



# The problem created by “Persons Unknown”, Injunctions and Public Spaces Protection Orders

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# **L B Barking & Dagenham v Persons Unknown, London Gypsies and Travellers intervening**

**Ranjit Bhose QC**

# What we will cover



## Ranjit

- The old approach to “Persons Unknown” injunctions
- The developing judicial landscape
- Service
- How does a “Person Unknown” become a party to proceedings?
- Canada Goose
- The cohort claims before Nicklin J
- Determination by Nicklin J of an Issue of Principle
- Consequences for the Cohort Claims
- Wider Consequences of the Judgment

## Kuljit

- Alternative options where the identity of individuals is unknown
- Particular considerations for traveller cases
- Other possible uses for PSPOs
- The statutory tests for making a PSPO
- PSPO case law

# The “Old” Approach to “Persons Unknown” Injunctions



- Describing the defendants simply as “Persons Unknown”.
- Orders for alternative service under CPR 6.15 by erecting notices on the land / website.
- Interim injunctions often granted ‘without notice’.
- No attendance by any “defendants” at the final hearing.
- Order for alternative service of the final injunction by erecting notices on the land / website.
- Assumption that *everyone* is bound by the final injunction.

# The Developing Judicial Landscape



- *Cameron -v-Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471
- *Ineos Upstream Ltd -v- Persons Unknown* [2019] 4 WLR 100
- *Bromley LBC -v- Persons Unknown* [2020] PTSR 1043
- *Cuadrilla Bowland Ltd -v- Persons Unknown* [2020] 4 WLR 29
- *Canada Goose UK Retail Ltd -v-Persons Unknown* [2020] 1 WLR 2802
- *LB Barking & Dagenham v Persons Unknown* [2021] EWHC 1201 (QB)



# “Persons Unknown” - the Description Requirement



- It is permissible to describe “Persons Unknown” defendants by reference *to future unlawful acts* which the claimant considers they will, or are likely to, commit. There is no conceptual impossibility in suing persons by reference to future unlawful conduct: *Ineos* [30].
- In the Claim Form “Persons Unknown” must be described “ by reference to... conduct which is alleged to be unlawful: *Canada Goose* [82(2)].

(For example “Persons unknown entering or remaining without the consent of the claimant(s) on land and buildings shown shaded red on the plans annexed to the amended claim form.”)

- You cannot:
  - simply refer to defendants in the Claim Forms as “Persons Unknown” or “Persons Unknown occupying land “. Such a description would embrace every householder in England & Wales.
  - describe the “Persons Unknown” by including conduct that is, or may be, lawful. The description must be very carefully tailored: *Ineos*; *Canada Goose*.

# Service of the Claim Form



- The court generally acts in personam. An action is completely constituted when the claim form is issued, but it is not until the claim form is served that the defendant becomes subject to the court's jurisdiction: *Barton v Wright Hassall LLP* [2018] 1 WLR 1119 [8], per Lord Sumption.
- **Cameron**
  - "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard" [17], per Lord Sumption.
  - Subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service under CPR 6.15 that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant.
  - [NOTE: this "essential requirement" is later relied on by Nicklin J in doubting whether it is ever possible to devise provisions for alternative service in Traveller Claims]
  - It is difficult to envisage the circumstances in which it would be right to dispense with service of the claim form under CPR 6.16 in circumstances where there is no reason to believe that the defendant is aware of the proceedings.





# How does a “Person Unknown” become party to proceedings?

*South Cambridgeshire DC v Gammell* [2006] 1 WLR 658

On 17.09.04 court grants an interim injunction against “Persons unknown ... causing or permitting ... caravans, mobile homes ... to be stationed [on land known as plots 1-11, Victoria View]”.

- Order made for alternative service of the claim form and the interim injunction.
- On 20.04.05 Mrs Gammell moves on to plot 10 with her caravan. The terms of the interim injunction are communicated to her on 21.05.05 and so, from that point, she is in breach of the interim injunction.
- She also becomes party to the proceedings, by virtue of (a) the order for alternative service of the claim form having been made and (b) her commission of the acts which the interim injunction prevented (the “Gammell Principle”).

