

Case No. BL-2023-000713

IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
CHANCERY DIVISION  
BETWEEN:

JOCKEY CLUB RACECOURSES LIMITED

Claimant / Applicant

-and-

(1) DANIEL FRANK PETER KIDBY

(2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE  
"RACE TRACK" ON THE DAY OF A "RACING FIXTURE", EXCEPT AT "CROSSING  
POINTS" WITH "AUTHORISATION", AS DESCRIBED BELOW

(3) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY "CROSSING  
POINTS" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING FIXTURE",  
AS DESCRIBED BELOW

(4) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE  
"PARADE RING" WITHOUT "AUTHORISATION" ON THE DAY OF A "RACING  
FIXTURE", AS DESCRIBED BELOW

(5) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY PART OF THE  
AREAS DESCRIBED BELOW AS THE "HORSES' ROUTE TO THE PARADE RING"  
AND/OR THE "HORSES' ROUTE TO THE RACE TRACK" WITHOUT  
"AUTHORISATION" ON THE DAY OF A "RACING FIXTURE", AS DESCRIBED  
BELOW

(6) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE "HORSE RACES",  
AS DESCRIBED BELOW

(7) PERSONS UNKNOWN INTENTIONALLY CAUSING ANY OBJECT TO ENTER ONTO  
AND/OR REMAIN ON THE "RACE TRACK" WITHOUT "AUTHORISATION" ON THE  
DAY OF A "RACING FIXTURE", AS DESCRIBED BELOW

(8) PERSONS UNKNOWN INTENTIONALLY ENDANGERING ANY PERSON AT THE  
LOCATION DESCRIBED BELOW AS THE "EPSOM RACECOURSE" ON THE DAY  
OF A "RACING FIXTURE", AS DESCRIBED BELOW

First to Eighth Defendants

(9) MR BEN NEWMAN

Ninth Defendant / Respondent

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**EXHIBIT NT2**

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**Statement of Truth**

I believe that the facts stated in this affidavit are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: Nevin Truesdale

**NEVIN TRUESDALE**

Dated: 1/8/23

Sworn at: 107 LEADENHALL STREET, LONDON EC3

On: 1 AUGUST 2023

Before me: Edward Gardiner

Signed: .....

Name: .....  
**A Commissioner for Oaths  
Bankside House, 107 Leadenhall Street,  
London EC3A 4AF  
England  
(Edward Gardiner)**

Index NT2  
(Injunction Application Bundle included separately)

<b>Tab</b>	<b>Evidence</b>	<b>Date</b>	<b>Page(s)</b>
1.	Order of Sir Anthony Mann (the "Order")	26 May 2023	5-20
2.	Applicant's skeleton argument for Injunction Application	25 May 2023	21-36
3.	Screenshot of a link to the Claim Documents on the Epsom Downs website	N/A	37-38
4.	Screenshot displaying the Claim Documents on the Jockey Club website	N/A	39-40
5.	Screenshot of the displayed Claim Documents on the Jockey Club website	N/A	41
6.	Six photographs of two envelopes containing the Claim Documents	22 May 2023	42-47
7.	Email to First Defendant, attaching Claim Documents	22 May 2023	48
8.	Confirmation that the First Defendant downloaded the Claim Documents attached to Iona Wilson's email of 22 May 2023	22 May 2023	49
9.	First Witness Statement of Stephen Williams	24 May 2023	50-51
10.	Images 1 to 55 displaying the Order at the Racecourse	N/A	52-105
11.	Screenshot of a link to the Order on the Jockey Club website	N/A	106-107
12.	Screenshot of a link to the Order on the Epsom Downs website	N/A	108-117
13.	Screenshot of the displayed Order on the Jockey Club website	N/A	118
14.	Screenshot of Order on Facebook by Jockey Club	28 May 2023	119
15.	Screenshot of Order on Twitter by Jockey Club	26 May 2023	120
16.	Email to First Defendant, attaching the Order	28 May 2023 at 13:14	121-126
17.	Article from BBC – Epsom Derby: Jockey Club wins injunction to stop protests	26 May 2023	127-132

Index NT2  
(Injunction Application Bundle included separately)

<b>Tab</b>	<b>Evidence</b>	<b>Date</b>	<b>Page(s)</b>
18.	Article from The Guardian – Talking Horses: Jockey Club granted Derby injunction against Animal Rising	26 May 2023	133-137
19.	Sky Sports - The Jockey Club granted High Court injunction against Animal Rising	26 May 2023	138-144
20.	Article from the Telegraph – Animal Rising 'hanging themselves in public', says Jockey Club chief after 'bad day for protesters'	4 June 2023	145-152
21.	Article from the Express – Animal Rising eco-mob plot to sabotage Saturday's Epsom Derby exposed	31 May 2023	153-159
22.	Article from the Daily Mail – Militant animal rights activists plotting to sabotage the Epsom Derby...	23 May 2023	160-163
23.	Transcript of BBC Radio Surrey Interview with Ben Newman	2 June 2023	164-165
24.	Article from Irish Times – Police Arrest 19 Animal Rights Activists ahead of Epsom Derby	3 June 2023	166-171
25.	Article from the Daily Mirror - 'Grand National 2023: 'Animal Rising' plead for people to join protest amid plan to sabotage race.'	11 April 2023	172-175
26.	Witness Statement of Mr Lewys H Salisbury	16 April 2023	176-178
27.	Article from Farmers Weekly website following McDonald's protest	24 May 2023	179-181
28.	Article from Planet Radio highlighting Mr Newman occupied a private farm in May	20 May 2023	182-184
29.	Images 1 to 5 of the Respondent on the Racetrack	3 June 2023	185-189
30.	Witness Statement of PC Katherine Stevens	7 June 2023	190-192
31.	Witness Statement of PC Mark Hodgkins	3 June 2023	193-195
32.	Respondent's Charge Sheet	3 June 2023	196-197

**IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
CHANCERY DIVISION**

**Case No. [BL-2023-000713]**

**Sir Anthony Mann, sitting as a Judge of the  
High Court  
26 May 2023**



**BETWEEN:**

**JOCKEY CLUB RACECOURSES LIMITED**

**Claimant/Applicant**

**and**

- (1) DANIEL FRANK PETER KIDBY**
- (2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "RACE TRACK" ON THE DAY OF A "RACING FIXTURE", EXCEPT AT "CROSSING POINTS" WITH "AUTHORISATION", AS DESCRIBED BELOW**
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**Defendants/Respondents**

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**ORDER FOR AN INJUNCTION**

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**PENAL NOTICE**

**IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER OR INSTRUCT OR ENCOURAGE OTHERS TO BREACH THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED, HAVE YOUR ASSETS SEIZED**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED**

**IMPORTANT NOTICE TO THE DEFENDANTS**

**This Order prohibits you from doing the acts set out in this Order. You should read it very carefully. You are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge this Order.**

**UPON the Claimant's application by application notice dated 22 May 2023 for an interim injunction ("the Application").**

**AND UPON the court reading the Application and the Witness Statements listed in Schedule 1 to this Order.**

**AND UPON the Court hearing Leading Counsel for the Claimant.**

**IT IS ORDERED that:**

1. For the purpose of this Order:
  - (1) The "Act" means the Epsom and Walton Downs Regulation Act 1984.
  - (2) The "Byelaws" means the Byelaws made by The Epsom & Walton Downs Conservators on 18 October 2005, by virtue of s. 11 of the Act.

- (3) The **"Plan"** means the the aerial photographs of the Epsom Racecourse and the markings thereupon, appended to this [draft] Order.
- (4) The **"Epsom Racecourse"** means the area where the Claimant holds Racing Fixtures, within the red line marked on the Plan.
- (5) **"Racing Fixture"** means an Authorised Meeting within the meaning of s. 14 of the Act, being a race meeting held on up to 16 days in any one year at the Epsom Racecourse, including Oaks Day and Derby Day.
- (6) **"Horse Races"** means any and all horse races taking place on the day of a Racing Fixture.
- (7) The **"Race Track"** means the area between the crowd barriers on either side of the stretch of land marked with a yellow dotted line, starting at point (C) and ending at point (D) on the Plan.
- (8) The **"Crossing Points"** mean the 10 points at which members of the public may cross from one side of the Race Track to another with Authorisation, marked in blue on the Plan.
- (9) **"Authorisation"** means authorisation given to any member of the public to be in a particular area at the Epsom Racecourse at a particular time, whether by a steward, police officer, and/or any agent of Jockey Club Racecourses Limited.
- (10) The **"Stables"** means the buildings and area where the horses are accommodated before the races, marked at point (A) on the Plan.
- (11) The **"Parade Ring"** means the area where horses parade ahead of the races, marked at point (B) on the Plan.
- (12) The **"Horse & Jockey Entrance"** means the point at which horses and jockeys enter the Race Track, marked at point (C) on the Plan.
- (13) The **"Horses' Route to the Parade Ring"** means the pathway by which the horses are led from the Stables to the Parade Ring, marked with a yellow dotted line, starting at point (A) and ending at point (B) on the Plan.
- (14) The **"Horses' Route to the Race Track"** means the route which the horses take from the Parade Ring to the Race Track, marked with a yellow dotted line, starting at point (B) and ending at point (C) on the Plan.

