



Neutral Citation Number: [2021] EWHC 3081 (QB)

Claim No: QB-2021-003977

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

The Law Courts

50 West Bar

Sheffield S3 8PH

Date: 17 November 2021

Before :

MR JUSTICE LAVENDER

Between:

National Highways Limited

- and -

**Persons unknown deliberately causing the blocking,
slowing down, obstructing or otherwise interfering
with the flow of traffic onto or off or along the
strategic road network for the purpose of protesting
and Others**

Saira Kabir Sheikh QC and Charles Merrett (instructed by the
Government Legal Department) for the **Claimant**

The following Defendants in Person: **Dr Diana Lewen Warner** (27th),
Jerrard Mark Latimer (44th), **Liam Norton** (54th), **Michael Brown** (67th), **Rob Stuart** (83rd),
Stephen Gower (95th), **Tim Speers** (105th), **Victoria Anne Lindsell** (110th)
and **Andria Efthimious-Mordaunt** (123rd)

Owen Greenhall (instructed by **Hodge Jones Allen**)

for **Jessica Branch** and **Caspar Hughes**

Hearing date: 11 November 2021

JUDGMENT

Mr Justice Lavender:

(1) Introduction

1.

The purpose of this judgment is to set out the reasons for the decision which I announced at the conclusion of the hearing in the Royal Courts of Justice on 11 November 2021, which was that I would not set aside the ex parte interim injunction made by Linden J on 25 October 2021.

2.

In that hearing, I was also invited to vary Linden J's injunction, if I did not set it aside altogether, and, in some respects, it was conceded that I should do so. Insofar as there were disputed issues about the terms of Linden J's injunction, I decided those issues at the hearing for the reasons which I gave then, which I will not rehearse.

3.

In effect, I varied Linden J's injunction, although the means by which I achieved that end was to discharge his order with effect from 11 November 2021 and to make a differently worded injunction in its place.

4.

For the purposes of this judgment, it is only necessary to refer to paragraphs 3.1 and 3.2 of the injunction which I made on 11 November 2021, which is in the following terms:

With immediate effect and until the earlier of (i) Trial; (ii) Further Order; or (iii) 23.59 pm on 31 December 2021, the Defendants and each of them are forbidden from deliberately undertaking the activities prohibited in paragraphs 3.1, 3.2, 3.3 and 3.4 below:

3.1 Blocking, slowing down, obstructing or otherwise interfering with the flow of traffic onto or along or off the SRN for the purpose of protesting.

3.2 Blocking, slowing down, obstructing or otherwise interfering with access to or from the SRN, including doing so by any activity on any adjacent slip roads or roundabouts which are not vested in the Claimant, for the purpose of protesting which has the effect of slowing down or otherwise interfering with the flow of traffic onto or along or off the SRN.

5.

This injunction applies to the whole of the Strategic Road Network ("the SRN"), except those parts covered by the earlier injunctions which I will mention later.

(2) Background

(2)(b) The Insulate Britain Protests

6.

There have in recent months been a number of well-publicised protests by individuals associated with a movement called "Insulate Britain". I will call these the "Insulate Britain protests". It is not suggested that Insulate Britain is either a legal entity or the sort of unincorporated association against which an order could properly be made. The first five Insulate Britain protests were on 13 September 2021, at various locations on the M25 motorway. By the date of the hearing, there had been many more Insulate Britain protests, including:

(1)

five protests on the M25 on 15 September 2021;

(2)

three protests on the M25 on 17 September 2021;

(3)

protests on the M3 at Junction 1 and the M11 at Junction 8 on 17 September 2021;

(4)

a protest on the M25 and one on the A1M at Junction 4 (Hatfield) on 20 September 2021;

(5)

two protests on the M25 on 21 September 2021;

(6)

a protest on the A20 near Dover on 24 September 2021;

(7)

protests on the M25 on 27, 29 and 30 September 2021;

(8)

protests on the M25 and on the M1 at Junction 1 (Brent Cross) and the M4 at Junction 3 (Heathrow Airport) on 1 October 2021;

(9)

four protests on roads in London which are not part of the SRN on 4 October 2021;

(10)

a protest on the M25 on 8 October 2021 (which is the subject of committal applications currently being heard by the Divisional Court);

(11)

a protest on the M25 on 13 October 2021;

(12)

protests on roads in London on 25 October 2021;

(13)

protests on the M25 and, outside the SRN, on the A206 and the A40/4000 on 27 October 2021;

(14)

two protests on the M25 on 29 October 2021;

(15)

protests on the M25 and, outside the SRN, on the A538 (in Manchester) and the A4400 (in Birmingham) on 2 November 2021; and

(16)

a protest in Parliament Square, London on 2 November 2021.

