2 of 2 DOCUMENTS

Heathrow Airport Ltd (for and on behalf of itself, the contractors, sub-contractors, suppliers and service providers ('the Airport Users') and the lessees, licensees, and concessionaires ('the Lessees') and another v Garman and others

QUEEN'S BENCH DIVISION

[2007] EWHC 1957 (QB), HQ07X02500, (DAR Transcript: Marten Walsh Cherer)

HEARING-DATES: 6 AUGUST 2007

6 AUGUST 2007

CATCHWORDS:

Public order - Demonstration - Demonstration in designated area - Injunction - Claimants fearing defendants intending to carry out unlawful demonstrations at Heathrow Airport - Claimants seeking injunctive relief preventing defendants carrying out unlawful disruptions of Heathrow Airport - Whether injunctive relief should be granted

COUNSEL:

T Lawson-Cruttenden for the Claimants; N Blake QC, S Harrison and S Simblet for the First and Second Defendants; The Fourth and Fifth Defendants were represented by Friends of the Earth Rights & Justice Centre; M Chamberlain and S Love for Transport for London and London Underground Ltd.

PANEL: SWIFT J DBE

JUDGMENTBY-1: SWIFT J DBE

JUDGMENT-1:

SWIFT J DBE:

[1] This is an application for injunctive relief made by the First Claimant, Heathrow Airport Ltd, the manager and operator of Heathrow Airport, and the Second Claimant, the First Claimant's managing director, against a number of persons and organisations who they allege are planning to take unlawful action so as to disrupt the operation of the airport.

[2] I heard the application on 1 to 3 August and 6 August of this year. The Claimants were represented by Mr Tim Lawson-Cruttenden, solicitor advocate. The Defendants were all represented by Mr Nicholas Blake QC, Miss Stephanie Harrison and Mr Stephen Simblet. Mr Chamberlain represented Transport for London ('TFL') and London Underground Ltd ('LUL').

[3] I make an order pursuant to CPR 19.4(1) that TFL and LUL be joined in this claim for the purposes only of making submissions at the hearing of this application for injunctive relief. I also make an order that the Claimants cease to represent TFL and LUL as providers of underground services at the airport.

BACKGROUND

[4] Heathrow Airport is the busiest international airport in the world. Over 78,000 people are employed at the airport. The airport covers a wide area bounded by arterial roads, both motorway and non-motorway. Included within the airport are two underground stations owned by LUL and a mainline railway station. In addition to the main airport site, there are island sites in the immediate vicinity of the airport. Parts of the airport site (in particular the Terminals, car parks and access roads) are open to members of the public, including (but not confined to) passengers and their families. The remainder is out of bounds to all but members of staff. There are byelaws which enable the airport authorities to exclude or otherwise deal with those who behave unacceptably on their property. Breach of a byelaw is punishable by a fine.

[5] The average daily number of air transport movements at the airport is approximately 1,296 a day. The average number of passengers arriving and departing each day is 185,000. August is the airport's busiest month. Approximately 50,000 vehicles a day enter the Central Terminal of the airport through the underground tunnel which connects the airport to the M4 motorway. In addition, a further 12,500 vehicles a day enter the area around Terminal 4.

[6] The airport has been expanded on a number of occasions. That fact, together with problems with aircraft noise, increased road traffic and concerns about the effect on the environment, have led over the years to the formation of various groups of local residents who have joined together to oppose further expansion. The airport now proposes to build a third runway. Consultation on the plans is due to start next year although, if the work goes ahead, the runway will not be installed for at least a decade. If it were built, it would result in the demolition of a nearby community. Not surprisingly, the proposals have caused great controversy locally.

[7] Meanwhile, more general concerns have been developing about the effect of the aviation industry on climate change. Heathrow is said to be one of the UK's largest emitters of carbon dioxide. This has caused it to become a focus for those who are involved in certain environmental movements. Many of those believe passionately and sincerely that it is only by acting now to reduce carbon emissions from aviation and other major sources that the environment, and the human race, can be saved from disaster. Most such people express their opposition, and their views and demands, peacefully and lawfully. A small minority regard direct action, including unlawful direct action, as a legitimate weapon in the fight against climate change, regardless of any limitations that that action might place on the rights of others to go about their business peacefully and lawfully. By 'unlawful direct action', I mean direct action which gives rise to the commission of a tort or criminal offence.

THE THREAT OF UNLAWFUL DIRECT ACTION

[8] One group which is very concerned about the effects of aviation on the environment is Plane Stupid. According to one of its founders, Mr Joss Garman, Plane Stupid is a grass roots movement which was created to challenge Government and aviation industry plans for expansion at British airports. On 24 May 2007, the group released a statement to the press. The statement included this passage:

'REVEALED: PLANS FOR NEWBURY BY-PASS OF THE SKIES - Mass direct action this summer against proposed 'third runway'.

This August, thousands of environmental activists and airport residents are planning to establish a 'high impact' direct action protest camp outside Heathrow. This year's 'Camp for Climate Action' follows on from the success of last year's 'Battle of Drax'.

Last summer 600 people took mass direct action in an attempt to shut down Drax Power Station in Yorkshire - the single biggest emitter of carbon dioxide in the UK. A new grassroots movement on climate change was born. Since Drax, groups have invaded an airport runway, occupied airline offices, and chained themselves to the coal belts at a climate-wrecking power station.

PLANE STUPID is one of the Groups that make up the 'climate camp' movement and are one of those helping to mount this summer's action.'

[9] Also on 24 May 2007, the organisation 'Camp for Climate Action' ('CfCA') published a press release about the proposed activity at Heathrow. This was headed 'Last Year Drax, This Year Heathrow' and stated that the purpose of the camp was 'eight days of education, sustainable living and direct action against the root causes of climate change'. The camp would, it said, 'oppose the lunacy of the Government's airport expansion plans, target industry giants profiteering from the climate crisis and raise awareness of the need to fly less'. It stated 'Mass direct action will disrupt the activities of the airport and the aviation industry.'

[10] Another document was posted on CfCA's website at about the same time on 24 May 2007. It was not, as the Claimants apparently believed, a press release, but was a news item from the Evening Standard newspaper. It was not therefore a document originating from CfCA, although it was displayed on their website without comment, qualification or denial. The news item stated that protestors at the CfCA said that they were planning to infiltrate the Terminal buildings at Heathrow by posing as passengers and then cause chaos once inside, to blockade roads and railways into Heathrow, to occupy airline offices and to take 'direct action' against freight companies and firms that supply food for passengers.

[11] The Claimants say that the fact that this document appeared on the website of CfCA demonstrates that the description of the types of action that would be taken came from within that organisation. The Defendants say that it

shows no such thing. They point out that none of the activities was mentioned in CfCA's own press release. They say that the document may be nothing but a highly coloured account which CfCA were happy to display for the purpose of generating increased publicity.

[12] In the days that followed, a large number of articles were published in the press, suggesting that large scale protest action was planned by those attending the camp, with a view to disrupting the operation of the airport. As a consequence of the information received through the media, the airport authorities became exceedingly concerned at the action that was being planned. They were aware that (as had been referred to in the Plane Stupid press release) CfCA had in 2006 organised a similar camp near to the Drax power station, during which a number of activists had occupied the power station and prevented machinery from operating for some hours. They had done so in defiance of an injunction made by a High Court Judge. In addition, on 24 September 2006, members of Plane Stupid (including the First and Second Defendants) were known to have occupied the taxiway at Nottingham East Midlands Airport for over four hours, causing disruption to flights. The Heathrow authorities feared that that had been a 'rehearsal' for more widespread action at Heathrow this summer. Plane Stupid members had also participated in blockades of the British Airways Authority's (BAA's) head offices on 3 April 2006 and 2 May 2007.

