Neutral Citation Number: [2021] EWHC 246 (Admin)

Case No: CO/361/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2021

Before :

MRS JUSTICE STEYN DBE

- -

Between :

THE QUEEN

- on the application of -

DR LARCH MAXEY — **Claimant**

- and -

HIGH SPEED 2 LIMITED — **Defendant**

(1) THE SECRETARY OF STATE FOR TRANSPORT
((2) THE LONDON FIRE COMMISSIONER
((3) THE HIGH COURT ENFORCEMENT GROUP LIMITED

Interested Parties

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- -

John Cooper QC and Joshua Hitchens (instructed by **Edwin Coe LLP**) for the **Claimant**
Saira Kabir Sheikh QC, Michael Fry and Jonathan Welch (instructed by **The Government Legal Department**) for the **Defendant**
Joseph Barrett (instructed by **LG Williams & Prichard**) for the **Third Interested Party**
Alistair Mills (instructed by **The Government Legal Department**) for the **Health and Safety Executive**
The **First and Second Interested Parties** did not appear and were not represented

Hearing date: 9 February 2021

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Approved Judgment

Mrs Justice Steyn :

A. INTRODUCTION

1. This judicial review claim was filed 9 days ago. The Claimant describes himself as an environmental activist. He is currently one of a number of people ("the protesters") who are occupying a tunnel which the protestors constructed clandestinely under Euston Square Gardens ("the site"). The purpose of the protest is to oppose the High Speed 2 ("HS2") project on environmental grounds. However, the merits of the HS2 project are not the subject of this claim.

2. The site is in HS2's temporary possession. HS2 gave notice in mid-December 2020 to the rightful owners and occupiers of the site of its intention to take temporary possession of the site. HS2's right to temporary possession is pursuant to a warrant issued under paragraph 11 of Part 3 of Schedule 16 to the High Speed Rail (London-West Midlands) Act 2017. The Claimant is a trespasser and he has not sought to contend otherwise.

3. On 27 January 2021, the Defendant began operations to remove the protesters, including the Claimant, from the tunnel and the site.

4. The decisions that the Claimant seeks to challenge are stated in the claim form to be:

> "1. Decision to extract the protestors currently occupying a tunnel under Euston Square Gardens.
>
> 2. Failure to safely manage Euston Square Gardens in a manner compatible with the D's ECHR obligations."

5. The Defendant has not yet filed an acknowledgment of service and summary grounds of defence, and the time for it to do so has not yet expired. Accordingly, the Claimant's application for permission has not yet been considered. This judgment addresses two interim applications.

6. The evidence is that the tunnel which the protesters have built is poorly constructed and liable to collapse. The Claimant and other protesters in the tunnel are in a highly dangerous situation, and the danger is equally grave for those who may attempt to breach the tunnel to rescue them. At present, there is nothing hindering the Claimant and other protesters from leaving the tunnel and several of the protesters have done so over the course of the last week.

B. THE 1 FEBRUARY ORDER

7. On 1 February 2021, late in the afternoon, the Claimant filed the claim, an application for urgent consideration and an application for interim relief. The Defendant responded a few hours later, and the application was determined by Mr Justice Robin Knowles CBE that evening. The interim relief sought by the Claimant was in the form of mandatory orders requiring the Defendant to instruct its contractors to cease all operations to extract the protesters from the tunnel under the site and requiring the Defendant to implement an exclusion zone around the tunnel. The Claimant also sought orders against the First and Third Interested Parties.

8. Robin Knowles J's order ("the 1 February Order") was in the following terms:

"It is ordered and directed that:

1. The Claimant's application for injunctions requiring the Defendant and the London Fire Brigade and the High Court Enforcement Group Ltd to cease operations, and for the implementation of an exclusion zone, and for other steps to be taken, is refused, save at 2 below.

2. Where there is a safe method of doing so (in the opinion of the Defendant, having taken the advice of the Health and Safety Executive and the London Fire Brigade) the Defendant is to allow reasonable access between the Claimant and his lawyers for the purpose of his taking legal advice and also for the purpose of facilitating compliance at 4 below.

3. Notwithstanding 1 above, in taking decisions the Defendant is to (continue to) consider carefully, with the health and Safety Executive and the London Fire Brigade, the expert opinions of Mr Peter Faulding as expressed in his witness statement made today.

