

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION

Case No. QB-2022-001420

The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday, 25<sup>th</sup> April 2023

before

THE HONOURABLE MRS JUSTICE HILL

SHELL UK OIL PRODUCTS LIMITED

- v -

PERSONS UNKNOWN

MS M STACEY KC and MR J SEMAKULA appeared on behalf of the CLAIMANT  
NO APPEARANCE by or on behalf of the DEFENDANTS  
MR S SIMBLET KC appeared on behalf of the INTERESTED PARTY

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WHOLE HEARING

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A **Case called.**

MRS JUSTICE HILL: Good morning.

MS STACEY: Good morning, may it please Your Ladyship, we appear on behalf of Shell, the various Shell entities in these matters, myself and Mr Semakula who sits next to me. And Mr Simblet KC appears on behalf of Jessica Branch as an interested person.

B My Lady if I could start with a short matter of housekeeping because there has been a number of developments recently-

MRS JUSTICE HILL: Yes.

C MS STACEY: You will have received our skeleton and a skeleton from Mr Simblet and his junior on behalf of Ms Branch?

MRS JUSTICE HILL: Yes.

MS STACEY: Coupled with a witness statement and then various – a note in response from us which was sent this morning, I hope that has reached you?

MRS JUSTICE HILL: It has.

D MS STACEY: Great and to our skeleton we have appended various orders. They are slightly modified from those that you will find in the bundle, so, I hope you have those too?

MRS JUSTICE HILL: If it helps you, Miss Stacey, I have got the orders that were appended to your skeleton and I have worked from those-

E MS STACEY: Excellent.

F MRS JUSTICE HILL: -I have got in total, I think, from your team, the skeleton itself, there was a short email yesterday about Ms Branch's application, I have read your response from this morning at my direction with many thanks, so, I have read that and I am aware that in terms of authorities the bundle that you provided yesterday has been supplemented by a separate bundle from Mr Simblet-

MS STACEY: Indeed.

MRS JUSTICE HILL: -which I also have.

MS STACEY: So you have now two authorities-

G MRS JUSTICE HILL: I do-

MS STACEY: -that is incredibly helpful, thank you.

MRS JUSTICE HILL: -and then this morning, in fact, I have already printed Hobbs[?] J's decision and read that-

MS STACEY: Yes.

H

A MRS JUSTICE HILL: -I have not, however, had which one of these provided this order in hard copy, so, someone needs to help me with that-

MS STACEY: Oh that is the permission to appeal-

MRS JUSTICE HILL: Yes.

B MR SIMBLET: Shall I tell you what that is, My Lady-

MRS JUSTICE HILL: Yes, please do Mr Simblet.

MR SIMBLET: -so, those are orders made by Maplin LJ in the Ineos[?] proceedings which we say cast some light on whether Ineos decided that the – whether section 12-

MRS JUSTICE HILL: The 12(3) point.

C MR SIMBLET: -subsection three applies.

MRS JUSTICE HILL: So, if I put these, Mr Simblet in your authorities bundle somewhere near Ineos?

MR SIMBLET: That would be very helpful My Lady yes thank you-

MRS JUSTICE HILL: I think you provide the very first instance and the Court of Appeal decision-

D MR SIMBLET: Yes.

MRS JUSTICE HILL: -did you not? So, I will just put those orders in around your page 314 of your skeleton – your authorities.

MR SIMBLET: Thank you My Lady.

E MS STACEY: I'm grateful, so-

MRS JUSTICE HILL: -return your copy-

MS STACEY: Yes.

MRS JUSTICE HILL: -judgment. Thank you.

MS STACEY: Thank you. And just to complete the housekeeping, there's been a reading list in the skeleton, as I understand it, Your Ladyship has been diligently reading since about last Friday, I hope you have made your way through the reading list that we have suggested.

F MRS JUSTICE HILL: That is a reasonable assumption, not entirely accurate-

MS STACEY: Okay.

G MRS JUSTICE HILL: -I was reading yesterday.

MS STACEY: Okay.

MRS JUSTICE HILL: And being completely honest and clear about it, because of the application by Ms Branch-

H MS STACEY: Yes.

A MRS JUSTICE HILL: -I have not had as long with the substantive documents as I might have otherwise liked. So, what I have been able to do is read all of your submissions, both of your submissions, the key authorities-

MS STACEY: Yes.

B MRS JUSTICE HILL: -I have scanned the witness evidence on your reading list but I have not read it in detail and I have given thought, plainly, to how to manage the various issues that are now raised. So, I think it is fair to say that yesterday was spent focusing on that-

MS STACEY: Yes.

MRS JUSTICE HILL: -rather than the granularity of your witness evidence-

C [Crosstalk]

MRS JUSTICE HILL: -but it is summarised helpfully in your skeleton in any event-

MS STACEY: And in any event I will take you through the various documents in my opening submission. So-

D MRS JUSTICE HILL: And if I helps you both, I think just to perhaps give you an indication-

[Crosstalk]

MRS JUSTICE HILL: -of where I am coming from, Ms Branch has plainly made her application to be heard. I do not know if you take any point that a formal application has not been made under an application notice-

E [Crosstalk]

MRS JUSTICE HILL: -or anything of that nature, but she plainly wants to be heard.

MS STACEY: Yes.

MRS JUSTICE HILL: It seems to me that there are some legal questions, if I can help you all I hope, about the basis on which she seeks to be heard, so there is an argument trail by Mr F Simblet that there is a general right to hear somebody who may assist the Court-

MS STACEY: Yes.

MRS JUSTICE HILL: -number one, even if they are not a defendant and I will perhaps need some help on that.

G MS STACEY: Yes.

MRS JUSTICE HILL: Number two, there is plainly then an issue about CPR 40.9-

MS STACEY: Yes.

MRS JUSTICE HILL: -so there is a question, it seems to me, about Miss Branch's eligibility under those provisions.

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A MS STACEY: Yes.  
MRS JUSTICE HILL: I note, for example, in the authorities, that Ritchie J in *Breen* set out certain criteria to be considered on a 40.9 application-

B MS STACEY: Factors, yes, yes.  
MRS JUSTICE HILL: -I am not necessarily yet sure that I have enough evidence or submissions on those points.  
MS STACEY: Yes.  
MRS JUSTICE HILL: That is the next question. So, for me, the way I have distilled this, firstly what is the legal route here from Ms Branch; two, if it is 40.9 what evidence or submissions do I have on the Ritchie criteria-

C MS STACEY: Yes.  
MRS JUSTICE HILL: -if I can call them that; three and perhaps the most fundamental question it seems to me at the moment is what is the scope of a 40.9 involvement in any event?  
MS STACEY: Indeed.

D MRS JUSTICE HILL: There are some side-wind comments by Johnson J about that and I have read, as he then was, His Honour Judge Cotter's decision-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -in, I think it is Ageas[?] Insurance-

E MS STACEY: -to do with the merits of an-  
MRS JUSTICE HILL: Yes, I mean I have read – the only assistance one can get on the scope of a 40.9 involvement from *The White Book* is quite limited-  
MS STACEY: Indeed.  
MRS JUSTICE HILL: -but there is plainly a question about if you are permitted to be heard under

F rule 40.9, what does that really mean-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -anyway, okay? But then I think more specifically there is a legal question, it seems to me, about is whatever the general right under rule 40.9 is moderated on these

G facts because the application Ms Branch makes now is to be heard in respect of injunctions that have already been made-  
[Crosstalk]

H MRS JUSTICE HILL: -whereas some of the earlier 40.9 authorities were about involvement in the course of the injunction being made-

A MS STACEY: Yes.  
MRS JUSTICE HILL: -and were about the wording of the injunction rather than substantive merits.  
MS STACEY: Indeed, which is a point that I think we raise in our note-

B MRS JUSTICE HILL: Yes.  
MS STACEY: -by moderated you mean made more difficult for Ms Branch, tactfully put-  
MRS JUSTICE HILL: Yes. Because there is plainly a legal dispute between you about the way in which Ms Branch seeks to be involved-  
MS STACEY: Indeed.

