

BETWEEN:

JOCKEY CLUB RACECOURSES LIMITED

Claimant/Applicant

and

- (1) MR 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
- (9) MR BEN NEWMAN

Defendants/Respondents

SKELETON ARGUMENT OF THE CLAIMANT
For the Annual Review of an Injunction
listed in a three-day window between 14-16 July 2025

References in the format [B1/Tab/Page], [B2/Tab/Page] and [AB/Tab/Page] are to the Application Bundle, Supplementary Bundle and Authorities Bundle, filed by the Claimant.

Suggested pre-reading (with a time estimate of 90 minutes):

- (1) *The Claimant's Skeleton Argument and Draft Order*¹;
- (2) *The Order of Sir Anthony Mann dated 9 July 2024 (the "Injunction Order")*²;
- (3) *The witness statement of Mr Charlie Boss, dated 24 June 2025 ("Boss 1")*³;
- (4) *Jockey Club Racecourses Limited v Kidby and Others* [2024] EWHC 1786 (Ch) (the "*Injunction Judgment*")⁴;
- (5) *Jockey Club Racecourses Limited v Kidby and Others* [2023] EWHC 1811 (Ch) (the "*Interim Injunction Judgment*")⁵;
- (6) (The headnote of) *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47; [2024] 2 W.L.R. 45⁶;
- (7) *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB)⁷.

A. INTRODUCTION

1. This is the Claimant's Skeleton Argument for the first annual review of a five-year injunction in the terms of the Order of Sir Anthony Mann dated 9 July 2024 (the "*Injunction*").⁸ The Injunction restrains acts by the Second to Eighth (Persons Unknown) Defendants amounting to (i) trespass on specified areas of the Epsom Racecourse owned by the Claimant, and (ii) interference with the Claimant's statutory right to hold horseraces thereupon. By this application, the Claimant seeks an Order that the Injunction shall remain in force for the remainder of the five-year period, subject to annual review, and directions for said review (the "*Application*").

B. FACTUAL AND PROCEDURAL BACKGROUND

2. The origin of these proceedings is described at [1]-[9] of the Injunction Judgment⁹, and §8 of Boss 1.¹⁰ A brief summary is set out below.

¹ [B1/2/8].

² [B1/5/264].

³ [B1/4/23].

⁴ [AB/1/3].

⁵ [AB/2/14].

⁶ [AB/12/312].

⁷ [AB/3/26].

⁸ [B1/5/264].

⁹ [AB/1/5-6].

¹⁰ [B1/4/25-26].

3. The Claimant is the freehold owner of the land comprising the areas of the Epsom Racecourse protected by the Injunction.¹¹ The public holds certain rights of access over parts of this land pursuant to s. 4 of the Epsom and Walton Downs Regulation Act 1984 (the “**Act**”).¹² However, as summarised by Sir Anthony Mann in the Interim Injunction Judgment, “*combining the Company's rights as freeholder with the rights given under that Act, the Company has very significant rights to control the public's rights*”.¹³ Pursuant to s. 17 of the Act, the Claimant also holds a statutory right, “*notwithstanding anything contained*” in the Act, to hold race meetings on the Epsom Downs.
4. Protesters affiliated with the group Animal Rising (“**AR**”) caused significant disruption to horseraces at a number of courses in 2022 and early 2023. Following widespread publication of protesters’ plans similarly to disrupt the Epsom Derby in June 2023, the Claimant applied for an interim injunction against one named Defendant, Mr Kidby (co-founder of AR), and seven persons unknown Defendants. An interim injunction was granted by Sir Anthony Mann, sitting as a High Court Judge, on 26 May 2023 (the “**Interim Injunction**”).¹⁴
5. The Interim Injunction was knowingly breached by Mr Newman, who ran onto the Racetrack during the 2023 Derby, exposing himself and security personnel who apprehended him to significant danger.¹⁵ In a successful committal application, Mr Newman was handed a suspended custodial sentence of two months, and was ordered to pay £10,000 towards the Claimant’s costs.¹⁶ By his actions, bringing him within the definitions of the Second and Sixth Defendants, Mr Newman joined himself as a Defendant to the proceedings.
6. The proceedings were stayed by consent as against the two named Defendants on 20 April 2024.¹⁷

¹¹ Injunction Judgment, [3], [13(i)] [**AB/1/5-7**].

