Case No: M00BS959

IN THE COUNTY COURT AT BRISTOL

2 Redcliff Street
Bristol
BS1 6GR

Date of hearing: 23 July 2025

Before:

DISTRICT JUDGE NAPIER

- -

Between:

BRISTOL CITY COUNCIL	**Claimant**
- and –	
PERSONS UNKNOWN ON DURDHAM DOWN, CLIFTON DOWN AND LADIES MILE RESIDING IN TENTS, STRUCTURES, CARAVANS AND OTHER VEHICLES ADAPTED FOR RESIDENTIAL PURPOSES ("PERSONS UNKNOWN")	**Defendants**

- -
- -

Mr Denford appeared on behalf of the Claimant
There was no appearance by the Defendants

- -

JUDGMENT

Handed down in open court at 2:30pm on 25 July 2025

- -

DISTRICT JUDGE NAPIER:

1. This claim concerns the Clifton and Durdham Downs (together "the Downs"). Clifton Down is owned by the Society of Merchant Venturers ("the Society"). Durdham Down is owned by the Claimant and, under sections I and II of the Clifton and Durdham Downs (Bristol) Act 1861 ("the 1861 Act"), is required to be held by the Claimant as open and unenclosed land, and as a place for the public resort and recreation of the citizens and inhabitants of Bristol. The Downs themselves are managed by the Downs Committee established under the 1861 Act. Notwithstanding the split in ownership, the Downs are run and managed by the Claimant, under the authority of the Downs Committee, as a single area of land open to the public for its enjoyment.

2. The use of the Downs has become increasingly fractious in recent months and a matter of public debate within the City. This is for two reasons. First, the increased use of the roads in and around the Downs by people living in vans or caravans. Second, the use of the land of the Downs itself by members of the Traveller community (and others) as a place to live in their caravans and other vehicles.

3. This claim concerns primarily the second issue. It does not affect the use of the roads in or around the Downs by van-dwellers, other than Ladies Mile (one of the main roads running across the Downs). As the Claimant explained to the Court, its position about the use of the roads in or around the Downs will develop once the Council has secured alternative plots of land for people to live on in their vans or caravans.

PREVIOUS PROCEEDINGS

4. On 17 June 2025, I granted a possession order in case M00BS793 over a large portion of the Downs in order to remove trespassers who had moved onto the land and taken up residence there in vans and caravans. Enforcement was transferred to the High Court.

5. That order did not include land next to Circular Road and Ivywell Road because the Claimant did not seek possession of that land at that time. Upon their eviction, a number of persons unknown moved to the land around Circular Road by the Sea Walls. In case M00BS922, District Judge Wales granted a possession order over that new area of land.

6. The consequence of that order was that a number of persons then returned to the original area they were evicted from. Claim M00BS958 was issued to seek a fresh possession order, but at a hearing on 1 July 2025 I was informed that the High Court Enforcement Officer with carriage of the original writ of possession considered they still had authority under the writ and had proceeded to remove the persons again. Claim M00BS958 was adjourned generally with liberty to restore.

THESE PROCEEDINGS

7. This judgment concerns claim M00BS959 which was issued at the same time as M00BS958. The Claimant has issued Part 8 proceedings for permanent injunctive relief concerning the Downs. I will turn later to the basis of the claim.

8. This claim was first considered by the Court on 1 July 2025. At that hearing, I gave directions for service of the claim. In compliance with that order, the

Claimant has affixed 29 notices in prominent places in and around the Downs, including copies of the court papers and an overall summary notice stating that an injunction hearing would take place at the Bristol Civil Justice Centre on 23 July 2025 at 10am. The Claimant explained to the Court that its Downs' team has regularly checked the notices and replaced any copies of the papers which had been taken.

9. A full meeting of Bristol City Council was held on 8 July 2025 and heard a formal petition and questions from members of the public. The petition had attracted 6,481 signatures, of which 4,169 had come from Bristol residents. The existence of these proceedings was, I understand, notified to the Councillors, Council officers and members of the public present at that meeting.

10. At the hearing, the Claimant attended and relied on two witness statements from Ms Ennion, the Area Park Manager of the Claimant. A number of members of the public attended to observe. No one attended as a 'person unknown' or asked to address the Court.