C MRS JUSTICE HILL: -and how she should be involved and I think perhaps not to complicate matters even further but my third sort of sub element of my thinking around this was that this is a review hearing in relation to injunctions but the third element is that they are against persons unknown-  
MR SIMBLET: Yes.

D MRS JUSTICE HILL: -which plainly brings it into a procedural space-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -that is different to the vast majority of litigation.  
MS STACEY: Yes. And then finally I do not know if that is at the end of your list but there is also

E a discretionary element when you – because any application under 40.9 is subject, even if you get through the various gateways-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -subject to the Court’s discretion and we say and I will develop this in due course,

F but we say there will need to be procedural controls and some guidance from the Court as to which submissions are appropriate because this – it – the problem with these kinds of applications is there is a danger of them [becoming unruly?] and there is a general point in principle here as to what circumstances (a) can a party in these types of cases pop up the day before, effectively, in circumstances where we say they’ve had ample opportunity to

G notify a claimant and seek to make submissions that are extensive as the submissions that are sought to be made in this case-

H MRS JUSTICE HILL: Understood but I mean those are the facts of this case but there is a general point in principle, I think, is that the next question I come to, if you like, is the interrelationship between 40.9 and defendant status.

A MS STACEY: Yes.  
MRS JUSTICE HILL: So, there is plainly a difference that Ms Branch rightly and understandably, I am sure, wishes to be heard under 40.9 and has her reasons for not wanting to be a defendant.

B MS STACEY: Yes.  
MRS JUSTICE HILL: You say, broadly, there are reasons that go the other way-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -but if somebody wants to be properly heard they should become a defendant-

C MS STACEY: Yes. And I note *The White Book* made clear that a non-party – there is no general rule that a non-party can do something that a party can do.  
MRS JUSTICE HILL: Against that, Ritchie J had sympathy with those who would wish to not be exposed to the costs of becoming a defendant but have the right to be heard-

D MS STACEY: Yes and I should say on behalf of my client, we are not wishing to close off submissions-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -we are not wishing to do that, we are not wishing to close off proper, appropriate submissions but it – we say it needs to be done on a principled and correct procedural basis

E with proper controls and we are concerned – I suppose can I just identify the three factors if you like?  
MRS JUSTICE HILL: Well, just bear with me a second please if you would.  
MS STACEY: Yes.  
MRS JUSTICE HILL: I think that final element-

F MS STACEY: Yes.  
MRS JUSTICE HILL: -makes a series of procedural questions around Ms Branch’s involvement.  
My initial view, plainly I will hear from you both, is that they are quite difficult points of principle-

G MS STACEY: Yes.  
MRS JUSTICE HILL: -that would have a wider consequence for all persons unknown cases, because my focus has been, as I have indicated, on this aspect of the claim on the case so far. And my reading of the various judicial observations about 40.9 come to something along these lines but it is recognised that there is, I think in *Barking and Dagenham*, a

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A recognition that that process exists-

MS STACEY: Yes.

MRS JUSTICE HILL: -and it seemed to be being spoken about as a counterbalance to the otherwise procedural difficulty with persons unknown cases-

B MS STACEY: Yes.

MRS JUSTICE HILL: -it seemed to be the suggestion that, well, look, someone can apply under 40.9 so that is a reason why we feel comfortable with the persons unknown jurisdiction.

MS STACEY: Yes.

C MRS JUSTICE HILL: There are some examples, I think Bennathan J and Ritchie J committing representations under 40.9 in a certain context-

MS STACEY: In the context and to a certain scope yes.

MRS JUSTICE HILL: But the question over involvement (a) on a review and (b) where the involvement goes to the root branch of the existing undertaking – injunctions, is quite different, I think, to what we have seen before.

D MS STACEY: Yes, indeed.

MRS JUSTICE HILL: And my overall thinking so far is one of how to properly and fairly manage Ms Branch's involvement, bearing in mind the limits on time that we have this week and bearing in mind that your injunctions, I think in two cases, expire on-

E [Crosstalk]

MRS JUSTICE HILL: -helpfully after the bank holiday on Tuesday is that right-

MS STACEY: Yes, 2 May is the earliest expiration-

MRS JUSTICE HILL: Yes. So, that is where I am at-

MS STACEY: Yes.

F MRS JUSTICE HILL: -in my thinking. I have questioned whether, doing the best you both have done so far, really those quite important procedural questions have been properly developed and are capable of being dealt with fairly-

MS STACEY: Yes.

G MRS JUSTICE HILL: -because – and I am very grateful to you both and I know that my clerk was making various requests of you yesterday and I am very grateful that you both tried to assist. But it seems to me that your submissions around Ms Branch's position, which were set out helpfully in your note from this morning-

MS STACEY: Yes.

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A MRS JUSTICE HILL: -on any view raise questions that need proper consideration and my worry,  
if I am – and I hope this is helpful, forgive me-

MS STACEY: No, this is extremely helpful.

MRS JUSTICE HILL: -for taking over if you like but it might be said that that is helpful, I hope,  
B but properly argued and properly developed, those points could themselves take a day and a  
half.

MS STACEY: I agree.

MRS JUSTICE HILL: Judgment is anticipated within the two-day time estimate.

MS STACEY: Yes.

C MRS JUSTICE HILL: That is the way in which this case has been listed-

MS STACEY: I thought it was a one and a half day time estimate.

MRS JUSTICE HILL: I have two days.

MS STACEY: I see.

MRS JUSTICE HILL: The logic of it was that this was anticipated to be a review hearing-

D MS STACEY: Yes indeed-

MRS JUSTICE HILL: -on an effectively *ex parte* basis.

MS STACEY: -yes, exactly.

MRS JUSTICE HILL: For which a day and a half and then another half a day-

E MS STACEY: Yes.

MRS JUSTICE HILL: -to provide judgment is not unrealistic. These are, I think, quite important  
points and my concern is that (a) you may not have each really enough time to think  
through how they work and what the consequences might be and so on and (b) that even if  
you are content to fully argue them that they in themselves, properly dealt with, might well  
F use up all the time that you have and then we do not even get to whether your injunction is  
extended.

MS STACEY: Yes.

MRS JUSTICE HILL: Do you understand the difficulty?

G MS STACEY: I do, I do and what's going through my mind is this is entirely without any  
instructions, so, taken in that vein, one option might be, for example, for us to say, well,  
look let us hear the submissions because the second stage of our analysis is that regardless  
of the submissions there is no real prospect of, we say, a different order being made because  
this is the review point and therefore we can skip over the 40.9 point, but that is a matter

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A entirely for my client because what we need to avoid is the Court proceeding on a, you  
know, basis that is procedurally incorrect in circumstances where there was an opportunity  
to bottom-out the point which obviously has wider implications. That's one option and I  
need to – so that's – it's almost like this is saying, okay, let's not get into the nitty-gritty of  
B the procedural position and she's here and we've dealt with it as best we can and let's hear  
the submission and see where we go but I'd need... I'd need some instructions because-

MRS JUSTICE HILL: The difficulty though with that is that there is a sort of, I mean I – the-

MS STACEY: I'm sorry, before – I should just to develop that a little, my concern about that  
would be that we are saying that the submissions go beyond what is appropriate on review,  
C as Your Ladyship will be well aware there's been a series of these reviews going through  
these – this court since January, I was involved in one before Cotter J yesterday and it  
consistently, the position of judges has been one does not go right back to the beginning  
*de novo* and start revisiting everything that's already been determined by the brethren  
judges, but that's essentially what Mr Simblet seems to be asking you to do-

D [Crosstalk]

MS STACEY: -I needn't be concerned with the 40.9 application-

MRS JUSTICE HILL: -I have not yet, apart from the – Cavanagh J's judgment which we think  
was I think was on the basis of without any *inter parte* representation was it?

E MS STACEY: No *inter parte*.

MRS JUSTICE HILL: Yes, so, although he made a comment, I think it is at paragraph 20 is it not  
of the *Esso* case, I think-

MS STACEY: Yes.