## IT IS IMPORTANT TO NOTE THAT:

- A “Person Unknown” does not become a party to the proceedings simply because an order for alternative service of the claim form has been made. They must, in addition, have committed acts which brings them within the category of defendant in the claim form (e.g. have actually trespassed upon land in breach of an interim injunction where the “Persons Unknown” have been described by reference to coming onto land without licence or consent)
- Even if a “Person Unknown” has a copy of the claim form and the interim injunction *in their hands* this does not render them a party to the proceedings. If they observe the terms of the interim injunction (i.e. do not satisfy the Description Requirement, they remain a *non-party*).



- A final injunction cannot be granted in a protestor case against “persons unknown” who are not parties at the date of the final order, that is to say “**newcomers**” who have not by that time committed the prohibited acts and so do not fall within the description of the “persons unknown” and who have not been served with the claim form [89].
- There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted *contra mundum* (against the whole world) (ibid).
- Protestor actions do not fall within that exceptional category. The usual principle applies: a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd (No 3)* [1992] 1 AC 191, 224 (ibid).
- That is consistent with the fundamental principle in *Cameron* that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard (ibid).



# The Cohort Claims before Nicklin J



- Concerns injunctions, both interim and final, granted in 38 different sets of proceedings to local authorities
- Generally prohibit unauthorised occupation or use of land and are granted, generally, against “Persons Unknown”. Some injunctions also restrain the deposit of waste or fly-tipping.
- Claims rely on trespass, nuisance, s.222 LGA 1972, s.187B TCPA 1990, s.130 HA 1980 and s.1 ABCPA 2014.
- The injunctions principally impact upon the Gypsy and Traveller community.
- Gathered together by Nicklin J as the “Cohort Claims” and case managed.
- Many final injunctions are set-aside and proceedings dismissed because no orders under CPR 6.15 have been made and, accordingly, the proceedings never served within the required 4 months: CPR 7.5 [14].
- Some remain, both final and interim, where orders under CPR 6.15 have been made (although deficient in some cases).

# Determination by Nicklin J of an Issue of Principle:



“Whether the Court has jurisdiction, and/or whether it is correct in principle, generally or in any relevant category of claim, to grant a claimant local authority final injunctive relief either against “Persons Unknown” who are not, by the date of the hearing of the application for a final injunction, persons whom the law regards as parties to the proceedings, and/or on a *contra mundum* basis?”

Nicklin J holds:

- The court has power to grant an injunction that binds non-parties to proceedings pursuant to section 37 Senior Courts Act 1981, which power extends, exceptionally, to making *contra mundum* injunction orders [161].
- “Traveller Injunctions” [4] are subject to the principle that a final injunction only binds the parties to the action at the date of the order [190]. These are the “Trial Defendants” [163].
- Any other “Persons Unknown” - “newcomers” - are “not parties to the litigation” at that date and cannot be bound [149].
- A “newcomer” does not become a party to the proceedings simply by breaching the terms of a final injunction. That injunction simply does not apply to him.
- Traveller Injunctions do not fall into the exceptional category where the court is compelled to act by way of a *contra mundum* injunction [§233].

# Consequences for the Cohort Claims



- Final injunctions: the final injunction binds only those “Persons Unknown” who the claimant can identify (whether by name or photograph etc) and demonstrate to have become a defendant to the proceedings *prior* to the grant of the final injunction (i.e. by having committed acts which resulted in their becoming defendants - c.f. the Description Requirement).

*The final injunction does not bind anyone else.*

- Interim injunctions: if they want to maintain their claims they will have to identify the “Persons Unknown” who have *become* defendants (c.f. the Description Requirement) and be case managed swiftly on to final hearings of the claims.

*The trial will then be against those individuals only.*

# Wider Consequences of the Judgment



- The death knell of Traveller Injunctions against “Persons Unknown”.
  - In practice, claims will have to be limited to “Persons Unknown” who can, at least, be identified by photograph, car registration number etc.
  - Impermissible to seek to protect against any and every possible future wrongdoer.
- The death knell of “Persons Unknown” injunctions in relation to:
  - threatened raves
  - other nuisances
  - breach of byelaws
  - mass trespass to land etc.

save and excepting cases against *identifiable* (even if anonymous) “Persons Unknown” organisers and other likely wrongdoers.
- The likely death knell of car cruising injunctions
  - *perhaps* scope for a *contra mundum* argument depending on the evidence.
- Highly adverse consequences even for seeking interim injunctive relief
  - Compliance with CPR 6.15
  - “Abuse” of Court 37 procedures
  - No prospect of obtaining an interim injunction and then allowing the litigation to “go to sleep”





The future judicial approach is well illustrated by the more recent judgment of Nicklin J in *City of London Corporation v Persons Unknown* [2021] EWHC 1378 (QB).

