

**Resources: Legal & Governance**

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To Persons Unknown

Your Reference:

Our Reference: GEG/079474

Date: 27 June 2017

Dear Sirs/Madam

**PROPOSED CLAIM FOR AN INJUNCTION**

This is a Pre-Action Protocol Letter in respect of an intended claim for an injunction (and damages) to restrain your unlawful conduct concerning tree protests in Sheffield

**1. CLAIMANT**

Sheffield City Council (the "Council") of Town Hall, Sheffield S1 2HH

**2. DEFENDANT**

[NAME] of [ADDRESS]

**3. REFERENCE DETAILS**

Please quote the reference number above in any correspondence.

Steve Eccleston within the Council will be handling this case.

**4. FACTUAL SUMMARY AND DETAILS OF PROPOSED CLAIM**

4.1 You have been involved in and/or have aided, counselled or directed as part of a common design, direct action seeking to prevent the lawful removal of trees by contractors on behalf of the Council. The Council intends to seek an injunction against you and others in the High Court of Justice to prevent the continuation of the direct action and to secure damages for all losses caused to it by the direct action. Costs will also be sought.

We attach samples of the evidence which will be relied on in the Claim for an injunction against you. We also attach a draft Statement of Case which sets out the case we will be presenting to the Court.

**You should take legal advice on this letter and the intended proceedings. A claim for an injunction is a serious matter.** Similar letters to this are being sent to a number of individuals. To minimise costs to you individually, you may wish to co-ordinate with others.

You may, of course, seek to defend the claim for an injunction. If you intend to do so you have 14 days to respond to this letter setting out your defence to the intended claim. We will be issuing the claim in the High Court in Leeds on 12<sup>th</sup> July 2017.

We set out in detail in the draft Statement of Case the basis on which the Council contends that an injunction (and damages) should be imposed by the Court so that you are clear now as to the legal and factual basis for our intended claim.

If you wish to avoid being included in the Claim then you may consider providing an Undertaking to the Council - a draft of which is also attached. This is a promise by you to desist from direct action and/or from aiding, counselling or directing direct action in the future. If you provide that Undertaking before 11<sup>th</sup> July **and** thereafter comply with it, the Council will not include you as a Defendant in the proceedings and will not seek damages or costs against you. (If you give the undertaking and then breach it, the Council will take action against you for an injunction, damages and costs).

**The Basis of the Claim** (for fuller details see the draft Statement of Case attached)

Safety Zones are lawfully erected on highways belonging to the Council to allow works to remove trees to progress. The public are lawfully excluded from entering in or remaining in the Safety Zones – the Council has withdrawn the public licence to enter those areas and in addition Road Traffic Regulation Orders are in force preventing access to the Safety Zones.

The direct action involves entering, or remaining in, Safety Zones on the highway with the intent to and effect of unlawfully preventing the works for the removal of the trees (“the Direct Action”).

You have been informed (by a range of methods including some or all of the following - notices on the Safety Zones, oral notice from contractors, letters handed to you and correspondence from the Council to STAG prominently displayed on its website) that you are not permitted to enter or remain in the Safety Zones and that in so doing you are trespassing.

By entering the Safety Zone you are also unlawfully interfering with the Council's and Amey's business, and unlawfully interfering with the Council's use of its land. The direct action also constitutes a criminal offence under at least s.241 of the Trade Union and Labour Relations Act 1992 and s.303 of the Highways Act 1980. The basis on which the Direct Action is unlawful is more fully set out in the draft Statement of Case attached.

Further, it is also unlawful to assist (aid), counsel (encourage) or direct the Direct Action as part of a common design (joint enterprise) whether or not you in fact enter the Safety Zone yourself. Sending out social media messages encouraging, directing, and assisting others to prevent tree felling is thus also unlawful.

We have evidence that you have:

- (1) entered the Safety Zones despite being told that doing so is unlawful and have refused to leave when asked; and/or
- (2) encouraged, aided and/or directed others to do so.