¹² [**AB/16/469**].

¹³ Interim Injunction Judgment, [39] [**AB/2/20**]; Injunction Judgment, [3] [**AB/1/5**]. The key provisions of the Act are ss. 2, 4, 11, 17, 17(1)(b), 17(3) and 17(5), addressed at [32]-[39] of the Interim Injunction Judgment.

¹⁴ [**B2/17/1044**].

¹⁵ Boss 1, §37 [**B1/4/37**]; Affidavit of Mr Nevin Truesdale, §§46-47 [**B2/1/14-15**].

¹⁶ By the Order of Mr Justice Miles dated 11 October 2023 [**B2/18/1060**].

¹⁷ By the Order of Master Teverson [**B2/20/1067**].

7. Following a disposal hearing on 9 July 2024, Sir Anthony Mann granted the Injunction in materially the same terms against the Persons Unknown Defendants, for a period of five years subject to annual review.

C. LEGAL PRINCIPLES

(i) Newcomer injunctions

8. As the Court will be aware, it may grant injunctive relief whenever it is "*just and convenient*" to do so, pursuant to s. 37 of the Senior Courts Act 1981.
9. In *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 W.L.R. 45 ("*Wolverhampton*"), the Supreme Court clarified that the Courts have jurisdiction to grant what had been regarded in other contexts, as 'final' (as opposed to interim) injunctions against "*newcomers*" (i.e. persons unknown who are unidentifiable at the time of the application).¹⁸ The Supreme Court held that injunctions against newcomers are typically neither interim nor final in substance, but a distinct category of without notice injunction.¹⁹
10. The Court is respectfully referred to [17]-[18] of the Injunction Judgment, in which Sir Anthony Mann summarised the principles held in *Wolverhampton* to justify the "*novel exercise of an equitable discretionary power*", and the "*procedural safeguards*" which "*give effect to those matters of principle.*"²⁰ The relevant requirements as applied by Sir Anthony Mann upon granting the Injunction are further summarised below (the "**Wolverhampton Requirements**"):
 - 10.1. There must be a compelling justification for the order sought, i.e. a strong possibility that a tort is to be committed that will cause real harm, for which damages are not an adequate remedy.²¹ The threat must be real and imminent, in the sense that the relief sought is not premature.

¹⁸ [167], [186], [237] [AB/12/367-386]; Injunction Judgment, [14]-[16] [AB/1/8].

¹⁹ [139], [142], [167] [AB/12/357-368]; Injunction Judgment, [15]-[17] [AB/1/8-9].

²⁰ [AB/12/357-368].

²¹ Injunction Judgment, [13(iv)] [AB/1/7]. See also *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) ("*HS2*"), [30] [AB/8/220-223].

- 10.2. All reasonable alternatives to an injunction must have been exhausted and all other appropriate steps taken to control the wrong complained of. Consideration should be given to the use of byelaws as a means of control.
- 10.3. The applicant is under a duty of full and frank disclosure, and must err on the side of caution in respect of the evidence filed.
- 10.4. The actual or intended respondents must be identified precisely by reference to the prohibited conduct; and the injunction must spell out clearly, in everyday terms, the full extent of the prohibited acts, extending no further than the minimum necessary to achieve its proper purpose.
- 10.5. There must be strict temporal and territorial limits, and the injunction should be reviewed periodically.
- 10.6. The claimant must take reasonable steps to draw the application to the attention of those likely to be affected. Effective notice of the order must be given, and all steps intended to achieve that must be disclosed to the Court.
- 10.7. The order must contain a generous liberty to apply.
- 10.8. The Court should consider whether a cross-undertaking in damages is appropriate.
11. When assessing the compelling justification for the injunction, the Court must have regard to the qualified rights of newcomers to freedom of expression and freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights (the “**Convention**”). If those rights are engaged and the injunction may interfere with those rights, the Court should consider whether any such interference would fall within the express qualifications in the second paragraph of each article.²² Restrictions may be justified where, *inter alia*, they are necessary in a democratic society in the interests of public safety, to prevent disorder and crime, and to protect the rights of others.

