper case: CPR Part 3.4



If you don't turn up, that might worry the court more...

See judgment of Nicklin J in *Canada Goose v Persons Unknown* [2019] EWHC 2459 (this is the first instance decision - see also the appeal decision): especially at [149-151].

[151] “...the grant of quia timet interim injunctions against "persons unknown" is the exercise of an emergency jurisdiction which is provisional and strictly conditional:

- i) It is provisional because the party seeking the injunction will be expected to take all practical steps to identify the alleged wrongdoers so that they can have an opportunity, if they wish, to defend themselves. The continuation of an injunction against "persons unknown" can only be justified for as long as it remains practically impossible to identify the alleged wrongdoers.

- ii) It is conditional upon the Court being satisfied that there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief; that it is impossible to name the persons who are likely to commit the tort unless restrained; that it is possible to give effective notice of the injunction; and that the terms of the injunction correspond to the threatened tort and are not so wide that they prohibit lawful conduct – see *INEOS* [29], [34].”



This is all basic stuff: surely the court wants to know who is before it.

- CPR Part 1: duties of the parties to assist the court, see CPR Part 1.3 and CPR Part 1.4.
- If the Claimants have not proceeded against named defendants, it is very difficult for them and for the court to comply with this.
- CPR Part 2.3 interpretation, “defendant” means a person against whom a claim is made.’
- How can a party have a remedy if there is no one to whom it applies?

It is possible to become a defendant after the injunction is made, but only if you can be given proper notice of it.

- Claims in trespass: can proceed against persons unknown by putting notices up:
- *Gammell v South Cambridgeshire* [2005] EWCA Civ 1429, cited and considered in *Boyd v INEOS*
- The difference between a real, and an imaginary defendant
- Legal personality: unincorporated associations, *EDO v Smash EDO* [2005] EWHC 837 (QB)



Advice WAS Litigate, don't capitulate- apply to strike out

CPR Part 3.4

- no reasonable grounds for bringing the claim AND/ OR
- statement of case is an abuse of process or is otherwise likely to obstruct the just disposal of the proceedings AND/ OR
- failure to comply with a rule, practice direction or court order

BUT DO THE COURTS CARE?

“The same interest”

Duke of Bedford v Ellis [1901] AC 1

- Concerned a dispute about the management of Covent Garden market, where 5 claimants sued “*on behalf of themselves and all other growers of fruit, flowers, vegetables, roots or herbs*”.
- Duke of Bedford had the claim struck out, but claimants successfully appealed and the claim proceeded. Case still good law for what is meant by “the same interest”.
- “the same interest” requires ALL of the below:
 - (a) a common interest;
 - (b) a common grievance;
 - (c) a remedy beneficial to all.



When might a representation order be made?

- It has to be all the claimants or defendants, not a sub-group, though see *Oxford University v Webb* [2006] EWHC 2490.
- A decision based on facts and pleadings, at the time the court is being asked to make the order. The authority for that is *Sinclair v Commissioners for HMRC* [2016] EWHC 2820. However, it is possible for membership of the class to change at different stages: see *Emerald Supplies v British Airways* [2010] EWCA Civ 1284, [2011] Ch 345.
- Whether to make such an order can be contested by the opponent in the case, as well as those who might wish not to be represented by that person.
- Cannot represent those who might, for instance, have a different defence, as there is then no common interest.

Difference between judgment and enforcement

Representative proceedings particularly against defendants may mean that a person is bound without knowing about the case or being heard.

- See *Huntingdon Life Sciences v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 (QB) and *Oxford University v Webb* [2006] EWHC 2490.
- In *RWE Npower v Carroll and others* [2007] EWHC 947 the claimants sought an order under CPR 19.6 (4) permitting enforcement against people that had not been defendants. Teare J refused such prospective enforcement against people who had never been brought before the court as defendants.