MRS JUSTICE HILL: -that this is the jurisdiction on review etc. etc.-

F MS STACEY: Yes, this is the approach-

MRS JUSTICE HILL: -that time but I do not believe that I have seen any reasoned judgment from  
a fellow judge to say this is how 40.9 operates in persons unknown cases, this is the scope  
of what you are allowed to say on the initial application for an injunction, this is the scope  
of what you are allowed to say on a review, I do not believe I have seen a – and that,  
G effectively, is what I am being asked to do-

MS STACEY: No, I understand there is an interesting jurisdictional question there-

MRS JUSTICE HILL: Well, an important one-

MS STACEY: Yes and important-

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A MRS JUSTICE HILL: -not just interesting-  
MS STACEY: -no-  
MRS JUSTICE HILL: -important in this – on any view-  
MS STACEY: Yes.

B MRS JUSTICE HILL: -novel area of law.  
MS STACEY: Yes, no, I see that, I see that-  
MRS JUSTICE HILL: I mean I throw this possibility open for you to reflect on between you. If you step back from the nature of this case and you said, well, this is listed for, effectively an *ex parte* hearing, there is quite a late application to intervene-

C MS STACEY: Yes.  
MRS JUSTICE HILL: -it is very well-developed legally, 35, I think, pages, it has authorities, it has a witness statement-  
MS STACEY: Yes.

D MRS JUSTICE HILL: -many judges in that scenario would say that late application cannot fairly be dealt with-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -irrespective of the complexity and might say that that application should be adjourned to a further date and the hearing itself should proceed on the basis anticipated.

E MS STACEY: Yes, I-  
MRS JUSTICE HILL: That might-  
MS STACEY: -none of that has not crossed my mind, certainly-  
MRS JUSTICE HILL: Well-

F [Crosstalk]  
MRS JUSTICE HILL: -the difficulty with that option and I am going to perhaps obviously hear from-  
MS STACEY: Yes.

G MRS JUSTICE HILL: -Mr Simblet too but I wanted to try and cut through the issues before we spent a lot of time talking about things that may or may not help. One option is that I proceed to hear you as planned on a review basis only-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -that Mr Simblet’s application is adjourned to a further date-  
MS STACEY: Yes.

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A MRS JUSTICE HILL: -but if I were persuaded by your review submissions, plainly I would not grant the review for a further year because Mr Simblet would need to be able to come back with his application at some point in the tolerably near future, but-

MS STACEY: Or you grant it for a year but he can - with provision for her to make-

B MRS JUSTICE HILL: Well, maybe, maybe-

MS STACEY: -an application at some point within that period-

MRS JUSTICE HILL: -or maybe I grant it for a period of months, for example-

MS STACEY: Yes-

MRS JUSTICE HILL: -with a timetable then, for example, along the lines of submissions have to

C be made about these issues-

MS STACEY: Yes.

MRS JUSTICE HILL: -you know, how the Ritchie criteria in *Esso* are met or not met, what is the scope of the involvement etc. and that that issue then comes back on a separate day.

MS STACEY: Well, My Lady, that, if I may say so, better than my suggestion-

D MRS JUSTICE HILL: I am not sure it is because it means – I mean if there is force in what Mr Simblet is saying it still means that I might be making-

MS STACEY: No-

MRS JUSTICE HILL: -a renewal injunction on a flawed basis but it is better perhaps than what

E you are suggesting-

[Crosstalk]

MS STACEY: -which is ducking the point entirely-

MRS JUSTICE HILL: Politely put.

MS STACEY: -if I can put it that way. Yes, and indeed it – I prefer it for that reason but also the

F reason that we prepared and it's the delay point really that I have raised because we prepared for a hearing on a particular basis and you see from our note that we make the point that Miss Branch has been involved before, she knew about Ms Friels' [?] involvement [?], she's assumed to have had knowledge of the order which contains

G provisions for variation and there's been absolutely no explanation as to why she's taken so long to come and make these or seek to make these submissions-

MRS JUSTICE HILL: Yes.

MS STACEY: -and all of that speaks to unfairness on my client if we are [going to be bounced?] at this point in time.

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A MRS JUSTICE HILL: You have rightly raised the point but because of the, we are where we are-  
MS STACEY: Yes, indeed.

MRS JUSTICE HILL: -you raised that point at 9.30 this morning, Ms Branch may well have an  
explanation for the delay, I do not have that before me, it may be a credible one, it may not  
be but it is those sort of issues that make me also feel concerned about the ability to manage  
this fairly to everybody-

MS STACEY: Yes.

MRS JUSTICE HILL: -if your clients are right, they want their injunction this week, they need it  
this week because it expires in two of the three days [as on the?] Tuesday and Monday is a  
non-working day, is that not right?

MS STACEY: It is.

MRS JUSTICE HILL: Yes and so there is a fairness to your client but there is also a fairness to  
Miss Branch that is required.

MS STACEY: Yes.

D MRS JUSTICE HILL: So, I mean perhaps I will hear from Mr Simblet but broadly and I know you  
need to take instructions, Miss Stacey, but do you understand where I am coming from?

MS STACEY: I do, I do entirely and I understand the proposal that you're, subject to Mr Simblet's  
argument, have in mind at this point in time.

E MRS JUSTICE HILL: I mean my main concern is how is this to be case managed in two days-

MS STACEY: Yes.

MRS JUSTICE HILL: -can I be assured that these important points of principle are given the  
airing that they really need and my provisional view is-

MS STACEY: I'm with you, I don't think-

F MRS JUSTICE HILL: Yes.

MS STACEY: -there can be a proper consideration and ventilation of all the issues arising from  
this, as you say, important jurisdictional point within the current timeframe-

MRS JUSTICE HILL: That would go beyond this litigation in some way-

G MS STACEY: That goes, undeniably, goes beyond this litigation.

MRS JUSTICE HILL: All right, just pause these please Ms Stacey.

**Pause.**

MRS JUSTICE HILL: Is there anything else you would like to say, Ms Stacey, at this point?

MS STACEY: Not at this point no-

H

A MRS JUSTICE HILL: Thank you very much. Mr Simblet, you have heard me talking-  
MR SIMBLET: Yes.

MRS JUSTICE HILL: -about you and across you quite a bit.

MR SIMBLET: I don't mind My Lady.

B MRS JUSTICE HILL: No.

MR SIMBLET: Well, let's take a – taking it in stages, everything My Lady says about this being  
potentially an important point is, of course, right and I can perfectly understand why any  
judge would want to be satisfied that they had heard full arguments if they were going to  
decide that point and would want to know that the parties appearing before them have  
C properly had an opportunity to ventilate it and I don't claim to be in the position, properly  
and fully, to satisfy a High Court judge that everything that there is to say on this matter that  
I can usefully conjure up has been said.

D The – in a sense, can I just park that point in this way and look at what you would do if  
Ms Stacey is right and you don't hear anything from Ms Branch. The Court, in that  
position, would be conducting a purely *ex parte* review in circumstances where points have  
been raised with the Court, you can't unread the submissions that have been made on  
Ms Branch's behalf, you can't unread the concerns that she's raised in her witness statement  
and you know that these injunctions were, in each case, granted in circumstances where not  
E only are they pursued deliberately and calculatedly by the claimants against persons  
unknown but where there was no legal opposition put forward to the grant of any of them  
and in one case the petrol stations injunctions, the proceedings before Johnson J, two people  
did turn up and did ask to be heard and did ask for it to be adjourned and His Lordship  
refused. So, this is not like a case where there are proper parties before the Court. The  
F Court has – knows that everybody affected has had an opportunity to be heard and the Court  
– a previous judge has therefore made findings of fact and findings of law that are binding  
on the parties. We are a long way from the sort of *Hunter v*  
*Chief Constable of West Midlands* territory of it being an abuse of process to go behind  
G factual findings that you – that a Court has made, because in this case you are sitting there  
with an injunction having been made, you have been apprised of some of the concerns that  
somebody has about that injunction and the basis upon which it was heard and you are  
being told by the people who were asking you for further injunctions and in circumstances  
where they are deliberately and calculatedly making no effort to secure a trial against the  
H

A current persons unknown because the witness statement – the witness evidence is very explicit on this point, it is deliberately the claimant’s case that they are not choosing to identify any people and instead are saying that they want their injunctions, this is in Ms Oldfield’s statement, it’s paragraph 4.25 of Ms Oldfield’s statement, that they are deliberately saying that they-

B MRS JUSTICE HILL: Sorry, which page Mr Simblet?