11. In these circumstances, I am satisfied the claim has been properly notified to the Defendants, and indeed to the world at large given the proposed injunction. As there was no opposition, the hearing was treated as the final hearing of the claim.

THE LAW

12. The Claimant seeks an injunction under the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"), and/or at common law or in equity. The claim for an injunction under the Highways Act 1980 was not pursued at the

hearing. The Claimant seeks a power of arrest to be added under section 4 of the 2014 Act.

13. Under section 38(1) of the County Courts Act 1984, the County Court has the power to make any order which could be made by the High Court. Under section 37 of the Senior Courts Act 1981, the High Court may make any interim or final injunction where it appears just and convenient to the Court to do so.

14. It is convenient first to address the general legal tests for 'newcomer' injunctions. The leading authority is the judgment of the Supreme Court in Wolverhampton City Council v London Gypsies and Travellers and others [2023] UKSC 47.

15. The Supreme Court held that the Court has jurisdiction (in the sense of a power) to grant a without notice interim or final injunction against 'newcomers'. The effect of such an injunction is to bind anyone with notice of it, even though a newcomer may have no intention to do the act prohibited at the time when the injunction was granted, and so is someone against whom lies no cause of action. It is an order with effect *contra mundum* (against the whole world).

16. In the more recent case of Valero Energy Limited and others v Persons Unknown and others [2025] EWHC 134 KB, Ritchie J confirmed at [17] that, in law, a landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on his land: *Snell's Equity* (34th ed) at para 18-012. However, in relation to a *quia timet* injunction, a claimant must prove that there is an imminent danger of very substantial damage, or further damage. This latter category was confirmed by Lord Upjohn in Morris v Redland Bricks Limited [1970] AC 652 at [655C]:

"Secondly, the type of case where the plaintiff has been fully recompensed both at law and in equity for the damage he has suffered but where he alleges that the earlier actions of the defendant may lead to future causes of action."

17. More recently, and most conveniently, Ritchie J in Valero Energy reviewed the law concerning anticipatory prohibitory injunctions as set out in the judgments in Ineos Upstream v Boyd [2019] 4 WLR 100, National Highways v Persons Unknown [2023] 1 WLR 2088, Canada Goose v Persons Unknown [2021] WLR 2802 and in Wolverhampton. He set out the following summary of the requirements at [58]:

i) Procedural Requirements

a) **Identifying Persons Unknown:** The persons unknown must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the claim form), and (b) clearly defined geographical boundaries, if that is possible.

b) **The terms of injunction:** The prohibitions must be set out in clear words and should not be framed in legal technical terms. Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

c) **Prohibitions must match the claim:** The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the claim form.

d) **Geographic boundaries:** The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

e) **Duration:** The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (*quia timet*) tortious activity.

f) **Service:** As persons unknown by their very nature are not identified, the proceedings, the evidence, application and the draft order must be served by alternative means which have been considered and sanctioned by the Court.

g) **Right to set aside or vary:** Persons unknown must be given the right to apply to set aside of vary the injunction on short notice.

h) **Review:** A final injunction involving persons unknown is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances.

ii) Substantive Legal Requirements:

a) **Cause of action:** There must be a civil cause of action identified in the claim form and particulars of claim. The usual *quia timet* (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

b) **Full and frank disclosure:** There must be full and frank disclosure by a claimant seeking the injunction against the persons unknown.

c) **Sufficient evidence:** There must be sufficient and detailed evidence before the Court to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), a claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In person unknown cases where there is no defendant present, the matter is considered *ex parte* by the Court. If there is no evidence served and no foreseeable realistic defence, a claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision. The Court does not carry out a mini trial

but does carry out an analysis of the evidence to determine if it the claimant's evidence is credible and acceptable.

d) **No realistic defence:** A defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative persons unknown defendant might reasonably be foreseen as able to put before the Court (for instance in relation to civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst the absence of any defence from persons unknown is relevant to this determination, the Supreme Court decision in Wolverhampton is clear that the Court must not put much weight on the lack of any served defence or defence evidence in a persons unknown case. The Court must be alive to any potential defences and a claimant must set them out and make submissions upon them.

e) **Balance of convenience – compelling justification:** Under American Cyanamid v Ethicon [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in persons unknown cases, pursuant to Wolverhampton, this balance is angled against the claimant to a greater extent than is required usually, so that there must be a

compelling justification for the injunction against persons unknown to protect the claimant's civil rights.