[13] The airport authorities became seriously concerned at the level of disruption to the travelling public that might be caused by the type of action described in the Evening Standard article of 24 May 2007. Their concern was heightened because of the current security situation, which means that the airport is believed to be at a high risk of terrorist attack. The Claimants therefore made an application for injunctive relief aimed at avoiding the disruption to their operations which would inevitably result from widespread unlawful activity at the airport. The Claimants sought this relief on three bases, namely (1) under the provisions of the Protection from Harassment Act 1997 (both Claimants); (2) at common law, pursuant to the common law torts of trespass and nuisance, including nuisance caused by restricting rights of access/egress (the First Claimant alone); and (3) pursuant to its byelaws (the First Claimant alone).

THE DIRECTIONS HEARING

[14] The matter came before Underhill J ex parte for directions on 20 July 2007. He granted leave to the First Claimant to represent, as well as itself, airport users (ie contractors, sub-contractors, suppliers and service providers), together with 'the lessees' (ie lessees, licensees and concessionaires at the airport). The Second Claimant was given leave to represent the employees of the First Claimant, of the airport users and of the lessees, together with the 'Protected Persons' (who were defined as including air passengers using the airport for travel purposes and their families). The Defendants submit that the order in respect of the Second Claimant is drawn far too wide.

[15] Underhill J also granted leave to the Claimants to proceed against the Third, Fourth and Fifth Defendants as representatives of various groups and organisations. I shall refer to the issue of the representative orders in due course. Suffice it to say for now that the Defendants contend that the orders are and were inappropriate and should be discharged. Underhill J also ordered the Claimants to file Particulars of Claim. This has now been done. The relief claimed is an injunction.

THE CURRENT HEARING

[16] The hearing of the application for an injunction was listed before me on 1 August 2007. The relief sought is said to be interim in nature, although the draft order specifies no end or return date. Furthermore, the purpose of the order is to deal with circumstances which are expected to arise only during the next few weeks - specifically between 14 August and 21 August, the advertised dates for the climate camp. For the Defendants, Mr Blake has submitted that, in effect, I am being asked to make a final order.

[17] The relief sought was originally (and, although modified to some extent, still remains) extremely wide-ranging, in particular the relief sought under the 1997 Act. The draft order circulated to the court and to the parties before the hearing included all the Defendants within the definition of 'Protestors', and therefore potentially included those organisations who were the subject of representative orders and their members and supporters. That would have constituted a very large number of people indeed. The Claimants were seeking to restrain the Defendants from 'coming to or remaining at' the airport, and the fact that members of, for example, the National Trust and employees of the local Borough Council might be caught within the terms of the proposed order caused a considerable degree of concern to many.

[18] There was particular concern on the part of TFL and LUL, who learned of the proposed application by means of a BBC radio news broadcast on the morning of 27 July. They had received no official notification of the proceedings, despite the fact that the representative order made by Underhill J provided for them, as service providers, to be

represented by the First Claimant and despite the fact that orders were being sought which would have affected the underground and rail links to the airport for which they are responsible. I am bound to say that I find it extraordinary that there should have been no attempt to inform or consult with TFL and LUL in advance about the action that the Claimants proposed to take. In the event, once they were aware of what was on foot, they managed to secure amendments to the orders being sought, which in effect excluded their services.

[19] The Claimants now seek an order restraining the Protestors (which term is defined more narrowly than in the original draft order) from pursuing a course of conduct which amounts to harassment of Protected Persons contrary to the 1997 Act and, in particular, from assaulting, molesting or threatening them; publishing their identity; obstructing them; obstructing vehicles or trains on which Protected Persons are or may be travelling; creating, forming or establishing protest camps in the vicinity of Heathrow Airport (save for in designated areas); carrying various equipment capable of being used for the purpose of unlawful direct action and trespassing on, conducting any demonstration, protest or other activities on the airport or in the vicinity of the airport save in designated areas. They also seek orders preventing the Defendants from picketing, demonstrating or loitering near to premises belonging to or operated or used by the First Claimant, airport users or Protected Persons and from inciting, compelling or otherwise seeking to persuade any Protected Person against his will from doing something which he is entitled or required to do. The Claimants seek a power of arrest to be attached to the order.

THE DEFENDANTS

[20] The Defendants named in the application, all of whom have provided witness statements, are as follows.

[21] The First Defendant is Mr Joss Garman. He does not dispute his status as a Defendant. He has offered to give undertakings to the court not to enter airport land or to incite or abet any person to do so with the intention of obstructing or harassing any person. He does so without making any admissions that he has behaved in this way in the past or had intended to do so in the future. His undertakings were offered prior to the start of the hearing. Despite the offered undertakings, the Claimants pursued their application for injunctive relief against the First Defendant, and also against Mr Murray and Mr Stewart, with whom I shall deal shortly. It was not until his closing speech that Mr Lawson-Cruttenden indicated that, subject to the agreement between the parties of an appropriate wording, and to the court's willingness to accept the undertakings, the Claimants were happy for the proceedings against the First, Second and Fourth Defendants to be disposed of in that way.

[22] The Second Defendant is Mr Leo Murray. He also does not dispute his status as a Defendant. He, too, has offered to give undertakings to the court in the same terms as Mr Garman and with the same proviso.

[23] The Third Defendants are Mr Garman and Mr Murray, as representatives of Plane Stupid, the group to which I have already referred and of which Mr Garman was a founder. Mr Garman and Mr Murray act as spokespersons for Plane Stupid. In his witness statement, Mr Murray says that the objectives of Plane Stupid are to stop airport expansion, end short haul flights and tax aviation fuel. Neither deny that Plane Stupid supports and encourages unlawful direct action in the pursuit of those objectives.

[24] The Fourth Defendant is Mr John Stewart, both on his own behalf and as a representative of the members of the Heathrow Association for the Control of Aircraft Noise '(HACAN' or 'HACAN ClearSkies') and of AirportWatch. Mr Stewart does not dispute his status as a Defendant, although he denies that he was intending to participate in any unlawful direct action at the climate camp. He, too, has offered to give undertakings to the court in the same terms as Mr Garman and Mr Murray and with the same proviso.

[25] Mr Stewart is the paid chair of HACAN and the unpaid chair of AirportWatch. He denies that HACAN or AirportWatch are groups committed to unlawful direct action, although he acknowledges that some of their members might resort to such action on an individual basis.

[26] The Fifth Defendant is Ms Geraldine Nicholson, on her own behalf and as representative of the No Third Runway Action Group ('NoTRAG'). In her witness statement, she denies that she has ever been involved in any unlawful direct action or would contemplate being so involved. She offers no undertakings. She will be on a family holiday for the duration of the climate camp. That was made clear in her witness statement, which was available at the beginning of the hearing. It was not until his final speech that Mr Lawson-Cruttenden said that he did not wish to pursue the proceedings against Ms Nicholson on her own behalf. She is chair of NoTRAG and regularly speaks on its behalf. She denies that NoTRAG would ever become involved in any form of unlawful direct action.

CAMP FOR CLIMATE ACTION

[27] No representative order was sought or made to enable CfCA to be joined in the action. In their skeleton argument, the Claimants explained that this was because they took the view that CfCA did not have the characteristics of an unincorporated association (although, in their latest draft order, they describe it as such). The Defendants took issue with this view and questioned why smaller local groups had been made the subject of representative orders in preference to the group primarily responsible for organising the climate camp.

[28] It seems from the evidence that the camp will attract several thousand visitors, some resident and some on a daily basis. There will be discussions, workshops and other entirely peaceful and lawful activities. Doubtless there will be many people visiting the camp who will confine themselves to these activities. However, it seems plain from the evidence as a whole that it is intended that a central part of the camp should be some form of direct action, including unlawful direct action, aimed at disrupting the operation of the airport and thus gaining publicity for the cause of climate change. The exact location of the camp is unknown, although it is likely to be outside the airport but within a short distance of its perimeter fence.