MR SIMBLET: It’s – well, it’s paragraph 4.25 of Ms Oldfield’s statement.

MRS JUSTICE HILL: Is it Oldfield one?

MR SIMBLET: I think-

C MRS JUSTICE HILL: If you give me the page-

MR SIMBLET: Yes, well-

MRS JUSTICE HILL: -left.

MR SIMBLET: -the – because of the way that – I rather wish I had done what you have done My Lady and printed the stuff out because I – when I’ve got thousands of pages of this - in this way but it’s, I think, Oldfield, I think it’s probably Oldfield two but I don’t want to say that.

MRS JUSTICE HILL: Which would be in the supplementary bundle, C1-

MR SIMBLET: Well, it’s in the hearing – I am working from the hearing bundle-

E MS STACEY: Two, one, six.

**Discussion sotto voce.**

MS STACEY: Two, one, six.

MR SIMBLET: Two, one, six.

MRS JUSTICE HILL: So it is in the first – it is Oldfield one I think.

F MR SIMBLET: Yes, right, thank you. But – I will wait for My Lady to turn it up.

**Pause.**

MRS JUSTICE HILL: Yes.

MR SIMBLET: I mean let us put it this way, you are being asked to extend injunctions for another year with the claimants making no real proposals for the progression of these claims to a final injunction but merely saying, as Ms Oldfield does in her statement, that at some point, they will want to join a few defendants so that they can have a final injunction. And one year into this claim the claimants are in the somewhat unusual position, particularly on the petrol station injunctions, of maintaining a claim in – or seeking to maintain a claim in

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A conspiracy with no identified conspirators, no identified scope for that conspiracy, no people who are given an opportunity to say, well, there isn't a conspiracy or I'm not in it or it doesn't mean this or its objects aren't that and instead simply to keep applying for an injunction. And that's the trouble, I mean suppose... suppose we weren't here, suppose nothing had happened and My Lady approached it on the basis that these people are asking, the claimants are asking for extensions of these injunctions in this somewhat-

MRS JUSTICE HILL: Unusual.

MR SIMBLET: Well, yes, unusual circumstances in terms of the absence of parties and in this set of circumstances that is at odds with the general expectation that the Court should be actively case managing claims to a conclusion. The claimants are asking you not to do that, the claimants are asking you simply just to grant them some extensions until, effectively, they decide that they can be bothered to identify people against whom they wish to maintain the claim.

MRS JUSTICE HILL: I thought there was a sense of waiting until the *Barking and Dagenham* Supreme Court decision-

MR SIMBLET: Well-

MRS JUSTICE HILL: -within the year, I thought there was a commitment to review within the year and not to cut across you, Mr Simblet, but I hope you elicited from my exchange with your learned friend that I am plainly not attracted to the idea-

MR SIMBLET: No-

MRS JUSTICE HILL: -of granting for a year-

MR SIMBLET: -I did-

MRS JUSTICE HILL: -without-

MR SIMBLET: -I did understand that from My Lady, I'm addressing what – I am standing back from this and saying, well, let's see what they are asking for, because of course the starting point is they've asked for one and a half days of Court time for you to sit back, read their evidence, hear what Ms Stacey's got to say and then decide what you want to do about it. On the face of it, your initial reaction from what you've told us in court is simply sitting back and giving them another year, it may not be what you want to do-

MRS JUSTICE HILL: Well, not least because of your role-

MR SIMBLET: Yes, but even without my role, in my submission, it's not – there would be some concern or ought to be some concern on the part of a judge in the King's Bench Division



A who is being asked to extend injunctions-

MRS JUSTICE HILL: But these are substantive points, Mr Simblet, these are substantive points-

MR SIMBLET: The - they are substantive points that inform the procedure that you may wish to adopt because of, well, the first thing I've said, you've now read the things from Ms Branch-

B MRS JUSTICE HILL: On a-

MR SIMBLET: -you've read-

MRS JUSTICE HILL: -basis-

C MR SIMBLET: -you've read the skeleton argument, you – it's up to you, I mean suppose we just, in the light of the response that the claimants have put in that they don't think Ms Branch should be heard, they don't think you should entertain anything [from her, I folded up my file of papers?] turned around, bowed politely and went, in those circumstances would My Lady be 100% confident that, for instance, Johnson J had properly applied the section 12 test? Those are all matters which the Court, of its own motion and of its own initiative, ought generally to engage with on applications of this sort, as is the point I was submitting about – before you, with respect, rightly said these have a degree of substance about them which is the – that - what they're asking for an essentially almost open-ended further injunction for a year with no actual steps being taken in that time, no procedural timetable to guarantee who they wish to proceed against. And that's not an idle point, these – this injunction has been in place for a year. The *Canada Goose* judgment, which in many respects is still binding, particularly in relation to cases that do not depend on the tort of trespass and I don't want to go too much in to the substance but one of the points that My Lady will see when she reads the *Barking and Dagenham* case is that it is authority for the proposition that the Court can make injunctions against, to prevent persons unknown coming on to or remaining on land. It's a very different set of circumstances, in my submission, from whether, in fact, Courts can allow injunctions to be sought in conspiracy in – against persons unknown and where no effort is made to identify the conspiracy and I – you've seen in my skeleton the substantive point that actually a particular – these – the particulars of claim upon which the judge previously proceeded, Johnson J, and my learned friend's particulars that they ask you to consider, do not comply with the mandatory obligation in the CPR to identify the scope of any agreement and the parties to it.

H The – I – the next point, also, I don't want to get too much into the substance when we are

A still talking about case management is, of course, that this is not simply an application to renew existing injunctions, the claimants seek to extend the category of – the people who are bound by them beyond simply people whose protesting aim is environmental protest-

MRS JUSTICE HILL: To remove the word, yes-

B MR SIMBLET: -must more widely, so, they – so the – so they’re not just saying do what Johnson J said, he was satisfied, there you go, put your imprimatur on it, they’re asking you to, they are asking you, *ex parte*, to do something different. So, when we come to look at how you should case manage this matter and the role of people other than the claimants and, on the face of it, everybody in the world except the claimants could potentially be  
C somebody who is affected by this order, you need to – you need, in my submission, to proceed or to bear in mind that they’re asking for something new in circumstances where no judge has heard from anybody previously and where those who did wish to be heard previously were not allowed to be heard. And there is – important, and this is the last thing I will say before I sit down because you are going to reach a decision on how you best want to be assisted, the – Cavanagh J decision, the Transport for London decision upon which  
D great store is placed by my learned friends, is a decision in which there were named defendants, it’s called *TFL v Lee*-

MRS JUSTICE HILL: It is paragraph-

E MR SIMBLET: -and there were 60 – there were – it was Lee plus 62 others. There were 63 named parties, as it happens, as My Lady’s, with respect, correctly observed, nobody turned up, well, somebody turned up because he thought it was polite to and he had to-

MRS JUSTICE HILL: So-

F MR SIMBLET: -but no legal argument came from anybody about that and it’s therefore in those circumstances easier for a judge to sit there and think, well, Mr Justice, I think it was Mr-

MRS JUSTICE HILL: Cavanagh was it not?

MR SIMBLET: No, well, no, it was Freedman J had heard the argument-

MRS JUSTICE HILL: Oh he had heard the substantive-

G MR SIMBLET: -he – yes, so, it’s easier for Cavanagh J to know that Freedman J has dealt with a case with named defendants, with a return date, at which no opposition has been made and to feel more comfortable with the factual and legal findings made than in these cases where nobody was – knew of the injunctions in the first place and where those that did try and say something to Johnson J about it were told they couldn’t act, in the face, or in the face of - in

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A part as a consequence of opposition from these claimants, from those parties.  
So, that's where you are, My Lady and if, leaving aside the issues of principle around 40.9  
or practice around 40.9, all of which may be important... may be important in some case,  
the question as to whether they are important in this case may be less stark because you  
B have read Ms Branch's skeleton argument and you have read the statement and if you  
acceded to what Ms Stacey submits and said it's wrong for the – for Ms Branch to seek to  
intervene at this stage and we then packed up and went, you'd still be sitting there in  
circumstances where you were, as it-

C MRS JUSTICE HILL: But is that right, I mean procedurally, I mean not to be too procedurally  
pedantic about it-

MR SIMBLET: Is what right sorry?