4. The Claimant is forthwith:

(a) and until further order, to cease any further tunnelling activity and is not to cause any other person to engage in tunnelling;

(b) to inform the Defendant, the Health and Safety Executive, the London Fire Brigade or the Police how many people are in the tunnel or tunnels, and how many of those are children (and where children, their age and immediate contact details for any adult who to his knowledge is their parent or guardian or has responsibility for their care);

(c) to provide details to the Defendant, the Health and Safety Executive, the London Fire Brigade or the Police of the layout, size and engineering used for the tunnel or tunnels (including the composition of the walls, floors and ceiling of the tunnel or tunnels); and

(d) and until further order, to cooperate with the Defendant, the Health and Safety Executive, the London Fire Brigade and the Police to leave the tunnel safely and allow others to do the same."

9. The Defendant has complied with §§2 and 3 of the 1 February Order. The Claimant has not complied with subparagraphs (b), (c) or (d) of §4 and there is no evidence that he has complied with subparagraph (a). Through Counsel, he has made clear that he will not comply with §4 of the 1 February Order.

C. THE APPLICATIONS

10. The purpose of the hearing, which was listed pursuant to the order of Mr Justice Martin Spencer dated 8 February 2021, was to consider two applications. The first is the Claimant's application dated 3 February (and filed a day later) ("the Claimant's application"). The second is the Defendant's application of 5 February ("the Defendant's application").

11. The Claimant's application raises several matters. First, the Claimant sought orders (a) adding the Health and Safety Executive ("HSE") as an Interested Party and (b) ordering the HSE to file and serve a witness statement within 7 days setting out its analysis of safety in Euston Square Gardens and the extraction methods deployed by the Defendant. The HSE opposed the application and, in those circumstances, leading Counsel for the Claimant, Mr Cooper QC, confirmed at the hearing that the Claimant did not pursue the application for either of these orders.

12. Secondly, the Claimant seeks interim relief ("the application for interim relief"). He renews his application for orders requiring (a) the cessation of operations to extract the protesters from the tunnel and (b) to implement an exclusion zone. In addition, the Claimant has expanded the interest relief he seeks to include provision forthwith by the Defendant of (a) oxygen monitoring equipment; (b) a hard-wired communication method; (c) food and drinking water for the Claimant and the protesters; and (d) to make arrangements for the removal of human waste from the tunnel.

13. Thirdly, the Claimant seeks (a) an order pursuant to CPR 25.1(1)(c)(ii) requiring the Defendant to permit Mr Peter Faulding (a witness for the Claimant), and three of his "support staff", to access the site; and (b) an order pursuant to CPR 35.9 requiring the Defendant to disclose to Mr Faulding and the Claimant's representatives (i) any risk assessments undertaken in respect of tunnel extraction operations in Euston Square Gardens, (ii) the extraction operation plans and any minutes and correspondence relating to the decision to extract the Claimant and others from the tunnel, and (iii) any minutes, correspondence or other material relating to the consideration of Mr Faulding's evidence pursuant to the 1 February Order. ("The site visit and disclosure applications")

14. Fourthly, the Claimant seeks to set aside §4 of the 1 February Order or, if the Court is not minded to do so, the removal of the words "and also for the purpose of facilitating compliance at 4 below" in §2 of the 1 February Order. The Defendant's application seeks to add a penal notice to assist in securing the enforcement of §4 of the 1 February Order. ("§4 of the 1 February Order")

D. THE APPLICATION FOR INTERIM RELIEF

15. The principles governing the grant of interim relief in judicial review proceedings are those contained in *American Cyanamid Company v Ethicon Ltd* [1975] AC 396, modified as appropriate to public law cases. First, the Claimant must demonstrate that there is a serious question to be tried. In judicial review claims, this involves considering whether there is a real prospect of the claim succeeding at the substantive hearing: see *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin), per Cranston J at [6] and *The Administrative Court Judicial Review Guide 2020*, §15.10. Secondly, the Court should consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

16. The pleaded grounds of claim are:

    i) The Defendant's extraction operation and other failures give rise to a direct and immediate risk to life, and serious injury crossing the Article 3 threshold, in breach of the Defendant's negative obligations under Article 2 (the right to life) and Article 3 (the prohibition of torture, inhuman or degrading treatment) of the European Convention on Human Rights ("the ECHR").

    ii) The Defendant is in breach of its positive obligations pursuant to Articles 2 and 3 to take all reasonable steps to protect the lives of the Claimant and other protesters in circumstances where there is a real and immediate risk to their lives, and to protect them from an imminent prospect of serious harm.

    iii) The Defendant has breached the Claimant's right to freedom of expression, in violation of Article 10 of the ECHR, by exposing him to risk of injury or death and by depriving him of sleep.