THE EVIDENCE

[29] Much of the evidence relied upon by the Claimants consists of remarks quoted in the press or material contained on websites over which the persons or organisations quoted will have had no control. Such material may or may not be accurate. It is necessary to be cautious before reaching conclusions based upon it. Also, the Claimants point to links between the various groups and suggest that they all, in effect, have a common purpose, namely to further their objectives by way of unlawful direct action. It is important, in examining such links, to recognise that, in a relatively limited field such as that covering environmental concerns associated with aviation, some discussion about matters of common interest and some sharing of the personnel involved in the various different organisations is to be expected. The position is further complicated by the fact that organisations may co-operate with each other from motives of mutual gain. For example, local groups may benefit from the publicity generated by a national organisation taking up their cause, while the larger organisation may gain credibility from local support. Such co-operation does not necessarily mean that all the organisations have the same aims and objectives and the same means of achieving them. I shall consider the evidence in respect of each of the Defendants separately.

Mr Garman And Mr Murray

[30] Both are committed campaigners on environmental and a range of other issues. Mr Garman has previous convictions for aggravated trespass when participating in an anti-war protest and in connection with a protest against Trident missiles. Both are adamant that they are wholly peaceful in their activities and would never knowingly cause anyone alarm or distress.

[31] They were both involved in the Nottingham East Midlands Airport occupation and I have seen a DVD in which they talk openly about the legitimacy of unlawful direct action (and of causing disruption to the travelling public) in order to protest about the effect of aviation on climate change. In the course of the DVD, Mr Murray said this:

'The idea behind our direct action campaign at the moment is really to frighten the people who are making those decisions into reconsidering and to think that maybe their plans may not end up being economically viable.'

Plane Stupid

[32] I have already referred to the objectives of Plane Stupid and its involvement in the occupation of the taxiway at Nottingham East Midlands Airport and in the blockade of BAA's Heathrow offices. The press release issued by Plane Stupid on 24 May 2007 made it clear that it would be a prime mover in the 'high impact direct action' which was to take place during the climate camp at Heathrow. The unlawful action at the Drax Power Station last year was mentioned in the press release with apparent approbation.

Mr Stewart

[33] Mr Stewart is an experienced protester who was involved in campaigns against road building in the 1990s. He admits that some of the direct action in which he has taken part involved unlawful action, including trespass. He regards this as a legitimate form of protest. He was for some time at least a spokesman for Plane Stupid.

HACAN

[34] HACAN is a long-standing organisation dedicated to campaigning on behalf of those who suffer because of aircraft flight paths. Its roots lie in local communities affected by aircraft noise and pollution. According to Mr Stewart, HACAN has about 25,000 members, either as individuals or as members of community and residents' groups. Mr

Stewart states that HACAN is essentially a lobbying organisation. It has a seat on the official Heathrow Area Consultative Committee. It is currently concerned about the proposals to expand Heathrow by adding a new runway and is attempting to bring together a coalition of interests to oppose the proposals. It is intended that the coalition should include environmental groups such as the National Trust, the Mayor and Greater London Assemblies and local authorities. Mr Stewart says that HACAN does from time to time stage public meetings and demonstrations. There has, however, been no history of trouble, or of disorder or unlawful behaviour at these events.

[35] The Committee of HACAN is composed of individuals such as former senior civil servants and local Councillors. Its president is the former MP for the area, now a member of the House of Lords. Mr Stewart says that HACAN is not a direct action organisation and does not condone civil disobedience in any form. He concedes that some members have in the past taken such action as individuals, but says that these actions have not been performed in the name of HACAN, nor have they been endorsed by HACAN. The furthest HACAN is prepared to go is to give members on request contact details for fellow members or groups which take direct action.

[36] The Claimants contend that this is not the true position. They refer to Mr Stewart's own credentials as an experienced protestor who has been prepared in the past to take unlawful direct action and to his connections with Plane Stupid. They point to a press release placed on HACAN's website on 1 January 2006 in response to the announcement by the Government of proposals to expand Heathrow further. In that press release, Mr Stewart was quoted as saying 'We stopped speaking to the Department for Transport. We have started speaking to Earth First!' (Earth First is an extreme environmental organisation known to support unlawful direct action.) He also said 'There will be the mother of all battles if the Government tries to expand Heathrow.'

[37] The Claimants also pray in aid a statement made by Mr Stewart to the effect that, if the proposals for expansion went ahead, he thought it would be justifiable for HACAN to 'look at blockading the airport or something like that'.

[38] Mr Stewart's explanation for these comments is that, in the first case, he had been trying to emphasise the fact that HACAN members felt let down by the airport and by Government authorities and, in the third case, that he had been speculating on what might happen some time in the future. He said that HACAN as an organisation had not spoken to Earth First and was not committed to direct action.

[39] Two other matters are relied upon by the Claimants. First, HACAN's contact details (including Mr Stewart's name and email address) appeared on the Plane Stupid press release of 24 May 2007. This demonstrates, so the Claimants say, that HACAN were a party to and authorised the press release. The same point is made in respect of AirportWatch and NoTRAG. It does not seem to me that such an inference can necessarily be drawn. Second, a Plane Stupid newsletter referred to a 'Heathrow Residents' Direct Action Workshop' to be held on 30 September 2006. A direct action talk and discussion was to be held by HACAN and another organisation. The contact details given for information about that event were those of Mr Stewart.

[40] It seems to me that some of the HACAN membership - of which Mr Stewart is plainly one - support a policy of direct action, including unlawful direct action, in order to further their cause. Mr Stewart has links with Plane Stupid and it is likely that other members of HACAN have such links too and that they would be prepared to take part in any unlawful direct action planned to take place during the climate camp. However, the uncontradicted evidence of Mr Stewart is that such a policy is not endorsed by the Committee of HACAN. In that event, it is unfortunate that they allow press releases to go out in HACAN's name, which suggest that the organisation supports and advocates such action. However, it is in my view significant that I have no evidence that any member or officer of HACAN other than Mr Stewart has been quoted as saying anything which would suggest that HACAN as an organisation supports unlawful direct action. I conclude that there is a divergence of view within the organisation as to how best to achieve its aims.

AirportWatch

[41] AirportWatch is a loose network of organisations which campaign in connection with aviation issues. Most of its supporters are organisations local to airports in the UK and Ireland. There are also a number of national organisations who are supporters of AirportWatch, including the Royal Society for the Protection of Birds (RSPB), the Woodland Trust, the World Development Trust, the National Trust, Friends of the Earth and Transport 2000. Large organisations such as these tend to come and go according to the relevance that aviation issues have to their own concerns at any given time. The effect of their affiliation to AirportWatch is that millions of people, members of these national organisations, are brought unwittingly within the 'umbrella' of AirportWatch. Supporters of AirportWatch, both individuals and organisations, are entitled to attend its meetings and its periodic conferences.

[42] Mr Stewart says that Plane Stupid is not a member of AirportWatch and there are no links between the two organisations, save that AirportWatch informs Plane Stupid about its activities and will refer persons interested in direct action to Plane Stupid. He describes AirportWatch as 'middle England in committee'.

[43] The Claimants do not accept this. They point to AirportWatch's newsletter of June 2007, compiled by Mr Stewart and a colleague. An item about the CfCA climate camp stated:

'Although it (the camp) is about direct action, it is also 'eight days of low-impact living, debates and learning skills . . .'. Although the climate camp has ruled out an invasion of the runways at Heathrow Airport, security is expected to be tight.'

The Claimants suggest that the statement that 'security is expected to be tight' in fact amounts to an invitation to take part in unlawful direct action.

[44] Reference was also made in the newsletter to an organisation (Seeds for Change) that offers free advice and training on direct action. Readers were told 'If you want to catch up on the latest direct action activities, check out PLANE STUPID's website.'

[45] On AirportWatch's website appears the 'Airport Pledge' 'We will take personal action to block airport expansion!' Immediately below appears an item about Plane Stupid which states 'If direct action (non-violent) appeals to you, against the growth of airports and of aviation, see what PLANE STUPID are doing.'

[46] The Claimants say that these extracts make it plain that, in reality, AirportWatch is an organisation committed to unlawful direct action which fully supports the unlawful direct action planned by CfCA at their Heathrow camp. Once again, they point to Mr Stewart's involvement in the organisation and his links with Plane Stupid.

