

Location:

Court 11
Royal Courts of
Justice, London

Date:

29 January 2025

Time:

12:00 pm

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|-------------|-------------------------|----------------------|----------|
| In | His Honour Judge Tindal | Judge | ("J") |
| attendance: | Myriam Stacey KC | Counsel | ("MSKC") |
| | Evie Barden | Counsel | ("EB") |
| | Andrew Todd | Eversheds Sutherland | ("AT") |
| | Louise Casey | Eversheds Sutherland | ("LC") |

WM Morrison Supermarkets Limited and Others v Persons Unknown
Return Day Hearing, 29 January 2025

MSKC: I appear for all 3 claimants with my learned friend Ms Barden, you may have seen an email dated 27 Jan from the FTA.

J: there was an email or post I was unable to find, a post from FTA thanking your client on 20 January – referred to in Mr Todd's fourth Witness statement.

MSKC: Pg 272 para 64 is where the reference is. Page 403.

MSKC: My Lord, if I could take a step back, I wanted to make sure your Lordship has an authorities bundle. There is a separate document for today's purposes which is the supplemental bundle, this includes all orders to date and Todd 4 and Roberts 2.

MSKC: This is the second return date for an application for a precautionary injunction to prevent protests at RDCs and access roads to them, the context is the agricultural protests which have formed from the Inheritance Tax changes and the actual protests which took place at Willow Green. All 8 of the RDCs are part of the Country's critical national infrastructure, all of the Respondents are persons unknown.

J: even after your trawl of social media, none of those views posted online have enabled you to identify someone saying "yes I did it"?

MSKC: yes that's correct, the evidential threshold in relation to the individuals cannot be met. We are aware of the ongoing duty on behalf on my client to try to identify and join defendants to the proceedings if appropriate.

MSKC: The prohibitions founded on trespass, private and public nuisance. Since the application was issued, there have been two hearings, the first in front on Mrs Justice Collins Rice and the first return hearing which Mr Justice Fordham heard last Monday on 20th and he made two orders one for a very short interim continuation to bridge the gap from the period of the Order of Mrs Collins Justice Rice and one slightly longer taking the injunction to today.

MSKC: We seek a continuation on the same terms, we have prepared a draft order with one amendment which we will flag in due course, it is to include the recital which

makes it clear that alternative service is to continue. We could do this one of two ways, we include provisions afresh or say what Mr Justice Fordham says.

J: I might include all of the service provisions. My order will effectively be superseding the previous orders.

MSKC: continuation of injunction and alternative service. In terms of the period, our primary position is 12 months, based recognition of temporal limits. This is a matter where there are no specific statements of duration, which is rapidly evolving and unpredictable. The best and coherent target is the introduction of the reforms. We are asking for 12 months, in which we fall short of April 2026 as in a year we will be better placed to explain to Court whether we need the injunction to continue or if it is no longer needed.

J: there is an alternative, which is for me to grant it for a shorter period of time, 3 months. This might have a number of features:

1. it would take us to late April, late April would cover the Chancellor's spring statement at the end of march, I have no idea whether the Chancellor will say anything about this issue or IHT but it doesn't take a lot to say that may be another pinch point at which protest may happen.
2. It will be a new tax year.
3. I haven't seen an application for summary judgment, in *Valero* a final order was made on the basis of 5 years, that was on the footing of a summary judgment. In the absence of findings on summary judgment, should I be making an order for a five year injunction?

MSKC: I'd like to address your last point first, you haven't seen an application for summary judgment as we're not at that point yet. In *Valero*, there were a series of interim injunctions and that was the hearing of the final injunction which was dealt with on summary judgment. For present purposes, we are in the position of an interim injunction. That doesn't mean I am asking for 5 years as that is in excess of what would normally be granted on an interim basis. A year is not ordinarily excessive at the stage of an interim order, although every case has to be decided on particular facts. The reason is that the interim period tends to depend on the nature of the protest and necessity to progress the litigation, albeit any longer period will be subject to annual review. Twelve months [is sought] on the basis we are at an interim stage, not final as per *Valero*.

Per the second point of it being a new tax year, I'm not sure to what extent that is strictly relevant as the reform is going to be implemented April 2026.

J: Inheritance Tax only forms part of the other concerns, in terms of particular dates or particular points in time during the next 12 months where there might be protests which are not in terms of tax.

