

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**BIRMINGHAM DISTRICT REGISTRY**

**Claim No. C90BM276**

**B E T W E E N:-**

**MALVERN HILLS DISTRICT COUNCIL**

**Claimant**

**-and-**

**(1) MR ANDREW TIDMARSH**

**(2) MRS ELIZABETH MARY ADAMS**

**(3) GRIMLEY OVAL RACEWAY LIMITED**

**(4) PERSONS UNKNOWN**

**Defendants**



---

**ORDER**

---

**PENAL NOTICE**

**IF YOU (1) MR ANDREW TIDMARSH (2) MS ELIZABETH MARY ADAMS OR (3) GRIMLEY OVAL RACEWAY LIMITED, DO NOT COMPLY WITH YOUR PROMISES TO THE COURT YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED**

Before His Honour Judge Rawlings sitting as a Judge of the High Court at the High Court of Justice, Queen's Bench Division, Birmingham District Registry on 26<sup>th</sup> October 2016.

UPON hearing Counsel for the Claimant and Counsel for the First to Third Defendants.

AND UPON the First to Third Defendants submitting to an interim injunction being made against them in the terms annexed hereto, such injunction to take effect at 00.01 hours on 31

October 2016 and to remain in force until the conclusion of the trial of this action (including judgment) or further order of the court and that such submission is without any admission as to the Claimant's entitlement to final injunctive relief.

AND UPON the First to Third Defendants giving an undertaking, by Counsel, to the Court for the purpose of the pre-arranged event which is scheduled to take place on 30<sup>th</sup> October 2016 promising:-

- (1) To restrict the use of the public address / tannoy system to:
  - a. emergency announcements;
  - b. safety announcements;
  - c. marshalling announcements which shall not take place more than 5 minutes before or after any race;
  - d. race commentary.
- (2) Not to play any music during the event whatsoever.
- (3) To use their best endeavours to keep the volume of the public address / tannoy system to an acceptable level and, in particular, to disconnect the speaker closest to Vine Cottage, Walton Road, Grimley, WR2 7LR.
- (4) To ensure that all vehicles are subject to Static Race Vehicle Noise Testing, using ORCi protocols, and that vehicles above the 96 dB(A) limit specified in GOR's own Noise Control Measures, are not allowed to race or be operated. Records of these tests shall be made available to the Claimant by 4pm on 13<sup>th</sup> November 2016.
- (5) To inform all drivers that engine revving is to be kept to a minimum at all times, other than during a race, and then only by those vehicles taking part in that race. In the event that any of the drivers infringe this rule, they shall be disqualified from the event.

AND UPON the First to Third Defendants acknowledging that by permitting the pre-arranged event on 30<sup>th</sup> October 2016 to proceed subject to the giving of the undertakings noted above, the Claimant does not accept that any activity that may occur on that date constitutes an acceptable level of noise and reserves its position to rely upon any noise that may amount to a nuisance.

IT IS ORDERED THAT:-

1. The claim is assigned to District Judge Truman for case management.
2. At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.
3. The Claimant has permission to amend the Particulars of Claim dated 4<sup>th</sup> October 2016 to correct errors in the references to the Defendants in paragraphs 2, 15 and 16. The amended Particulars of Claim shall be filed and served by 4pm on 2<sup>nd</sup> November 2016.
4. The Defendants shall file and serve a Defence by 4pm on 23<sup>rd</sup> November 2016.
5. The need for formal disclosure of documents is dispensed with. The parties shall exhibit any documents upon which they seek to rely to their witness statements. The parties are reminded that the duty of disclosure continues throughout the proceedings.
6. Evidence of fact will be dealt with as follows:-
  - a. By 4pm on 21<sup>st</sup> December 2016, the Defendants shall serve on the Claimant copies of the signed statements of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence.
  - b. By 4pm on 1<sup>st</sup> February 2017, the Claimant shall serve on the Defendants copies of any further witness statements on which it intends to rely and all notices relating to evidence. For the avoidance of doubt, the Claimant is not obliged to re-serve the six witness statements that have already been filed and served.

- c. Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.

7. The parties each have permission to rely on the following written expert evidence:-

a. The Claimant:

- i. An expert in environmental health with qualifications in acoustics and noise, namely Mr Daniel Baker of MAS Environmental, whose report must be served by 4pm on 21<sup>st</sup> December 2016.

b. The Defendant:

- i. An expert in the field of acoustics environment, namely Mr John E Grant, whose report must be served by 4pm on 21<sup>st</sup> December 2016.

c. Unless the reports are agreed, there must be a without prejudice discussion between the experts by 4pm on 18<sup>th</sup> January 2017 in which the experts will identify the issues between them and reach agreement if possible. The experts will prepare for the court and sign a statement of the issues on which they agree and on which they disagree with a summary of their reasons in accordance with Rule 35.12 Civil Procedure Rules, and each statement must be sent to the parties to be received by 4pm on 1<sup>st</sup> February 2017.

d. A copy of this order must be served on the expert by the party instructing that expert with the expert's instructions.

e. The experts may apply direct to the court for directions where necessary under Rule 35.14 Civil Procedure Rules.

f. The parties have permission to call oral evidence of the above experts.

8. Costs Budgets are dispensed with pursuant to CPR r. 3.13(1).

9. Pre-trial checklists are dispensed with pursuant to CPR r. 29.6(1). The trial will be listed as follows:-

- a. The trial window is between 22<sup>nd</sup> February 2017 and 17<sup>th</sup> May 2017 inclusive.
- b. The estimated length of trial is three days.
- c. By 4pm on 21<sup>st</sup> December 2016 the parties must file with the court their availability for trial, preferably agreed and with a nominated single point of contact. They will be notified of the time and place of trial.
- d. It is recorded that the trial is suitable for determination by a Circuit Judge authorised to sit as a Judge of the High Court pursuant to section 9 of the Senior Courts Act 1981.

10. The trial directions are as follows:-

- a. Not more than seven nor less than three clear days before the trial, the Claimant must file at court and serve an indexed and paginated bundle of documents, which complies with the requirements of Rule 39.5 Civil Procedure Rules and Practice Direction 39A. The parties must endeavour to agree the contents of the bundle before it is filed. The bundle will include:
  - i. a chronology;
  - ii. a trial timetable.
- b. The parties must file with the court and exchange skeleton arguments at least two clear days before the trial by email.

11. Costs in the case.