- (15) The “**Claim Documents**” means the Application Notice, the Witness Statements listed at Schedule 1 to this Order, and the Claim Form.

**Injunction in force**

2. Until judgment or further order, on the day of any Racing Fixture at the Epsom Racecourse (which, for the avoidance of doubt, includes Oaks Day on 2 June 2023 and Derby Day on 3 June 2023), the Respondents must not:
- (1) Enter the Race Track, except at authorised Crossing Points;
  - (2) Enter and/or remain on any Crossing Points without Authorisation;
  - (3) Enter the Parade Ring without Authorisation;
  - (4) Enter and/or remain on any part of the Horses’ Route to the Parade Ring, without Authorisation;
  - (5) Enter and/or remain on any part of the Horses’ Route to the Race Track, without Authorisation;
  - (6) Intentionally obstruct the Horse Races;
  - (7) Intentionally cause any object to enter onto and/or remain on the Race Track without Authorisation;
  - (8) Intentionally endanger any person at the Epsom Racecourse.

**Service**

3. Pursuant to CPR r.6.15, r.6.27 and r.81.4(2)(c) and (d) (being an order to dispense with personal service), and having regard to the steps already taken by the Claimant to bring the Claim Documents to the attention of the Second to Eighth Defendants by alternative means, service of the Claim Documents on the Second to Eighth Defendants shall be effected by the Claimant by:
- (1) posting digital copies of the Claim Documents on its website and Facebook page;
  - (2) affixing sealed copies of the Claim Documents in transparent containers in at least 2 conspicuous locations at public entrances to the Epsom Racecourse;
  - (3) providing digital copies to the organisation Animal Rising by email.



4. The Claimant shall effect personal service of the Order on the First Defendant.
5. The Claimant shall attach a copy of the Order by way of the steps set out below, thereby effecting good and sufficient service of this Order on the Second to Eighth Defendants, including for the purposes of CPR 81.4.
  - (1) posting the Order at 50-metre intervals along that part of the perimeter of the Race Track marked with an orange line on the Plan;
  - (2) posting a digital copy of the Order on its website and Facebook page;
  - (3) providing digital copies to the organisation Animal Rising by email.

**Directions**

6. The Defendants and/or any other person affected by this Order may apply to the court at any time to vary or discharge it, but if they wish to do so they must give the Claimant's solicitors notice in writing at least 48 hours beforehand.
7. Any person applying to vary or discharge this Order must provide his or her full name and address, and an address for service.
8. The Claimants have liberty to apply to extend or vary this Order, or for further directions.
9. Costs reserved.

**Name and Address of Claimants' Solicitors**

10. The Applicant's solicitors are Pinsent Masons LLP, of 30 Crown Place, Earl Street, London, EC2A 4ES; +44 (0) 20 7418 7000.

**Interpretation of this Order**

11. In this Order the words "he" "him" or "his" include "she" or "her" and "it" or "its".
12. Where there are two or more Defendants then (unless the contrary appears)
  - (1) References to "the Defendant" mean both or all of them;
  - (2) An Order requiring "the Defendant" to do or not to do anything requires each Defendant to do or not to do it.

**The Effect of this Order**

13. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

26 May 2023

**SCHEDULE 1**

**Witness statements**

The Judge read the Witness Statements of the following individuals before making this Order:

- (1) Nevin Truesdale, Group Chief Executive of the Claimant;
- (2) Dickon White, Aintree and North-West Regional Director of the Claimant;
- (3) Amy Starkey, Managing Director of the Claimant;
- (4) Simon Knapp, Senior Veterinary Officer for London Region Races for the Claimant;
- (5) Julian Diaz-Rainey, Partner of Pinsent Masons.

**SCHEDULE 2**

**Undertaking given to the Court by the Claimant**

If the Court later finds that this Order has caused loss to the Defendants or any other Party served with or notified of this Order and decides that the Defendants or other Party should be compensated for that loss, the Claimant will comply with any Order the Court may make.

**SCHEDULE 3**

**Witness statement: service**

The Claimant will provide a witness statement confirming personal service of the Order on the First Defendant.

**Access to  
Parade Ring  
from Stables**

**a** Stables

**b** Parade Ring





Access from  
Parade Ring to  
race track

**b** Parade Ring

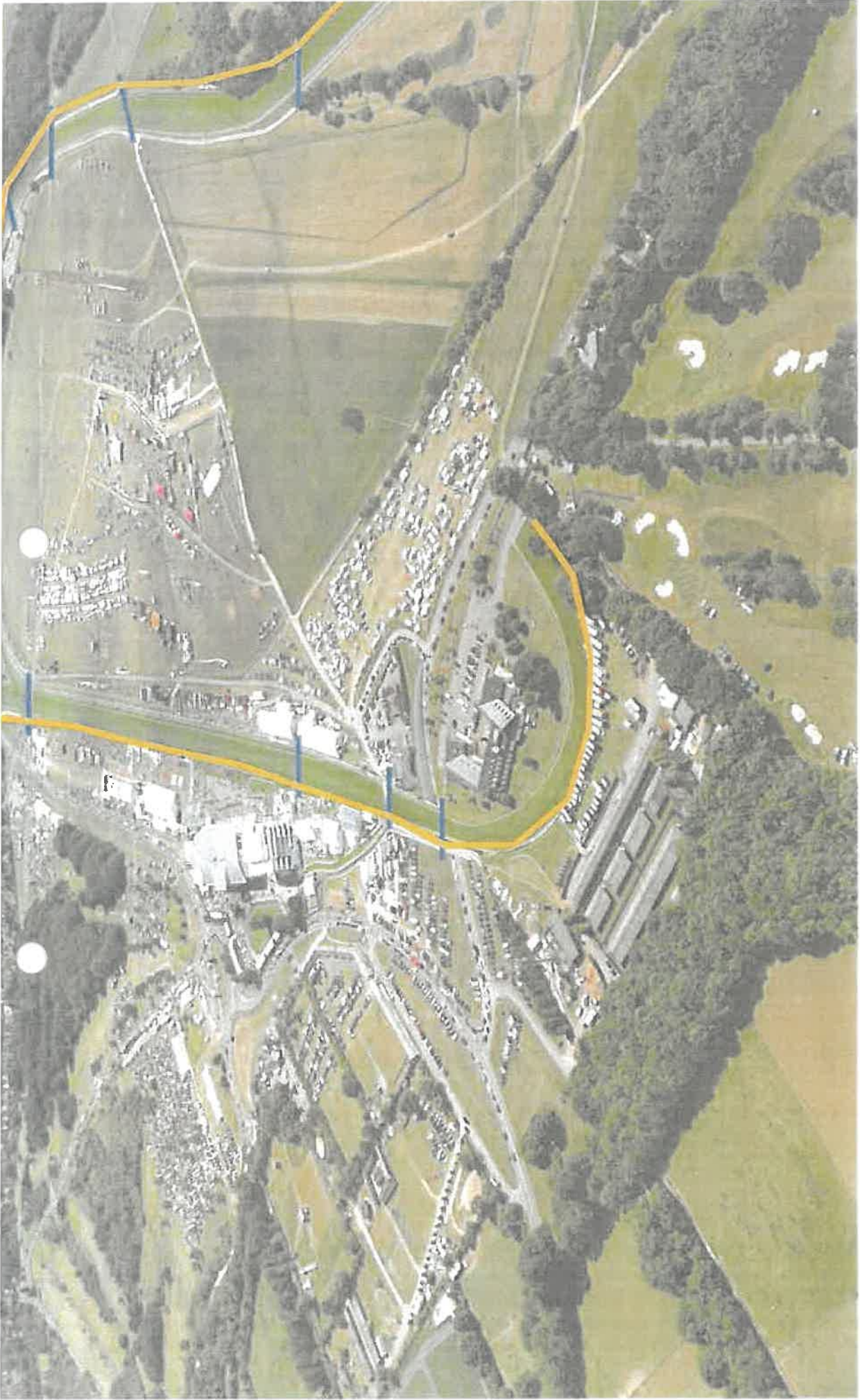
**c** Horse & Jockey  
entrance to  
race track