²² Injunction Judgment, [20], [22] [AB/1/11-13].

12. In particular, the Court must balance the newcomers' rights against the Claimant's property rights under Article 1 of the First Protocol of the Convention ("A1P1"). In this regard, the Courts have held that: "(1) Articles 10 and 11 do not include any right to trespass when exercising those rights [...]; (2) trespass is a blatant and significant interference with the Claimants' rights under [A1P1]; and (3) the exercise of rights under Articles 10 and 11 cannot normally justify trespass."²³
13. Finally, s. 12(2) of the Human Rights Act 1998 ("HRA") provides that, if the respondent is neither present nor represented, relief which "might affect" the respondent's Article 10 right, shall only be granted if the court is satisfied that the applicant has taken all practicable steps to notify the respondent.²⁴

(ii) The test upon annual review

14. Wolverhampton at [225] provides that the purpose of the annual review is to give the parties: "*an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.*"²⁵
15. The proper approach on an annual review was recently clarified in Rochdale MBC v Persons Unknown [2025] EWHC 1314 (KB) ("Rochdale"),²⁶ in which Garnham J considered a series of newcomer injunctions reviewed since Wolverhampton.²⁷ By reference to the substantive test at [225] of Wolverhampton, Garnham J summarised the "*appropriate elements of the analysis*" as follows: (i) the existence of any material change of circumstances; (ii) the efficacy of the order to date; (iii) the justification for its continuance; (iv) whether any grounds for discharge have emerged; (v) the basis on which any further order ought to be made; and (iv) the other Wolverhampton Requirements.²⁸

²³ Arla Foods Ltd v Persons Unknown [2024] EWHC 1952 (Ch), [65]-[73] [AB/7/195-198].

²⁴ [AB/15/468].

²⁵ [AB/12/383].

²⁶ [AB/3/26].

²⁷ [42]-[53] [AB/12/328-331].

²⁸ [53] [AB/3/36-37].

16. As confirmed in Rochdale, in conducting a review, the Court is not starting *de novo*:

*"The Judges who have previously made the [injunctions] have made findings justifying the [injunctions]. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled."*²⁹

17. Only if there has been a material change in circumstances, or the particular circumstances require it, should the Court "determine anew, whether the scope, details and need for the full interim injunction should be altered."³⁰ An example of such a case was Basingstoke and Deane BC v Loveridge [2025] EWHC 738 (KB) ("Basingstoke"), in which DHCJ Brimelow KC continued an injunction against unlawful encampments after conducting a *de novo* hearing.³¹ In that case, Freedman J, upon granting the injunction under review, expressly required future consideration to be given to the absence of a formally negotiated stopping policy for Travellers in the borough³² (highlighted in Wolverhampton as a matter to be considered under the 'compelling justification' requirement in so-called Traveller injunctions³³). The Claimant had told the Court that a policy may be put before the local council some five months after the hearing before Freedman J, and undertook to bring the matter back before the Court if it were not.³⁴ Considering this case in Rochdale, Garnham J found that it was unsurprising in those circumstances that a *de novo* hearing had been conducted, and confirmed that this represented a departure from the norm.³⁵

18. Whether a change of circumstances is material must, of course, be assessed by reference to the Wolverhampton Requirements, and will require a fact sensitive evaluation.³⁶ The threshold applied in High Speed Two (HS2) Ltd v Persons Unknown [2024] EWHC 1277 (KB) ("HS2") is instructive. In that case, the cancellation of the

²⁹ Rochdale, [44], [50] [AB/3/35-36], citing HS2, [32]-[33] [AB/8/223] (with emphasis added).

³⁰ Ibid.

³¹ [23]-[25] [AB/4/47].

³² Basingstoke and Deane BC v Loveridge [2024] EWHC 1828 (KB), [55]-[59] [AB/9/260-262].

³³ [189]-[194] [AB/12/374-375].

³⁴ [57]-[58] [AB/9/261-262].

³⁵ [49]-[52] [AB/3/36].

³⁶ Rochdale, [54]-[55] [AB/3/37].

planned construction of the high-speed railway along a particular route was a material change. It meant that “*the protesters’ motivation to take direct action*” along that route “*[had] gone*”, thereby removing the imminent and real threat of direct action and disruption on that land.³⁷ As a result, there was no longer a compelling need for the injunction on that route, which was, therefore, partially discharged.