The Judge refused an interim injunction seeking to restrain a series of potentially unlawful acts in Epping Forest. Nicklin J holds:

- (1) It is not permissible to start a claim, and obtain an injunction, in the hope that a person may arrive, at some point in the future, and do something which qualifies him/her to become a defendant to the proceedings under the operative definition of "Persons Unknown".
- (2) It is one thing to have established the jurisdiction of the court over defendants by service of the Claim Form – as in *Gammell* – and have been granted an interim injunction the terms of which include a category of "Persons Unknown" which may lead to new defendants being added to the claim in the period before trial.
- (3) It is something completely different to bring a claim when presently it is impossible to identify and serve any defendant. The court would be granting an interim injunction in such a case without having established jurisdiction over anyone.
- (4) All of these problems stem from the fact that the Claimant is trying to fashion a remedy, using the *inter partes* procedures of the court, not against identifiable defendants, but against the world at large.



- (5) The interim injunction sought by the Claimant seeks to regulate the conduct of every person who visits the Forest. Some 11 million people visited the Forest in 2020. Such is the width of the definition of "Persons Unknown" adopted by the Claimant that, for all practical purposes, it is seeking a contra mundum injunction.
- (6) This is not an appropriate use of civil litigation; it is asking the Court effectively to legislate to prohibit the conduct generally.
- (7) None of the people, whom it is alleged have been guilty of anti-social behaviour in the past, is sought to be identified as a defendant to the proceedings. Nor has the Claimant identified anyone who is either presently carrying out the activities that would bring him/her into a category of "Persons Unknown" or is credibly threatening to do so.
- (8) In short, it is impossible to identify any defendant to these proceedings. Without a target to aim at, there is no way of devising a method of alternative service of the Claim Form that the Court can be satisfied is reasonably likely to bring the proceedings to his/her attention. It is conceptually impossible to identify the defendants to the claim because none of them presently exists.





# Public Spaces Protection Orders

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# Alternatives where D's identity is not known



- Remedies that attach to a particular geographical location/property
  - Dispersal powers (police)
  - Criminal Justice and Public Order Act 1984 powers
  - Closure orders
  - Public Spaces Protection Orders
- Practical steps
  - E.g. targeting ring leaders and/organisers (whose identities are known) with remedies designed for named individuals
    - Injunctions
    - Community Protection Warnings/Notices