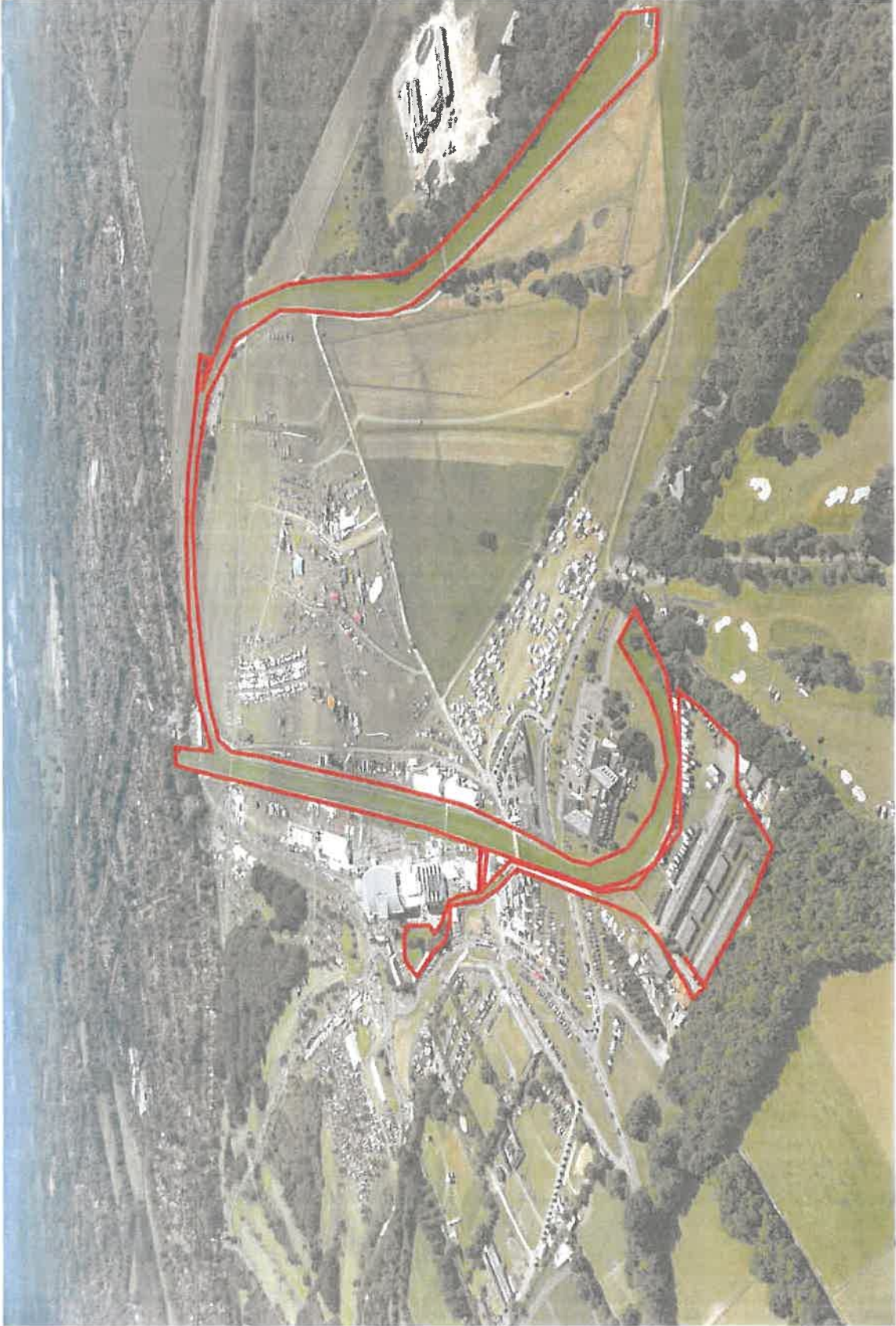








**Protected Areas**

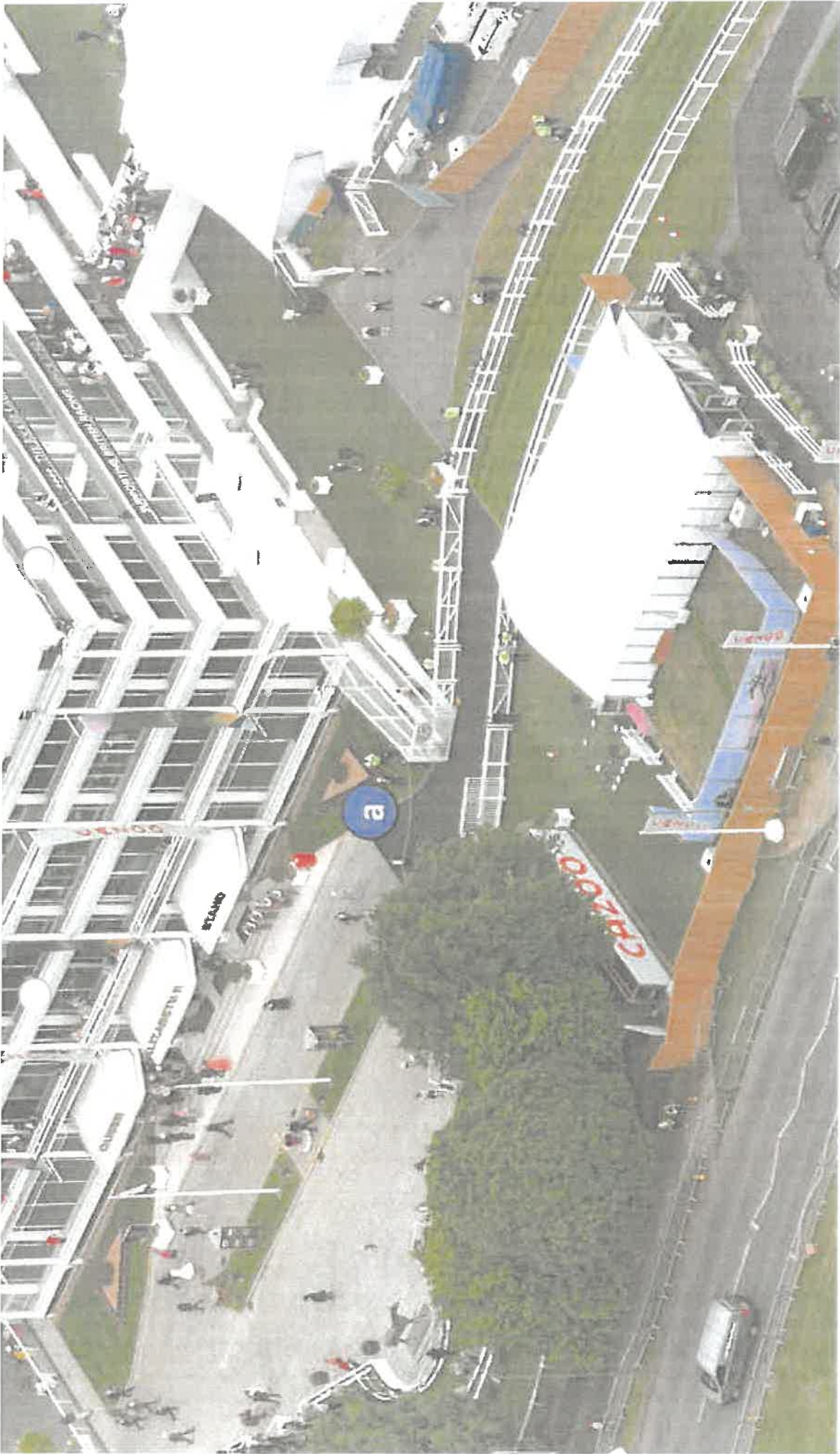




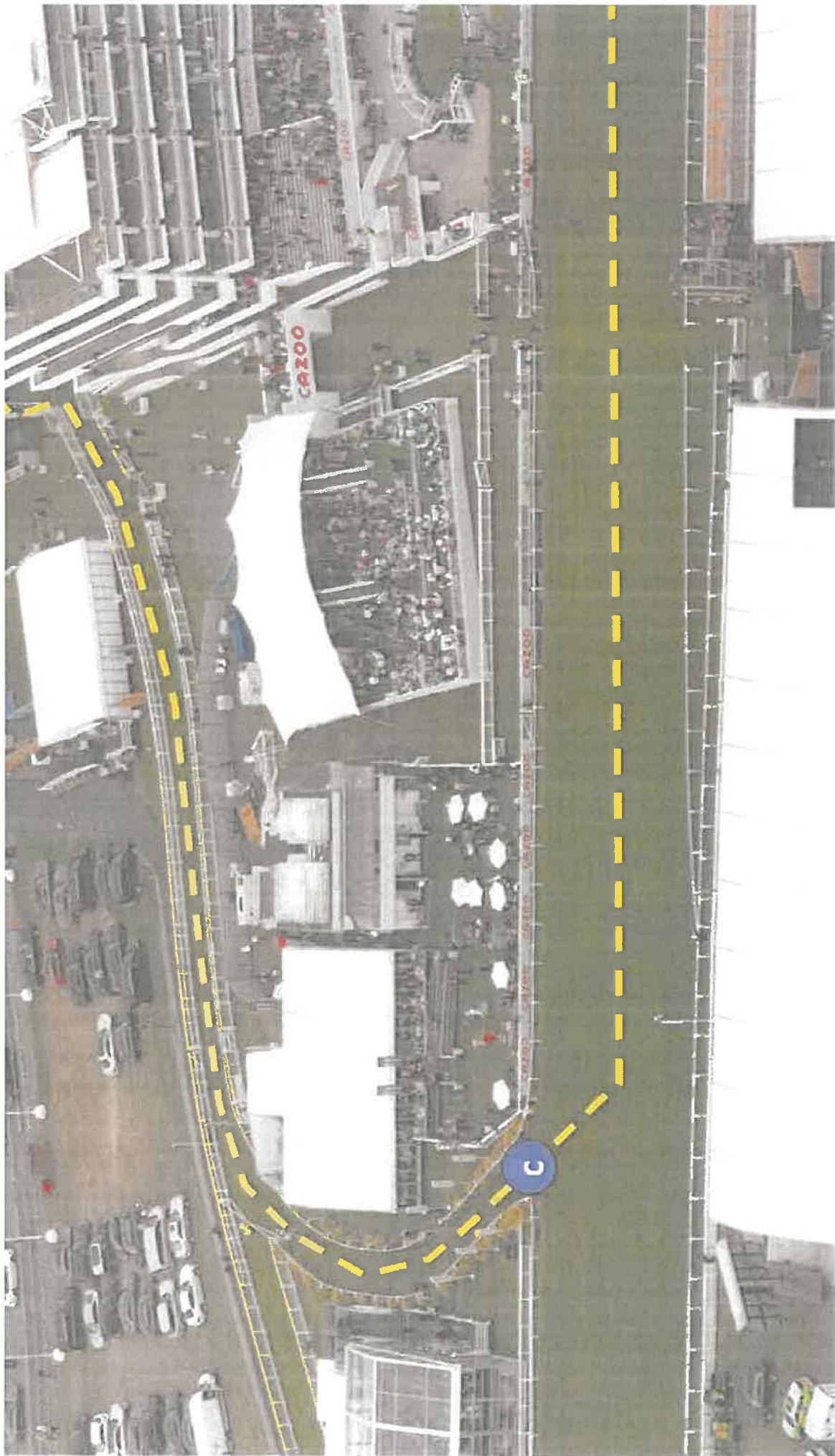












IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY  
COURTS OF ENGLAND AND WALES  
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Case No. [BL-2023-000713]

BETWEEN:

JOCKEY CLUB RACECOURSES LIMITED

Claimant/Applicant

and

- (1) DANIEL FRANK PETER KIDBY
- (2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED IN THE DRAFT ORDER AS THE "RACE TRACK" ON THE DAY OF A "RACING FIXTURE", EXCEPT AT "CROSSING POINTS" WITH "AUTHORISATION", AS DESCRIBED IN THE DRAFT ORDER
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Defendants/Respondents

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THE APPLICANT'S SKELETON ARGUMENT  
FOR THE APPLICATION HEARING  
Listed at 10:30am on 26 May 2023

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*Suggested pre-reading (with a time estimate of 1 hour): (1) the Applicant's skeleton argument, (2) the draft Order and Plan, (3) the witness statements of Nevin Truesdale, Amy Starkey, Dickon White, Simon Knapp, and Julian Diaz-Rainey.*

*References in the format [DB/\*] are to page numbers in the Documents Bundle, and [AB/\*] to page numbers in the Authorities Bundle, provided by the Applicant.*

*References in the format e.g. [Truesdale (D/B\*) §\*] are to the witness statement of the named individual, the first page of the witness statement in the Documents Bundle, and the relevant paragraph.*

## **A. INTRODUCTION**

1. This is an application for an interim *quia timet* injunction to restrain one known and other unknown persons from disrupting horse races at Epsom Racecourse (“**the Application**”). The injunction is sought, in particular, to restrain protesters from disrupting the Oaks meeting on 2 June and the Epsom Derby meeting on 3 June 2023.
2. The terms of the injunction sought are set out in the draft Order [DB/14]. These intend to prevent protesters from trespassing on various parts of the Applicant's land and/or unlawfully interfering with the Applicant's statutory right to hold racing fixtures (as set out in Section B below).
3. Attached to the draft Order is a set of aerial photographs identifying the areas of the Epsom Racecourse the Applicant seeks to protect (“**the Plan**”; also at [DB/57-62]).
4. The Applicant is the largest commercial horseracing organisation in the UK. It is the freehold owner of the Epsom Downs, and of the Epsom Racecourse (marked with a red line on the Plan) [Truesdale (DB/30) §7-8, 18] [DB/56].
5. Daniel Frank Peter Kidby (“**R1**”) describes himself as the co-founder of Animal Rising, a collective of individuals with a shared purpose said to be focused on animal welfare (“**AR**”) [Truesdale (DB/30) §10] [DB/173]. AR is believed to have some 1,000 active participants [DB/46]. It is clear that R1, together with AR, disrupted the races at the Grand National on 15 April 2023. AR has publicly shared its plans to disrupt the

forthcoming Epsom Derby, with a wider programme of “*mass trespass onto animal racing events*” [White (DB/188) §§19-27] [Truesdale (DB/30) §§38-41] [DB/115-118].

6. The Applicant knows that individuals affiliated with AR are intending to trespass on the racetrack and/or otherwise disrupt the races at the Epsom Derby, but other than R1, does not know the identities of the individuals intending or actively considering whether to do so. For this reason, the Application is brought against Persons Unknown (“Rs 2 to 8”).

## B. LEGAL BACKGROUND

### i. Injunctions against Persons Unknown

7. The Court of Appeal in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 established that an injunction may be granted against persons unknown who are not currently in existence but will come into existence when they commit the prohibited act (§30) [AB/67]. Such persons are “**Newcomers**”, against whom both interim and final injunctions may be ordered (*Barking and Dagenham v Persons Unknown* [2023] QB 295, §§7, 123 [AB/157]).<sup>1</sup>
8. The Court of Appeal provided guidance on interim relief against persons unknown at §82 of *Canada Goose UK Retail Limited v Persons Unknown* [2020] 1 WLR 2802 [AB/79]:<sup>2</sup>

*“(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*

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<sup>1</sup> Injunctions may also be granted against (i) anonymous defendants who are identifiable but whose names are unknown (e.g. squatters, identifiable by location if not name), and (ii) anonymous defendants who cannot be identified (e.g. hit and run drivers) (*Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers’ Bureau Intervening)* [2019] 1 WLR 1471 at §13, per Lord Sumption).