[47] Witness statements were submitted by officers of the RSPB, the World Development Movement, Friends of the Earth and the Woodland Trust. All expressed concerns at their involvement in injunction proceedings. The World Development Movement and Friends of the Earth have representatives attending the climate camp to participate in workshops and to advise. All said that their organisations do not support unlawful direct action of the type contemplated by the Claimants. They are concerned at their position in the event of an injunction being made. All stated that they objected to Mr Stewart representing them in these proceedings.

Ms Nicholson And NoTRAG

[48] There is no evidence that Ms Nicholson has been involved in any form of unlawful direct action in the past. As I have said, she will be abroad during the period of the climate camp. She says that NoTRAG was formed in 2002 by local residents, together with Hillingdon Borough Council and the three MPs within the Borough, in order to fight the proposal for a third runway at Heathrow. NoTRAG is funded wholly by the Council. It lobbies, provides speakers and organises events to gain publicity for its cause. It has organised a number of peaceful marches. Ms Nicholson says that neither she nor any of the other Committee members of NoTRAG have ever taken part in any unlawful direct action. She does not agree with it. She says that, if NoTRAG were involved in unlawful activity, it would lose its funding.

[49] There are also witness statements from Ms Christine Shilling, press officer of NoTRAG, and Ms Christine Taylor, vice-chair of NoTRAG. These paint a similar picture of the activities of the organisation.

[50] In addition, Mr Raymond Puddifoot, Leader of the Hillingdon Borough Council, has provided a statement. In it, he describes the Council's reasons for opposing the proposal to build a third runway and its decision to provide funding for NoTRAG. He states that he has never been aware that NoTRAG has engaged in any unlawful activity. He makes it clear that Ms Nicholson cannot represent the Council and expresses concern about the position of Council officers who carry out duties at Heathrow in the event that an order is made against NoTRAG.

[51] The Claimants point to a comment in a press release issued by Plane Stupid in which Ms Nicholson was quoted as saying:

'BAA should not be surprised if the people are planning to come from all over the country to protest at their expansion plans. This community will be destroyed if the third runway is built at Heathrow . . . We will fight on all fronts and we will win.'

[52] They refer also to a quotation from Ms Shilling which appeared in a Plane Stupid newsletter, in which she said 'I have got nothing to lose. I have tried the political process.'

[53] The Claimants contend that these comments demonstrate that, in reality, NoTRAG is a direct action

organisation fully supportive of any action planned by the climate camp.

[54] In response, Ms Nicholson says that she believes that she has been misquoted. She says that she was contacted by somebody who told her that CfCA were going to be at Heathrow in 2007 and asked her to give a quote for a press release. That was the first time that she knew that the camp was coming to Heathrow. She believes that she did not use the words in the final sentence of the passage attributed to her, but said only 'Together we can win'. Whatever were her precise words, she says that she did not mean to suggest that she or NoTRAG would do anything unlawful. She said she was not asked to approve the press release and did not see it in advance.

[55] In her witness statement, Ms Shilling explains the circumstances in which she made her comment. The comment had been made in the course of a radio interview in which she was pressed to say what she would do in the event of her village being destroyed in order to build the third runway. She says that she had not intended to suggest that she or NoTRAG was going to take any direct action now or in the foreseeable future.

REPRESENTATIVE ORDERS

[56] Before I express my conclusions as to whether the Claimants have established on the evidence that the various Defendants and organisations have in the past been involved in unlawful direct action and/or intend to participate in any unlawful activity at Heathrow during the climate camp, it is necessary to deal with the question of representation. The Defendants contend that the individuals named in these proceedings cannot properly represent the organisations in respect of whom Underhill J made representative orders, so that the orders against them should be discharged.

[57] CPR 19.6 provides:

'(1) Where more than one person has the same interest in a claim -

(a) the claim may be begun separately; or

(b) the court may order that the claim be continued

by or against one or more of the persons who have the same interest as representatives of any other person(s) who have that interest.'

[58] There is a safeguard for a person who is made the subject of an order and who is not a party to the proceedings. CPR 19.6(4) provides that:

'Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule -

(a) is binding on all persons represented in the claim; but

(b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.'

[59] CPR 19.6 and its predecessors have formed the basis by which injunctive relief can be granted against an unincorporated association, provided that a suitable legal person can be found to represent the association as Defendant. However, for an order for representative action to be appropriate, it is essential that all those whom it is proposed should be represented have the same interests in the claim.

[60] In the present case, two questions arise. First, does the group in question have the characteristics of an unincorporated association? Second, can the persons joined as Defendants be taken fairly to represent all members of the association?

[61] Relevant to both these issues is the question of whether or not there is a divergence of interest among the membership of the association. The authorities, in particular United Kingdom Nirex Ltd v Barton and others [1986] The Times 14 October and Monsanto plc v Tilly and others (Unreported) 25 November 1999, make clear that a representative action is not appropriate where there is a divergence of interests between the members of the relevant organisation. In this case, therefore, a difference of views about the appropriateness of using unlawful activity in order to achieve the aims of the organisation will be highly relevant to the issue of whether a representative action was justified.

HACAN

[62] The Defendants accept that HACAN is an unincorporated association. However, I have concluded that there is a difference of views among the membership (and as between Mr Stewart and the rest of the Committee) as to the use of unlawful action to further their cause. This gives rise to a divergence of interests, as a result of which the essential

requirement for a representative action does not exist. I therefore discharge the representation order made by Underhill J.

[63] In any event, I am not satisfied to the required standard that HACAN as an organisation (or its members properly acting in its name) has been involved in any unlawful direct action in the past or that it will become so involved during the currency of the climate camp. That is not to say that some members of HACAN may not participate in such action in their individual capacities. I shall consider in due course whether anything can and should be done to prevent that. Meanwhile, the claim against the Third Defendants will be struck out.

AirportWatch

[64] The Defendants contend that AirportWatch does not have the characteristics of an unincorporated association as identified by the Court of Appeal in Conservative and Unionist Central Office v Burrell [1982] 2 All ER 1, [1982] 1 WLR 522, [1982] STC 317, by the House of Lords in Eastbourne Town Radio Cars Association v Customs & Excise Commissioners [2001] UKHL 19, [2001] 2 All ER 597, [2001] 1 WLR 794 and by the Court of Appeal in Monsanto plc v Tilly and others. They also argue that the divergence of interest within the organisation renders it inappropriate for Mr Stewart to represent its members.

[65] In the Conservative and Unionist case, Lawton LJ defined an unincorporated association as follows:

'. . . two or more persons bound together for one or more common purpose, not being business purposes, by mutual undertakings each having mutual duties and obligations, in an organisation which has rules that identify in whom control of it and its funds rest and upon what terms and what can be joined or left at will . . . .'

[66] In the Monsanto case, Stuart-Smith LJ set out at para 40 the characteristics that in his view justified the judge in finding that the organisation in question, GXS, was an incorporated association:

'It is directed and managed by a co-ordinating group; it has and publicises a postal address, telephone line, facsimile number and email address; it has received [and presumably dealt with] over a thousand enquiries to its office; it has a 'comprehensive' website and a website administrator; it has a bank account and seeks donations; it has published a 100 page handbook, priced at £3.50 and distributed 600 copies; it publishes a newsletter; it has published a video film priced at £3.50 which has been 'well received'; it has a press/media liaison; it has held over 40 public meetings; it trains people to take direct action as part of its campaign; it has undertaken a number of direct actions, the direct action has involved over 70 people; it has branches or local groups which meet regularly in Brighton, London, the South East, and branches in Scotland, Bristol and Cambridge; it acts as a co-ordinating office for proposed uprooting action by its campaigners.'

[67] AirportWatch has a postal address, telephone and fax numbers, email addresses and a website. It publishes regular news bulletins and other publications. It has a constitution (in which it is described as an 'unincorporated association'). Although there is no standing committee (supporters who attend meetings form 'the committee'), there is provision for regular meetings and conferences. The committee has the power in certain circumstances to expel any individual or organisation.