The Court must take into account any required balancing exercise required by the Supreme Court in DPP v Ziegler [2021] UKSC 23, if the persons unknown's rights under the European Convention on Human Rights ("the Convention") are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect a claimant's rights.

f) **Damages not an adequate remedy:** For the Court to grant a final injunction against persons unknown the claimant must show that damages would not be an adequate remedy.

18. That is a summary of the law and procedural requirements concerning injunctions in general. Turning then to the requirements for anti-social behaviour injunctions ("ASBI") under the 2014 Act:

i) The Claimant, as a local authority, is entitled to apply for an ASBI under section 5(1)(a) of the 2014 Act.

ii) Anti-social behaviour is defined by section 2(1), as relevant in this case, as "*conduct that has caused, or is likely to cause, harassment, alarm or distress to any person*".

iii) For an injunction to be granted, the Court must be satisfied that both of the following two conditions from section 4 are met:

a) First, on the balance of probabilities, the defendant has engaged or threatens to engage in anti-social behaviour (as defined).

b) Second, the Court considers it just and convenient to grant the injunction in order to prevent the person engaging in anti-social behaviour.

iv) A claimant must prove how each proposed term of the ASBI will stop the respondent from engaging in or threatening to engage in anti-social behaviour.

v) The Court can attach a power of arrest to it if it considers that:

a) The anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against another person.

b) There is a significant risk of harm to other persons from the respondent.

It is the latter case that the Claimant seeks to rely on here.

19. It is for the Claimant to prove all matters on the balance of probabilities.

THE EVIDENCE

20. The Claimant relies on the evidence of Ms Ennion contained in her first and second witness statements ("WS/CE1" and "WS/CE2"). As explained earlier, no evidence or defence has been filed by any defendant. There has been no dispute or challenge to her evidence accordingly. Having read it, I find it to be

credible, internally and externally consistent, and plausible. I find her to be a reliable witness.

21. The registered title to Durdham Down has been provided. The Claimant is the legal owner of the land. The title to Clifton Down is unregistered but the Court takes judicial notice of the terms of the 1861 Act which record that the Society is the legal owner of the land. I find it is more likely than not that it is the legal owner of Clifton Down (the land marked in pink in Exhibit CE5 of WS/CE1). In addition, to the extent that it is not the legal owner of the underlying land, the Claimant is the highways authority and therefore has control and ownership of the highway of Ladies Mile under the Highways Act 1980.

The Traveller Community

22. Ms Ennion has explained each year a substantial number of Travellers occupy the land beginning in April and ending in October. In 2025, there have been six separate occasions when different groups have occupied parts of the Downs. The first occupation this year was on 11 April and the last one ended with the enforcement of the possession order in M00BS793. I was informed by the Claimant that, as of the date of the hearing, there were no unauthorised occupations occurring although, in preparing this judgment, I understand the position may have changed again. At the time of WS/CE1, there were at least 50 caravans from the Traveller community parked across a large central area of the Downs.

23. The Downs have been occupied continuously in one part or the other since 11 April (except for a single five-day period). The encampments have regular vehicle traffic across the Downs' land and the residents use quad bikes riding

across the land at speed. The riding or driving of a motor vehicle across the Downs is a criminal offence under section 2 of the Byelaws of the Downs made under Section V of the 1861 Act ("the Byelaws").

Van-Dweller Community

24. Turning to the persons using caravans or vans adapted for residential use to live on the public highway ("van-dwellers"), the Court is aware that for some considerable period of time there have always been van-dwellers living on certain roads around the Downs (which are not subject to these proceedings). However, Ms Ennion explains that recently the number has significantly increased and now includes Ladies Mile, one of the central access roads across the Downs. As of WS/CE1, there were 11 such vans and, as an indication of the scale, around the wider Downs area there are approximately 140 van-dweller vehicles. Ms Ennion explains this decreased the parking for visitors to the Downs and a collision has already occurred between a parked van and a speeding car. Ms Ennion says the Claimant is concerned that a number of vans use gas canisters which poses a risk of fire or explosion in the event of an unfortunate accident.