<sup>2</sup> The principles at §82 remain good law. The Court of Appeal in *Barking and Dagenham* (§§97-100) refused to follow parts of the Court of Appeal’s reasoning in *Canada Goose* (§§89-92), but not this paragraph.

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 must be 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."

## ii. Quia timet injunctions

9. Injunctions may be granted to prevent threatened or apprehended acts if the court is satisfied that the risk of an infringement of the applicant's rights causing irreparable harm is "imminent and real". "Real" means that "there is a real probability that in time the activities of the [respondent] will result in actual damage" to the applicant's interests; "imminent" means "that the injunction must not be granted prematurely" (*Hooper v Rogers* [1975] Ch 43, pp.49-50 [AB/3]).



iii. The test for granting an injunction

10. The court will be familiar with s. 37 of the Senior Courts Act 1981, which provides that it may grant an injunction where it is “*just and convenient to do so.*” This requires that the claimant have an interest which merits protection, and a legal or equitable principle which justifies protecting that interest by ordering the defendant not to do something (*Re G (Court of Protection: Injunction)* [2022] 3 WLR 1339, §55)<sup>3</sup>.
11. The test for an interim injunction under CPR 25.1(1)(a), is usually that stated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396: involving consideration of whether there is a serious question to be tried, the adequacy of damages for either party, and the balance of convenience.
12. The first part of that test (“*serious question to be tried*”) is modified in cases in which the court is considering “*whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression*” (s. 12 of the Human Rights Act 1998 (“HRA”) [AB/213]). The court must then be satisfied that the applicant is “*likely to establish*”, at trial, that the act in question should not be allowed (s. 12(3) HRA).
13. “*Likely*” here simply means “*more likely than not,*” although a “*lesser degree of likelihood will suffice*” where the potential adverse consequences of the apprehended act are particularly grave (*Cream Holdings v Banerjee* [2005] 1 AC 253, §22 [AB/13]).
14. If the respondent is neither present nor represented, the court must also be satisfied “(a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified” (s. 12(2) HRA).

iv. Trespass

15. Trespass to land consists of “*any unjustifiable intrusion by one person upon land in the possession of another*”, which is “*actionable without proof of damage*” (*Clerk & Lindsell on*

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<sup>3</sup> Baker LJ, giving the judgment of the Court of Appeal and considering the judgment of Lord Leggatt in *Convoy Collateral Ltd v Broad Idea International Ltd* [2022] 2 WLR 703 (“*Broad Idea*”).

*Torts* (23<sup>rd</sup> Ed.) §§18-01, 18-08 [AB/257]). One who has a right of entry upon another's land and acts in excess of that right, also commits trespass (*Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] LLR 458 [AB/47]).

v. *Rights in the land on the Epsom Downs and rights of access thereto*

16. Members of the public are granted limited rights of access over the Epsom Downs under the Epsom and Walton Downs Regulation Act 1984 Act ("the Act") [AB/215], and in accordance with the Byelaws made by The Epsom & Walton Downs Conservators on 18 October 2005 ("the Byelaws") [AB/249].<sup>4</sup>
17. Section 4 of the Act grants the public the "right of access for air and exercise on foot over the Downs". It clearly states, however, that "nothing in this section shall authorise any interference with ... any ... rights conferred upon the Company ... by this Act."
18. It is the Applicant's right (as "The Company" under the Act) to hold and conduct horse races at "Authorised Meetings" on the Epsom Downs on up to 16 days in a year (more commonly referred to as "Racing Fixtures": s. 14).
19. Section 17 of the Act provides that the Applicant may hold Racing Fixtures "notwithstanding anything contained in this Act or in any byelaws made under this Act". Pursuant to s. 17, the Applicant may:
  - (1) On the day of a Racing Fixture, control access over the Downs to a broad area of land encompassing the Epsom Racecourse ("the Relevant Area")<sup>5</sup>, and to the paddock, more commonly known as the "Parade Ring" (s. 17(3));

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<sup>4</sup> The Conservators were incorporated under the Epsom and Walton Downs Regulation Act 1936 with powers to regulate, preserve and control the Epsom and Walton Downs. The 1936 Act was repealed but the Conservators' powers retained. The Applicant is a Conservator, holding 3 of 10 places [Truesdale (DB/30) §19].