17. These allegations are based upon the evidence of Mr Faulding who has given two witness statements.

18. The first criticism made by Mr Faulding is that the National Eviction Team ("NET") which is operated by the Third Interested Party and whose Confined Spaces Team is undertaking the tunnel extraction operation at the site, do not have the "relevant specialist experience" or the "specialist equipment" to conduct this operation.

19. Mr Faulding is the Chief Executive of a company called Specialist International Group Ltd. He describes himself as a "*world-leading expert in confined space rescue*" and asserts that he is "*one of the only person*" (sic) able to carry out an urgent tunnel assessment. It is common ground that Mr Faulding was unsuccessful in his bid to undertake the extraction operation for HS2 which is being run by the NET. The Defendant strongly challenges Mr Faulding's expertise, noting that even when asked to do so he has not disclosed his qualifications, and observing that his claim to have been responsible for every successful tunnel removal operation in the UK in the last 25 years is "*patently incorrect*". Mr Philip Evans, who has given evidence on behalf of the Third Interested Party, challenges Mr Faulding's evidence but not his "*experience*".

20. It is apparent that Mr Faulding has considerable experience in this field, albeit the greater part of his experience of removing protesters from tunnels occurred between 1995 and 2001, and almost all the references supplied are more than 20 years old. While I would not, at least at this stage, reject his evidence for want of expertise, there is no realistic prospect of the Court finding a breach of Articles 2, 3 or 10 based on his contention that those who are undertaking the operation lack sufficient expertise or equipment given the powerful evidence of Mr Richard Jordan, Mr David Asker and Mr Evans to the contrary.

21. Mr Faulding's second criticism of the operation is that it began on 27 January 2021, just a day after NET discovered the tunnel that had been dug by the protesters. He states that an "*operation of this scale would normally take six weeks to plan along with detailed method statements and risk assessments*". However, the evidence of Mr Asker (a "High Court Enforcement officer" employed by a subsidiary of the Third Interested Party) is that:

> "In any established protest site, there is always the possibility of underground workings and, in this case, although the tunnelling was undertaken in secret and concealed from visual inspection of the site, there was always the possibility there would be tunnels to which protestors would retreat when the eviction started.
>
> …
>
> The planning of the operation began in early December and the first operation plan was created on 23 December 2020. …"

22. The evidence of Mr Jordan of HS2 is that:

> "Prior to commencement of his operation HCEG produced a 167 page operational plan containing 32 detailed risk assessments. This plan was independently reviewed twice by security professionals in HS2, including me, and also twice by safety professionals in HS2 before the operation was approved. This plan included a contingency for the presence of tunnels which was activated the day before possession and saw issue of a pre-prepared 32 page plan dealing with the tunnel situation. For each stage of the operation a Risk and Method Statement ("RAMS") is produced which goes through a rigorous approval process by HS2 and our contractors before works commence. Recently, the Health and Safety Executive ("HSE") has become part of this process."

23. The contention that the operation was begun without being properly planned is based on the incorrect assumption that until it was discovered that the protesters had, in fact, built a tunnel, no planning for that possibility was undertaken.

24. Mr Faulding states that an "*exclusion zone*" should be established in which no activities (such as the use of vehicles or heavy machinery) with the potential to cause tunnel collapse are carried out. Mr Asker's evidence is that "*[w]hen the tunnels were identified, an exclusion zone was established. No machinery was brought within the exclusion zone established*". Mr Cooper submitted that the Defendant's evidence is not accepted, but there is no sound basis on which the Court could reject this evidence. The application for an order requiring the Defendant to establish an exclusion zone is redundant.

25. Mr Faulding expresses a concern that the protesters "*are not being provided a multigas detector*" and "*oxygen levels in the living area are not being monitored*". He also expresses a belief that the air compressor on site "*may not have a valid certificate of service*" and that there was "*no backup compressor available*" when it broke down.