CPR 40.9 and Protest Injunctions

Challenging protest inductions with less risk

Alice Hardy

Date: 26/01/2023

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Overview

- Challenging a protest injunction is a risky business.
- Legal aid is not available so the challenge must be funded privately. The unlikelihood of receiving inter partes costs makes them unsuitable for a CFA.
- Added to this is the standard requirement for anyone wishing to challenge a protest injunction to apply to be a named defendant in order to do so.
- CPR 40.9 offers an alternative, less risky means to challenge an injunction as a non-party.



Requirement to be a named defendant

- Standard provision: *“Any person applying to vary or discharge this order must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time (to the extent they are not already so named).”*
 - Significant disadvantages in being a named defendant:
 - Order likely to be served - bound by its terms
 - Contempt of court - unlimited fine and up to two years in prison
 - Liability for the underlying claim in nuisance, trespass etc - damages and costs
 - Claimant’s costs in responding to the challenge.
 - As a result, many protest injunctions go unchallenged.

The National Highways injunction

- Injunction restricting protests on and near several major roads, including the entire M25 and its feeder roads (including some of the A1(M)), the M2, M20, A2 and A20.
- Jessica Branch – XR activist, had not attended any IB protests. Concerned by the breadth of the order and the danger of being caught inadvertently.
- Chamberlain J had made the standard order: anyone wishing to challenge the injunction must apply to be joined as a named defendant
- Return hearing in May 2022: Bennathan J thought Chamberlain's order was at odds with CPR 40.9.



CPR 40.9

- *“A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.”*
- Bennathan granted permission for Jess Branch to challenge the order as an IP under CPR 40.9 on the grounds that:
 - Her concern (being inadvertently caught up in contempt proceedings) was not fanciful. Sufficiently sensible to be “directly affected”.
 - Even without a direct connection, a flexible approach was appropriate where Convention rights were engaged. General concern with a political cause may be sufficient.
 - Desirable to take a generous view where court is being asked to make wide-ranging orders and would not hear any opposition otherwise.

Novel development

- Previous judgments on CPR 40.9 tended to relate to judgments in default and the test was narrower, focussing on whether:
 - The non-party was directly affected.
 - There was a real prospect of success in changing the order
- This is the first use in relation to protest injunctions.
 - Those affected by an injunction with potential impact on Articles 10 and 11 rights can make representations without becoming a party and without the application of the standard costs regime.
 - No guidance on whether and when costs can be ordered against an (IP under CPR 40.9.

Southampton to London Pipeline

- SLP – 90km pipeline being built by Esso, carrying aviation fuel to Heathrow.
- Injunction restricted protests along the pipeline.
- Two activists participated in peaceful protests:
 - Standing silently on a footpath close to the construction works for approx 45 mins
 - Mock funeral, lowering a child's coffin into the trench, causing works to stop for 40 minutes
 - Standing on a public road with banners in front of an entrance to the works
- Requested permission to challenge the injunction under CPR 40.9.



Mr Justice Ritchie's judgment

- *Esso Petroleum Company Limited v Scott Breen and persons unknown* [2022] EWHC 2600 (KB)
 - Two stages process:
 - Gateway test to bring challenge
 - Permission to proceed as IP or party:



Gateway test

- Two factors to be satisfied:
 - Directly affected
 - Good point
- Two factors to be satisfied:
 - Financially
 - Ability to travel
 - Ability to work or enjoy private life or social life
 - Convention rights affected
- Good point: *“Does the IP have a good point to raise? If the point raised is weak or irrelevant there is no need for the CPR rule 40.9 permission.”*



Proceed as an IP or as a party

- *“The closer the connection between the IP and the claim or the defence the more likely the Court will require the IP to join the action to take part.”*
 - Eight factors:
 1. Will the IP profit from the litigation (financially or otherwise)?
 2. Is the IP controlling the whole or a substantial part of the litigation?
 3. Will the final decision adversely affect the IP (civil rights, financial interests, property rights etc)?
 4. Is the IP funding the litigation or the defence?
 5. Is the IP raising a substantial public interest or civil liberties point?
 6. Low threshold for IPs to take part in broad and or wide orders, taking into account the “wide or draconian nature of injunctions against unknown persons which may be geographically large or temporarily large or both”.
 7. The costs risks and difficulties faced by IPs who are affected by orders which they did not instigate.
 8. Any prejudice to the Claimant in the IPs not being to required to become parties.