19. Also relevant to the assessment of materiality is that there may be a compelling justification for an injunction where there is “*a small risk of future disruption*” but “*the consequences of the risk materialising are serious.*”³⁸

20. As to the efficacy of the injunction, “*the courts have repeatedly held in this context that evidence*” as to the apparent reduction of a threat, “*is not evidence that the threat has dissipated; rather, it is evidence that the injunctions have had their intended effect.*”³⁹

D. WHY THE INJUNCTION SHOULD BE CONTINUED

(i) The correct approach in this case

21. By contrast to the position in *Basingstoke*, no special considerations were identified by Sir Anthony Mann as requiring particularly careful scrutiny going forward. Moreover, as set out below, there has been no material change of circumstances. Accordingly, in the Claimant’s submission, a *de novo* assessment is not required, and the starting point is the findings of Sir Anthony Mann. By reference to those findings, and the evidence of Mr Boss, the Claimant sets out below why, in its submission, the Injunction should be continued. The submissions are structured by reference to the Wolverhampton Requirements, addressing the elements of analysis identified in *Rochdale*.

(ii) There remains a compelling justification for the Injunction

22. In the Claimant’s submission, there has been no material change to the compelling justification for the Injunction. In particular:

³⁷ [45], [55] [AB/8/231-233].

³⁸ *Exolum*, [20], [24], [26] [AB/10/271-272].

³⁹ *Valero Energy Ltd v Persons Unknown* [2025] EWHC 207 (KB) (“*Valero Review*”) at [34] [AB/6/184].

- 22.1. There remains a strong possibility that protesters will trespass on the Claimant's land and interfere with its statutory right to hold horse races. The threat remains imminent and real.
- 22.2. If such trespass and interference were to occur, it would cause real harm.
- 22.3. The lack of recent disruption demonstrates the Injunction has been effective. Were it discharged, the risks would increase.
- 22.4. The balance of Convention rights continues to favour the Injunction.
23. **First**, there remains a strong possibility of trespass and disruption, which would cause serious harm. As addressed in Boss 1, AR continues publicly to lambast horseracing, while showering high praise on those who disrupted previous races.⁴⁰ There remains a strong possibility, therefore, that AR affiliates or others inspired by the group's messaging will carry out further direct action. As demonstrated by Mr Newman, it takes just one individual to threaten real harm.⁴¹
24. For example, AR's website describes horseracing as "*abhorrent*" and "*televised cruelty*", and calls for the sport to be "*resigned to history*" in an "*immediate end*" to the industry.⁴² Simultaneously, it lauds the "*brave*" supporters and "*incredible people*" who disrupted the races, and the 'success' of Mr Newman.⁴³ A press release on AR's website likens the actions of protesters in 2022 to those of suffragette Emily Davison, who was fatally knocked down on the Epsom Racecourse campaigning for equal voting rights in 1913.⁴⁴ Moreover, in a radio interview in April 2025, an AR campaigner stated that the alleged cruelty of horseracing is why "*campaigners feel compelled*" – in the present tense – to take "*peaceful action*". In circumstances in which AR frequently refers to disruptive campaigns as "*peaceful*" protest, its public messaging continues to promote and threaten disruptive action.⁴⁵

⁴⁰ [14]-[24] [B1/4/27].

⁴¹ Boss 1, §§26, 37 [B1/4/35-37].

⁴² Boss 1, §§18.4, 18.2, 17.1 [B1/4/28-31].

⁴³ Boss 1, §§17.1, 22, 18.5 [B1/4/28-33].

⁴⁴ Boss 1, §18.5 [B1/4/31].

⁴⁵ Boss 1, §§18.1, 23.3 [B1/4/29-34].