7.

The protestors who appeared before me on 11 November 2021 and on earlier occasions made clear that it was their intention to continue protesting in this way and, indeed, that they considered

themselves obliged to do so. That is consistent with press releases and statements by other protestors reported in the media.

8.

The aims of the protestors are, in summary, to draw attention to what they consider to be failings in government policy in relation to the likely consequences of climate change resulting from global warming and to promote changes in that policy, notably the introduction of a new policy for insulating all homes in Britain.

9.

The protestors block traffic on the road where they are protesting and continue to do so until they are removed. In addition to sitting on the road, they also glue themselves to the road or to police vehicles. The protests can last for several hours, with the longest of which I am aware having lasted for seven and a quarter hours. No warnings are given to allow drivers to choose a different route so as to avoid the protest.

10.

The protestors are non-violent. They are usually removed by the police, but some drivers have taken it upon themselves to remove protestors or to drive slowly into them in an attempt to force them out of the way.

(2)(b) The Strategic Road Network and National Highways Limited

11.

Many, but not all, of the Insulate Britain protests have taken place on motorways or other parts of the SRN, which consists of 4,300 miles of motorways and major A roads. The roads forming the SRN are illustrated on maps attached to Linden J's and my order and are more precisely identified in a 249-page list attached to those orders. The SRN is of considerable importance to the economy of this country. Individuals use it daily to get to work and for a host of other purposes. It carries 69% of lorry traffic in England. In 2016 it carried 126 billion vehicle miles. That is equivalent to an average of about 29 million vehicle miles per mile of road per year, or about 80,000 vehicle miles per mile of road per day.

12.

The claimant, National Highways Limited (known until 8 September 2021 as Highways England Company Limited), was appointed as a strategic highways company and as the highway authority for the SRN pursuant to section 1 of the Infrastructure Act 2015 by the Appointment of a Strategic Highways Company Order 2015 (SI 2015/376). Title to the SRN was vested in National Highways pursuant to section 263 of the Highways Act 1980 and a Transfer Scheme made pursuant to section 15 of the Infrastructure Act 2015.

13.

The claimant has, inter alia, the following duties:

(1)

The claimant maintains the SRN pursuant to a licence dated 1 April 2015 which obliges it, inter alia, to seek to minimise disruption to road users which might reasonably be expected to occur as a result of unplanned disruption to the network.

(2)

Section 5(2)(b) of the Infrastructure Act 2015 provides that the claimant must, in exercising its functions, have regard to the effect of the exercise of those functions on the safety of users of highways.

(3)

Section 130 of the Highways Act 1980 provides that it is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority.

(2)(c) The Injunctions

14.

The claimant contends that the Institute Britain protests:

(1)

constitute trespasses and nuisances;

(2)

have caused widespread and serious disruption to road users, considerable economic damage, considerable public expense and anxiety, inconvenience and distress for road users; and

(3)

create an immediate threat to the lives of the protestors and road users, including those reliant on the movement of emergency services vehicles.

15.

The claimant has obtained four injunctions against “Persons unknown causing the blocking, slowing down, obstructing or otherwise interfering with the flow of traffic onto or off or along” relevant roads, as follows:

(1)

On 21 September 2021 I granted an interim injunction which applied to the M25 motorway (“the M25 injunction”: claim number QB-2021-003576).

(2)

On 24 September 2021 Cavanagh J granted an interim injunction which applied to the A2, A20, A2070, M2 and M20: claim number QB-2021-003626.

(3)

On 2 October 2021 Holgate J granted an interim injunction covering various access roads to London: claim number QB-2021-003737.

(4)

On 25 October 2021 Linden J made the injunction which on 11 November 2021 I effectively varied, but refused to set aside, and which applies to the whole of the SRN, except those roads covered by the first three injunctions.

16.

It is relevant to note that Transport for London has also obtained two similar injunctions, covering various significant roads in London.

17.