Effect of the Unauthorised Occupations

25. The Claimant has shown the adverse effects of the unauthorised use of the land on those who use the Downs for its intended public purposes:

    i) Each time a Traveller group departs, the Claimant has been required to remove and clear a significant amount of rubbish. Following an occupation between 14 to 24 April 2025, the Claimant removed 1.86

tonnes of rubbish which had been fly tipped from two encampments. Ms Ennion explains that addressing this public health hazard diverts the Claimant's staff from their regular duties.

ii) In WS/CE1, Ms Ennion explained that the scrubland and woodland of the Downs has become a public health hazard due to human faeces, urination, and a large amount of litter and fly tipping. In WS/CE2 she expanded on these issues. The cost of cleaning the Downs and disposing of waste following an eviction on 1 July 2025 was £13,200. This did not include the cost of daily waste removal whilst the occupation was occurring. This cost is borne by the Claimant and so, in turn, by the local taxpayers.

iii) The Claimant has received, as of WS/CE2, 156 enquiries and 21 official complaints from members of the public concerning Travellers and van-dwellers. The Claimant has exhibited its complaints log showing the content of the complaints. Almost half of these make complaints of anti-social behaviour. These include complaints of defaecation and urinating in the bushes, littering, fires and barbeques (which are prohibited under the Byelaws), and a lack of access to parking. Reports received showed the use of gas powered barbeques near areas of woodland and scrubland, posing a substantial fire risk. There is also a running theme of the complaints that the public do not feel safe using the land for its intended recreational purpose.

iv) The Claimant told the Court that its maintenance staff have submitted reports of anti-social behaviour directed at them. Four reports were received in a fortnight period in mid-May.

v) When a large number of Travellers moved to the area next to the Sea Walls, the public toilets immediately next to them were repeatedly vandalised. The Claimant's depot for its maintenance staff was also vandalised. The cost of repairs and additional security was £3,254.38 and will rise to around £4,000. I am satisfied, based on the reasonable inference drawn from the coincidence of the vandalism with the unlawful occupation of the immediate neighbouring land, that it is more likely than not that the persons living on the land were responsible.

vi) The Avon Gorge and Downs Wildlife Project has cancelled its education events since occupations began because the encampments have been using their teaching areas. There are safeguarding issues and unsanitary conditions.

vii) Until a possession order was obtained, it was highly uncertain that the annual Race for Life event could be held. An email from Cancer Research UK from this year explains nevertheless that the event faced significant challenges from the members of the Traveller community living on the Downs. This included, in addition to the types of anti-social behaviour identified above, driving through road closures, knocking down infrastructure, the theft of Cancer Research UK equipment, public nuisance and intimidation of event staff and volunteers.

viii) The Claimant reports that commercial event organisers estimate that they have spent an additional £48,000 this year dealing with the effects of the unauthorised occupation of the land from both groups. The Claimant has exhibited a list of issues caused to the event organisers. Not all of these can be directly attributed to the unauthorised use of the Downs and concern general criminality. However, the list makes clear that there has been systemic anti-social behaviour occurring in 2022, 2023, 2024 and 2025 at the same time of Traveller encampments taking up occupation.

ix) There is ecological harm being caused to the Downs resulting from compaction of the soil, human and canine waste products, invasive species arriving via fly tipping, and direct damage to the ecosystem from fires and litter. The Claimant has adduced an academic report of Ms Stevens explaining this damage.

x) The Claimant has provided the Court with extensive photographic evidence of the widespread fly-tipping, littering and defaecation on the Downs. The very clear inference I draw is that those residing on the Downs, or on Ladies Mile, are the principal contributors to this.

26. The Claimant has also provided a witness statement from PS 4481 Gentry who is responsible for the policing of the Downs. His statement corroborates the information provided by the Claimant.

27. I have been careful not to simply infer that because inappropriate or unlawful conduct has occurred, it must be said it is attributable to those targeted by these proceedings. I have considered the incidence of the occupations with the

records of the conduct. In particular, I have considered the widespread reports of various members of the public, the Claimant's officers, the police, and from the various event organisers on the Downs that all point to one single cause: those who unlawfully occupy the land. I find that is more likely than not they are the overwhelming cause of the disruption. Put another way, there is no plausible explanation that it is anyone else.