[68] Despite the relative informality of the structure and the large and moving band of supporting organisations, I would be satisfied that AirportWatch could properly be regarded as an unincorporated association were it not for the clear divergence of views between members such as Mr Stewart (who regard unlawful action as a legitimate means of protesting) and other members (including supporters such as the RSPB, the Woodland Trust, etc), who are opposed to any form of unlawful activity. That divergence of views means that the organisation does not have the element of mutual purpose which is necessary for an unincorporated association. It also makes it inappropriate for Mr Stewart to represent the interests of all members and supporters of AirportWatch. That being the case, I discharge the representative order made by Underhill J.

[69] In any event, I am not satisfied to the required standard that AirportWatch as an organisation (or its members properly acting in its name) has been involved in any unlawful direct action in the past or that it will become so involved during the currency of the climate camp. That is not to say that some members of AirportWatch may not participate in such action in their individual capacities. I shall consider in due course whether anything can or should be done to prevent that. Meanwhile, the claim against the Fourth Defendants will be struck out.

NoTRAG

[70] The Defendants accept that NoTRAG is an unincorporated association. There is no evidence of a difference of approach or views among the membership of this organisation and, as chair and a regular spokesperson, Ms Nicholson

would seem an obvious person to represent it. However, NoTRAG's funder, co-founder and general facilitator, the Hillingdon Borough Council, has raised objection to Ms Nicholson representing the Council in these proceedings, and I feel sure that, in those circumstances, she would have no wish to do so. Thus, although the position is not as clear cut as in the case of HACAN and AirportWatch, there does seem to me to be a divergence of interests which makes a representative order inappropriate. I therefore discharge the representation order made by Underhill J.

[71] The remarks made by Ms Nicholson and Ms Shilling that I quoted earlier constitute a slender basis for the contention made by the Claimants that Ms Nicholson and/or NoTRAG have in the past been, or intend in the future to, become involved in any form of unlawful direct action. Ms Nicholson falls into a completely different category from Messrs Garman, Murray and Stewart. There is no evidence that she has ever been involved in any form of unlawful direct action. It is regrettable that she was ever involved in these proceedings. It is clear from her witness statement that it has caused her considerable anxiety and distress and disrupted her family holiday. Nor is there any evidence that NoTRAG (or any of its members in its name) supports or encourages unlawful direct action. The claim against the Fifth Defendant will be struck out.

Plane Stupid

[72] Plane Stupid does not have a conventional organisational structure, constitution or membership. However, it has a website, electronic contact details, local groups (each of which has a contact email address), named officers and administrators and a telephone number for the many press enquiries it receives. It distributes regular newsletters, organises direct action training and workshops, attends meetings and conferences (for example, the regional conference of a major political party) to put forward its views and it acts as a point of referral for other organisations. It has organised and carried out a number of direct action protests in the past and was instrumental in organising activity for the National Day of Action against short haul flights. It is clear from all its literature that those who support the organisation have a unanimity of purpose, namely to press their demands by means of direct action, including unlawful direct action. An entrance on its MySpace site is significant:

'Our role has not been to overlap with other groups who have entered into discussion with industry and government . . . Plane Stupid should complement the work of these NGOs [non-governmental organisations] that are established and expert in the areas of conventional campaigning and lobbying while remaining distinctive, focused, direct action-orientated and different.'

[73] I am entirely satisfied that Plane Stupid fulfils the necessary characteristics of an unincorporated association and that its supporters have identical aims, objectives and interests. Mr Garman and Mr Murray are appropriate representatives who regularly speak on the group's behalf and who are fully committed to its aims and strategies. It is argued that, since they have offered undertakings to the court and have thereby potentially bound themselves not to pursue the group's aims and objectives at the climate camp, they no longer have the same legal interest in these proceedings as do other supporters of the group and cannot therefore represent them. I do not accept this argument. I therefore continue the representative order made by Underhill J. I am satisfied that, in the event of my making an order, the safeguard afforded by CPR 19.6(4)(b), which I have previously mentioned, will prevent an injustice being done to specific individuals who may be members or supporters of the group.

[74] It is quite clear that Plane Stupid has organised and carried out direct action in the past, including unlawful direct action. I am quite sure that activists within the organisation and those who support it fully intend to participate in unlawful direct action directed at Heathrow Airport during the climate camp. Direct action is after all the raison d'etre of Plane Stupid and its support for disruptive action aimed at public authorities is evidenced both by its own past actions and its approbation of the events at Drax last year.

REPRESENTATION OF THE CLAIMANTS

[75] The Defendants also contend that the Claimants cannot properly represent all the individuals in respect of whom Underhill J granted representative orders. For reasons that will become evident, it is not necessary for me to determine that matter finally. Suffice it to say that my preliminary view is that passengers seeking to travel to and from Heathrow Airport would have a sufficiently mutual interest in the prevention of disruption to the operation of the airport to make a representation order appropriate in their case.

THE APPLICATION FOR AN INJUNCTION

[76] I now turn to consider whether it would be appropriate for me to make an order for injunctive relief against the First, Second and Third Defendants and others.

THE APPLICATION UNDER THE PROTECTION FROM HARASSMENT ACT 1997

[77] The primary basis of the claim for injunctive relief is under the provisions of the 1997 Act.

THE TEST TO BE APPLIED

[78] Mr Lawson-Cruttenden submits that the test to be applied by the court when determining the application under the 1997 Act is the test laid down in American Cyanamid v Ethicon [1975] AC 367, that is whether there is a serious question to be tried. He does not accept that it would be appropriate to apply, given the impact or possible impact of an injunction on the right to freedom of expression, the test to be found in the case of Cream Holdings Ltd v Banerjee [2004] UKHL 44, [2005] 1 AC 253, [2004] 4 All ER 617, namely that an interim injunction should not be granted unless the court is satisfied that relief would probably (ie more likely than not) be granted at trial. Cream Holdings Ltd involved a breach of confidentiality, and the restraint imposed by the court precluded any publication of the relevant material. Mr Lawson-Cruttenden submits that that was very different from the circumstances of the present case and that the more stringent test would not apply.

[79] The Defendants argue that, since I am in effect being asked to make a final order, the hearing should be conducted to the standards and requirements of a final hearing. They submit that any other approach would be unfair and incompatible with the Defendants' rights under art 6 of the European Convention on Human Rights ('ECHR'). They submit further that, since an order under the 1997 Act against a Defendant gives rise to a regime for the imposition of criminal penalties, the standard of proof required should be the criminal standard. They rely on the cases of R v McCann and Manchester Crown Court [2002] UKHL 39, [2003] 1 AC 787, [2002] 4 All ER 593 (a case involving anti-social behaviour orders ('ASBOs')) and Gough v Chief Constable of the Derbyshire Constabulary [2002] EWCA Civ 351, [2002] QB 1213, [2002] 2 All ER 985 (a case involving preventative football orders), which they say are analogous. They say that, at the very least, the standard of proof should be the highest civil standard, effectively equivalent to the criminal standard.

[80] Since the hearing is in effect final in nature, I accept the Defendants' submission in relation to the appropriate standard to be applied when considering the Claimants' application under the 1997 Act.

[81] Section 1 of the 1997 Act prohibits harassment in the following terms:

'A person must not pursue a course of conduct -

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.'

[82] Section 2 of the Act makes harassment a criminal offence. Section 7(5) (added in 2005), makes clear that references to a person in the context of the harassment of a person are references to a person who is an individual.

[83] Under s 3(1) 'An actual or an apprehended breach of s 1(1) may be the subject of a claim in civil proceedings . . . by the person who is or may be the victim of the course of conduct in question.'

[84] Section 3(6) provides that, where a court grants an injunction restraining a Defendant from pursuing any conduct which amounts to harassment and the Defendant without reasonable excuse does anything which he is prohibited from doing by the injunction, he is guilty of a criminal offence.

[85] Section 1A was added in 2005. It provides, inter alia, that a person must not pursue a course of conduct which involves harassment of two or more persons with the intention of restraining any person not to do something that he is entitled to do. Injunctive relief is available in respect of this type of conduct also (by virtue of s 3A) and breach is a criminal offence.