# Particular issues in Traveller cases



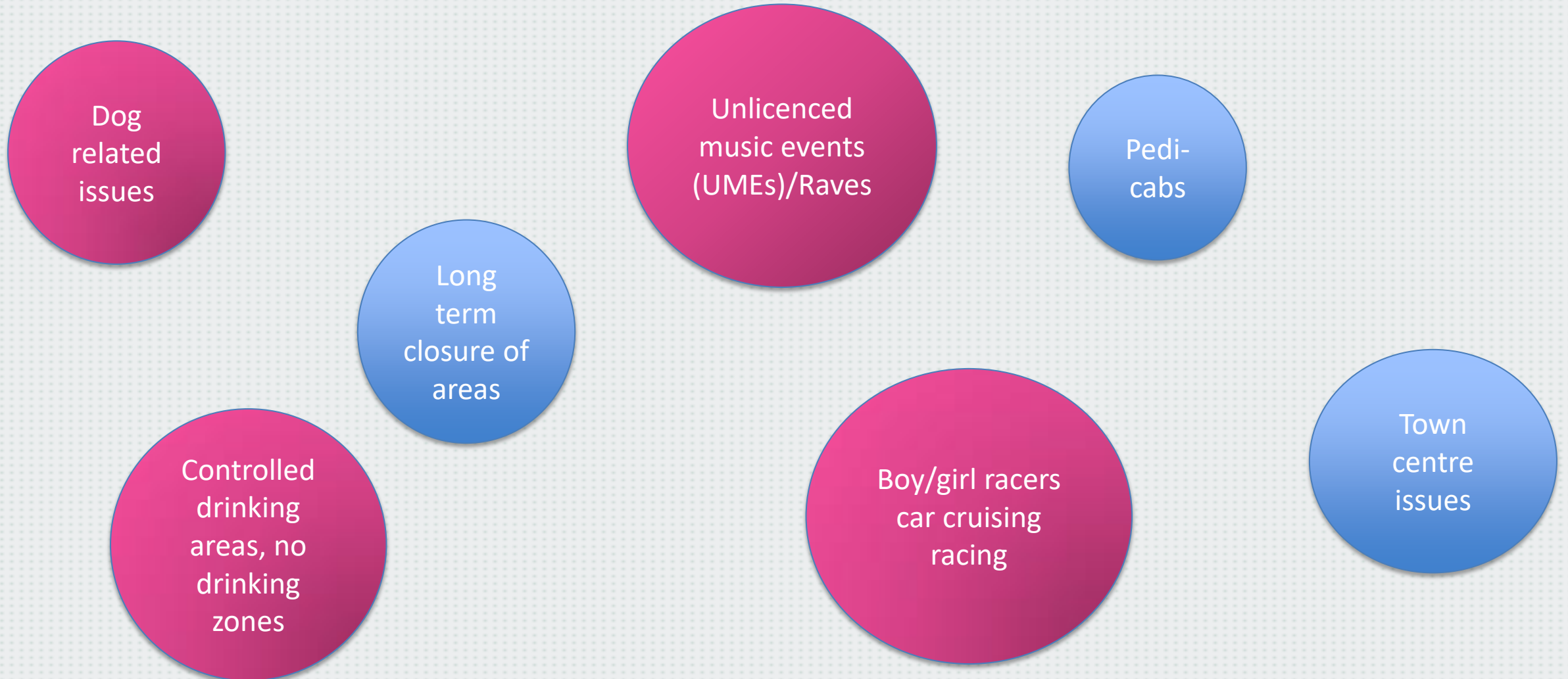
## Chapman v UK

Referenced by Nicklin J at § 15 onwards

- Occupation of a caravan by a member of the GT community was “an integral part of...ethnic identity”
- Measures affecting the stationing of a caravan was a potential interference with Article 8 rights to respect for own home and private life and affected the ability to maintain identity as a GT
- GTs in a vulnerable, underprivileged position requiring “special consideration”
- Although it was legitimate for authorities to seek to regain possession of land from persons who did not have a right to occupy it, orders should not be enforced without regard to the consequences upon GT residents or without securing of alternative shelter for the community
- “mere fact” of ASB did not justify summary eviction
- DOE Circular 18/94, powers should be used in a “human and compassionate way”
- Lack of alternate sites impacts on whether action is proportionate
- GTs are an ethnic minority, section s.149 PSED engaged



# Possible uses for PSPOs







# The statutory framework for PSPOs

# Overview



- Anti-Social Behaviour, Crime and Policing Act 2014, ss. 59-75
- Control of public space
- Maximum duration of 3 years (s.60)
- Evidence base
- Consultation
- Proportionality
- Breach can result in a FPN upto £100 or prosecution with a fine up to £1000

Old orders transitioned to be treated as PSPOs - but the transitioned orders **expired in October 2020**



# Not a LA? Why they are relevant for you



- PSPOs attach to **public spaces** – and will be relevant the areas where your properties/service users are located
- If you know what the powers are, you can ask your LA to use them
- You may be consulted about whether a PSPO should be made/varied/extended
- Role for local ASB/multi-agency/safeguarding panels – partnership working

# What were the old orders?



- Gating orders
  - Relevant to areas which are currently gated off to prevent (for example) access, congregating, fly tipping, rough sleeping
- Drinking in Public Places Orders ('DPPOs')
  - Very common in town centres
- Dog control orders ('DCOs')
  - Requirements to keep a dog under control, out of children's play areas, on a lead, to pick up and dispose of faeces, maximum number of dogs walked by a single person

**BUT:** PSPOs are not limited to these types of behaviour



# Human Rights Act 1988



Need to have “particular regard” to Arts 10 and 11

Section 6: ‘it is unlawful for a public authority to act in a way which is incompatible with a Convention right’

- Article 8 – respect for private and family life
- Article 10 – freedom of expression
- Article 11 – freedom of assembly

‘qualified’ rights. Interference is permitted if this is in accordance with the law and necessary in the interests of national security, public safety, prevention of disorder or crime protection of health or morals, for the protection of the rights and freedoms of others.