ANALYSIS: GENERAL INJUNCTION

28. I turn to the various tests for a general injunction:

i) **Cause of action:** The Claimant must plead a cause of action which underlies the application for an injunction. Whilst the claim form makes a clear statement initially that it seeks an injunction order under the Highways Act 1980 and the 2014 Act, it does then go onto to plead, in roundabout terms, the tort of trespass. It could have been better pleaded, but there is sufficient there for the Court to proceed with. Concerning those on the Downs's land itself, there is no right of possession to be there and any occupation or use of the land is unauthorised. Concerning the van-dwellers on the public highway, equally there no right to occupy the highway. The possession is not being undertaken while either group is exercising any legal right. There is a right to pass, and re-pass, over the highway – not to remain permanently on it.

ii) **Full and frank disclosure:** This is the third piece of litigation concerning the Downs this year I have been involved in. I am satisfied that the Claimant and its legal team have put all relevant information – supportive or otherwise – of their case before the Court. In particular,

the Claimant has always carefully drawn the Court's attention to potential defendant's rights, both substantive and procedural, including under the Convention.

iii) **Sufficient evidence:** The evidence of Ms Ennion, in my judgment, amply and sufficiently sets out that the Downs is the subject of repeated trespasses by persons who have no right to be on the land. The trespasses occur without notice and are highly disruptive and have been growing in their size and frequency over the years. Indeed I understand, although not in evidence, that since the hearing another occupation has commenced. Coupled with this, the trespassers engage in activities which breach multiple Byelaws made for the enjoyment and protection of the Downs, and interfere with Parliament's intention that the Downs are a place of public resort and recreation. Not only does the evidence amply justify an immediate fear from the Claimant that another incursion may take place at any time, but the effect and impact of the incursions is substantial and far reaching and causes damage to the Claimant's land which must be remedied every time at public expense. As I explain below, there is no foreseeable realistic defence to this, and I am satisfied of this on the balance of probabilities. In addition, no Defence and no evidence to the contrary has been put forward by anyone.

iv) **No realistic defence:** No one has appeared to defend the claim, but that is not the end of the matter. The Court must consider the potential defences available to the persons unknown:

a) Travellers are protected as an ethnic minority group and enjoy protection from discrimination along these lines. They enjoy rights under Article 8 to respect for their private and family life, and homes. However, in order to have the benefit from the right to respect for the home, an individual is required to demonstrate that they have established sufficient and continuous links to a particular place. I do not consider the limited periods of interrupted time that the occupations by Travellers have taken place in this case for are sufficient to engage Article 8.

b) I accept for any van-dwellers on Ladies Mile the proposed injunction would potentially interfere with their Article 8 rights as they have been living permanently in their vans for a significant period of time.

c) However, any rights under Article 8 are not absolute. Article 8(2) states:

> *"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

d) So the Court can make an order interfering with any Article 8 rights. The interference must be proportionate when balancing the legitimate needs of society with that of the individual. In most cases where there is an entitlement to possession under domestic law (as here), there is already a very strong case for

saying interference in Article 8 rights would be proportionate, unless those affected set out why there are compelling factors which render it disproportionate.

e) The right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). The Claimant has the benefit of this. In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by other qualified Articles. Trespass is an interference with A1P1 rights, which in turn requires justification and Article 8 and other qualified rights cannot normally justify a person in trespassing on land of which another has the right to possession, just because the defendant wishes to do so for the purposes of making it their home when they have no legal right to be there. Interference by trespass will rarely be a necessary and proportionate way of exercising an Article 8 right.

f) I consider that any proposed defence in this case under Article 8 has no realistic prospect of success. Any injunction would be granted pursuant to law. The repeated trespass to Claimant's property, the damage caused and harm posed, and interference to the public's legal right of enjoyment of whole of the Downs are not justified under any Article 8 rights. The proposed injunction has a wholly legitimate aim i.e. to protect the Claimant's (and the public's) civil rights to the Downs and access and enjoyment of them, to avoid criminal damage and littering, to avoid health and

safety dangers, and to protect those who use the Downs as members of the public, the Claimant's staff, and those who have legitimately acquired a right to hold commercial or charitable events on the Downs.