The only defendants to the M25 injunction were “Persons unknown”, but individual defendants have been named in subsequent injunctions, in part as a result of orders made against relevant chief constables requiring them to provide to the claimant the names of protestors who are arrested at Insulate Britain protests. There were 122 individuals named as defendants in a schedule to Linden J’s injunction. 13 more have been added. Orders have also been made in each case for alternative service on individuals by posting copies of the injunction and associated documents through their letterbox or leaving them in a separate mailbox or affixing them to the front door.

(2)(d) The Hearing

18.

A number of named defendants attended the return date hearing for Linden J’s injunction on 28 October 2021. At their request, I adjourned the hearing to 11 November 2021, both to enable them to instruct counsel and to allow time for others who were affected by Linden J’s injunction, but who were not involved in the Insulate Britain protests, to consider their position.

19.

In the event, the defendants did not instruct counsel. Instead, nine of them attended the hearing and eight of them addressed me. Their submissions primarily concerned the reasons why they had joined the protests and, especially, their concerns at the potential consequences of global warming, if it is not properly addressed. They submitted that the Insulate Britain protests were necessary, targeted, proportionate and effective and that these proceedings were not in the public interest. Indeed, they submitted that they were acting to prevent overthrow of institutions such as the court, which they contended would be the outcome of global warming, if not properly addressed.

20.

Mr Greenhall was instructed by two individuals, Jessica Branch and Caspar Hughes, who contended that they were affected by Linden J’s injunction, although they have not taken part in the Insulate Britain protests. Ms Branch attends demonstrations organised by Extinction Rebellion and Mr Hughes attends demonstrations organised by Stop Killing Cyclists, who hold protests to mark the death of cyclists in road traffic accidents.

21.

Mr Greenhall provided helpful written and oral submissions, but those submission were primarily directed at the terms of the injunction. In particular, he submitted, and I accepted, that I should discharge the provision of Linden J’s injunction which provided that service of the injunction on all “Persons unknown” could be effected by sending a copy of the injunction by email to the Insulate Britain email address, since that was not likely to bring the injunction to the attention of people who were not associated with Insulate Britain, but who might fall within the definition of “Persons unknown”.

22.

I also accepted many of Mr Greenhall’s submissions as to the operative terms of the injunction, some of which, as I have said, were not opposed. I asked him to consider over the short adjournment whether there was any way of amending paragraph 3.1 of the injunction so as to make it more focused on the activities which the claimant contends constitute torts by the Insulate Britain protestors. Other than suggesting the insertion of the word “deliberately” in paragraph 3.1 and in the definition of “Persons unknown”, a suggestion which I accepted, he did not suggest any other change to paragraph 3.1.

(3) Injunction against Persons Unknown

23.

Linden J's injunction was made against 122 named defendants as well as "Persons unknown". The named defendants included eight of the nine individuals who attended the hearing before me. The ninth individual has now been added as a named defendant. Nevertheless, it is appropriate to consider the guidance recently given by the Court of Appeal as to injunctions against "Persons unknown" in paragraph 82 of its judgment in *Canada Goose UK Limited v Persons Unknown* [2020] 1 WLR 2802:

"Building on *Cameron* [2019] 1 WLR 1471 and the Ineos requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protestor cases like the present one:

(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".

(2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction are sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. ..."

24.

As to these seven points:

(1)

The 122 defendants whose names were known were added as individual defendants when the proceedings were commenced.

(2)

I have already set out the definition of “Persons unknown” in the present case.

(3)

Paragraph 82(3) identifies what I consider to be the central issue for me to decide. I will return to this issue.

(4)

As I have said, 122 defendants were named in the order. The “Persons unknown” are capable of being identified, as attested to by the fact that more defendants have been added.

(5)

Especially in the light of the changes made at the hearing, I consider that the prohibited acts correspond as closely as is reasonably possible to the allegedly tortious acts which the claimant seeks to prevent.

(6)

Likewise, I consider that the terms of the injunction are sufficiently clear and precise to enable persons potentially affected to know what they must not do. There are references to intention both in the word “deliberately” and in the words “for the purposes of protesting”, but “deliberately” was included at Mr Greenhall’s suggestion to protect people in the position of his clients and “for the purposes of protesting” serves to distinguish protestors from others who might block or slow down the flow of traffic, perhaps merely as a result of poor driving.

(7)

I consider that the injunction has clear geographic and temporal limits. The geographic extent is considerable, since it covers 4,300 miles of roads, but this is in response to the unpredictable and itinerant nature of the Insulate Britain protests. Thus:

(a)

I granted the M25 injunction on 21 September 2021 and the next Insulate Britain protests, on 24 September 2021, were in Kent.