[86] Since breach of an injunction made under the 1997 Act is a criminal offence, a power of arrest can be attached to such an injunction. The Claimants point out that, at last year's climate camp, protestors ignored the provisions of the civil injunction obtained by the operators of the Drax power station. They express concern also at the leniency with which protestors are treated by the Magistrates' Courts. They take the view that a power of arrest would make it easier to deal with protestors who breach the injunction during the course of the action and that an order under the 1997 Act would also result in more substantial penalties when those in breach were brought before the courts.

[87] The 1997 Act was originally passed to deal with problems associated with stalkers. However, it has in recent years been used more widely, in cases involving animal rights groups and persons protesting against genetically modified crops and the sale of arms. This has been in circumstances where protestors have previously waged a

campaign of intimidation, damage and/or other criminal activity towards those operating companies and other organisations in the relevant fields, together with persons employed or otherwise associated with those companies and organisations, and where it has been clear that, unless restrained, the protestors would continue such activities.

[88] In the present case, there is no such history of past conduct on the part of those involved in Plane Stupid or indeed in CfCA. I have received no evidence that the occupation of the Drax Power Station, or the occupation of Nottingham East Midlands Airport, or any other actions in the name of Plane Stupid or CfCA, have given rise to conduct that was harassing in nature. Indeed, I received no evidence at all about the effects of these incidents on the individuals involved.

[89] The Claimants rely on two past incidents perpetrated by members of Plane Stupid which they say amounted to harassing behaviour. These are:

(a) The two occasions when BAA's Heathrow offices were blockaded (from the outside); and

(b) An occasion when loud music was played outside the home of the chief executive of the BAA. (In fact, it is not at all clear to me that this action was perpetrated by members of Plane Stupid, although it may have been.) Contemporaneous news reports suggest that the chief executive was away from home at the time.

[90] A 'course of conduct' is defined in s 7(3) of the 1997 Act as 'conduct on at least two occasions'. There is authority for the proposition that, although conduct on at least two occasions is necessary to establish a breach of s 1(1), there are no statutory minimum requirements for an apprehended breach: see EDO MBM Technology Ltd v Campaign to Smash EDO and others (Unreported), a decision of Gross J, 29 April 2005, at para 62(i). Thus, the fact that there is no evidence of harassment of an individual in the past does not necessarily mean that there may not be an apprehension of such a breach in the future. There must, however, be some proper evidential basis for the apprehended breach.

[91] Mr Lawson-Cruttenden says that the nature of the harassment anticipated by the Claimants is a blockade of the roads giving access to the airport. Such a blockade would inevitably cause long delays and a build up of traffic on the access roads and would cause anxiety and stress to would-be passengers. This, he says, would be conduct such as to amount to harassment within the meaning of the 1997 Act. He argues further that, if it becomes known that there is, or is to be, disruption at the airport, that would have the effect of persuading those intending to travel not to do so and would therefore amount to conduct within s 1A(c)(i) of the 1997 Act. The foundation for the Claimants' belief that a blockade might occur is the Evening Standard article of 24 May 2007, which appeared on CfCA's website. No reference to a blockade appeared in Plane Stupid's own press release or in the press release issued by CfCA on the same day.

[92] Mr Lawson-Cruttenden also relies on the comment made by the Second Defendant in the DVD (see the earlier reference in this judgment) that the idea behind the direct action was 'to frighten the people that are making the decisions into reconsidering and to think that maybe their plans may not end up being economically viable'. He submits that, on the basis of this comment and a similar one to be found elsewhere, the Claimants could satisfy the Chambers test (see below) for harassment. He does not seek to suggest that any other apprehended actions by the protestors are such as to be likely to cause harassment to intended passengers or others.

[93] It is relevant to consider here what type of conduct is capable of amounting to harassment under the 1997 Act. Section 7(2) of the 1997 Act provides that references to 'harassing' a person include alarming the person or causing the person distress. Mr Lawson-Cruttenden submits that annoyance and inconvenience are sufficient to constitute harassment. He relies on the case of Chambers v DPP [1995] CLR 896, a decision of the Divisional Court on the meaning of 'harassment' within the context of s 5 of the Public Order Act 1986. That section provides that a person is guilty of an offence if he uses threatening, abusive or insulting words or behaviour, or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. It is therefore necessary for the offender's behaviour to be threatening, abusive, insulting or disorderly before the consequential 'harassment, alarm or distress' come into play. In Chambers, the Crown Court found that the behaviour of the Defendant, who had peacefully blocked the beam of a surveyor's theodolite in protest at the building of a road, was disorderly and caused harassment, in that it annoyed and inconvenienced the surveyor, although it did not cause him any fear of violence. Before the Divisional Court, counsel for the Appellant argued that harassment meant more than just inconvenience and annoyance. The Court of Appeal disagreed with that, stating that for behaviour to constitute harassment there was no need for any element of apprehension about one's personal safety.

[94] Mr Blake submits that harassment is a persistent course of conduct targeted against individuals, involving apprehension for safety, alarm and distress. He argues that inconvenience and annoyance caused by the consequences of a public demonstration do not amount to harassment. He relies on R v Jones and others [2006] EWCA Crim 2942,

which was an appeal, inter alia, against an ASBO imposed on protestors who, in the course of a protest against an arms fair, interfered with trains on the Docklands Light Railway to prevent them from moving. Their actions had the effect of causing considerable disruption to train services and prompted angry passengers to resort to violence against them in retaliation for their actions.

[95] Before making an ASBO, a judge must be satisfied that the offender has behaved in a manner that 'caused or was likely to cause harassment, alarm or distress' to another person. The judge found that the protestors' actions had had a 'substantial harassing effect' on the public, to the extent that they led briefly to a breakdown in public order by irate passengers who attacked the protestors.

[96] Giving judgment in the Court of Appeal, Moses LJ observed at para 42:

'The fact that other passengers in their frustration caused a breach of the peace provoked by the behaviour of these Applicants could not possibly entitle the judge to reach the conclusion he did . . . They [that is the judge's reasons] did not relate to the manner of the behaviour of the Applicants but rather to the response of the public to that activity.'

[97] He went on to say at para 45:

'. . . we do wish to draw a distinction between activities likely to cause harassment, alarm or distress and activities which mainly cause frustration, disappointment, anger or annoyance. That is plainly not what the Crime and Disorder Act 1998 is aimed at. It is aimed at actions likely to cause what might be globally described as 'fear for one's own safety'; merely being frustrated at the delay on the train does not come within that meaning, even though in one sense it might be said to cause distress.'

[98] Mr Blake submits that the conduct in Jones was very similar in nature to the behaviour on which the Claimants seek to rely, namely the blocking of the roads leading to the airport. He argues that, although it relates to a different piece of legislation, Jones is nevertheless entirely in point and binding on me. He submits that the 1997 Act was never intended to be used, and cannot be used, in order to police or restrict or outlaw peaceful, non-intimidatory demonstrations, assemblies or protests. In this context, he referred to the case of Laporte v Chief Constable of Gloucester Constabulary [2006] UKHL 55, [2007] 2 All ER 529, [2007] 2 WLR 46.