g) I must consider as potential defences whether the proposed injunction is a disproportionate means of achieving the Claimant's legitimate aims. This is relevant as well to any question of discrimination against a protected group. I do not consider there are less restrictive means available to achieve the aim of protecting the Claimants' civil rights and property than the terms of the final injunction. The persons unknown have committed repeated violations of the Claimant's rights on a wide scale over a substantial period of time. An injunction in the terms to be granted strikes a fair balance. Later, I will address the other potential remedies which, in my judgment, do not suffice.

h) I bear in mind that the persons unknown are only being prohibited from being in a defined and limited geographic area. This is in no way a 'county-wide' injunction. It concerns an area of land which is frequently subjected to the same incursions. Those wishing to reside there in caravans or vans are able to do so elsewhere.

i) I bear in mind further that whilst the Claimant has a power to provide sites for Traveller use, it is under no legal duty to do so: section 80(1) of the Criminal Justice and Public Order Act 1994.

j) For these reasons, I do not consider that there is any realistic prospect of success of a potential defence. The Court has considered the defences commonly available which the Claimant has, in compliance with its duty of full and frank disclosure, put before the Court. Any other defences, if available, have not been put before the Court by any potential defendant. If there are any, the right to apply to set aside or vary is a sufficient procedural safeguard.

v) **Balance of convenience – compelling justification:** I am satisfied from the Claimant's evidence that there is a compelling justification to interfere with the persons unknown's rights. I reach this conclusion on account of three reasons primarily:

a) First, the significant length of time over which multiple unauthorised occupations have occurred. These are not 'one off' or infrequent events. They are repetitive and increasingly so and it is clear in my judgment that the Downs has become targeted as an area where unauthorised occupations can take place.

b) Second, I have set out the evidence of the wide-ranging impact the occupations have, significantly the abundance of anti-social behaviour which accompanies them. I make clear that I do not consider that adverse public opinion is enough to merit an injunction in such circumstances – no matter how deeply held or widespread it may be in the local community. However, the Claimant has shown by its clear and compelling evidence the

widespread damage, some criminal in nature, to the Downs and hazards to human health. The Claimant faces mounting costs to remedy the land after each occupation. In addition, in my judgment the cumulative effect of the evidence the trespassing is now to interfere substantially with the statutory requirement that the land be available for the recreation of Bristol's residents.

c) Third, I consider the compelling justification against those dwelling in vans on Ladies Mile is less so than on the Downs' land itself but is still enough to weigh in favour of the Claimant. The majority of the unlawful or reprehensible conduct does not originate from them, however, it remains the case that there is significant littering and pollution from those living in vans which constitutes a public health hazard and is a breach of the Byelaws. Further, they are occupying the public highway in such a manner which places them at risk of collision and there is frequent storage of combustible gas in them.

vi) **Damages not an adequate remedy:** Damages are not an adequate remedy – indeed there is almost no prospect that anyone is going to be identified to pay damages to the Claimant. No one has attended Court to offer any undertakings in lieu of an injunction.

vii) It is appropriate here to explain why I agree with the Claimant that other remedies are insufficient:

a) Byelaws: The penalty for a breach of the Byelaws cannot exceed a fine. It requires a criminal prosecution of identified individuals

and will not address or stop the wider conduct at the time. Put simply, the damage will already have been done again by the time of any summons being issued.

b) Public Space Protection Orders ("PSPO"): Breach of a PSPO without reasonable excuse is a criminal offence and can be enforced by a fixed penalty notice or prosecution with a maximum fine of level three on the standard scale. Any PSPO must be reasonable and necessary to prevent the conduct and detrimental effects at which it is targeted and a PSPO takes precedence over any byelaw in so far as there is any overlap. Like the Byelaws, I consider it will not act to address the trespass and damage done in the short to medium term.

c) Criminal Justice and Public Order Act 1994: The powers available under this Act are explained at paragraphs 205 to 208 of the decision in Wolverhampton. There are difficulties with the powers available, although they are aimed at this kind of mischief. The statutory requirements on the police and local authority to serve notices takes time and, as the Claimant pointed out, if the site is vacated and re-occupied, the entire process must begin again. In relation to the police powers, a breach results in prosecution with a fine, or more seriously, custody if successful. However, the Claimant points out that the police when exercising their discretion do not have access to wider information, or the same duties, as the local authority will do in relation to areas such

as housing, social services, public health and the protection of vulnerable parties. It is a blunter tool for use by the police and may not be appropriate to the circumstances in each case.