26. However, the evidence of Mr Jordan and Mr Asker is that HS2 is monitoring, and always has monitored, the oxygen levels in the tunnel. At an early stage, "*[t]wo compressed air hoses were fed into the tunnel along with an oxygen and gas detector and instructions given to the protestors not to obstruct the filter*". In addition, "*Caden Gas have attended to check for gas seepage from mains in the area*". The monitors are

not left with the protesters, but the clear evidence is that oxygen levels are being regularly monitored and have not dipped below a safe level. Mr Asker explains, "*The breathing air compressor was hired from specialist company together with all appropriate documentation in relation to its function. There is also a back up compressor on site.*" The Court could not reasonably reject the Defendant's factual evidence, given by those who are present on the site and responsible for the operations there, based on concerns and beliefs expressed by a person who is not involved in the operations and has not been to the site.

27. Mr Faulding expresses concern that the NET are not allowing the protesters to have a liaison contact. However, Mr Asker's evidence is that his team have established an element of rapport with the protesters and the NET will welcome "*[w]hatever arrangements the protestors require to ensure communication with the team*".

28. Mr Faulding criticises the work done by the NET to shore up the shaft built by the protesters. Mr Asker's evidence is that the shaft was shored to stop collapse. The NET recognises the protester-built shaft is tight and so they have excavated "*a more suitable shaft … to a point 6 inches from the suspected roof of the protest tunnel*". Shoring up the shaft was necessary. Although the protester-built shaft is tight, there is no suggestion that the protesters are unable to use it as an exit and several have done so. And the approach of building a new more suitable shaft is not one which the Court could reasonably criticise.

29. Mr Faulding expresses concern that the protesters are not being given "*any hard wired communications in the tunnel*". His evidence is that "*[h]ard wire communications have always been provided to protestors in tunnels*". The evidence of Mr Asker is that the protesters have "*full access to mobile signals*". Their ability to communicate is demonstrated by the evidence that they are "*constantly releasing footage and giving interviews from the tunnel*", as well as speaking to Mr Faulding and their legal representatives. Mr Asker's evidence is that they have oral contact with the protesters and "*as the removal process progresses, if additional communication equipment is required, it will be provided*". Similarly, Mr Jordan's evidence is that "*in 1996, best practice was to provide hard-wired telephone connections to people stuck underground. However, 25 years on, in 2021 in central London 5G communications have allowed the Occupiers to broadcast to the world from the tunnel – and not just from the entrance*".

30. HSE has been on site and it is clear from the information provided to the Court, on instructions, by Mr Mills that they have required changes (and on occasion the stoppage of operations to implement changes) whenever they considered them necessary. In addition, the emergency rescue procedures have been agreed with the London Fire Brigade and Mine Rescue Services are on site for immediate response. In the circumstances, there is no realistic prospect of the Court finding that the Defendant's approach to communications by and with the protesters breaches articles 2, 3 or 10.

31. Mr Faulding has expressed concern that operations began at a stage when other protesters were still living in accommodation above the tunnel. However, Mr Asker's evidence is that "*proper steps were taken to remove the protesters and to ensure that the above ground environment was as safe as could be achieved*". It also must be borne in mind that not taking action to seek to extract the protesters in the tunnel is not a safe option. Mr Jordan's evidence is that the tunnel is "*extraordinarily dangerous*" and it is

"*not a reasonable or safe option to leave the Occupiers underground*". The "*best and only reasonable option for safety reasons is for the Occupiers to be above ground as soon as our safety led plan will allow*". This criticism, too, is incapable of founding a realistic prospect of success on the claim.

32. Mr Faulding suggests that the NET has removed the water drainage system the protesters had been in place. Whereas Mr Asker gives evidence that: "*No steps have been taken to compromise the water drainage system put in place by the protestors. Having said that, the whole structure of the tunnel complex is inadequate. Nothing that has been undertaken by the tunnel team would have made the surrounding area more unsafe and rainwater continues to be collected to an area outside the exclusion zone*." Again, in the absence of any reason not to do so, the Court is bound to accept the Defendant's evidence because it is based on knowledge of what has and has not been done by those on site, whereas Mr Faulding has no such knowledge.

33. Mr Faulding makes a few other criticisms but the final one relied on by the Claimant in his grounds is that he had seen a video which "*appeared to show a protester having his hand stamped on by a bailiff*". Mr Asker has explained the circumstances in which an enforcement officer was attempting to fill a lock with expanding foam when the protesters attempted to grab his legs. He exited the shaft as quickly as possible, fearing that the protesters would use restraints to stop him leaving. In any event, there is no realistic prospect of this incident providing any foundation for a breach of articles 2, 3 or 10.