D MRS JUSTICE HILL: Is that a correct submission, because your application to be heard,  
effectively under 40.9 or any other wider jurisdiction that you rely on, was made yesterday  
and plainly was opposed and plainly there was no clear order that you have the right to be  
heard-

MR SIMBLET: Absolutely.

MRS JUSTICE HILL: -and it therefore is surely, procedurally, is it not the case, that I read those  
submissions on a *de bene esse* basis-

E MR SIMBLET: Yes.

MRS JUSTICE HILL: -yes they are in my mind but is not a judge therefore entitled to say I put  
those out of my mind temporarily because that application, heavily contested as it is and  
requiring further evidence around delay and a range of other issues, has not yet been made,  
so, you may-

F MR SIMBLET: You would be entitled-

G MRS JUSTICE HILL: -you may indirectly achieve your outcome in a sense that, as easy as it is to  
put things formally out of one's mind, the existence of that significant opposition in  
principle to the orders being renewed is there and it may be therefore that it is not – that  
there is some sort of middle ground where a judge in this scenario is aware that there is a  
front and centre challenge to the existence of the original injunctions and bears those in –  
that fact mind in deciding whether to review it or not. But you appear to be saying that even  
if you did, as you put it, pack up and leave, I would then be charged with holding your  
arguments and playing them in the mix-

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A MR SIMBLET: No.

MRS JUSTICE HILL: -and I do not think that is quite right.

MR SIMBLET: Well, if I presented it like that then I was wrong to do so. My submission would –  
is this, on – this is a one and a half day hearing that the claimants have asked for. It is the  
responsibility of the judge to interrogate the claimants as to the... as to the – their  
entitlements, legally and factually, for the remedies that they come to court to seek. Those  
responsibilities are much the greater when there are no argument – no – where the Court  
knows that the injunction affects many, many people and the Court hears no argument  
against the claimants. In my submission, My Lady might properly and it's quite clear that,  
for instance, some reliance is placed on this by the claimants, Bennathan J raised a number  
of questions about the scope of the order and the terms and so on, all of those sorts of issues  
are things that are in the Court's mind or should be on an application of this sort anyway.  
So, while I don't or while on my pack up and leave example I don't say the Court would be  
required to resolve my arguments, I would hope that my arguments would have put  
questions in the Court's mind so that when Ms Stacey is trying to satisfy the judge on the –  
her one and a half day application, that these injunctions for – in the terms they are sought  
and for the reasons they are sought, should be extended for yet another year with no  
defendants, no effort being made to progress the claim to trial, that that would inform the  
questions and inform the answers. That's... that's where I get my pack up and leave  
example because you are a, as a judge of the King's Bench Division, required for yourself  
to consider whether these injunctions should be granted. And in that exercise, you are in a  
different position or you are, in my submission you have a different starting point from  
Cavanagh J for the reasons I've said, that there are... there are people – there are no people  
who are bound by anything that Johnson J decided. They were not parties to the litigation  
and nobody, although... although they were serviced by the sort of substituted service route  
of sending emails to various email addresses and so on, the – one of the points I have raised  
in my skeleton and then will be developing orally is there is, of course, a difference between  
sending an email to somebody and making a person a party or giving a person proper  
notice, there's a difference between when a Court has to be careful not to elide  
unincorporated associations or the names of protest groups, into legal persons who are  
bound by decisions in which they have had no opportunity to make representatives.  
So, but for that – that's sort of the way into this. In relation to the proposal that My Lady

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A made about hearing the application *ex parte* and adjourning off Ms Branch's application to  
be heard in a different way. Well, there are a number of – there are very limited resources  
in relation – that Ms Branch has available to her, that's not, on the face of it, we are here  
now, resourced now and able to make – assist the Court to the extent you consider helpful  
B now and I don't necessarily, and I'll see if I'm given different instructions on this, I don't  
necessarily expect us to be able to find or be usefully present at a further hearing. So, that's  
what I would say at the start.

C The other thing to say is that it – is that, I mean, it's – although our skeleton says "the  
interested person" the – it – there are cases where judges have just allowed people affected  
to address the court *de bene esse*, the 40.9 route was a suggested route if the Court wanted  
things to be formalised without[?] - I suppose our starting point is we should be able to say  
that this – these injunctions should not be extended for the reasons we've said, without  
becoming parties at all. And if I can – there are certain procedural advantages to the Court  
D in that course and advantages to the claimants in that course. In *Ineos*, the claimants  
insisted that defendant six, Mr Boyd and Mr – defendant seven, Mr Corré were joined to the  
proceedings if they wished to address the Court, with it being part of the order that no relief  
was sought against them and as, in words that turned out to be prophetic from Morgan J  
"with all the consequences that ensues". As it turns out, the consequences that ensued for  
E the claimants in that case, is they had to pay the defendants' costs in the Court of Appeal  
and they've now got to pay all the claim – all the defendants' costs of the proceedings and  
they're – and along with various orders for indemnity costs along the way because the Court  
was – because the defendants raised concerns about the way the Court – they had litigated  
their claim and are on the hook for hundreds of thousands if not millions of pounds worth of  
F costs, so, there are certain advantages to the claimants in not making people parties in these  
sorts of proceedings.

G So that – it's not a – it's not simply... it's not simply, to pick up a point Ms Stacey had  
raised in writing and in her note, it's not simply that people like Ms Branch shouldn't be  
allowed to just not take, as it were, risk the responsibility of becoming a party. There are  
certain advantages in these sorts of injunctions where no specific relief is alleged against  
Ms Branch, for the claimants in allowing the Court to interrogate their arguments with the  
benefit of somebody else here to gainsay it. And that comes back to my point about what  
H your responsibility would be if we'd not walked through the door. You would be entitled to

A consider for yourself whether Johnson J was right to say that section 12 doesn't apply. I mean, let's put it this way, if you thought-

MRS JUSTICE HILL: Well, that is your argument, I am not sure Ms Stacey accepts that-

MR SIMBLET: Well-

B MRS JUSTICE HILL: -your point is-

MR SIMBLET: -I say you must-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -be able to because what – can it sensibly be the case that a judge who doesn't think that an injunction has been properly granted on a proper basis is - and knows that there's been no definitive resolution of that at any sort of *inter partes* hearing, is that subsequent judge bound by what they may regard as a legal error that goes to the entire basis of what they are being asked to do. There can only be one answer to that and it's no. And I haven't yet heard Ms Stacey submit that if you did... if you did disagree with Johnson J you should nevertheless say, well, he's decided it so I'm going to do it too.

D MRS JUSTICE HILL: Well, I think the effect of her reliance on Cavanagh J is to that consequence is it not, she effectively says my role here is simply review, because of what he said you may interpret his comments in the context in which they made but there is plainly, it seems to me, a dispute between you-

E MR SIMBLET: Yes.

MRS JUSTICE HILL: -as to what the level of-

MR SIMBLET: Well-

MRS JUSTICE HILL: -review at this stage, is but-

F MR SIMBLET: Well, if it's simply – if it were simply a Cavanagh J type review, in my submission it would be unlikely to be a one and a half day case, that would be a one and a half or not one and a half minutes but one and a half hours to look at the evidence – to hear the submissions to update it and for the Court to grant it and it is their time estimate of one and a half hours, they... they obviously expected the Court to need to investigate these issues and to be satisfied that the injunctions still remain necessary to be granted-

G MRS JUSTICE HILL: But I do not think they anticipated that-

MR SIMBLET: No, didn't anticipate me walking through the door, no.

MRS JUSTICE HILL: Well, no, I mean but your arguments, Mr Simblet, you know, I have tried to distil them as best I can but, you know, you make a front and centre challenge to the role of

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A            *Zeedla*[?] and *Laporte*[?] in these cases, you make your section 12(3) point, you make your point about the underlying tort in *ILEOS* and conspiracy to injure and so on. You therefore make it – thereafter make a series of points about the detailed wording of the injunction. So, you know, there are a series of significant-

B            MR SIMBLET: I understand.