25. In this regard, there has been no material change in circumstances since July 2024 when the Injunction was granted. Shortly before the disposal hearing in 2024, AR stated it was suspending the disruption of horseracing, and removed references to planned disruptions to the races from its website. It continued, however, to “[trumpet] what it calls its successes to date.”⁴⁶ Sir Anthony Mann held that the updates to the website were likely a “*tactical response*” to the Claimant’s evidence pointing to the relevant sections of the website, which had been served on members of AR shortly before.⁴⁷ Sir Anthony Mann concluded that there remained, therefore, a “*real possibility that the campaign and the unlawful activities associated with it will be re-ignited, which could happen at short notice.*”⁴⁸ AR’s recent public messaging demonstrates that nothing material has changed.
26. If present, the Respondents might point to the section of AR’s updated website entitled “*Taking animal rights to trial*”, and its crowdfunding campaign seeking financial support for those trials.⁴⁹ They might seek to argue that AR’s focus has turned to defending the criminal trials of individuals arrested in relation to previous disruption. However, the changes on the face of AR’s website are, again, in the Claimant’s submission, likely to be tactical, in view of the Injunction in force and under review. In fact, AR capitalises on the criminal proceedings as a platform to celebrate disruptive protests, commending the “*Horse Protectors in Court*” and so-called “*Epsom Six*”.⁵⁰ Far from demonstrating a genuine change in strategy, therefore, AR’s messaging continues to encourage and threaten direct action.
27. Certainly, there has been no material change in circumstances remotely comparable to the removal of the protesters’ very motivation to act in HS2. On the contrary, horseracing remains well-attended, with record broadcast figures for the Derby in 2025,⁵¹ and races scheduled at Epsom on 10, 17 and 31 July, 15 and 25

⁴⁶ Injunction Judgment, [12] [AB/1/7].

⁴⁷ Injunction Judgment, [21(i)] [AB/1/11].

⁴⁸ *Ibid.*

⁴⁹ Boss 1, §§17.1-17.5 [B1/4/28-29].

⁵⁰ Boss 1, §§18.5, 22, 23.2-23.4 [B1/4/31-35].

⁵¹ Boss 1, §27 [B1/4/35-36].

August, and 11 and 28 September 2025. In view of the foregoing, the threat remains imminent and real, and the compelling need for the Injunction unchanged.

28. Furthermore, Sir Anthony Mann emphasised that “*the odd physical nature of and title to Epsom Downs*”, including the limited public access rights and “*absence of a clearly delineated, fenced area around the area of the whole racecourse*”, mean that “*the racecourse is vulnerable to greater degrees of invasion than might otherwise be the case.*”⁵² Such factors underscore the continued compelling need for the Injunction at Epsom.

29. **Second**, were the threat of trespass and interference to materialise, it would cause real harm. There has been no material change in this regard.⁵³ As Sir Anthony Mann accepted, the risks include “*a serious risk to life and limb of humans and horses*”, noting that the young horses which run in the Derby, in particular, may react to disruptions “*by bolting, by backing into people, by throwing jockeys, and/or by somehow damaging themselves.*”⁵⁴ Sir Anthony Mann also accepted there were potential financial and reputational risks to the Jockey Club, and that overall, damages were not an adequate remedy.⁵⁵

30. Moreover, the particular nature of the Epsom Racecourse means that, not only is there a greater vulnerability to incursions, but a greater risk of serious harm if such an incursion is carried out. Blind corners mean that individuals on the track (including protesters and security personal required to apprehend them) may be unable to see fast-approaching horses and jockeys, and vice-versa. It was one such blind corners that took the life of Ms Davison, the suffragette.⁵⁶ In accordance with the principles set out at paragraph 19 above, even if the probability of disruption had reduced (which in the Claimant’s submission it has not), such severe risks would continue compellingly to justify the Injunction.

31. **Third**, the fact that protesters did not trespass or disrupt the races at the Epsom Racecourse in 2024 and 2025, demonstrates the Injunction is working. As noted at

⁵² Interim Injunction Judgment, [10]-[12] [AB/2/16].

⁵³ Boss 1, §§33-42 [B1/4/37-38].

⁵⁴ Interim Injunction Judgment, [18]-[20] [AB/2/17]; Injunction Judgment, [13(iv)] [AB/1/7].

⁵⁵ Interim Injunction Judgment, [21] [AB/2/17]; Injunction Judgment, [13(iv)] [AB/1/7].