Ritchie's comments on costs

- *“48. At the heart of the distinction between being a party and being an Interested Person making submissions under CPR 40.9 is the difference in the costs and costs risks. A party is subject to the normal cost rules set out in CPR rule 44 and the other rules. The general rule is that the winner has his or her costs paid by the loser. In contrast an Interested Person making submissions on the CPR rule 40.9 basis has far less prospect of suffering adverse costs orders.”*
- 50. Costs orders against non parties are exceptional.
- 51. Public interest in parties getting access to justice through third party funding.
- 53. Main principle is that a **non party who funds litigation and controls and benefits from litigation** will ordinarily be required to pay the costs on losing.

Applying gateway to SLP protestors

- Directly affected” passed:
 - (1) Long-term conscientious objectors against fossil fuel use.
 - (2) Sought to protest lawfully but actively.
 - (3) The injunction would have bound them.
 - (4) The protests that they took part in could have caused them to breach it.
- Good point test passed, thanks to Owen’s submissions.



Whether to proceed as IPs or defendants

- Permission granted to proceed as IPs, applying 8 factors:
 - (1) Neither lady would profit directly from the litigation.
 - (2) They did not seek to control the litigation, although they did seek to restrict its breadth or prevent it from being granted so as to exercise their rights under Arts 10 and 11.
 - (3) The final decision in the claim would not adversely affect them financially, nor would it adversely affect their civil rights so long as the injunction was properly drafted.
 - (4) Neither lady was involved in funding the litigation.
 - (5) Points raised were matters of public interest, related to fundamental civil liberties, and important points of wide public interest.
 - (6) The draconian nature and the breadth of large injunctions against persons unknown: relatively low threshold to allow IPs to make representations.
 - (7) No legal aid available.
 - (8) No evidence of prejudice was put forwards by the Claimant. (The fact that it would be more difficult to get their costs was not considered prejudice..)

No risk of adverse costs under CPR 40.9?

Costs can still be awarded under CPR 46.2:

“(1) Where the court is considering whether to exercise its power under section 51 of the Senior Courts Act 1981 (costs are in the discretion of the court) to make a costs order in favour of or against a person who is not a party to proceedings, that person must—

(a) be added as a party to the proceedings for the purposes of costs only; and

(b) be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.”

Previously used against non-parties controlling the litigation.

Orders should not be made for costs that would have been incurred in any event.

Redressing the balance

Much still to be done to redress the astonishing imbalance between the well-resourced bodies who seek these injunctions and those who seek to challenge them

Ritchie and Bennathan's judgments on CPR 40.9 help in a small but significant way.



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Protest Injunctions

Owen Greenhall, Garden Court Chambers

26 January 2023



Committal for Contempt: Recent issues

- i) Knowledge of the order and contempt
- ii) Sanction for contempt
- iii) Costs



Cuciurean v Secretary of State for Transport [2021] EWCA Civ 357

- If complying with alternative service, then no requirement to have actual knowledge of injunction for contempt.
- Lack of knowledge goes to sanction only.
- Defendant can apply various alternative service provisions if unfair.