[99] It is plain that considerable care must be taken in applying the 1997 Act to situations of public protest and, by its application, seeking to restrict freedom of expression, which is an integral part of our democratic process. There will however be cases where there is obviously reason to believe that protest and expression will involve the harassment of individuals, and in such cases the courts have in the past been prepared to invoke the 1997 Act to prevent such behaviour. I am not satisfied that this is appropriate here for these reasons:

(a) There is no evidence that those involved with Plane Stupid or acting in concert with them have been guilty of harassing behaviour in the past. The evidence that is available from the First, Second and Fourth Defendants is to the effect that they are committed to peaceful action and are completely opposed to any behaviour that would cause alarm or distress to any individual. Nor is there any evidence from the First Claimant and the Second Claimant or from those that they represent to the effect that they have been subject to any harassment in the past;

(b) The evidential basis for the expectation of the type of blockade that is suggested by the Claimants as founding the apprehension of a breach of s 1(1) of the 1997 Act is weak. It consists of a reference in an article which appeared in the Evening Standard (and was placed on the CfCA website) and a comment made by the Fourth Defendant on the HACAN website: see the earlier references in this judgment. I fully accept that such a blockade is one of the forms which any protest action might take, but it is not possible to put it any higher than that. Nor is there any evidence that the harassment (in relation to any individual member of the public) would be persistent;

(c) In determining what kind of behaviour is capable of amounting to harassment, the cases of Chambers and Jones are, it seems to me, of limited assistance, since both deal with legislation significantly different from the 1997 Act. In particular, having regard to the contrast between the offences created by s 2 and s 4 of the 1997 Act, 'harassment' cannot, in the context of that Act, be confined to conduct which would place the victim in fear of violence. Neither in my view can it be right that harassment is confined just to conduct that will cause alarm and distress. Quite where the line is to be drawn and whether a particular type of conduct can properly be considered to amount to harassment will depend on the particular facts and circumstances of the incident in question. It is not a matter that can - save in a clear case - be predicted in advance. All I am able to say at this stage is that the fact that the actions of protestors will or may cause annoyance and inconvenience to the travelling public (whether by a blockade or any other form of action) does not necessarily mean that their conduct will amount to harassment. It may do. It may not.

[100] I do not accept either that the reference by Mr Murray to an intention to 'frighten' decision makers amounted to a threat of violence or intimidation. In his witness statement, he said - and I accept - that the fear that he was referring to was of the financial consequences of continuing to ignore the message being communicated by him and those who think like him. It seems to me that that is the only sensible way in which that passage can be understood.

[101] There is another problem in relation to the First Claimant's application under the 1997 Act. Section 7(5) of the 1997 Act (inserted in 2005) provides that the person who is the target of the apprehended harassment must be an individual. This accords with previous decisions of the courts under the 1997 Act, both criminal and civil. The First Defendant is a body corporate and not an individual.

[102] Mr Lawson-Cruttenden argued (not with any great force) that where, as here, a body corporate is representing individuals, those individuals can be protected under the Act. However, his case under the 1997 Act was put primarily on the basis of the need to protect the Second Claimant and those he represents from harassment. In the light of the view I have come to on the application of the 1997 Act generally, it is unnecessary for me to reach any concluded view on this matter.

[103] There was a considerable amount of argument also on the issue of whether a person who was not a party to an action, but was the subject of a representative order, could properly be made the subject of a power of arrest, bearing in mind that such a power would have the effect of negating the safeguard afforded by CPR 19.6(4)(b), which provides that an order against such a person may only be enforced by or against a person with the permission of the court. Holland J in Huntingdon Life Sciences Group plc v Stop Hunting and Animal Cruelty [2007] EWHC 522 and Teare J in RWE NPower plc and others v Carroll and others [2007] EWHC 947 and in SmithKline Beecham plc and others v Greg Avery and others [2007] EWHC 948 concluded that it was not appropriate for the court to circumvent the safeguard afforded by CPR 19.6 in this way. Mr Lawson-Cruttenden argued that the position had been changed by the amendment in 2005 of the 1997 Act to include s 3A. The Defendants submit that the amendment to the Act had no effect on the position, as demonstrated by the fact that the relevant decisions post-dated the amendment. Although it is not necessary for me to decide this point, had I had to do so, I should have adopted the same approach as Holland and Teare JJ.

[104] For the reasons previously set out, I reject the Claimants' application for an injunction under the provisions of the 1997 Act.

INJUNCTION BASED ON TRESPASS, NUISANCE AND/OR THE FIRST CLAIMANT'S BYELAWS

[105] The First Claimants also seek an injunction based on trespass, nuisance and/or breach of its byelaws. Those byelaws include the following:

'3(17) No person shall organise or take part in any demonstration, procession or public assembly likely to obstruct or interfere with the proper use of the Airport or obstruct or interfere with the comfort and convenience or safety of the passengers or persons using the Airport.

3(19) No person shall intentionally obstruct or interfere with the proper use of the Airport or with any person acting in the execution of his duty in relation to the operation of the Airport.

3(14) No person shall enter the Airport except as a bona fide airline passenger whilst having been prohibited in writing from entering by the Airport Company.'

[106] The Claimants seek an injunction designed to prevent mass breach of 3(17) and 3(19). They argue that, since it is impracticable for them to identify and communicate with all those in respect of whom they would wish to prohibit entry under 3(14) (namely 'persons intending to cause disruption to the operation of the Airport'), the court should make an order giving effect to the byelaw.

[107] As to the appropriate test to be applied, the Claimants contend that it is the balance of convenience. The Defendants say that it is necessity.

[108] Reliance is placed by the Defendants on arts 10 and 11 of the ECHR, ie the rights to freedom of expression and freedom of association. These are, of course, fundamental rights that must be carefully guarded. However, these rights do not entitle ordinary citizens, by means of mass protest or unlawful action, to stop the lawful activities of others.

[109] The activity that is intended by Plane Stupid and others is not a lawful assembly for the purpose of communicating their views to members of the public. Such an assembly always carries the attendant risk of being hijacked by a minority of persons intent on behaving unlawfully. In those circumstances, the rights of the law-abiding

majority should plainly not be curtailed. But the position here is very different. The activity intended is not a lawful protest. Its sole purpose is to disrupt the operation of the airport. The actions contemplated may be peaceful in that they involve no violence. They would, however, be designed to interfere with the rights of thousands of people, acting perfectly lawfully, as well as with the lawful activities of an authority responsible for running an operation of vital importance to this country, its international communications and its commercial interests.

[110] The Defendants submit that the court should place prior restraint on art 10 and 11 rights only if it is necessary to do so. The fact that it would be useful, reasonable or desirable is not sufficient. They rely on the recent case of Laporte. They point to the wide range of powers available to those responsible for policing Heathrow and to the byelaws already in force. They argue that an injunction would add nothing to these powers and is therefore unnecessary. They rely on the position adopted by TFL and LUL. The views of those bodies is that they, together with the British Transport Police, are able, and have sufficient powers, to deal with any unlawful action involving the services for which they are responsible. Their view is that the injunctive relief sought by the Claimants (which at the time they expressed this view included the relief sought under the 1997 Act) is disproportionate and unnecessary.

[111] The Defendants rely also on the evidence of Commander Robert Broadhurst, the police officer responsible for policing Heathrow, to the effect that the granting of the injunction would allow 'clear boundaries' to be drawn between protestors and the police. They point out that he does not suggest in terms that an injunction is necessary.

[112] If the anticipated unlawful action is permitted to take place, the resources required to deal with it, both in terms of manpower and financial cost, will be very large indeed. Police who would ordinarily be deployed on other duties at the airport and elsewhere will be required instead to deal with protestors. They will be deflected from their ordinary duties and - a matter of considerable concern - from carrying out their vital role in protecting the public (in particular the travelling public) from terrorist attack. There is a risk that a terrorist group might use the disruption caused by the protestors to perpetrate an attack on the airport with disastrous consequences.

[113] Moreover, the measures necessary to contain the protestors would in themselves cause disruption to the operation of the airport. In his witness statement, Commander Broadhurst refers to these matters, saying:

'. . . the presence of large numbers of protestors at or near the airport will reduce our ability to proactively counter the terrorist act (sic). This will be exacerbated by those seeking to carry out unlawful acts. The police and emergency service response to such incidents will undoubtedly cause disruption to the smooth running of the airport. This will quickly lead to delays to the travelling public, which could in itself lead to disorder. The build up of queues adds to the terrorist threat by forming crowded spaces as well as preventing quick access for emergency vehicles. Individuals could easily use the cover provided by such incidents to commit acts of terrorism.'

and:

'Road access to the airport is limited and traffic will quickly back up if there is any disruption that cannot be cleared immediately. This will cause disruption to the flying schedule and add to the threat of terrorism and public order, with large crowds gathering quickly. It could also slow or prevent emergency vehicles from getting on to the site in the event of an incident occurring.'