⁵⁶ Boss 1, §12 [B1/4/27].

paragraph 20 above, the Courts have frequently found that a reduction in tortious activity is evidence that the injunction is effective. Indeed, since Mr Newman was granted a custodial sentence for breaching the Interim Injunction, and the Injunction has remained in force, no one has dared follow his lead. Considering the regret Mr Newman expressed during the committal proceedings, Sir Anthony Mann held that “*the threat of prison had become a real deterrent*” for him, and inferred “*that it would be the same for others.*”⁵⁷ Were the Injunction discharged, that deterrent would fall away, and the Claimant would be exposed to a greater risk of harm.

32. **Fourth**, there has been no material change requiring the Court to go behind the finding of Sir Anthony Mann that the balance of Convention rights falls “*clearly in favour of granting the injunction.*”⁵⁸ Consistent with the authorities noted at paragraph 12 above, he found that “*protesters have no legal right to be on the property in order to carry out disruptive protests,*” and that it was “*quite plain*” that any possible infringement with protesters’ Article 10 and 11 rights would be justified as “*necessary in a democratic society to prevent disorder and crime and to protect the rights of others – the claimants and those wishing to attend race meetings.*”

(iii) There are no reasonable alternatives, and appropriate steps have been taken

33. Sir Anthony Mann was satisfied upon granting the Injunction that “*there is no practical alternative to an injunction*” and there were “*no other practical steps*” the Claimant could take “*to prevent the wrong.*”⁵⁹ He considered the designated protest area provided by the Claimant, the byelaws created under the Act, and possible criminal sanctions, addressed in turn below.

34. As highlighted by Sir Anthony Mann, AR “*turned down*” the offer of a designated area for non-disruptive protest immediately opposite the Racecourse Pavillion in 2023.⁶⁰ Similarly, during the 2025 Derby Festival, protesters refused to move to the designated area when requested to do so by the Claimant’s staff.⁶¹ Accordingly,

⁵⁷ Injunction Judgment, [9] [AB/1/6]; the witness statement of Mr Newman dated 4 October 2023 [B2/14/528].

⁵⁸ Injunction Judgment, [22] [AB/1/13].

⁵⁹ Injunction Judgment, [21(ii)-(iv)] [AB/1/12].

⁶⁰ Injunction Judgment, [21(ii)] [AB/1/12].

⁶¹ Boss 1, §45 [B1/4/39].

there has been no material change. While the Claimant has continued to take appropriate steps to facilitate non-disruptive protest, the designated area provides no alternative to the Injunction.

35. Sir Anthony Mann held that the acts prohibited by the Injunction might contravene some of the Byelaws in force (the “**Byelaws**”)⁶², “*but not all of them.*”⁶³ In any event, he held that “*the only remedy*” under those Byelaws is a fine capped at £50, “*and that is not going to be a deterrent.*” There have been no changes to the Byelaws.⁶⁴ Moreover, the £50 cap is set by primary legislation (s. 11(3) of the Act), such that there are real obstacles to a material change being brought about.

36. Sir Anthony Mann held that it was “*pretty plain*” that criminal proceedings “*are not an adequate deterrent,*” and that it is “*impractical to suppose*” them to be so.⁶⁵ It might be argued for the Respondents that a deterrent has developed now that criminal proceedings are progressing against individuals arrested at the 2023 Derby. However, the trial has not been listed until September 2028, five years after the acts in question - in stark contrast to the four-month period it took for Mr Newman to be committed via the civil courts.⁶⁶ Respectfully, such developments only reinforce the finding of Sir Anthony Mann that an injunction is “*the only practical answer*”, which “*provides a real risk of punishment.*”⁶⁷

(iv) The other Wolverhampton Requirements are met

37. There has been no material change as to the remaining procedural safeguards, and all requirements are met for the continuation of the Injunction.

38. **Full and frank disclosure and evidence**: Sir Anthony Mann was satisfied that the Claimant had fulfilled its duty of full and frank disclosure in its prior applications, and that it had erred on the side of caution in the evidence filed.⁶⁸ The Claimant has followed the same approach in the present Application, and sought to place

⁶² Byelaws made by the Epsom and Walton Downs Conservators, pursuant to s. 11 of the Act [AB/17/502].

⁶³ Injunction Judgment, [21(ii), (iv)] [AB/1/12].