(b)

More recently, there have been protests in Manchester and Birmingham as well as Parliament Square in London. These protests were not on parts of the SRN, but they demonstrate that Insulate Britain protests can be held throughout the country.

(c)

If the claimant is entitled to an injunction, then I do not consider that it is appropriate to require the claimant to continue seeking separate injunctions for separate roads, effectively chasing the protestors from one location to another, not knowing where they will go next. (I note, although this did not form part of my decision, that, at a hearing on 12 November 2021 in relation to the second injunction obtained by Transport for London, one of the protestors complained of the sheer volume of documents being served pursuant to the six injunctions now in place.)

(4) The Lawfulness (or Otherwise) of the Insulate Britain Protests

25.

As I have said, the central issue for me to determine is whether there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief. As to that, it was effectively common ground that there is a real and imminent risk of more Insulate Britain protests taking place. As I have said, the protestors regard themselves as obliged to continue with their protests. There is a dispute, however, whether the protests involve the commission of the torts of trespass and nuisance. In effect, the defendants contend that, by conducting the Insulate Britain protests, they are exercising their rights to freedom of expression and freedom of assembly.

26.

It is not, of course, for the claimant to prove its case on an application for an interim injunction. According to the principles established in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (which Morgan J held in paragraph 91 of his judgment in *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch) apply to an application for an interim quia timet injunction), it is sufficient for the claimant to show that there is at least a serious issue to be tried. However, I bear in mind that section 12(4) of the Human Rights Act 1998 requires that the court must have particular regard to the importance of the Convention right to freedom of expression if the court is considering whether to grant any relief which, if granted, might affect the exercise of that right.

27.

Not every protest on a highway constitutes a trespass. That was decided by a majority of the House of Lords in *DPP v Jones* [1999] 2 AC 240. More recently, in *DPP v Ziegler* [2021] 3 WLR 179, the Supreme Court has considered the extent to which a protest which involved obstructing the highway may be lawful by reasons of articles 10 and 11 of the European Convention on Human Rights.

28.

Ziegler was a criminal case. The defendants were charged with obstructing the highway, contrary to section 137 of the Highways Act 1980. They accepted that they had obstructed the highway, since they had lain in the middle of the approach road to the conference centre where the arms fair against which they were protesting was taking place and had blocked traffic approaching the centre for 90 minutes. They contended, however, that they had not acted “without lawful .. excuse”. The district judge acquitted them, on the basis that the prosecution had not proved that they acted without lawful excuse. The Divisional Court allowed an appeal by the prosecution, but the Supreme Court reversed the Divisional Court’s decision.

29.

Although *Ziegler* was a criminal case, the submissions of both Miss Sheikh and Mr Greenhall proceeded on the basis that what was said in that case was applicable to the question whether the obstruction of the highway by protestors constituted the tort of trespass or nuisance. I agree.

30.

In paragraph 58 of their judgment, Lords Hamblen and Stephens JSC agreed with the Divisional Court that the issues which arise under articles 10 and 11 require consideration of the following five questions:

(1)

Is what the defendant did in exercise of one of the rights in articles 10 or 11?

(2)

If so, is there an interference by a public authority with that right?

(3)

If there is an interference, is it “prescribed by law”?

(4)

If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 or article 11, for example the protection of the rights of others?

(5)

If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?

31.

In the present case, the answers to the first four questions are as follows:

(1)

By participating in the Insulate Britain protests, the defendants are exercising their rights to freedom of expression and freedom of assembly in articles 10 and 11.

(2)

The application for, and the grant of, an injunction to prevent the defendants continuing with the Insulate Britain protests on the SRN is an interference with those rights by a public authority.

(3)

That interference is “prescribed by law”, namely section 37 of the Senior Courts Act 1981 and the cases which have decided how the discretion to grant an interim quia timet injunction should be exercised, together with section 130 of the Highways Act 1980.

(4)

The interference is also in pursuit of a legitimate aim, namely the protection of the rights of other road users and the promotion of safety on the SRN.

32.

Turning to the question whether the interference is “necessary in a democratic society”, I note that the Divisional Court in Ziegler said as follows in paragraph 64 of its judgment ([\[2020\] QB 253](#)):

“That last question will in turn require consideration of the well-known set of sub-questions which arise in order to assess whether an interference is proportionate:

(1) Is the aim sufficiently important to justify interference with a fundamental right?