LB of Barking and Dagenham v Persons Unknown [2022] EWCA Civ 13

"[*Gammell*] decided that there was no need to join newcomers to an action in which injunctions against persons unknown had been granted and **knowingly** violated by those newcomers" [30]

"... it was essential to the reasoning [in *Gammell*] that such injunctions, whether interim or final, applied in their full force to newcomers with **knowledge** of them " [31];



LB of Barking and Dagenham v Persons Unknown [2022] EWCA Civ 13

"Lord Sumption [in *Cameron*] seems to have accepted that, where an action was brought against unknown trespassers, newcomers could, as Sir Anthony Clarke MR had said in *Gammell*, make themselves parties to the action by (**knowingly**) doing one of the prohibited acts....



LB of Barking and Dagenham v Persons Unknown [2022] EWCA Civ 13

...This makes perfect sense, of course, because Lord Sumption's thesis was that, for proceedings to be competent, they had to be served. Once Ms Gammell **knowingly** breached the injunction, she was both aware of the proceedings and made herself a party" [37]



MBR Acres v McGivern and Persons Unknown [2022] EWHC 2072 (QB)

“I do not find it easy to reconcile a requirement of knowing breach of injunction, as a pre-requisite for becoming a "Persons Unknown" defendant by operation of the *Gammell* principle, with the earlier decision of the Court of Appeal in *Cuciurean*, in which the Court rejected any requirement of "knowing" breach. What was required, the Court of Appeal held in that decision, was notice or service of the relevant order, and that could be achieved by alternative service.”



Sanction

- i) Maximum: 2 years imprisonment
- ii) Suspended committal order
- iii) Financial penalty



Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9

“Civil disobedience may be defined as a public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations): see e.g. John Rawls, *A Theory of Justice* (1971) p 364. Where these conditions are met, such acts represent a form of political protest, both in the sense that they are guided by principles of justice or social good and in the sense that they are addressed to other members of the community or those who hold power within it...”



Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9

“It seems to me that there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved...”



Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9

“Second, by reason of that difference and the fact that such a protestor is generally—apart from their protest activity—a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law-breaking...”



Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9

“Third, part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protestor's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches.”



National Highways Ltd v Buse [2021] EWHC 3404 (Ch)

- Admission at first hearing should be given full credit
- Consider totality for multiple breaches
- There is no dialogue where Defendant intends to commit breach in future (*Heyatawin*)



Cuciurean v Sos Transport and HS2 Ltd [2022] EWCA Civ 1519

- 268 days imprisonment upheld
- Fine £3,000 quashed
- Multiple previous breaches
- No such things as ‘Cuadrilla Discount’
- J wrong to treat contesting the injunction as aggravating feature
- J was wrong to apply algorithm to calculate the length of sentence from the length of breach



Sentencing Guidelines

- i) Breach of Criminal Behaviour Order/ASBO
- ii) Credit for guilty plea
- iii) Suspended sentences
- iv) Mental Health
- v) Children and Young Persons



Costs: Attorney General v Crosland [2021] UKSC 15

“In determining whether the claimed amount is reasonable and proportionate, the court may take into account the respondent’s means.”

“As the respondent’s rights under article 10 ECHR are engaged in the present case, the combination of any penal measure and any costs order must be a proportionate interference with such rights.”



Costs: Heyatawin [2021] EWCA

“We would not rule out that, in an extreme case, the imposition on a contemnor in a protest case of an order to pay a large sum of costs might be part of a package of measures that would render the interference with his Convention rights under articles 10 and 11 disproportionate. However, in most cases, the application of the usual costs rules to contemnors in protest cases is unlikely to give rise to an unjustified interference with the protestor’s rights.”



Costs: Heyatawin [2021] EWCA

BUT the court must be careful to ensure that:

- Costs claimed have been proportionately and reasonably incurred and
- Costs are proportionate and reasonable in amount.



Costs: SoS for Transport v Cuciurean [2022] EWCA Civ 661

- No costs protection under criminal legal aid certificate
- Judge must have evidence of inability to pay before any issue arises (none given for Mr Cuciurean)
- Costs governed by general principles in the CPR
- “Contempt cases, even in protest cases, are not in some special category even though tempered to some extent by the approach in *Crosland*”



Thank you

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