⁶⁴ Boss 1, §52 [B1/4/41].

⁶⁵ Interim Injunction Judgment, [60] [AB/2/24]; Injunction Judgment, [21(ii)] [AB/1/12].

⁶⁶ Boss 1, §48 [B1/4/40].

⁶⁷ Injunction Judgment, [21(ii)] [AB/1/12].

⁶⁸ Interim Injunction Judgment, [58] [AB/2/23]; Injunction Judgment, [11], [21(v)-(vi)] [AB/1/7-12].

before the Court all facts, matters and arguments which, with reasonable diligence and research, it considers might affect the Court's decision.

39. **Respondents:** No change is sought to the formulation of the Respondents, held by Sir Anthony Mann to be "*adequate and effective*."⁶⁹
40. **Terms of the Order:** No changes are sought to the terms of the Injunction, or the liberty to apply provision, as ordered by Sir Anthony Mann.
41. **Territorial and temporal limits and annual review:** No substantive changes are sought. As to the procedure for future annual reviews, a direction is sought that, in circumstances in which no further application is made, the Injunction will expire and the proceedings will be at an end. It is submitted that such a direction would further the Overriding Objective by (i) saving expense and (ii) protecting the Court's resources in the hypothetical scenario in which the Claimant no longer seeks to enforce the Injunction (e.g. for future costs considerations).⁷⁰
42. **Notice:** The Claimant gave notice of the Application in accordance with paragraph 6 of the Injunction Order and s. 12(2) HRA.⁷¹ In particular, the Claimant posted copies of the Application documents, hearing notice and hearing bundles online and at the entrance to the Racecourse, and emailed copies to Mr Kidby.
43. The Claimant gave notice of the Injunction Order in accordance with paragraph 7(i) thereof, by the same methods.⁷² As to paragraph 7(ii), the Claimant posted the Order at 50-metre intervals on the perimeter of the Racetrack two days before the 2025 Derby and one day before Oaks Day (the first day of the Derby Festival).⁷³
44. Inadvertently, the Order was not posted the full three days ahead of each racing fixture, as stipulated by paragraph 7(ii).⁷⁴ However, in the Claimant's respectful submission, this is not a ground on which the Injunction should be discharged. The Court is respectfully referred to *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB),

⁶⁹ Injunction Judgment, [21(vii)] [AB/1/12].

⁷⁰ Boss 1, §55 [B1/4/41].

⁷¹ Boss 1, §62 [B1/4/43]; Injunction Order [B1/5/264].

⁷² Boss 1, §57 [B1/4/42].

⁷³ Boss 1, §§58 [B1/4/42].

⁷⁴ Boss 1, §§58-60 [B1/4/42-43].

another protest case, in which the partial performance of steps set out in the alternative service order was taken into account in respect of the Claimant's subsequent committal application; but did not invalidate the underlying injunction.⁷⁵

45. Mr Boss has provided evidence as to steps which will be taken to effect notice of any further Order the Court may make.⁷⁶ In the Claimant's respectful submission, this complies with the forward-looking requirement in *Wolverhampton*, that the applicant "*make full and complete disclosure of all the steps it proposes to take [...] to notify all persons likely to be affected*" by any Order the Court may make.⁷⁷

46. **Undertakings:** Sir Anthony Mann held that he "[could not] see that any cross-undertaking in damages is appropriate in this case."⁷⁸ The Claimant submits that there has been no material change necessitating an undertaking, but remains prepared to provide one if required.⁷⁹

E. CONCLUSION

47. For the reasons set out above, the Court is respectfully requested (i) to grant an order that the Injunction is continued for the remainder of the five-year period subject to annual review, and (ii) to give directions as to the conduct of such review, in the terms of the draft Order.

ANTONIA EKLUND
Blackstone Chambers
11 July 2025

⁷⁵ [75]-[79] [AB/14/459-460]. The Injunction was considered and continued in *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB), and *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB).

⁷⁶ Boss 1, §60 [B1/4/43].

⁷⁷ *Wolverhampton*, [231] [AB/12/384].

⁷⁸ Injunction Judgment, [21(xiv)] [AB/1/13].

⁷⁹ Boss 1, §56 [B1/4/42].