34. The Claimant also now seeks orders that the Defendant should provide him and other protesters in the tunnel with drinking water and food, and that the Defendant should make arrangements for the removal of human waste from the tunnel, although these matters were not raised in the Statement of Facts and Grounds. The media reports suggest that the protesters went into the tunnel equipped with about six weeks of supplies and there is no evidence that they lack food and water. But in any event, they are not detained or stuck in the tunnel: they are choosing to remain there as trespassers. Any contention that the Defendant has an obligation to supply them with food and water, to enable them to remain longer in the highly dangerous situation they are currently in, is misconceived. The Defendant has in fact been removing human waste and has made clear it will continue to do so, although as Ms Sheikh points out, the need to deal with such materials, particularly with an ongoing pandemic, serves to reinforce the importance of bring the occupation of the tunnel to an end.

35. While I accept that the Defendant is (or at the very least there is a good argument that the Defendant is) currently under a duty to take all reasonable steps to protect those in the tunnel under the site (including the Claimant) from death or serious injury, on the evidence before me there is no realistic prospect of the Court finding that the Defendant is breaching its duty. In my judgment, the claim for interim relief does not meet the first test.

36. That suffices to dispose of the interim relief application. But if it were necessary to consider the balance of convenience, I would have to bear in mind the strong public interest in permitting a public authority's decision (here a decision to proceed with the operation and a decision as to the necessary safeguards) to remain in force pending a final hearing of the application for judicial review, so the party applying for interim relief must make out a strong case for the grant of interim relief. The Claimant has not

come close to establishing a strong enough case to justify the Court stopping the operations to remove those who are in the tunnel, given the compelling evidence as to how dangerous it is for them to remain there.

E. THE SITE VISIT AND DISCLOSURE APPLICATIONS

37. The purpose of the application for Mr Faulding and his support staff to be permitted to undertake a site visit, and to be given access to the Defendant's risk assessments and extractions plans is to enable Mr Faulding to write an expert report in support of the claim.

38. No party may put in evidence an expert's report without the permission of the court: CPR 35.4(1). Mr Cooper sought to remedy the lack of any application for permission to rely on an expert report by making such an application orally. However, the information required to be provided by CPR 35.4(2) was not provided.

39. More fundamentally, this is not a case in which expert evidence is "reasonably required to resolve the proceedings". In *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649, Carr J (as she then was), giving the judgment of the court, explained the applicable principles for determining an application to rely on expert evidence in a judicial review claim at [36] to [43]. At [36] she said:

> "The use of expert evidence in judicial review proceedings, as in all civil proceedings, in the High Court is governed by CPR Pt 35. CPR r 35.1 restricts expert evidence to "that which is reasonably required to resolve the proceedings". It follows from the very nature of a claim for judicial review that expert evidence is seldom reasonably required in order to resolve it. That is because it is not the function of the court in deciding the claim to assess the merits of the decision of which judicial review is sought. The basic constitutional theory on which the jurisdiction rests confines the court to determining whether the decision was a lawful exercise of the relevant public function. To answer that question, it is seldom necessary or appropriate to consider any evidence which goes beyond the material which was before the decision-maker and evidence of the process by which the decision was taken—let alone any expert evidence."

40. The Claimant has not sought, let alone succeeded, in showing that the application to adduce expert evidence comes within any of the situations envisaged in *Law Society v Lord Chancellor* as ones in which expert evidence may be admissible.

41. Mr Jordan has said in evidence, "*I consider that every hour that the Claimant remains in the tunnel, the risks to life and limb increase, and it is only a matter of time before someone is seriously injured or killed*". The proposition that in such circumstances the Court should require the Defendant to allow four more people to access the tunnel, imposing a burden of protecting more lives on the Defendant, is extraordinary.

42. The Claimant is seeking specific disclosure prior to the determination of permission, and so prior to the ordinary stage at which the Defendant would provide evidence, in

accordance with CPR 54.14. The fact that I have found the claim does not have a realistic prospect of success weighs against requiring pre-permission disclosure.