MSKC: probably the best one is the end of march / spring statement that is likely to enhance and accentuate risk, rather than minimise. My clients are extremely concerned that any protection would need to protect the Easter period.

MSKC: So the spring statement is probably the pinch point, if the court is only minded to grant an injunction for 3 months, I will not oppose that but I do submit that there is a credible case for a longer period on the basis of the evidence before you and that a longer period would avoid the Court having to spend time on another application.

J: I see the point, this was listed 3.5 hours because Mr Justice Fordham didn't know whether there would be a court full of people. Were I to be persuaded to grant the order for 3 months, what I might do is list the further return hearing for an hour. It would avoid a significant amount of time being wasted and if matters became more contentious then obviously closer to the time those that instruct you could write to the Court and say 1 hour not long enough.

MSKC: yes, that is perfectly sensible and a set of directions could be baked in to say at which the Court will consider the extent of any continuing risk that will enable my clients to prepare their case.

J: a statement which is targeted on that issue, that doesn't stop your client from submitting further evidence.

MSKC: we will see at that time whether 12 months is vindicated or not would. It would require amendments to the order.

J: I would need to see that today. In the absence of anyone here I might give a slightly longer judgement just to set the scene in more detail as Mr Justice Fordham's judgment was holding fort pending a return date. If I give an order for 3 months, it might be that I give a judgment which explains that and direct that it be expedited and then be uploaded to your website.

Subject to giving judgment I will list a review in 3 months and see whether further time is needed.

J: it's one thing to say we always assume someone may find it on BAILII. However, if someone is interested it is a lot easier to look on your website.

MSKC: yes and that reflects the fact that this is a moving situation.

J: I'll make my judgment unless you have further submissions.

MSKC: My Lord no, what I was going to do was satisfy you on the s12 notice requirements, as this is an injunction against persons unknown and on a without notice basis. All practical steps have to be taken and the previous hearings, both Mrs Justice Collins Rice and Mr Justice Fordham were satisfied. Todd 4 provides the steps taken to effect service and notify, para 16 deals with uploaded re amended claim form.

J: I can see that and most clearly I have an email of 27 January which says "thank you for the time to read the documentation. We have had time to consider our position and at present we no longer wish to proceed".

MSKC: what isn't available in the bundle is service of the documents last night, an email was sent last night, notification has been given. We've discussed whether the order should be continued, unless I can help with any specific point, I don't need to take up your time.

J: this is an application for a renewed injunction in respect of the protests by members of the farming community and their supporters regarding a number of issues, the most well-known is the changes to Inheritance Tax which will come into effect in April 2026. A number of protest groups have been set up in response to both that issue and, as I understand, they have published online the other issues are the Department for Environment, Food and Agricultural Affairs 25 year road map and indeed pricing of food.

One such group is Farmers to Action which is closely associated with another group, Together. Together were associated with Farmers to Action at protests at the distribution centres of the Claimant to these proceedings, Morrisons, those protests took place on 10 January this year, they led to two previous orders by two High Court Judges, Mrs Justice Collins Rice on 16 January and Mr Justice Fordham on 20 January and his Order of 24 January listed this return date which has been listed before me.

Procedural fairness

The injunction I am asked to make applies to anyone in the world whether or not previously involved in the protests, those protesting are newcomers and such injunctions are legitimate but require special procedural features as they are a mixture of interim and final injunctions and they affect the whole world.

Per the decision in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023], new procedural protections were introduced, a number of those procedural protections are live in the present proceedings and particularly importantly, as there has been no appearance at any of the three hearings of the potential defendants. Like the two judges before me I am satisfied there has been sufficient notice to potential defendants as required given the obvious engagement of freedom of speech and freedom of assembly under Article 10 and Article 11 of the Human Rights Act. Section 12 confirms that if a respondent is neither present nor represented, no such relief is to be granted unless the court is satisfied (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.

Mrs Justice Collins Rice and Mr Justice Fordham were satisfied that there had been a sufficient notification. That notification has grown, e.g. the primary notification was the email of the proceedings and hearing date to associated email address of Farmers to Action, pursuant to the order of Mrs Collins Justice Rice, further notice was then published on the Claimant's website. Further, there was then more notification by the affixing of the warning notices and copies of the order at the injunction sites at the RDCs.