MRS JUSTICE HILL: -points that you advance and my concern is simply, and I am afraid that we are spending longer now perhaps talking about how to manage-

MR SIMBLET: In doing it.

C            MRS JUSTICE HILL: -this effectively, I do not have – I am not, as you I hope elicit, trying in any way to say that your point should not be advanced, I think these are important points. I am not attracted immediately to the idea, I have to say Ms Stacey, of just hearing all of this – hearing everything you both have to say and then somehow being required to give a judgment on everything because I do not think that is very realistic. So-

D            [Crosstalk]

MRS JUSTICE HILL: -you know, I am not trying to shut you out-

MR SIMBLET: No, I know.

MRS JUSTICE HILL: -in any way, Mr Simblet, but I am concerned. I mean I am still not very clear what are you saying I should do?

E            MR SIMBLET: What – well, what we are saying you should do is – I suppose I am, on this respect, saying the same thing as Ms Stacey. I am saying that the – we don't want to adjourn to develop arguments on 40.9 or to have another hearing in this case. That's what Ms Branch doesn't want to do. Ms Branch does want the Court to consider her arguments and we are here to assist the Court as much as we can on those issues. But I suppose thirdly it is the claimant's application, it is they who put before the Court the terms of the draft that they want the Court to approve and their reasons for saying so.

F            If, in the course of them explaining why it is you should extend this injunction, it becomes clear and in my submission it already has, that there are certain difficulties with some of the orders as drawn, then they make their submissions, you interrogate them and you may want to call on me for further assistance. So, to that extent, I do agree with the procedural route advanced by Ms Stacey but essentially it is her and her client's application, it is their show, it is you that they are asking to deal with an *ex parte* and... and in a way and I will take some further instructions on this, if in fact we are simply – we just sit here and respond to

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A questions from the Court, if called upon, knowing what it is that we – our position is and that allows you to deal with the case in the way that you consider appropriate and necessary in the time allotted for it, then that is what we should do.

B And in practice that shouldn't make much difference, I know we have spent 50 minutes on the discussion about how to proceed but in practice that shouldn't make much difference. I would hope that, for instance, My Lady will see the extension that is sought by the claimants in terms of the injunctions [based on?] conspiracy. My Lady would see what is pleaded and My Lady might have searching questions to ask my learned friends about why it is she should be extending these injunctions. But I am not seeking, as it were, I am not seeking a speaking role, as such, I am not saying you need to allot time to what – to our submissions to be heard but you have seen in writing what we say, you've seen the concerns we have about this and in your interrogation and examination of the claimant's case, you can see the arguments that are available and if you want any assistance with them I shall give it.

D I know that sounds – that's – now I know that's only one stage on from turning my – folding my folder off and walking out the door, but it's, in my submission, it fits in with the practicalities of how you want to or how you might want to, My Lady, case manage these applications. I don't want to... I don't want to end up in a situation where you or – are – or the claimants lose time on what they say is a late application, though I should point out, of course, that the skeleton argument itself from the claimants was only filed on – after – well, Thursday afternoon.

E MRS JUSTICE HILL: What about though the point that is taken generally about your client's awareness of these proceedings and that this is something that your client has been aware of for some time?

F MR SIMBLET: Well-

MRS JUSTICE HILL: That does not justify the application made, I think, yesterday, that is the point Ms Stacey makes-

G MR SIMBLET: Yes, I understand that. Well, the point – what I am – our simple legal answer to that is this is a review hearing. At a review hearing the Court is required to review whether the injunction should be extended. If Ms Branch were already a party, the Court would hear from her. The fact that the claimants have decided not to have anybody in the proceedings, doesn't affect the intellectual exercise or the propriety of somebody coming along and

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A saying, “Can I be heard on this review?”

MRS JUSTICE HILL: But I think the logistics would have been different if this was a named defendant, the group that-

MR SIMBLET: They would.

B MRS JUSTICE HILL: -Ms Stacey represents would have had greater notice of the likely issues and so on?

MR SIMBLET: Well, that’s true I can’t... I can’t really say anything, I can’t really say anything about that and it may be that this comes back to the we are where we are point. What I can say is that Ms Stacey’s clients, from what we have read and you’ve been told, My Lady,

C would have wanted – would have, well, let’s put it this way, suppose an application is made to vary the order under 40.9 and that application does not succeed. Ms Stacey would be saying we’ve been put to all these costs, we should have those costs against the applicant. If somebody comes along to a Court hearing that is taking place anyway, the position is different. That’s – so that’s why, as it were, somebody who turns up at a review hearing in

D an injunction that [I am?] so many people that has only been made effectively *ex parte* and is - the renewal is pursued *ex parte*, that is the-

MRS JUSTICE HILL: I am not sure I follow, I mean you are applying to be heard, your-

MR SIMBLET: Yes.

E MRS JUSTICE HILL: -skeleton argument posits some residual discretion to hear from the Court if – and for the Court to hear anyone who it feels will be-

MR SIMBLET: Yes.

MRS JUSTICE HILL: -helpful but I am not sure there is direct authority for that but you are effectively applying under 40.9 are you not?

F MR SIMBLET: Well, I’m saying that if you... if you want – if – effectively I would be rather be able – be in the position to just make submissions as anyone can, as-

MRS JUSTICE HILL: Well, I am sure you would for all sorts of reasons but I am not sure-

MR SIMBLET: Yes.

G MRS JUSTICE HILL: -that there is clear authority that that space exists-

MR SIMBLET: I’m-

MRS JUSTICE HILL: -is there?

MR SIMBLET: Well there would – there is, in relation to persons unknown. How – let’s put it this way, when an injunction is made *ex parte* and there is a return date, it is, what the judge

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A does is say, “Is there anybody here who wants to be heard?” Your – people... people do, do  
that, people do turn – what can’t be done by the – what effectively the claimants want to do  
is have a bespoke injunction without any contrary argument and deliberately deciding not to  
B proceed against anybody for contrary argument but one consequence of that is that the  
Court may be required to be more procedurally flexible to those who wish to address it than  
it would in a case where there was a targeted identified defendant against whom the  
claimants maintained specific allegations. And it may be that this is a consequence of their  
failure properly to plead their case or comply with the rules-

MRS JUSTICE HILL: Well certainly-

C MR SIMBLET: -going back to my conspiracy point, I mean-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -I will accept that when we come actually to the substance of that there may be  
D differences but our main focus – our main concerns and focus are on the petrol stations  
injunction. But on that, the claimants [have formulated?] no pleaded case against anybody.  
So – but they say... but they say injunctive relief should be granted in everybody. To put it  
in very simple terms, if everybody is sued – if nobody is named but everybody is affected,  
then somebody can come along to make representations about that position. And we say  
E Ms Branch is such a somebody, the Court is here looking at this anyway and she wishes to  
make those representations in that way. The 40.9 example is given as a... as a situation in  
which the Court may wish to regularise its own decision-making and know who is before it  
and in what capacity because, for instance, there may be situations where a subsequent  
F judge or a judge in similar proceedings, looking at what you’ve done, My Lady, sees a  
difference between the Cavanagh injunction, if I can call it that, one with named defendants  
and 63 parties, as opposed to one with nobody at all, as opposed to one where although  
there were no named defendants representations and submissions were made on behalf of  
somebody about the basis of the argument but it may affect whether this is a truly *ex parte*  
proceeding or not.

G MRS JUSTICE HILL: And it may be that 40.9 has a role where orders have already been made  
because the wording of it is such is it not-

MR SIMBLET: Yes, affected by a judgment.

MRS JUSTICE HILL: Yes and so it may be that there is a difference in practice, the example you  
H gave of a judge simply saying, “Is there anybody here who wishes to object?” is not in the

A 40.9 space-

MR SIMBLET: No.

B MRS JUSTICE HILL: -because no order has been made. But the concern I have still got, Mr Simblet, is that there are still procedural objections from the claimants to the nature of your involvement and what that means. You are essentially saying let us go ahead anyway and see how we go, I think-

MR SIMBLET: Which is also – yes, I am and that’s also-

MRS JUSTICE HILL: Yes.