43. A further factor that weighs against disclosure is that the documents sought are confidential and disclosure would be liable to scupper the operation. Mr Cooper acknowledges that the documents could not be disclosed to the Claimant or any of the other occupants of the tunnel. That is obviously right. This is a situation, unlike an ordinary rescue operation, in which the protesters are taking steps to thwart the Defendant's attempts to remove them from the dangerous situation they are in. If they learn of the Defendant's plans, the Defendant will necessarily have to abandon them in favour of a new plan. Disclosure to the Claimant's representatives and to Mr Faulding, but not to the Claimant, would be problematic because it would leave them in an invidious position in relation to their client where they may, for example, be unable to explain why they advise taking a particular course in the litigation and there would be an obvious risk of inadvertent disclosure. It is in recognition of that risk that special advocates can only speak to the party whose interests they are representing *before* they view CLOSED material.

44. More broadly, I consider it manifest that both the site visit and disclosure are sought in the hope that something may emerge which might form the basis of a claim for judicial review. The court will not entertain such a "fishing expedition".

F. §4 OF THE 1 FEBRUARY ORDER

45. The Claimant seeks to set aside §4 of the 1 February Order. Mr Cooper submits that there was no cause of action, nor threatened cause of action, against the Claimant from which the injunctive relief granted against him could flow.

46. Mr Cooper has also drawn my attention to *City of London v Bovis Construction Ltd* [1992] 3 All ER 697 in which Bingham LJ (as he then was) described the guiding principles regarding the circumstances in which the civil courts will grant injunctions in aid of the criminal law in these terms:

> "The guiding principles must, I think, be –
>
> (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution: see the authority already cited;
>
> (2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see the Stoke-on-Trent case at 767B, 776C, and *Wychavon District Council v. Midland Enterprises (Special Events) Ltd.* [1987] 86 L.G.R. 83 at 87;
>
> (3) that the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will

> continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them: see the Wychavon case at page 89."

47. Mr Cooper submitted that these principles are applicable on the understanding that the Defendant alleges that the Claimant has committed the criminal offence of aggravated trespass.

48. Ms Sheikh QC submitted that the order flowed from the Defendant's civil cause of action for trespass. The Defendant has not yet brought a claim in trespass, but Ms Sheikh submitted that the court has the power to grant an injunction pursuant to s.37 of the Senior Courts Act 1981, and she made clear that the Defendant would undertake to bring such a claim within 7 days (or such shorter period as the Court considers appropriate).

49. Unlike in the *Bovis* case, the Defendant was not seeking an injunction in aid of the criminal law, but rather as a remedy in the Defendant's intended civil action for trespass. In any event, Ms Sheikh submitted that the Claimant has made clear his intention to continue his trespass unless and until effectively restrained by the law. He has not complied with §4 of the 1 February Order and, through Counsel, made clear that he has no intention to do so. Ms Sheikh relied on *Mid Bedfordshire DC v Brown* [2004] EWCA Civ 1709 at [25] to [27] in support of the submission that maintaining §4 of the 1 February Order and adding a penal notice would be consistent with the "*vital role of the court in upholding the important principle that orders of the court are meant to be obeyed and not to be ignored with impunity*".

50. In my judgment, subparagraphs (a) and (d) of §4 seek to prevent the Claimant's continuing trespass by requiring him to cease tunnelling and to leave the tunnel. I also consider that subparagraph (c), which requires him to provide details of the layout, size and engineering of the tunnel is a just and convenient order made with a view to securing the end of the Claimant's trespass by removing him safely and consistently with his right to life.

51. Subparagraph (b) requires the Defendant to provide information about others and so it bears some similarity to a *Norwich Pharmacal* order. I consider that subparagraph (b) should be discharged. It is not an order that directly seeks to bring the Claimant's trespass to an end. Ms Sheikh did not press for this subparagraph to remain, not least as the primary aim was to ascertain information regarding the children who were said to be in the tunnel and the Defendant now has much (albeit not all) of the information sought. Although the Claimant did not convey the information sought, it has been reported in the media and Mr Cooper stated that it was his understanding that a 17-year-old who had been in the tunnel left a few days ago and there is now only one child, a 16-year-old boy, who is in the tunnel with his father. The boy's full name was given to the Defendant by Mr Cooper.

52. I consider that it is necessary to add a penal notice to the order (as varied) in circumstances where the Claimant has made express his intention to flout the Court's order.

G. SUMMARY OF CONCLUSIONS

53. For the reasons I have given, the Claimant's application is dismissed, save to the extent that paragraph 4(b) of the 1 February Order is set aside, and the Defendant's application is granted (subject to the caveat that the penal notice applies to §4 as varied).