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IN *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47, [2024] 2 All E.R. 431 ("*Wolverhampton*"), the Supreme Court upheld an injunction awarded to the respondent local government authorities which prevented any individuals establishing unauthorised encampments on local authority land. The appellants, representing the Gypsies and Travellers community (as the litigating party describe themselves), opposed these injunctions primarily by invoking the conventional common law principle that injunctions should be limited to identified defendants who have been served with proceedings, rather than being imposed universally. The appellants objected that the impugned injunction effectively functioned as local law, regulating land use and criminalising conduct through the threat of contempt of court.

The Supreme Court clarified some important legal principles regarding such injunctions. The court balanced the right of Gypsies and Travellers to respect for private and family life, as protected under Article 8 of the European Convention on Human Rights, against the right of local authorities to manage property in the name of public interest. The decision is significant as it creates a "wholly new type of injunction" known as the "newcomer injunction" (at [144]). Importantly, the ruling also established safeguards for these injunctions to protect the rights of affected parties.

Since 2015, local authorities have increasingly sought injunctions against "persons unknown" to prevent unauthorised encampments on accessible public lands. The legality of these injunctions was first scrutinised by the high court in *London Borough of Bromley v Persons Unknown* [2019] EWHC 1675 (QB), where the application was dismissed due to inadequate consideration of equality impact assessments. The Court of Appeal ([2020] EWCA Civ 12), led by Coulson L.J., upheld this decision, emphasising that such injunctions could infringe upon the Convention rights of the Gypsy and Traveller communities.

The issue resurfaced in the high court in *London Borough of Barking and Dagenham v Persons Unknown* [2021] EWHC 1201 (QB), where Nicklin J. emphasised the distinction between interim and final injunctions and refused to impose final orders that would restrict the actions of unidentified persons without assessment of individual circumstances. The claimants appealed and, in a surprising turn, the Court of Appeal ([2022] EWCA Civ 13) unanimously overturned Nicklin J.'s decision and upheld the injunctions. Sir Geoffrey Vos denied a fundamental difference between interim and final injunctions issued universally against unidentified persons, as courts must continuously review these injunctions to ensure the order is properly enforced, even if they are final in character. Furthermore, in

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light of the principle limiting final injunctions to named defendants to the proceedings, the court ruled that any individual who wilfully breaches the injunction's terms automatically renders themselves a defendant.

In the Supreme Court in *Wolverhampton*, Lords Reed, Briggs and Kitchin delivered the judgment dismissing the appeal, with Lords Hodge and Lloyd-Jones concurring. The Supreme Court reviewed the case law and the arguments put forth by the Court of Appeal, ultimately deeming the distinction between interim and final injunctions unhelpful. It emphasised that "newcomer injunctions" apply irrespective of their form, because they are almost always sought for medium to long-term effects rather than as a short-term emergency measure pending trial. The Court ruled that these injunctions, typically operating against unknown persons universally, fall into neither the interim nor final category but represent a new type of injunction that acts against individuals who may not have been served with the application in due time, may have had no notice of the intended application and may not be defendants served with the proceedings, effectively functioning as embargoes made without notice (at [139]–[143]).

The Supreme Court referred to section 37 of the Senior Courts Act 1981, which empowers courts to grant injunctions "when it appears to the court to be just and convenient to do so", to affirm that injunctions can be imposed on non-parties and should not be unduly restricted. In addition, the Court placed significant emphasis on equity to affirm that its authority to issue injunctions is not restricted to established categories (at [21]). Based on the facts, the Supreme Court determined that a common law possession order was insufficient to protect government land from unidentified trespassers before any occupation had occurred. Equity thus intervenes where common law remedies fail adequately to protect the claimant's rights. It emphasised that equity's flexibility allows for the court to introduce new remedies like the "newcomer injunction", as equitable relief can be adapted to address the specific demands of individual cases.