d) Ejectment: The common law right of ejectment is summarised in the Court of Appeal's decision in Brake & Ors v The Chedington Court Estate Ltd [2022] EWCA Civ 1392 at [32] to [39]. As can be seen from the Court's summary, it is a historic procedure and one which may require litigation in order to insure against any counterclaim for wrongful eviction (however unlikely to succeed). More importantly, the common law right only permits the person entitled to the land to peaceful re-entry. It is very unclear how that could be accomplished given a large encampment and with those unwilling to leave the land without a court order. The Court can readily understand why a claimant, faced with the possibility of using reasonable force, would want the protection of a court order.

29. Concerning the procedural requirements for an injunction:

i) **Identifying Persons Unknown:** The draft injunction clearly identifies a limited class of persons unknown *viz* those residing in tents, structures, caravans and other residential vehicles who are present on the Downs. That class is easily identifiable and provides a clear category of persons who can be bound by the proposed injunction. It does not go wider, by design or accident, to the world at large. In order to come within the class of people enjoined by the injunction, a person must first have taken

some action which are they are not already by law permitted to do. Those going about their daily lawful activities will not be caught by it.

ii) **The terms of injunction:** The Claimant's proposed injunction wording is now set out in WS/CE2. In my judgment, the proposed wording is clear and unambiguous and does not use legal jargon. The terms of the injunction do not contravene any legitimate right to use the public highway insofar as Ladies Mile is concerned. The proposed terms of the injunction are proportionate to the rights sought to be vindicated.

iii) **Prohibitions must match the claim:** I am satisfied the prohibitions in the injunction must match the torts claimed (or feared) in the Claim Form.

iv) **Geographic boundaries:** The prohibition in the injunction is defined by clear geographic boundaries. This is not a county-wide or wide geographic injunction: it is limited to a specific area of land which is clearly marked or delineated on the map annexed to the proposed injunction. However, as I remarked to the Claimant at the last hearing, I require the plan to be redrawn to make clear where the borders of the area are concerning roads which are not to be caught by the injunction e.g. Circular Road.

v) **Duration:** The Claimant seeks one year as a duration. I regard that as reasonable and proportionate and will allow sufficient time for the Claimant to assess whether there remains, at the end of the period, a need to apply for its extension.

vi) **Service:** I have already set out above the steps which have been taken to bring the proposed injunction to the notice of those affected by it. There has been ample and sufficient signage placed prominently around the affected area for a number of weeks. This is similar to the steps the CPR require to be taken for possession proceedings against trespassers. I consider that this amounts to adequate and good service.

vii) **Right to set aside or vary:** The proposed injunction must contain a right to apply to set aside or vary the injunction on two clear days' notice.

viii) **Review:** I consider it is appropriate to review the injunction in October towards the end of the period when the Claimant's evidence showed the most occupations occurred. At that hearing, the Court will decide whether to set another review date.

30. For these reasons, I conclude that the claim for an injunction is made out on a final basis, subject to the right of review and liberty to apply. This is clearly a case which falls into the category where an anticipatory injunction against future repeats of the tort is warranted.

ANALYSIS: ANTI-SOCIAL BEHAVIOUR INJUNCTION

31. I will be briefer concerning my analysis over a claim for an ASBI as there is substantial overlap with the previous issues.

32. I am satisfied it is more likely than not there has been conduct which causes harassment, alarm and distress to members of the public seeking to use the Downs for recreation, and to the other users of the Downs have been granted the right to use the Downs for commercial or charitable purposes.

33. The undisputed evidence of Ms Ennion shows there is a significant degree of anti-social behaviour. The Downs are made a dumping ground by those living on them. They urinate and defaecate in the open ground. Criminal damage and vandalism of public property occurs. Commercial and charitable events are curtailed or cancelled due to the risk of loss of property. Anti-social and discriminatory language is used against those working for the Claimant and the other users of the space.