That process has been continued by Mr Justice Fordham's order who continued those arrangements regarding service which Mrs Justice Collins Rice initially made. By virtue of those various steps including publication on website, notification to email address and posting to sites, that all practical steps have been taken to ensure notification of this hearing. The best evidence of that is that an email was received from Farmers To Action email address on 27 January which stated "thank you for the time to read the documentation. We have had time to consider our position and at present we no longer wish to proceed." I'll come back to that but for current purposes it notes it is a clear acknowledgement and an indication that no one was going to participate.

I am therefore satisfied that there has been sufficient notification and so we can proceed.

History

I can take this history briefly; the statements of the Claimants' head of agriculture, Scott Roberts and Andrew Todd who is solicitor for the Claimants set out the basic background which is that Morrisons is a well-known national supermarket which has about 1700 branches nationwide, to serve that network it has 8 RDCs around the country e.g. in the Midlands it has Northampton and in Kettering, Corby. In the north it has Stockton on Tees and Wakefield, in the South East it has an RDC in Sittingbourne and in Kent and the most relevant to this application is the RDC in Bridgwater known as Willow Green

As I started the judgment, I noted there has been an upswell in protests from the farming community in this calendar year given the change in policies but it is part of the context of the changes which have led to those protests, the most well known are the changes to Inheritance Tax, which plan to take effect in 2026, and the DEFRA road map. Both of those are changes brought by the government rather than Morrisons. Part and parcel seems to be the complaint about fair pricing which is at least in part directed against supermarkets including Morrisons.

On 6 January on a website, which I hasten to add is not a protest website, the Farming Forum, there was a notification of several groups including Farmers to Action of planned protests. On 9 January there was a high profile demonstration in Whitehall itself and also the planned protest on the 10 January, which took place overnight from 7:30 to 8:30 on 11 January, a number of people with tractors associated with FTA placed their tractors at strategic places blocking the RDC of Morrisons, according to the statement of Roberts, that overnight blocking had an effect on 76 retail stores and 260 wholesale sites. It cost Morrisons about £200,000. It's not the first time Willow Green has been targeted, I understand in 2012, 2013, 2014 and 2023, the point is not that this issue has been ongoing protests from the farming community have been focused at Willow Green, perhaps in part because it is a high profile site.

The disruption has a number of effects as described by Mr Roberts; 1. Disruption to food supply 2. Health and safety tractors where they would not normally be and 3. Morrisons' business.

On the 11 and 15th, as detailed, there was much talk on social media relating to action and calling for further action which is why Ms. Throup posted a message indicating Morrisons' support for the objections of the farming community and their grievances, that did not quell the targeting of Morrisons as is seen by further posts

There are posts calling for another similar protest on Friday 17 January, that is what led to the application for an injunction on 16 January at which Mrs Justice Collins Rice made an order with two provisions 1. a prohibition from entering or remaining upon the Sites without consent of the Claimants and 2. prohibiting from causing blockades or other obstructions to the access roads to the said Sites.

It is important to stress that that injunction was made to stop the sort of protests which had blocked access to and from Willow Green and other RDCs, it did not stop protests near or outside those centres nor did it touch upon protests at any one of the 1700 shops which Morrisons has up and down the country. It was a carefully and focused injunction which is why Mrs Justice Collins Rice granted it.

I've referenced the fairness, on 17 January, protests did occur relating to the farming community but there was no repeat of Willow Green, either there or at any of the other Sites. I should say that it is apparent that after the injunction was served, those who had organised the protests have refrained from any form of repetition for any form of blockages at the RDCs. It hasn't stopped them carrying on the protests at supermarkets not covered by the injunction.

Notwithstanding the fact that Morrisons has obtained a public injunction, Ms. Throup seems to have placated a significant part of the group behind the original protests to the extent a post was made on FF website thanking Morrisons for their support on 20 January. Other supermarkets have had similar posts.

One of the reasons I am persuaded they do is what has happened since with others on social media not associated with Farmers to Action, in accordance with the Order of Mrs Justice Collins Rice, there was a return day where Mr Justice Fordham produced a short order and then a long order to tidy up various aspect of the order and to clarify that the injunction was at sites not supermarkets. That order also listed a return date, today which is the hearing before me.

The current position between 20 January and today is dealt with in the statements of Mr Todd and Mr Roberts, it is clear that the official email account of Farmers to Action have taken the injunction onboard and have respected the injunction and have posted complimentary things about Morrisons, they confirmed they would not be contesting the injunction.