A sample of the evidence against you is attached.

The Council considers that an injunction is required to prevent you taking direct action in the future or encouraging others to do so. It also considers it appropriate to seek an injunction in support of the criminal law under s.222 of the Local Government Act 1972.

The Council considers that this is a clear case of unlawful action by you and that there is no arguable defence to the action. If either our facts are wrong, or you contend that the actions complained of are lawful, then please set out your reasoning in a response to this letter by 11<sup>th</sup> July.

### **The Effect if an Injunction was granted**

The effect of an injunction being granted would be to prevent you from taking Direct Action or aiding, counselling or directing others to take Direct Action on any public highway in the Council's area.

If you then took further Direct Action or aided, counselled or directed others to do so, after the injunction was granted you would be liable to be held in contempt of court. In such circumstances, the Court would have power to send you to prison or to fine you.

### **Damages**

The Direct Action is causing severe disruption to the tree felling programme and to the consequent highway maintenance work. If, and to the extent, the Council is liable for any consequent financial losses by reason of Direct Action

by you, it will seek to recover such losses from you as part of this claim. The sums could be significant.

### **The Procedure**

The Council will be issuing proceedings on 12<sup>th</sup> July 2017 against any persons who have not provided an Undertaking by that date. The proceedings will be in substantially the form of the draft Statement of Case attached and will be accompanied by substantial evidence of your involvement.

The Council will ask the Court to grant an interim injunction at the outset – you will be given notice of the date and location of the interim injunction application so that you can attend.

Whether or not an interim injunction is granted, the Court will give directions for the trial of the claim for the permanent injunction. We will be inviting the Court to expedite all stages with a view to a trial before the end of August.

At the end of the trial, the judge will decide whether to grant an injunction and on what terms and will make such order for costs of the litigation as deemed appropriate.

We will be inviting the Court to adjourn the claim for damages because the financial consequences of the Direct Action for the Council are not yet clear.

### **Next Step**

You have 14 days to provide a response to this letter. You should seek legal advice. If you wish to defend the Claim for an injunction and damages, you are asked to set out the basis of your defence at this stage so that the Council can consider whether to instigate proceedings against you.

Alternatively, you can provide the Undertaking attached by 11<sup>th</sup> July. Your signature on the Undertaking should be witnessed by someone other than a member of your family who should provide their name and address.

## **5. RELIEF CLAIMED**

By reason of the matters aforesaid, the Council will seek an injunction in the terms set out below to restrain you from entering the Safety Zones, or from encouraging others to do so, on the following individual and/or cumulative grounds:

- a. trespass;
- b. in support of the criminal law in at least s.241 of the TULRA 1992 and s.303 of the Highways Act 1980 because there has been and otherwise will continue to be flagrant and deliberate breach of the criminal law;

- c. the tort of unlawful interference with the exercise of the Council's statutory duty or the exercise of its business;
- d. a nuisance and/or an unlawful obstruction of the highway

An injunction restraining you from:

- a. entering in or remaining in any Safety Zone established on the Highways to which a notice of the Injunction is attached;
- b. encouraging, facilitating or organising others to enter or remain in any Safety Zone established or to be established by Amey or the Council for the purpose of felling trees.

- 2. Damages
- 3. Costs

## **6. SETTLEMENT AND ADR**

6.1 The Council has gone to significant effort to avoid having to take this action but the unlawful direct action has continued and there is every sign it will continue unless restrained by injunction.

## **7. ADDRESS FOR FURTHER CORRESPONDENCE AND SERVICE OF COURT DOCUMENTS**

Steve Eccleston, Sheffield City Council, Legal and Governance, Town Hall, Sheffield S1 2HH

### **Documents**

The documents in support of the proposed claim will be provided on the Council's website at [www.sheffield.gov.uk](http://www.sheffield.gov.uk)

Yours faithfully

**STEVE ECCLESTON**  
Enc.