34. In addition, I consider there is distress to the public, albeit it as a lesser factor. An important area of land in the City is being disrupted, damaged, and misused when the residents of Bristol have been granted the legal right to use it for their recreation and enjoyment. It is clear from the evidence submitted from the Claimant from its extensive interactions with members of the public that there is widespread and genuine emotional upset about the use of the land in this way.

35. There is no attempt to conceal this behaviour: it occurs in plain sight and on a repeated basis without any consideration for the public, or for the laws which govern the use of the Downs. In particular, the Claimant must frequently spend time and resources, funded by the local taxpayers, remedying the damage to the land and mitigating the risks to the public.

36. I am therefore persuaded it is just and convenient to grant an ASBI to control the anti-social behaviour, in addition to the general injunction.

TERMS OF THE INJUNCTION

37. Having considered the proposed terms of the injunction, the proportionate and reasonable terms are set out in the Schedule to this judgment.

POWER OF ARREST

38. The Claimant requests that a power of arrest is added on the ground of a significant risk of harm to others. This test must be applied in a suitably robust manner. Anti-social behaviour causes differing degrees of distress or anxiety and the barrier for a power of arrest must not too low. Powers of arrest should be used in cases where there is a significant risk of harm beyond mere distress.

39. 'Harm' is primarily used in ASBI proceedings to mean physical or psychological harm. However, there is no statutory limit to just these two categories. It is accepted it can mean harm in a wider context, such as nuisance and environmental harm.

40. It is not a risk of significant harm, but rather the significant risk of harm that matters. In my judgment it is more likely than not that there is, taken cumulatively across all the evidence, a significant risk. This arises from the criminal damage that occurs to the public facilities, the public health hazard of human waste, the riding of vehicles across the land with no regard to the other users of the land, and the theft from, and abuse of, commercial and event organisers over the years. Of a lesser, but still relevant factor, the environmental harm being caused is outlined in the academic report of Ms Stevens which makes clear the ecological impact of high levels of human activity.

41. For these reasons, it is appropriate to add a power of arrest to all provisions of the injunction and it is proportionate to controlling the anti-social behaviour to do so.

42. That is my judgment.

SCHEDULE

TO ALL PERSONS UNKNOWN ON CLIFTON DOWN, DURDHAM DOWN, AND LADIES MILE WHO ARE RESIDING, OR INTEND TO RESIDE, IN TENTS, CARAVANS, STRUCTURES, OR OTHER VEHICLES

You are forbidden (whether by yourselves or by instructing or encouraging or permitting any other person) from:

1. Entering or being present, within the area shown in the Map attached to this injunction edged and hatched red or green, on Clifton Down, Durdham, Down and Ladies Mile with the intention of residing in any tent, structure, caravan, van, or vehicle.

2. Defecating and/or urinating, other than in the public toilets, within the area shown in the Map attached to this injunction edged and hatched red or green.

3. Placing household or any other waste material within the area shown in the Map attached to this injunction edged and hatched red or green. For the avoidance of doubt, this prohibits the use of the public bins.

4. Causing any nuisance, harassment, alarm or distress to any person lawfully on Durdham Down, Clifton Down and Ladies Mile by way of any or all of (1) dangerous driving of any vehicle, (2) verbal or physical abuse or threats (3) unreasonable levels of noise (4) allowing any animal to be out of control and/or (5) disposing of waste except in a manner expressly permitted in writing by Bristol City Council.

And it is further ordered that you must vacate any part of the area shown in the Map attached to this injunction edged and hatched red or green on Clifton Down, Durdham, Down and Ladies Mile within two hours of any written or oral request by an authorised officer or agent of Bristol City Council or by any constable (provided that at the time of the request you are offered a copy of this injunction) and you must not return to the said area without the express written permission of Bristol City Council.

Your attention is drawn to your right to apply to the Court to set aside or vary this injunction. Any application must be made to the County Court at Bristol at the Bristol Civil Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR or by email to e-filing.bristol.countycourt@justice.gov.uk. Your application must be made on HMCTS Form N244 or by way of letter provided it is signed with a statement of truth and a copy must be sent to legal.support@bristol.gov.uk at the same time it is filed with the Court. A hearing will then be arranged with no less than two clear days' notice to all parties, or shorter if the parties agree or the Court orders otherwise.

You must comply with this order pending any hearing.