<sup>5</sup> The Relevant Area is referred to in the Act and the Byelaws as the "Race Course", by reference to markings on a "deposited map" produced with the legislation. This should not be confused with the area constituting the "Epsom Racecourse", marked within the red line on the Plan. For these purposes, it is sufficient to note that the Relevant Area includes the Epsom Racecourse.

- (2) On all days, exclude members of the public from walking on the Relevant Area except on at least seven crossing places, and on the day of a Racing Fixture, exclude members of the public from said crossing places as well (save that in the three days prior to a Racing Fixture, the Applicant must maintain a passage of 1-2 metres across the northern part of the Relevant Area: ss. 17(5)(a), 17(16)).<sup>6</sup>
- (3) On the day of a Racing Fixture, exclude members of the public from the Relevant Area, subject to the payment of a charge as the Applicant sees fit (s. 17(1)(b)).
20. The Byelaws, made pursuant to s. 11 of the Act, provide that:
- (1) Without the consent of the Conservators, a person may not walk on the Relevant Area except at the crossing places identified in s. 17(5)(a) of the Act (s. 2(1)(j));
- (2) No person shall *“intentionally obstruct, endanger or give reasonable cause for annoyance to any other person in the proper use of the Downs”* (s. 2(2)(e)).
21. *“Proper use of the Downs”* for the purpose of s. 2(2)(e) of the Byelaws necessarily includes the Applicant’s right to hold Racing Fixtures under ss. 14 and 17 of the Act. In accordance with ss. 4, 14, 17 of the Act and s. 2(2)(e) of the Byelaws, therefore, the Applicant has a clear legal right to hold Racing Fixtures without interference, intentional obstruction or danger intentionally caused to any person on the Downs.
22. A breach of the Byelaws is a criminal offence, punishable by a fine of up to £500 (s. 20). A police officer or servant of the Conservators may also in certain circumstances, and after due warning, remove from the Downs individuals considered to have breached the Byelaws (s. 18).

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<sup>6</sup> The crossing places across the Downs referenced in the Act should not be confused with the “Crossing Points” which traverse the Race Track itself, marked with blue lines on the Plan.

vi. The parties' Convention rights

23. The right to engage in public protest is, of course, protected by Articles 10 and 11 of the European Convention on Human Rights ("ECHR"). However, these rights to freedom of expression and peaceful assembly are qualified. Under Articles 10(2) and 11(2), they may be subject to restrictions "*as are prescribed by law and are necessary in a democratic society, in the interests of ... public safety, for the prevention of disorder or crime, ... for the protection of the reputation or rights of others.*" In determining the necessity of a restriction in a democratic society, the court "*must assess the proportionality of the interference with the aim pursued*" (*Cuadrilla Bowland Limited & Ors v Persons Unknown* [2020] 4 WLR 29, §41 [AB/105]).
24. The Court of Appeal stated in *Ineos* that "*[t]he citizen's right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example*" (§42) [AB/67]. Indeed, the object of the law of trespass "*is to protect property rights in accordance with [Article 1 of Protocol 1 of the ECHR]*" ("**A1P1**") (*DPP v Cuciurean* [2022] QB 888, §46 [AB/127]). The court must balance the Applicant's Convention rights with those of the Respondents.
25. There is also an important distinction "*between protests which cause disruption as an inevitable side-effect and protests which are deliberately intended to cause disruption, for example by impeding activities of which the protesters disapprove*" (*Cuadrilla* §§42-43 [AB/105]). Deliberately disruptive protests are not at the core of the Article 11 freedoms (although they may fall within its scope), and restrictions in respect of such protests "*may much more readily be justified*" (*Cuadrilla* §§43-44 [AB/105]).

C. THE ORDER SOUGHT

26. The Applicant seeks the minimum restrictions necessary to ensure that the races on 2 and 3 June can go ahead safely. The terms at subparagraphs 2(1)-(5) of the draft

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<sup>7</sup> Citing the Strasbourg jurisprudence, and particularly, *Kudrevičius v Lithuania* (2016) 62 E.H.R.R. 34, §97.

Order seek to prevent trespass on the areas of the Epsom Racecourse which require protection for this purpose, namely: (i) the Race Track, (ii) the Parade Ring, (iii) the Horses' Route to the Parade Ring, and (iv) the Horses' Route to the Race Track, as described at paragraph 1 of the draft Order, by reference to the Plan ("the Protected Areas") [DB/14-24].

27. The routes referenced at points (iii) and (iv) are open to the public until such time as the horses are led out. At that point, the parts of the pathways which are not fenced off are closed by stewards holding rope (as can be seen in the fourth photograph in the Plan). At that point, no spectators are authorised to be on the pathways, for the protection of the horses and spectators alike [Truesdale (DB/30) §§22-23].

28. Subparagraphs 2(6)-(8) of the draft Order seek to protect the Applicant's right under the Act, in accordance with the Byelaws, to hold Race Meetings without interference, intentional obstruction, or danger intentionally caused to individuals on the Downs.

#### **D. WHY THE INJUNCTION SHOULD BE GRANTED**

##### ***i. There is an imminent and real risk of irreparable harm.***

29. On the evidence before the Court, there is a very clear imminent and real probability of actual damage to the Applicant's interests if injunctive relief is not obtained, and in particular that AR will attempt to access the Protected Areas and disrupt the races on 2 and 3 June 2023. AR told the Applicant on 19 May 2023: "[W]e are unwavering in our intention to stop the race by getting onto the race course using non-violent means, no matter the sacrifice we make to our personal liberty and comfort" [DB/179]. AR is actively recruiting individuals through its website to "Join us on the tracks of the Epsom Derby!" [Truesdale (DB/30) §49.1] [DB/53].

30. The high probability of AR following through with its plans is demonstrated by AR's disruption of the recent Grand National at Aintree Racecourse on 15 April 2023. Some 100 protesters scaled the perimeter fence to the racecourse (with ladders and plastic

sheeting to protect themselves from barbed wire) and ran onto the racetrack. Three protesters, who the Applicant believes included R1, ran on to the racetrack having accessed the event with tickets [White (DB/188) §26] [Truesdale (DB/30) §41]. It is understood that the protesters intended to glue themselves to the horse jumps [White (DB/188) §§24, 27] [DB/73-101, 197-202].<sup>8</sup> The race was delayed by approximately 15 minutes, and the police made 118 arrests [White (DB/188) §31] [DB/46].<sup>9</sup>

31. The high probability of the planned disruptions occurring poses a real probability of significant and irreparable damage to the Applicant's interests. A delayed race is not a mere inconvenience: it is deeply damaging to the reputation of the race, and to the Applicant's relationships with sponsors, patrons, broadcasters and others [Truesdale (DB/30) §§62-67].
32. There is also a real issue with safety, of both horses and humans. The trainer of the horse which suffered a fatal fall at the Grand National has explained that, in his view, the 15-minute delay caused by protesters was a major reason for the three fallen horses and five unseated jockeys in that race [White (DB/188) §32.1] [DB/218]. Moreover, the horses at the Epsom Derby are younger (3 year old colts), and so both less experienced and more excitable than those at the Grand National, and delays may agitate or frustrate them causing them to "*rear up, kick out, or barge through*", posing serious risks to anyone present [Knapp (DB/222) §§8-10].
33. Further, the Race Track at Epsom contains blind corners such as Tattenham Corner (where the suffragette, Emily Davison, entered the track before she was knocked down and fatally injured) [Truesdale (DB/30) §26]. Protesters accessing the tracks,

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<sup>8</sup> Other tactics involved lying down limp, requiring several police officers to carry one individual away, and a slow march around the racecourse perimeter [DB/46].

<sup>9</sup> AR protesters also ran onto the tracks at the Epsom Derby in 2022 [DB/46], the Scottish Grand National at Ayr Racecourse on 22 April 2023, [Truesdale (DB/30) §42] [DB/102-111], and at Doncaster Racecourse on 6 May 2023 [DB/112-115].

or security personnel following them, may not be aware if a race is underway or a horse is nearby and, as Ms Davison's fate demonstrates, would be at risk of very serious harm.

34. The Applicant has invited AR to desist from its plans, and offered a location for a peaceful protest by AR [Starkey (DB/163) §§20-21]. The Applicant has also highlighted the actions it takes to protect the horses' welfare, and drawn attention to criminal offences which may apply to AR's actions. None of this was sufficient to deter AR from its plans to disrupt the Derby, and in the Applicant's submission, an injunction is now a necessary and urgent step. The *quia timet* test is amply satisfied.