C MR SIMBLET: -what Ms Stacey was saying, to an extent, in terms of whether... of whether at the end of it you needed to-

MRS JUSTICE HILL: Well, only because her position, I think, is hear everything that they have to say but her submissions are nevertheless that you do not have the right under 40.9 to make the submissions you are. So, I mean I think-

D MR SIMBLET: Yes, well, but what – but to use the we are where we are point, if having done that you would then have heard what I have got to say, you might think some of it was useful, you might think some of it was not useful. It might mean that you wanted to make particular orders based – that included in the recitals that you’d heard from Ms Branch or that you have – all of those sorts of things but essentially and I am conscious now that I don’t want to waste your time or the claimants, but we have set out our position as best we can. We are intending to sit here and be here, whatever you decide. I don’t formally ask for you to resolve this issue at the start, I would like Ms Stacey, I share the concern at the question – at whether we can provide a definitive answer to the question that you, with respect quite rightly, raised at the outset which is can I safely decide an issue of whether Ms Branch should be joined under CPR 40.9.

E Unless there is anything else I can help with for the moment, My Lady, I was proposing to leave it there, but...

F MRS JUSTICE HILL: So, effectively your end point, Mr Simblet, is I would like to remain, I would like to take part, whether or not I am in under 40.9 I should be heard anyway and it is a matter for me to resolve these issues in the mix?

G MR SIMBLET: I can be heard anyway-

MRS JUSTICE HILL: Yes.

H MR SIMBLET: -and it’s for-

A MRS JUSTICE HILL: Although you point to no explicit authority I think for that-  
MR SIMBLET: That's right.  
MRS JUSTICE HILL: -other than you saying this is what happens?  
MR SIMBLET: I'm saying-

B MRS JUSTICE HILL: Yes.  
MR SIMBLET: -this is what can happen and what should happen in a case where the Court is here  
on a review date in an injunction against persons unknown but which affects so many  
people.  
MRS JUSTICE HILL: I understand Mr Simblet but I think the nature of the involvement of  
C somebody in Ms Branch's position could take a number of forms-  
MR SIMBLET: Yes of course-  
MRS JUSTICE HILL: -and the distinction between being a defendant, being a 40.9 participant or  
being somebody who is just here, may be significant and it is those sort of-

D MR SIMBLET: Yes of course.  
MRS JUSTICE HILL: -nuances that I think give this a level of complexity-  
MR SIMBLET: Yes, well, can I – then I'll answer... I'll answer which of those – we don't want  
to be a named defendant-  
MRS JUSTICE HILL: I know you do not.

E MR SIMBLET: -and they haven't – and nobody has applied for us to become one. We don't wish  
to be – we wish – our primary position is simply to be here to assist the Court in its  
exploration of its own responsibilities to consider whether these injunctions should be  
extended and if the Court wants to turn this from simply an *ex parte* proceeding into one  
where arguments have been received from somebody else and therefore wants to have that  
F somebody else before it in some capacity, the vehicle for so doing is CPR 40.9.  
MRS JUSTICE HILL: Well, I think it is your application that invited me to do that, is it not-  
MR SIMBLET: Well I – we-

G MRS JUSTICE HILL: -because your primary position is or your starting point is, I think what you  
say at paragraph seven. So, paragraph seven of your submissions is your first position, is it,  
which is that there is a basis on which you can make representations short of being a  
defendant because that is the *Ineos* position and short of being a 40.9 participant because  
that is paragraph eight?  
MR SIMBLET: Yes, we've set out how you can be here if-

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A MRS JUSTICE HILL: Well, you set out the proposition, Mr Simblet, at paragraph seven-  
MR SIMBLET: Yes.  
MRS JUSTICE HILL: -because you state the proposition which may well be entirely correct but it  
would be of benefit to the Court and the Court-

B MR SIMBLET: Yes.  
MRS JUSTICE HILL: -would be more confident in its conclusions if it heard from somebody-  
MR SIMBLET: Yes.  
MRS JUSTICE HILL: -other than the claimant.  
MR SIMBLET: Yes.

C MRS JUSTICE HILL: And just pausing there, you then go on to quote *Ineos* but that involves a  
different factual-  
MR SIMBLET: Yes-  
MRS JUSTICE HILL: -scenario-  
MR SIMBLET: -yes, yes, that is where there had become a party, yes.

D MRS JUSTICE HILL: Yes, you then go on to quote 40.9 and you – so, I am at the moment-  
MR SIMBLET: Yes, our primary position is we just want to be here-  
MRS JUSTICE HILL: I understand that but I am-  
MR SIMBLET: -certainly-

E MRS JUSTICE HILL: -flailing around, if I may say at the moment, looking for a basis for that  
because at the moment I think you are saying, I mean just to take that in the abstract, the  
proposition is that the Court can hear from whomever it likes on a persons unknown  
applications or indeed in any application-  
MR SIMBLET: Yes, that’s my proposition. I have no authority directly to support that but then

F this is, as you observed earlier, My Lady, a novel and developing area of law-  
MRS JUSTICE HILL: But is your-  
MR SIMBLET: -and the Courts themselves-  
MRS JUSTICE HILL: -submission advanced that because it is a persons unknown application

G anybody can be heard on it who might fall within the terms – there is some residual  
category of people who are entitled to be heard that are not 40.9 people and are not  
defendants, I am sorry if I am not-  
MR SIMBLET: Yes.

H MRS JUSTICE HILL: -following you but that seems to be what-

A MR SIMBLET: No, that-

MRS JUSTICE HILL: -you are saying, right.

MR SIMBLET: -that, I say, is a basis upon which you can receive argument, yes. Bearing in mind, of course, that the starting point is this is an *ex parte* application. You – the Court

B can, in a sense, hybridise it and hear submissions from other people while it technically remaining with keeping the parties as they are.

Secondly, if you are unhappy with that, 40.9 provides a procedural route or thirdly you can do none of this, you can... you can not let us take part but you have heard our submission – you have heard our submissions and our reasons to why we consider that we should be able

C to assist and take part. But I don't think I can improve on what I have said, it may be that it is... it may be that it is unsatisfactory but the reason it's unsatisfactory is because these proceedings are unsatisfactory. And the route – the claims as used to pursue them is unsatisfactory.

I think Ms Stacey is ready to-

D MRS JUSTICE HILL: Yes she is, is she not?

MR SIMBLET: -respond so I shall sit down.

MRS JUSTICE HILL: Ms Stacey?

MS STACEY: My Lady, this comes back to the first point I made that namely that there needs to

E be proper procedural consideration and consideration given to what the proper procedure is, is there a procedural hook and what the controls in relation to that procedural hook are. Now, Mr Simblet has made an application, as I understand it, under 40.9, to make submissions on behalf of Ms Branch-

MRS JUSTICE HILL: Well, I do not think that is exactly right, my reading of his paragraph seven

F and eight is I want to be heard-

MR SIMBLET: I understand that-

MRS JUSTICE HILL: -application-

MR SIMBLET: -I understand that. He does say I can be heard but there is no – or I can assist the

G Court, I think “assistance” was the word used, but what is the basis of that assistance, what is the procedural entitlement for any party to turn up and make submissions in the absence of 40.9 which is his fall-back position. It's, in my submission, not the case that just because these are proceedings against persons unknown that entitles anyone to come to court. Of course, if a person is somebody who would fall or has fallen within the category of persons

H

A unknown, so, for example, if they have carried out the prohibited act which is clearly  
defined as per the guidance in *Canada Goose*, they fall within the category of persons  
unknown, they are then identified, they can pop upon in Court and say, “This is my name”  
and they can be joined to the proceedings, that’s the process. But as I understand it  
B Ms Branch is not such a person. So, we are not joining her because she is not a person who  
falls within a category under persons unknown who are defined on the face of the  
proceedings.

C That being so, she is somebody who we say, if she is to be heard, needs to satisfy the Court  
that 40.9 applies, namely that she is a person who is directly affected and consideration  
needs to be given and [a determination factor?] as to what the proper parameters of that  
procedural rule are, because of the wider implications point that Your Ladyship raised  
earlier.