(2) Is there a rational connection between the means chosen and the aim in view?

(3) Are there less restrictive alternative means available to achieve that aim?

(4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?”

33.

The question whether an interference with a Convention right is “necessary in a democratic society” can also be expressed as the question whether the interference is proportionate. In Ziegler, Lords Hamblen and Stephens JSC stated in paragraph 59 of their judgment that:

“Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case.”

34.

Lords Hamblen and Stephens JSC quoted, inter alia, paragraphs 39 to 41 of Lord Neuberger MR’s judgment in *City of London Corp’n v Samede* [2012] PTSR 1624:

“39. As the judge recognised, the answer to the question which he identified at the start of his judgment [the limits to the right of lawful assembly and protest on the highway] is inevitably fact sensitive, and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public.

40. The defendants argue that the importance of the issues with which the Occupy Movement is concerned is also of considerable relevance. That raises a potentially controversial point, because as the judge said, at para 155: ‘it is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors’ views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command ... the court cannot—indeed, must not—attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention ... the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous.’

41. Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom. In this case the judge accepted that the topics of concern to the Occupy Movement were ‘of very great political importance’: para 155. In our view, that was something which could fairly be taken into account. However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important, or with which they agree. As the Strasbourg court said in *Kuznetsov v Russia*, para 45: ‘any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles—however shocking and unacceptable certain views or words used may appear to the authorities—do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means ...’ The judge took into account the fact that the defendants were expressing views on very important issues, views which many would see as being of considerable breadth, depth and relevance, and that the defendants strongly believed in the views they were expressing. Any further analysis of those views and issues would have been unhelpful, indeed inappropriate.”

35.

I have set this passage out in full because, given the nature of the submissions which the defendants made to me, I want them to understand that, while I can acknowledge, and I readily do acknowledge, that, by the Insulate Britain protests, they are expressing sincere and strongly held views on very

important issues, it would be wrong for me to express either agreement or disagreement with those views. Many of the submissions made to me consisted of an invitation to me to agree with the defendants' views and to decide the case on that basis. That is something which I cannot do, just as I could not decide this case on the basis of disagreement with their views.

36.

It is permissible for me to observe that, insofar as the defendants assert that something should be done about the prospect of climate change, they are in agreement with the government. Where they disagree with the government is on what should be done about the prospect of climate change. The hearing took place during the 26th Conference of the Parties, also known as CoP26, which has demonstrated that there are many different views on that subject, a fact which is hardly surprising, since it is a very important political issue.

37.

Moreover, the specific objective of the Insulate Britain protests, namely a change in government policy in relation to the insulation of homes in the United Kingdom, concerns a very particular aspect of government policy in this field. Again, CoP26 has demonstrated that many measures contribute to the efforts which are being made to limit global warming. Whether to emphasise one policy response or another to a perceived threat is a quintessentially political issue.

38.

Lords Hamblen and Stephens JSC reviewed in paragraphs 71 to 86 of their judgment the factors which may be relevant to the assessment of the proportionality of an interference with the article 10 and 11 rights of protestors blocking traffic on a road. Disagreeing with the Divisional Court, they held that each of the eight factors relied on by the district judge in that case were relevant. Those factors were, in summary:

(1)

The peaceful nature of the protest.

(2)

The fact that the defendants' action did not give rise, either directly or indirectly, to any form of disorder.

(3)

The fact that the defendants did not commit any criminal offences other than obstructing the highway.

(4)

The fact that the defendants' actions were carefully targeted and were aimed only at obstructing vehicles heading to the arms fair.

(5)

The fact that the protest related to a "matter of general concern".

(6)

The limited duration of the protest.

(7)

The absence of any complaint about the defendants' conduct.

(8)

The defendants' longstanding commitment to opposing the arms trade.

39.

This list of factors is not definitive, but it can serve as a useful checklist. In the present case:

(1)

The Insulate Britain protests have been peaceful. Although some protestors have glued themselves to the road, it has not been suggested that there has been any instance in which a protestor has offered physical or violent resistance to being removed from the road.

(2)

The Insulate Britain protests have, so far, not given rise to any form of disorder. However, other road users have increasingly taken steps themselves to remove the protestors from the road. On one occasion, this resulted in a protestor being tied up with his own banner. The risk of disorder is increasing.

(3)

It is not suggested that the Insulate Britain protestors committed any offences other than obstructing the highway.