*ii. The Applicant is more likely than not to succeed in obtaining a final injunction*

35. The Applicant is more likely than not to succeed in obtaining a final injunction: (i) the Applicant's proprietary rights merit protection under the law of trespass and A1P1, and its statutory rights are entitled to the protection of the Courts; (ii) the restrictions on the Respondents' Convention rights that would ensue from the relief sought are justified to protect the Applicants' said rights and other legitimate aims including public safety and order; and (iii) an injunction is just and convenient.

36. AR's planned disruptions clearly fall within the second category of protests described at paragraph 25 above, which the Court of Appeal (by reference to Strasbourg jurisprudence) held are not at the core of Article 11 and may more readily be restricted.

37. There is overwhelming justification for restrictions on AR's deliberately disruptive protests, which are required to protect three of the legitimate aims described under Articles 10(2) and 11(2): public safety, the prevention of disorder and crime, and the reputation and rights of others. AR's plans threaten significant risks of injury, mass arrests (as at the Grand National), the diversion of police and security resources

[White (DB/188) §32.3] and damage to the Applicant's reputation and legal rights [Truesdale (DB/30) §§62-67].

38. The proposed restrictions are proportionate. The Applicant has offered a dedicated space for peaceful protest, and asked members of AR whether there are alternative means, other than disrupting the races, by which they consider they can pursue their objectives. AR stated that there are not [Starkey (DB/163) §16].
39. That being so, the Applicant submits that the proposed relief is necessary and proportionate, and it would be just and convenient for a final injunction to be granted at trial, and for an interim injunction to be granted on this Application.

*iii. The balance of convenience falls in favour of granting an interim injunction*

40. Further to the above, the Applicant submits that the balance of convenience falls decisively in favour of granting the interim injunction for the reasons set out below.
41. The Epsom Derby is a much-loved sporting event<sup>10</sup>, which has taken place since 1780 [Truesdale (DB/30) §13]. Approximately 100,000 people attend the Derby, with millions watching around the world [Truesdale (DB/30) §17]. The Derby is also known as the "People's Race" as it embraces people from all walks of life, offering free access to parts of the event from the Epsom Downs [Truesdale (DB/30) §14]. AR should not be allowed deliberately to obstruct the wider public's legitimate enjoyment of the sport.
42. Animal welfare is at the heart of the sport, which is heavily regulated and attracts significant investment [Truesdale (DB/30) §§28-34]. No race runs unless British Horseracing Authority ("BHA") criteria are satisfied, and industry statistics show that 99.5% of horses that race finish safely [Truesdale (DB/30) §30]. At the Epsom

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<sup>10</sup> Queen Elizabeth II was a patron of the Applicant and the Thoroughbred Breeders' Association, and, as is well known, very rarely and reluctantly ever missed a Derby [Truesdale (DB/30) §§7, 14].



Derby, both the Applicant and BHA provide specialist veterinary teams [Truesdale (DB/30) §34].

43. Finally, the protesters' actions have a significant financial impact on the Applicant, which has been required to spend £150,000 on additional security measures for the Epsom Derby, and extensive management time in discussions with various stakeholders [Truesdale (DB/30) §§58-60]. These include Surrey Police, which is supportive of the Application [Truesdale (DB/30) §60].

44. Damages are not an adequate remedy for the Applicant, even assuming there was any source for payment, which is to say the least improbable.

*iv. All practicable steps have been taken to notify the Respondents*

45. The Applicant has taken all practicable steps to notify the Respondents of the Application, as is required by s. 12(2) HRA if the Respondents are not present or unrepresented. The relevant steps are set out in Section E below.

*v. Conclusion on the injunction*

46. In light of the submissions above, the Applicant submits that it is just and convenient for the court to grant an interim injunction.

47. It is not clear to the Applicant what damage the Respondents may incur in consequence of an order granting the injunction. However, if the court considers it necessary for the Applicant to provide a cross-undertaking in damages, the Applicant is willing to do so, and has provided its most recent accounts [Truesdale (DB/30) §74] [DB/124-162].

**E. SERVICE**

*i. Legal principles*

48. CPR 6.15(1) provides that the Court may make an order permitting service of the claim form by an alternative method or at an alternative place, where there is "good

*reason*” to do so. Under CPR 6.15(2), the Court may order that steps already taken to bring the claim form to the defendant’s attention by alternative means are good service. CPR 6.27 states that CPR 6.15 applies to any document in the proceedings as it applies to a claim form.

49. Whether there is “*good reason*” is a matter of fact; there need not be exceptional circumstances (c.f. CPR 6.16; *Abela v Baadarani* [2013] 1 WLR 2043, §§33-35 [AB/25]). The essential requirement is that the means used should be such as can reasonably be expected to bring the proceedings to the respondents’ attention of the defendant (*Canada Goose* §82 [AB/79]: see paragraph 8 above).
50. Appropriate forms of alternative service may include: (i) exhibiting copies of the relevant documents in transparent envelopes around the premises where the protests would take place; (ii) advertising and making copies available online; and (iii) sending a copy and a press release to news outlets (*Canada Goose* §50 [AB/79]; *Cuadrilla* §19 [AB/105]).
51. In respect of the known respondent, Mr Kidby, personal service is required in respect of a Court order for the purpose of any later enforcement proceedings under CPR 81, but not in respect of the claim form or other documents. A claim form can be served on an individual by leaving it at his/her last known address (CPR 6.3(c), 6.9).
52. CPR 6.20(c) provides that documents other than the claim form may be left at an address specified in CPR 6.23, which states that parties to any proceedings must give an address for service, at which address documents may be left.<sup>11</sup>

ii. *Why permission should be granted*

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<sup>11</sup> The White Book states (§6.23.1): “*The former r.6.5(6) anticipated that a party might fail to provide an address for service of documents and explained how service should be effected in that circumstance. In relation to the service of claim forms, that provision is in effect replicated in r.6.9(2), but it is not replicated in r.6.23.*”

53. Service must necessarily be effected on unknown respondents by alternative means, given that their identities are not known. There is good reason for service by alternative means, therefore, and the Applicant has taken all reasonable steps to bring the Claim Documents to the attention of Rs 2 to 8, following the steps referenced in paragraph 50 above [**Diaz-Rainey (DB/227) §§11-15**].<sup>12</sup> Moreover, AR issued a response to the Application on its website at approximately 6.30pm on 22 May 2023 [**Diaz-Rainey (DB/227) §8**] [**DB/234**].
54. The Applicant considers that the same steps can reasonably be expected to bring the Order to the attention of Rs 2 to 8 if an injunction is granted, and invites the court to grant permission for alternative service of the Order to be effected on Rs 2 to 8 by the means set out at paragraph 3 of the draft Order.
55. It was not possible personally to serve the Claim Documents on R1 as the Applicant intended; however, personal service is not required by the CPR rules. Insofar as it is necessary to do so, the Applicant invites the court to direct that the steps taken - leaving copies in R1's letterbox, and emailing him digital copies - amount to good service [**Diaz-Rainey (DB/227) §§5-7**] [**DB/231-232**]. The Applicant received a notification that R1 had downloaded the documents at 5.24pm on 22 May 2023, and the AR's response on its website was almost entirely a quote attributed to R1 [**Diaz-Rainey (DB/227) §§7-8**].

#### **F. CONCLUSION**

56. In all the circumstances, the Applicant respectfully invites the court to: (i) grant the injunction in the terms set out in the draft Order; (ii) direct that good service of the Claim Documents has been effected on each of the Respondents; and (iii) order that

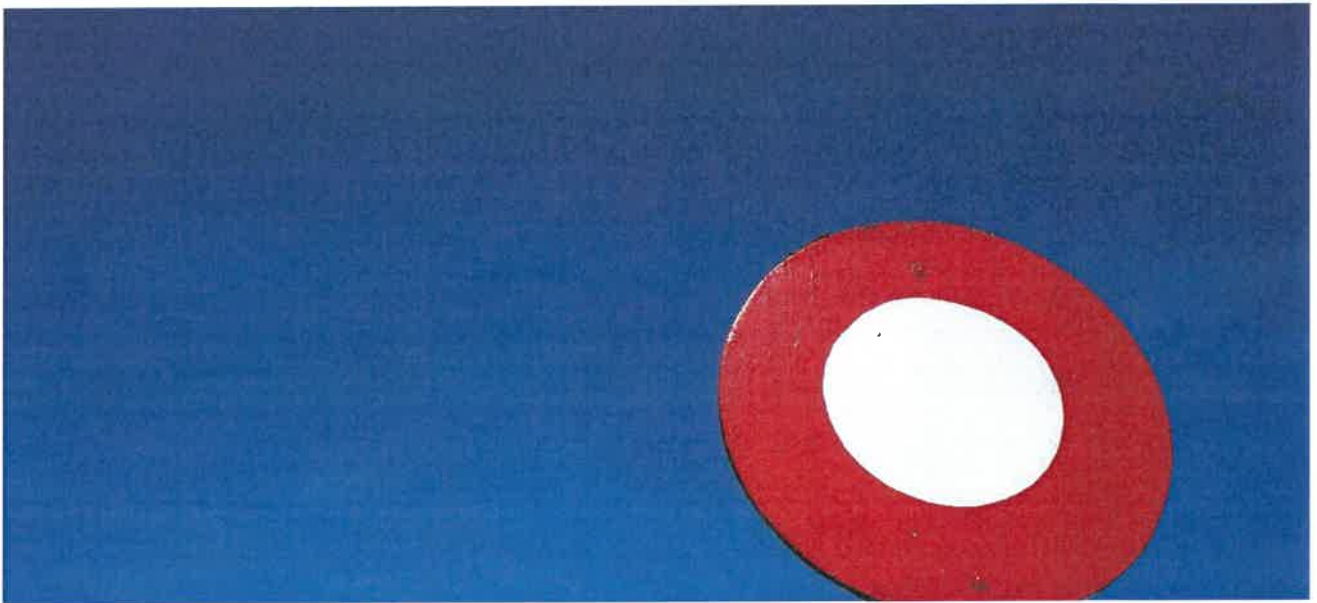
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<sup>12</sup> The Claim Documents are those defined in the draft Order, namely, the Claim Form, the sealed Application Notice and draft Order, the Witness Statements of Mr Truesdale, Ms Starkey, Mr White and Mr Knapp, and the exhibits thereto.

service of the Order, if the injunction is granted, be effected on Rs 2 to 8 in accordance with paragraph 3 of the draft Order.