On that footing it appears that the original organisers and planners for Farmers To Action are happy to respect the injunction, they have not taken opportunity to make representations in writing, I will say that they were very courteous in their response, it is clear from other social media posts that that position from FTA by no means is universal for example since the hearing before Mr Justice Fordham, comments have included the quote "fuck your injunction" someone else said "ignore the injunction it's nonsense..." "chain their gates shut", "if we all go to Morrisons... they can't arrest us all" "we can move to a location 100 ft away" and the most considered and significant was by one user "thanks to the FTA at Bridgwater we've discovered a powerful tool"

This, if I may say so, is a quintessential, thoughtful and considered view about the use of protests as part of a "carrot and stick" to achieve their objectives, something this country is built on, its life blood and part and parcel of law and democracy - as one can pick up from protest outside court today.

The point is, it is clear there are certain people who are not dissuaded by the injunction who may well intend to protest and in particular at RDCs rather than at the 1700 different Morrisons shops.

It is for that reason that it seems to me there is a compelling justification for an injunction, I use that phrase deliberately.

In the light of *Wolverhampton*, which has adapted the protest context there are a number of substantive and procedural requirements

Most importantly, in the context of where no respondents are present, there is the obligation of full and frank disclosure.

Entirely properly and appropriately Mr Todd in his evidence and Ms Stacey and Ms Barden in their skeleton argument draw my attention to points which could be made by Defendants if they were here.

In particular the point that FTA have been invited to participate and have indicated that they do not wish to participate.

Against that, there are also the points that the protests appear to move to supermarkets rather than RDCs, against that the expressions of more militant views focusing on the ongoing risk I am satisfied that all substantive and procedural requirements have been met.

Plainly a civil cause of action has been identified, torts of trespass, public and private nuisance.

This protects Morrisons from people coming onto their land and blocking access to its land which is part and parcel of their property rights.

The secondary, there is sufficient evidence of that conduct and the risk which I've outlined and there are no obvious defences which could be put forward save as the question of human rights.

It is compelling justification because of potential impact, even an Order which prevents trespass can interfere with a protestors' right to freedom of expression, making clear that the right to protest on private land is less of a core aspect of those human rights.

I am satisfied that in injunction is a reasonable and proportionate restriction and it is necessary and proportionate, it is targeted and only covers RDCs does not cover supermarkets.

Secondly, those sites are matters of important public infrastructure and are crucial to the distribution of food including those who are outlined in Mr Roberts' statement and are particularly vulnerable e.g. to care homes and other people who have need for food to be delivered.

Thirdly, there is no obvious alternative to an injunction, prosecution and other orders are not likely to be effective, damages would not be an adequate remedy.

There is a continuing requirement for claimant to identify persons unknown who are by definition not connected to the proceedings. One individual was identified in the judgments of Mrs Collins Rice and Mr Justice Fordham, I won't mention that individual again.

Understandably, those operating the Farmers To Action account haven't identified themselves.

The documents have been properly served, proper notification in the way I've described in the Supreme Court ruling, there are provisions for protection of people, there is liberty to apply, there are both geographic and temporal limits. Geographic being that this injunction is for 8 sites only. The only issue I do not accept, temporal

duration the Claimants originally sought for a 12 month order on the footing that would protect whole of 2025 and early 2026. I accept that for an order, like this it can be appropriate to make an order for 12 months and recognise that Supreme Court state not longer than 12 months. However, in this particular case it seems to me 12 months is too long:

Firstly, these are particular protests about particular issues, they are likely to spike an injunction needed at particular times, most obvious is spring statement at the end of March, where the Treasury may or may not affirm its policy on IHT. There is also Easter to get through which is a challenging time for supermarkets and coincides with challenging time for farmers so I can see importance of lasting over Easter. A three month order would cover both of those things without going off further into distance. 3 months is long enough for Morrisons to review and say it's no longer needed or that it should be extended, by then it could arguably be extended for a year which would cover next tax year.

Therefore I am satisfied that an order on same terms as Mrs Justice Collins Rice of 3 months should be granted.

MSKC: I'm grateful, there is one tidying up point.

J: Para 8 of skeleton is all fine.

MSKC: I'm grateful, it does appear in our draft order.