(4)

The Insulate Britain protests are not targeted in any way at those against whom the protestors are protesting. Insofar as they are protesting about government policy, the protests (save perhaps for the recent protest in Parliament Square) are not targeted at government.

(5)

I accept that the Insulate Britain protests relate to a “matter of general concern”, in that they relate to what the government acknowledge to be an important issue. However, insofar as they seek to pursue the specific objective of changing government policy about home insulation, the protests could be said to relate to a rather more specific issue.

(6)

The Insulate Britain protests are many in number and are not limited in duration. The disruption which they have caused to users of the SRN is considerable.

(7)

It is abundantly clear from press reports that many members of the public object to the Insulate Britain protests. At least one press report suggested that an ambulance was held up at one protest, but the defendants deny this.

(8)

As I have already said, I accept that the defendants are expressing genuine and strongly held views.

40.

Looking at the four questions identified in paragraph 64 of the Divisional Court’s judgment in Ziegler :

(1)

By protesting on the SRN, the defendants are obstructing a road network which is important both for very many individuals and for the economy of England and Wales. In that context, it is strongly arguable that the aim pursued by the claimant is sufficiently important to justify interference with a fundamental right. I base that conclusion primarily on the considerable disruption caused by the Insulate Britain protests and less on the risk to safety, which, thankfully, has not yet resulted in any injuries being inflicted at any of the protests.

(2)

I also accept that it is strongly arguable that there is a rational connection between the means chosen by the claimant and the aim in view. The aim is to allow road users to make use of the SRN, which is their right. Prohibiting the blocking of those road users' exercise of their rights is directly connected to that aim.

(3)

There are no less restrictive alternative means available to achieve that aim. As to this:

(a)

An action for damages would not prevent the disruption caused by the protests. The claimant is suing to enforce the rights of others and so could not claim damages for their loss. The loss caused by the protests would be difficult, if not impossible, to quantify. Several of the defendants told me that they did not have much money, so they may well be unable to pay substantial damages. The threat of having to pay damages does not appear in the circumstances to be likely to have any deterrent effect.

(b)

It might be said that prosecutions for the offence of obstructing the highway would be a sufficient response to the Insulate Britain protests. However, all of the named defendants have been arrested and some of them have told me that they will continue to protest and they are willing to give up their liberty.

(c)

By contrast, there is some evidence that injunctions do affect the protestors' behaviour. For instance, it may be that the M25 injunction was the reason why the next Insulate Britain protest was in Kent, rather than on the M25. More recent protests have been on roads which are not part of the SRN. Moreover, the M25 injunction has already led to committal applications, which, if successful, may prevent some protestors from continuing their protests during the period of their committal.

(4)

Taking account of all of the factors which I have identified in this judgment, I consider that it is strongly arguable that the injunction granted by Linden J strikes a fair balance between the rights of the individual protestors and the general interest of the community, including the rights of others. As to this:

(a)

On the one hand, the injunction only prohibits the defendants from protesting in a particular way. I do not accept the defendants' claim that it was necessary for them to protest in this way. There are many other ways of protesting. Moreover, as I have already noted, unlike the protest in Zeigler, the Insulate Britain protests on the SRN are not directed at a specific location which is the subject of the protests.

(b)

On the other hand, the Insulate Britain protests have caused repeated, prolonged and serious disruption to the activities of many individuals and businesses and have done so on roads which are particularly important to the population and economy of this country. The protestors choose where to protest, but they deprive other road users of any choice to avoid the protests and to avoid being held up for long periods of time, with all of the personal or economic consequences which may follow.

41.

Finally, looking at the same matters in terms of the American Cyanamid principles:

(1)

There is a serious issue to be tried whether the Insulate Britain protests involve the commission of the torts of trespass and nuisance on the SRN. Indeed, although section 12(3) of the Human Rights Act 1998 is not applicable, I consider that the test which it imposes is met and that the claimant is likely to establish at trial that the Insulate Britain protests involve the commission of the torts of trespass and nuisance on the SRN.

(2)

Damages would not be an adequate remedy for either party. I have already dealt with the position of the claimant. It would be difficult to quantify the loss to the defendants if they were wrongly prohibited from carrying on a lawful protest.

(3)

For reasons which I have already given, the balance of convenience strongly favours the continuation of the injunction.

(5) Conclusion

42.

For all of these reasons, I concluded that it was appropriate not to set aside Linden J's injunction.