**ALAN MACLEAN KC**  
**ANTONIA EKLUND**  
**Blackstone Chambers**  
**25 May 2023**

## EPSOM DOWNS NEWS



### The Derby Festival 2023

The Jockey Club made the following application on Monday 22nd May 2023.

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22 MAY 2023

**THE JOCKEY CLUB APPLIES FOR INJUNCTION IN AN EFFORT TO PREVENT “ILLEGAL AND RECKLESS” DISRUPTION OF**

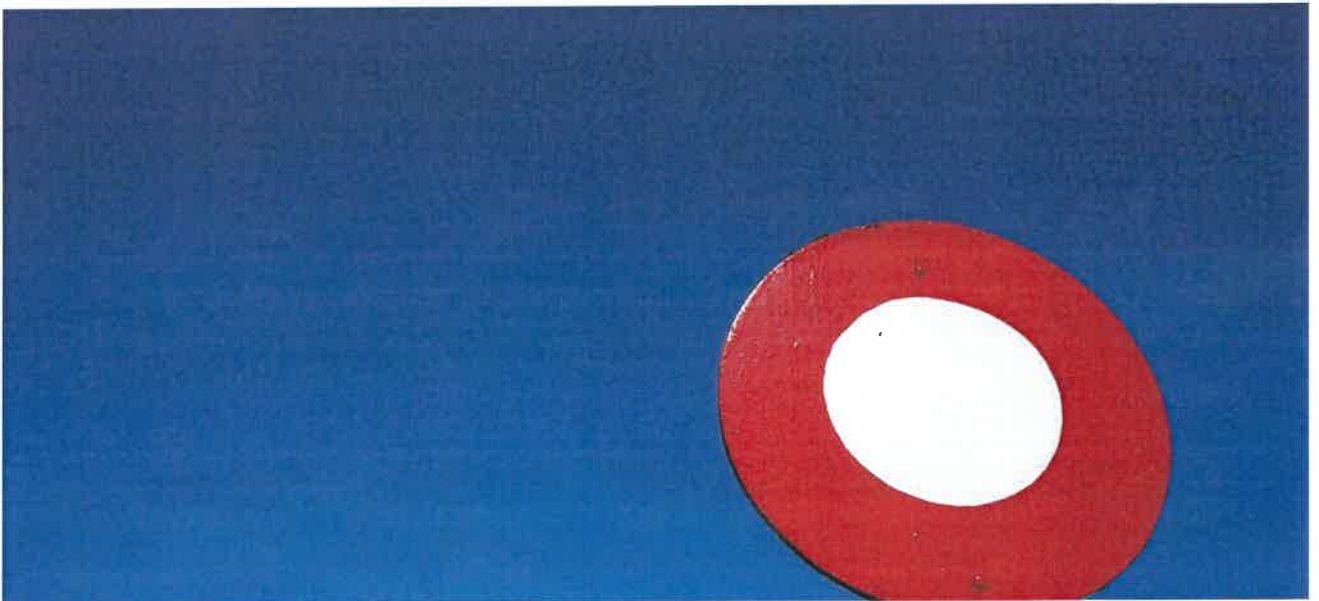




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### The Derby Festival 2023

The Jockey Club made the following application on Monday 22nd May 2023.

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22 MAY 2023

## THE JOCKEY CLUB APPLIES FOR INJUNCTION IN AN EFFORT TO PREVENT “ILLEGAL AND RECKLESS” DISRUPTION OF







## The Derby Festival 2025

The Jockey Club made the following application on Monday 22nd May 2023:

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[View Claim Form](#)

[View Witness Statement Nevin Truesdale](#)

[Exhibit to Witness Statement of Nevin Truesdale Part One](#)

[Exhibit to Witness Statement of Nevin Truesdale Part Two](#)

[View Witness Statement Amy Starkey](#)

[View Witness Statement Dickon White](#)

[View Witness Statement Simon Knapp](#)



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ABOUT

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**Downs**







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Apple iPhone 14 Pro

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 IMG\_0482

Apple iPhone 14 Pro

JPEG

Main Camera — 24 mm  $f1.78$

12 MP • 4032 × 3024 • 5.5 MB

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Apple iPhone 14 Pro

JPEG

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ISO80

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0ev

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 IMG\_0480

Apple iPhone 14 Pro

JPEG

Main Camera — 24 mm *f*1.78

12 MP • 3024 × 4032 • 3.9 MB

ISO80

24mm

0ev

*f*1.78

1/3717s



## Iona Wilson

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**From:** Iona Wilson  
**Sent:** 22 May 2023 15:50  
**To:** d.f.p.kidby@outlook.com  
**Cc:** Julian Diaz-Rainey; Trevor Watkins; Alexander Richardson (Litigation, Regulatory & Tax)  
**Subject:** JCR v (1) Daniel Kidby; and (2)-(8) Persons Unknown

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### File(s):

Witness Statement of Amy Starkey and Exhibit - 22 May 2023 (Final) (Signed).pdf  
Witness Statement of Dickon White and Exhibit 22 May 2023 (Final) (Signed).pdf  
Witness Statement of Nevin Truesdale and Exhibit 22 May 2023 (Final) (Signed).pdf  
Endorsed Application Notice N244 21052023(140249495(140259774.1)).pdf  
Sealed Claim Form and additional sheet 22 May 2023(140252735.1).pdf  
Witness Statement of Simon Knapp - 22 May 2023 (Final) (Signed).pdf  
n208c-eng Notes for Defendant Part 8 claim.pdf  
N210\_1122\_save AoS.pdf

Dear Mr Kidby

Please find enclosed for your urgent attention:

- i. Sealed Claim Form dated 22 May 2023;
- ii. Sealed Application Notice dated 22 May 2023;
- iii. Witness Statement and Exhibit of Nevin Truesdale dated 22 May 2023;
- iv. Witness Statement and Exhibit of Amy Starkey dated 22 May 2023;
- v. Witness Statement and Exhibit of Dickon White dated 22 May 2023;
- vi. Witness Statement of Simon Knapp dated 22 May 2023; and
- vii. Acknowledgement of Service Documents (Forms N208 and N210).

**Please acknowledge receipt of this email.**

Yours faithfully,

**Pinsent Masons LLP**



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**Sent:** 22 May 2023 17:24:35

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Filed on behalf of the Claimant  
Statement of: S Williams  
Statement Number: 1  
Exhibits:  
Dated:  
Filed:

**Case No BL-2023-000713**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**CHANCERY DIVISION**

BETWEEN

**JOCKEY CLUB RACECOURSES LIMITED**

**Claimant**

and

- (1) DANIEL FRANK PETER KIDBY
- (2) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE 7 HORSE RACES ON 2 JUNE 2023 AND 8 HORSE RACES ON 3 JUNE 2023 AT THE LOCATION DESCRIBED BELOW AS THE "EPSOM RACECOURSE"
- (3) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "RACE TRACK" EXCEPT AT SPECIFIC "CROSSING POINTS" AND WITH "AUTHORISATION", AS DESCRIBED BELOW
- (4) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY "CROSSING POINTS" WITHOUT "AUTHORISATION", AS DESCRIBED BELOW
- (5) [PERSONS UNKNOWN INTENTIONALLY CAUSING ANY OBJECT TO ENTER ONTO THE "RACE TRACK" WITHOUT "AUTHORISATION", AS DESCRIBED BELOW
- (6) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE "PARADE RING" WITHOUT "AUTHORISATION", AS DESCRIBED BELOW
- (7) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY PART OF THE AREAS DESCRIBED BELOW AS THE "HORSES' ROUTE TO THE PARADE RING" AND/OR THE "HORSES' ROUTE TO THE RACE START", WITHOUT "AUTHORISATION", AS DESCRIBED BELOW
- (8) PERSONS UNKNOWN INTENTIONALLY ENDANGERING ANY PERSON AT THE LOCATION DESCRIBED BELOW AS THE "EPSOM RACECOURSE"

**Defendants**

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**STATEMENT OF PROCESS SERVER**