These observations confirm my view that widespread unlawful action of the kind intended by Plane Stupid and others will give rise to a very serious situation indeed. That situation could potentially continue for as long as eight days.

[114] The only way in which these serious and damaging consequences can be avoided is by preventing the unlawful activity from taking place. The purpose of an injunction is to do just that. The law expects that an order of the court will be obeyed, in the knowledge that serious consequences are likely to follow if it is not.

[115] The Defendants further contend that the policing of any injunction granted would be impossible and that it would in practice be difficult to differentiate between any individual protester and an ordinary member of the public. I accept that some difficulties may arise in the event that the order is breached. However, I do not accept that any order made would be unworkable. Nor do I accept the proposition that the fact that persons may breach an order is a reason for declining to make it.

[116] In all the circumstances, I conclude that the Claimants should be granted injunctive relief. The balance of convenience clearly lies in favour of granting it. I further conclude that such relief is necessary and proportionate for the reasons I have set out. Thus, even applying the higher test urged upon me by the Defendants, I have no difficulty in finding that it is satisfied.

THE TERMS OF THE ORDER

[117] I come now to the terms of the order. I am bound to say that I have had little assistance from the Claimants in the drafting of an order which meets the requirements of clarity and comprehensibility. The suggestions that have been proffered have been inconsistent and in some respects plainly unworkable. However, I am confident that the requirements I have identified can be met by the order that I have devised.

[118] I shall set out the main terms of the order and will ask Mr Lawson-Cruttenden to produce a suitable draft. It should contain these provisions:

(a) The First Claimant alone should be named as bringing proceedings on its own behalf. The Defendants shall be confined to the First, Second and Third Defendants, together with the Fourth Defendant on his own behalf.

(b) There should be an appropriate definition of the airport land (excluding that under the control of TFL and LUL) by reference to a clearly identified plan.

(c) Paragraph 2 - 11 of the draft should be omitted, and I refer there to draft No 11.

(d) Paragraph 12 should be amended to read 'All persons who are and/or who are acting as officers, activists and/or supporters of and/or in the name of the unincorporated association known as Plane Stupid.'

(e) Paragraphs 13-14 of the draft should be omitted.

(f) Paragraph 15 should be omitted except for 15.5. The definition of 'Protestors' should read:

'(i) all persons who are and/or are acting as officers, activists and/or supporters of and/or in the name of the unincorporated association known as Plane Stupid; and

(ii) all persons acting in concert with any of the above persons for the purpose of disrupting the operation of Heathrow Airport.'

In adding this second category of persons, I am adopting the approach of Holland J in the Huntingdon Life Sciences case [2007] EWHC 522. At para 15 of his judgment, he said this:

'For practical purposes the Order would be ineffective from the standpoint of HLS and unfair from the standpoint of the Defendants if 'non-SHAC' protestors when within any such Exclusion Zone could claim immunity from the Order. It follows, by way of example, that if Uncaged's members are minded to demonstrate within an Exclusion Zone, then, good intentions notwithstanding, arguably they too become 'Protestors' so as to be bound by the Order.'

In precisely the same way, this order would be ineffective and unfair if persons not acting in the name of Plane Stupid could claim immunity from it. The second category of persons will include those members of HACAN and of AirportWatch (and indeed those of NoTRAG, if there be any such) who are intent on unlawful direct action. It will also cover any other individuals who fall within its terms. (I mention in parenthesis that it may be necessary for the First, Second and Fourth Defendants to be included within this definition also. I shall refer to their position shortly.)

(g) The order shall take effect immediately and shall remain in force throughout the month of August.

(h) The order should provide that the protestors shall not:

(i) enter the area of land marked on the plan to be attached without the prior consent of the Claimant;

(ii) by impeding or preventing access to or egress from the airport or otherwise, obstruct or interfere with the operation of the airport or with any person acting in the execution or his or her duty in relation thereto; and/or

(iii) incite, aid and/or abet any person to enter the area of land specified in (i) above and/or to act in any of the respects referred to in (ii) above.

Subparagraph (a) gives effect to byelaw 3(14). The area will embrace the whole area of the airport. Given that, as I have said, the intention of the protestors is not to hold a lawful assembly, the provision of the designated areas within the airport for the purposes of protest (as suggested by the Claimants) seems inappropriate and would add greatly to the complexity of policing the order.

Sub-paragraph (b) deals with activities which might be perpetrated outside the area, but which would nevertheless have an impact on its operation. It seeks to prevent a breach of byelaw 3(19) and nuisance.

If the First, Second and Fourth Defendants are prepared to give undertakings in these terms, I shall accept them.

Otherwise, I shall grant an injunction against them in the above terms. It would not be fair for them to be under less onerous terms than other supporters of Plane Stupid.

(i) Paragraph 17 of the draft order should be omitted. It seems to me unnecessary and potentially confusing. The position is that the order will be binding on unnamed individuals included within the definition of 'Protestors'. It will not, however, be enforceable against any unnamed individual without the express permission of the court. That is the safeguard afforded by CPR 19.6(4)(b). Such permission may well be forthcoming if it can be shown that the relevant person was or must have been aware of the order but nevertheless chose to ignore it.

(j) The remaining paragraphs of the draft order should remain, with appropriate modifications in the light of my judgment.

CONCLUSION

[119] I am satisfied that the terms of this injunction are no wider than is necessary to provide proper and effective protection for the Claimants. I am prepared to hear submissions relating to the detail of the order, if required, but not in relation to the principles which I have set out.

[120] The order I have granted is nothing like as wide-ranging as that originally sought by the Claimants. It should not affect the peaceful and lawful activities associated with the climate camp. It is targeted solely and specifically at a group of persons who are intent upon disrupting the operation of the airport, irrespective of the rights of passengers and others to go about their lawful activities. The purpose of the injunction is to enable the airport to continue to function and to permit those responsible for security at the airport and elsewhere to focus on their prime concern of protecting the public from the risk of terrorist attack.

[121] In relation to costs, I make no order for costs in respect of the First, Second, Third or Fourth Defendants.

[122] So far are HACAN, AirportWatch and NoTRAG are concerned, I make an order that the Claimants should pay their costs, to be assessed on the standard basis if not agreed, and I make that order because, in effect, the Claimants have failed to establish that, first of all, a representative order was appropriate in respect of those organisations and, secondly, that they fell within the class of person against whom an injunction should be made.

[123] Thirdly, I order that the Claimants pay the costs of Ms Nicholson and, indeed, they have conceded that they should do so. I order that her costs should be assessed on the standard basis, if not agreed. I have commented earlier that I regard it as regrettable that she was included in these proceedings, but, having said that, I do not regard the Claimants' conduct as so unreasonable as to warrant the assessment of costs on the indemnity basis.

[124] So far as TFL and LUL are concerned, there is a concession on the part of the Claimants that they should pay their costs up to the start of this hearing on 1 August. In my judgment, they should pay the entire costs of these two organisations. In view of the breadth of the injunction which was being sought and the possible impact that it would have on the operations of TFL and LUL, it was plainly, in my judgment, necessary for them to be here during the course of these proceedings. Indeed, that is exemplified by the fact that the only matter still outstanding relates to the status of a bus station in which they are concerned. It was therefore highly important, in my view, that they were here, even in relation to the order that I have made and would have been even more important had I decided to make the order originally sought by the Claimants.

[125] I have considered anxiously the basis on which the costs of these two organisations should be awarded. I have expressed the view, and remain of the view, that it was completely extraordinary that they were not informed of the proposed action to be taken by the Claimants personally and certainly well in advance of the time when that action was taken. But, having said that, again, it does not seem to me that the conduct of the Claimants is so unreasonable, looking at the involvement of TFL and LUL overall, as to render it appropriate to award costs on the indemnity rather than the standard basis. So they will have their costs up to the close of these proceedings on the standard basis to be assessed if not agreed.

DISPOSITION:

Judgment accordingly.

SOLICITORS:

Harrison Grant; Eversheds LLP.