# The test – s.59



Two conditions:

- Activities carried on in a **public place** within the authority's area have had a **detrimental effect** on **the quality of life of those in the locality** (or are **likely to** have that effect), AND
- The effect, or likely effect of the activities;
  - Is, or is likely to be persistent or continuing
  - Such as to make the activities unreasonable, AND
  - Justifies the restrictions imposed

# The restrictions – s.59(5)



- Only those that are **reasonable to impose** in order to:
  - Prevent the detrimental effect from continuing, occurring or recurring
  - Reduce the detrimental effect or reduce the risk of continuance, occurrence or recurrence

## Human rights

- In deciding whether to make, vary or discharge a PSPO, the LA **must** have regard to Article 10 (freedom of expression) and Article 11 (freedom of assembly) set out in the European Convention on Human Rights





# Summers v Richmond Upon Thames LBC



Dog control, leads, clearing up after dogs, maximum number of dogs walked by one person  
[2018] EWHC 782 (Admin), High Court, May J

## Key facts:

- Two articles: one to provide for dogs to be kept under proper control, use of leads in certain defined areas, use of a lead if directed to use one, disposal of faeces, ban on dogs on certain areas
- 'Proper control' article referred to out of date charity
- Maximum number of dogs to be walked by one person restricted to 4 (with up to 18 licences allowing up to 6 dogs to be walked)
- Neighbouring boroughs had introduced maximum 4 dog rules, lots of open spaces, royal parks, professional dog walkers coming into area



# Summers v Richmond Upon Thames LBC



- “Locality”

“those in the locality” must be construed as meaning some, but not necessarily all, of those within the locality, whether as residents, visitors or workers [§24]

- “Persistent”

was an ordinary English word “commonly understood to mean ‘continuing or recurring, prolonged’ [§27], we argued it meant ‘more than once’ and relied on Ramblers Association v Coventry CC [2008] EWHC 796 (Admin), accepted by Judge

- Deference to LA:

*"The Act therefore envisages use of PSPOs to curb activities which it is possible that not everyone would view as detrimentally affecting their quality of life. Taken together with the absence of any further definition of the key terms 'activities' or 'detrimental' **this strongly points to local authorities being given a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area. This requires local knowledge, taking into account conditions on the ground, exercising judgment** (i) about what activities need to be covered by a PSPO and (ii) what prohibitions or restrictions are appropriate for inclusion in the order. There may be strong feelings locally about whether any particular activity does or does not have a detrimental effect, in such cases a local authority will need to weigh up competing interests. **Deciding whether, and if so what, controls on certain behaviours or activities may be necessary within the area covered by a local authority is thus the very essence of local politics.**"* (emphasis added) [§25]





# Dulgheriu & Orthova v Ealing LBC



Abortion clinics, safe zones, designated area for protests

[2019] EWCA Civ 1490, 21 Aug 2019, Court of Appeal

## “Detrimental effect”

- LAs have “wide discretion” to identify the relevant behaviour, based on local knowledge [§47]

## “Those in the locality”

- A ‘loose’ expression - left open & undefined [§41]
- For local authorities to identify relevant persons [§47]
- Can include occasional visitors e.g. tourists, shopping centers, hospitals and abortion clinics [§43]
- AS LONG AS the detrimental effect on them “is, or is likely to be, of a persistent or continuing nature”
- Depends on all the evidence and circumstances
- Other issues arising from B and D v PU
  - S.1 ASBCPA injunctions & PUs §§64-70, “requires further argument” but unlikely to be available (confirms previous case law)



# Questions?



# Resources



## Cornerstone On...

The practical guides from

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