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I, Stephen Williams of Conflict International Limited 180 Piccadilly, London, W1J 9HF, process server, acting in the employ of Pinsent Masons LLP of 30 Crown Place, Earl Street, London, EC2A 4ES, Solicitors for the Claimant in this matter, **State as follows:-**

1. THAT I did on Monday 22/05/2023 at 15:25 hours, attend in the vicinity of [REDACTED] in order to personally serve upon Daniel Frank Peter Kidby, the First Defendant, the Claim Form issued on 22/05/2023, the Application Notice, the Notes for Defendant, the Acknowledgement of Service, the Witness Statement of Amy Starkey with Exhibit, the Witness Statement of Dickon White with Exhibit, the Witness Statement of Simon Knapp and the Witness

1

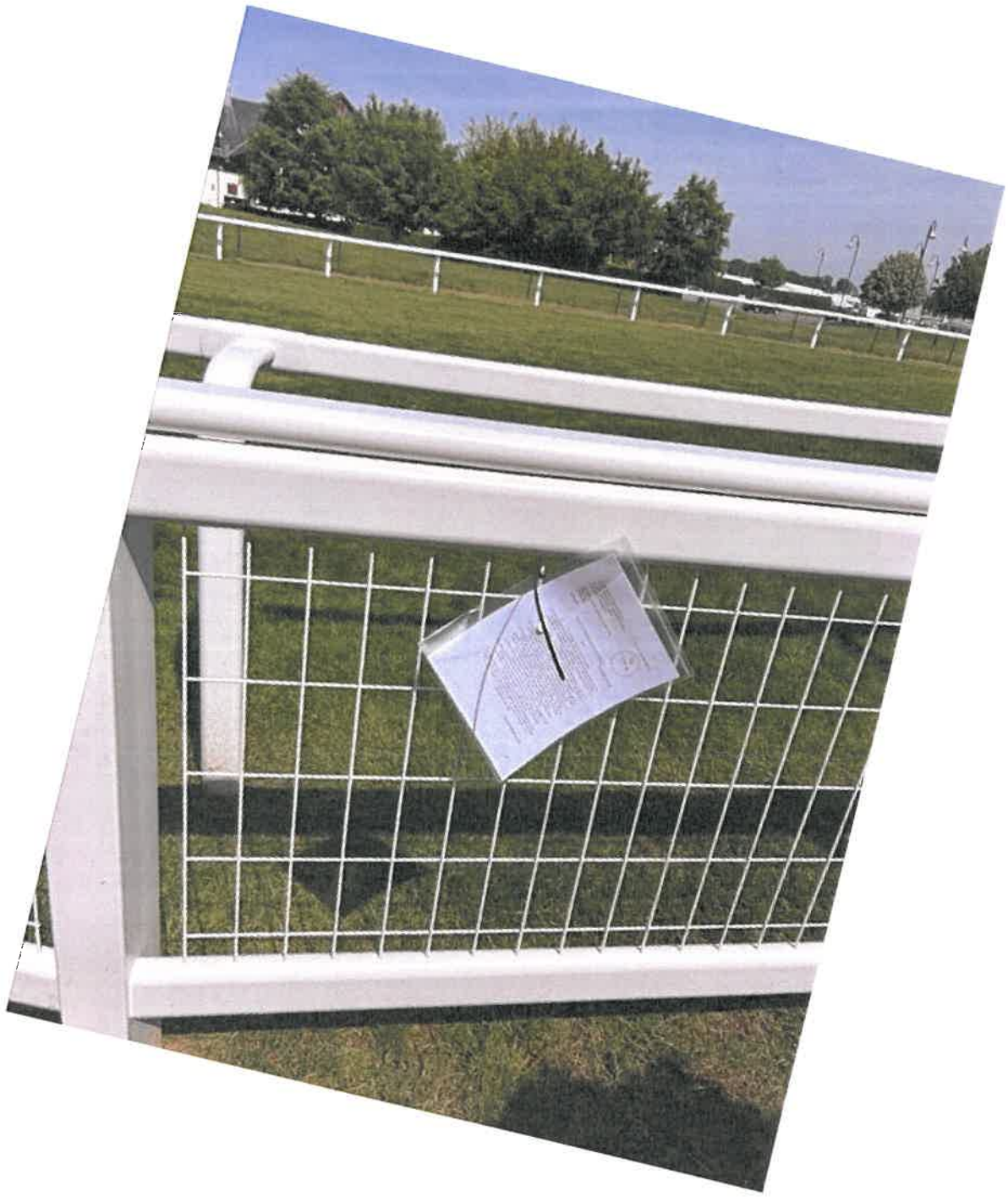
Statement of Nevin Truesdale with Exhibit. I was able to confirm with neighbours the continued residency of the First Defendant at the aforementioned address.

2. THAT upon attendance at [REDACTED] I met with an adult female who confirmed that Daniel Frank Peter Kidby, the First Defendant, resides at the property, but was not at home at the time. She confirmed that Mr Kidby was not due to return home until the evening of Tuesday 23/05/2023. I explained the purpose of my attendance and that I had important legal paperwork to deliver to Mr Kidby. I informed her that I would withdraw and get permission to post the documents through the letterbox.
3. THAT on Monday 22/05/2023 at 15:40 hours I posted the aforementioned documents through the letterbox at [REDACTED] in a series of envelopes addressed to Daniel Frank Peter Kidby, the First Defendant. Prior to service I had marked on an envelope the details of the Hearing date and time.
4. THAT on Monday 22/05/2023 I returned to the aforementioned address at 16:29 hours and posted a further copy of the Application Notice which had been issued in the High Court of Justice and endorsed with the Hearing date and time.
5. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed SMW Dated 24/5/23

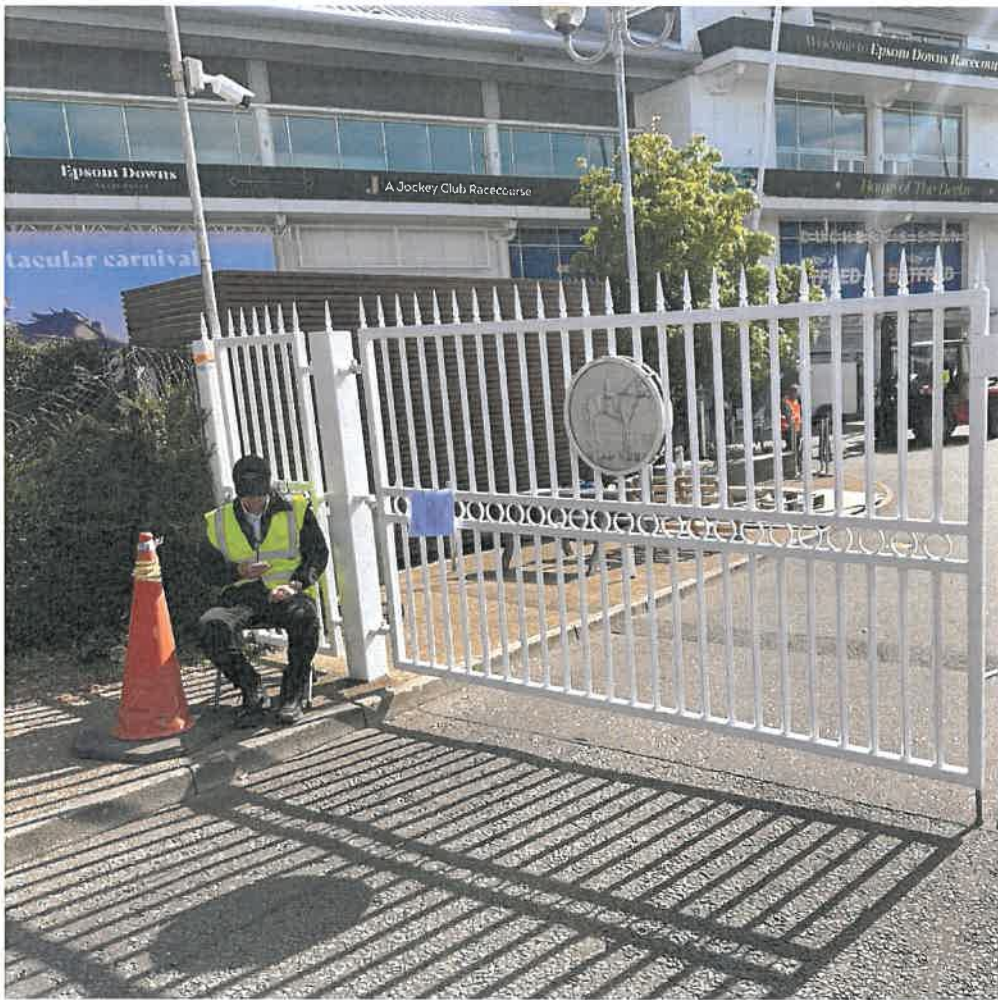












Add a Caption

Wednesday • 31 May 2023 •  
16:28

Adjust

IMG\_0605

Apple iPhone 14 Pro

JPEG

Main Camera — 24 mm f1.78

12 MP • 4032 x 3024 • 5.9 MB

ISO80

24mm

0ev

f1.78

1/3472s



Edit