While earlier courts grappled with positioning the "newcomer injunction" within the conventional framework of injunctions – distinguished by the "twin silos" of interim and final relief, with requirements for identifying affected defendants and the procedures for serving proceedings – the Supreme Court, invoking the principle that "equity prioritises substance over form", managed to transcend these substantive and procedural constraints. The Court not only found the distinction between interim and final relief unnecessary but also adopted a flexible approach to the service requirements of "newcomer injunctions", ruling that service would be deemed sufficient as long as the claimant "took all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it" (at [167]).

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Upon establishing the legal principles, the Supreme Court determined that it was just and convenient to impose "newcomer injunctions" by carefully balancing competing rights. It acknowledged that the right of Gypsies and Travellers to pursue the nomadic lifestyle is protected under the Convention's provisions on private and family life. However, the Court emphasised that this must be balanced against the public interest, including not only the local authorities' legal right to property for planning enforcement but also the potential negative impacts on the local community. The Court ruled that injunctions sought by local authorities are justified by a "compelling need" that cannot be addressed through other means, which required an assessment of whether local authorities have explored alternative solutions and provided adequate lawful stopping places. To protect the Convention rights of Gypsies and Travellers, the Court established procedural safeguards for these injunctions to ensure affected communities receive adequate notice of legal actions, are given the opportunity to challenge the injunction and that the injunctions are proportionate in their geographic and temporal scope.

Importantly, the Supreme Court left open the question of how the "newcomer injunction" might apply in other contexts, indicating that the safeguards related to Gypsies and Travellers communities should not be seen as "prescriptive" (at [235]). However, practitioners may find the recent case of *Valero Energy Ltd. v Persons Unknown* [2024] EWHC 134 (KB) ("*Valero*") particularly relevant, as it applies this "newcomer injunction" in a protest context. In *Valero*, fuel-producing companies sought an injunction against unidentified individuals associated with environmental protest organisations, fearing trespass and nuisance at their sites. Ritchie J., after analysing the evidence, drew support from *Wolverhampton* and granted an injunction to prevent further tortious behaviour by protestors.

The status of the claimants and the claims in *Valero* differ from those in *Wolverhampton*, as the injunction was sought by corporate claimants to protect private property rights and Convention rights do not extend to action on private property. Yet, as in *Wolverhampton*, Ritchie J. weighed the public interest, particularly as it related to public nuisance, when assessing the restriction of Convention rights to freedom of expression and association. Ritchie J. further incorporated procedural safeguards similar to those in *Wolverhampton*, arguably making them even more stringent. Notably, although the injunction extends to any unidentified individuals – including those who have neither committed nor threatened the prohibited acts and against whom the claimants had no initial cause of action – Ritchie J. emphasised the necessity of identifying a civil cause of action in both the claim form and particulars of claim

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(*Valero*, at [58]), as a failure to specify the behaviour prompting the injunction could render its scope excessively broad.

Therefore, although "newcomer injunctions" may be criticised for their potential to chill the exercise of certain Convention rights – acting as tailored measures to protect powerful entities under the guise of public interest – the establishment of safeguards in *Wolverhampton* and their reinforcement in *Valero* suggest that future courts will likely exercise restraint in imposing such injunctions. It should be noted that the Supreme Court in *Wolverhampton* highlighted the "last resort" nature of "newcomer injunctions", emphasising the role of local authorities in engaging in dialogue with the Gypsies and Travellers community (at [189], [203]). When deciding whether there is a compelling need to issue such injunctions, courts will likely consider the extent of efforts made to promote understanding and pursue cooperative, proportionate solutions aimed at avoiding legal enforcement whenever feasible.

In conclusion, *Wolverhampton* not only addresses the substantive and procedural dimensions of injunctions imposed universally, but also underscores the Court's careful consideration of competing rights. *Wolverhampton* strives to balance the restriction of Convention rights in favour of public interest by implementing adequate safeguard mechanisms and emphasising the importance of consultation and cooperation, ensuring that any imposed restrictions are both necessary and proportionate.

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