D It’s not sufficient for Mr Simblet to simply stand and say his client wishes to be here  
because that’s boundless and it comes back to the point about these proceedings becoming  
potentially unruly. Either she is a person who is identifiable within the categories on the  
proceedings [as they are currently?] or she’s not-

MRS JUSTICE HILL: Is it your position that the definition of persons unknown would capture Ms  
Branch or not-

E MS STACEY: No.

MRS JUSTICE HILL: -is it your position that she should be made a defendant or not?

MS STACEY: No, she shouldn’t be-

MRS JUSTICE HILL: So you agree-

MS STACEY: -based on what she says-

F MRS JUSTICE HILL: -between you, you agree that she is not in that-

MS STACEY: Yes.

MRS JUSTICE HILL: -category of named defendants?

G MS STACEY: Yes and that’s a point that we, in due course, would say in the direct effect – the –  
if – insofar as she says she’s directly affected, that is tenuous, it seems to us, in the extreme  
because the terms of the persons unknown definition are clearly defined, as per  
*Canada Goose*, to capture those persons who commit the offending acts, the unlawful acts  
which would involve establishing the various components of the conspiracy, I am not just  
talking about stations here. But as far as we can see on the face of the witness evidence

H

A Ms Branch does not fall within that. And there is a recital on the orders to the effect that it  
is not intended to capture lawful process activity. My Lady you may be aware but  
yesterday there was a slow march protest outside [Sir Shelton's?] Tower. Those persons  
B who took part in those protests are not caught by the definitions of persons unknown  
because the offending of prohibited acts are appropriately circumscribed. So, our position  
is, on the basis of the evidence, Ms Branch is not a person who falls within the persons  
unknown categorisation[?] and is therefore – it wouldn't be appropriate to join her.  
C So, that's the procedural, the procedural position is as set out at the beginning of this  
hearing which is that there's a 40.9 point, we do not want to shut out submissions, that is the  
difficulty. But equally if there is to be proper consideration of these very important issues,  
then that opportunity needs to be given to the Court and frankly to my client so that a  
determination can be made in relation to all that. And-

MRS JUSTICE HILL: So-

D MS STACEY: -Your Ladyship's proposal is a perfectly fair approach procedurally. Ms Branch  
has known about these proceedings for a year or so, I don't think there's any issue with that  
and has made her application at the eleventh hour. It's a case management decision, My  
E Lady, for you on the hearing of the review as to whether to, I suppose, adjourn everything  
with a short continuation, adopt[?] Mr Simblet's proposal, dodge the issue as per my  
original proposal which frankly probably wasn't a very good one or do what Your Ladyship  
is suggesting, namely consider the review and given that there are no persons defending, my  
clients obviously have duties to the Court and those duties were duties which previous  
F counsel was mindful of, I will take you to the attendance note but you will have to consider  
how it was dealt with before, whether there are any change of circumstances and so forth.  
But it's appropriate and would be proper for Your Ladyship to proceed on the basis of the  
review. But I am finding it difficult to see on what basis Mr Simblet can be of assistance to  
the Court unless and until you determine the 40.9 application.

G And finally, My Lady, it was suggested that there is – well, there's a front and centre  
challenge, I think that's Your Ladyship's expression to the very basis upon which these  
injunctions are granted, I should lay a marker down in relation to that. There is no  
conceptual[?] difficulty. These proceedings are against persons unknown in accordance  
with the *Canada Goose* guidance which were considered by McGowan J, Johnson J, and  
H Bennathan J and we've not decided, as I think Mr Simblet put it, to bring the proceedings



A against everybody, there is a defined category as per that guidance of persons unknown  
which is by reference to the prohibited act and appropriately circumscribed. Nor is this *ex*  
B *parte* in the true sense of that word. Persons unknown have been served in accordance with  
the alternative service provisions which have been endorsed by previous judges. So, it's a  
mischaracterisation to say that the claimant wants to simply issue proceedings against  
C persons unknown, that is the nature of the protection, couldn't identify anyone. So far as  
progression is concerned, My Lady, we have a chronology which sets out what we have  
been doing since the beginning, we haven't sat on our hands and Your Ladyship will have  
seen, I hope, the evidence of third party disclosure orders and there have been hearings  
before, in this court, as to the proper parameters of that particular discretion – jurisdiction,  
rather, as to whether-

MRS JUSTICE HILL: And I think your application is limited to [past arrests?]-

MS STACEY: -exactly, there's been a debate about [whether you can get?] future documents [past  
D documents?] there have been various complications on that too. You've got the *Dagenham*  
issue because, you know, can you get a final injunction against persons unknown, at the  
moment yes but possibly no depending on what the Supreme Court ultimately decides. But  
there are – this is an evolving area, we fully intend to progress the matter and indeed, again,  
E it's a mischaracterisation to say that they're simply asking for a year. We're not. If you  
look at the draft order we're asking for the [year's backstop?] but until trial or further order  
and there's a specific paragraph in there dealing with directions. I haven't set out a list of  
directions but, My Lady, we can do that if that's something you require us to do-

MRS JUSTICE HILL: I had understood the relevance of the *Barking* decision-

MS STACEY: Yes.

F MRS JUSTICE HILL: -in your submissions-

MS STACEY: Yes.

MRS JUSTICE HILL: -and I think my characterisation of the submissions Mr Simblet made were  
intended to distinguish them from submissions that others have made simply about the  
G wording of orders because his submissions are effectively that these orders should not be  
made at all.

MS STACEY: Exactly.

MRS JUSTICE HILL: So they are front and centre challenged to the underlying torts, the role of  
H *Zeedla*-

A MS STACEY: Indeed.  
MRS JUSTICE HILL: -the role of *Laporte*, all of those authorities, so-  
MS STACEY: Which is the point we make in our note .  
MRS JUSTICE HILL: Yes.  
B MS STACEY: Yes, yes.  
MRS JUSTICE HILL: But I mean that is a point, if I may say, that goes between the two of you  
because it is – because Ms Branch wants to make such substantive submissions it could well  
be said on Mr Simblet’s behalf that that makes her role more important. She wants to  
actually turn up and challenge the fact that these injunctions were made at all but your point  
C is that that - you argue that is a reason against giving her 40.9 status I think-  
MS STACEY: No, no, I am saying that I am not trying – again back to we’re not trying to shut her  
out but if she is to be heard it needs to be done or the application needs to be considered and  
the suggestion that, well, when I suggested we [inaudible] it was on the basis of the caveat  
D which is I need to take instructions. So, that wasn’t my suggestion un-caveated. But I do  
think given the importance of the point and given the jurisdictional issue as to the role of  
any Court on review, including against persons unknown where such orders have been  
obtained following return date hearings which considered the [*Canada Goose* procedural?]  
E guidelines the judges were taken through the conspiracy torts and all the issues that are  
sought to be reopened, a party, a non-party rather, can re-open all of that and[?] there is a  
jurisdictional issue which needs to be tested and the way to test that is not to bounce a  
claimant into that [inaudible] in the way that Ms Branch has sought to do-  
MRS JUSTICE HILL: Or the Court.  
MS STACEY: Or the Court, exactly, into the way that they have sought to do. So, that’s it, I am  
F not, I am not, I say again, seeking to shut out submissions but it’s a procedural management  
objection.  
MRS JUSTICE HILL: I mean it might be-  
MS STACEY: Without being joined because the front and centre attack without being joined there  
G is the route to here would be to say, well, let’s join her and if she’s joined-  
MRS JUSTICE HILL: But do you not agree that that is not appropriate on the facts?  
MS STACEY: Well, she’s not a person unknown but that comes back to issue directly affected,  
yes.  
MRS JUSTICE HILL: But I think Bennathan J’s approach to directly affected was that the  
H

A characterisation of the-

[Crosstalk]

MRS JUSTICE HILL: -scenario there was she could be directly affected but not a defendant-

MS STACEY: Yes.

B MRS JUSTICE HILL: -and so I think the sense of both him and Ritchie J was that there is a need to be reasonably flexible-

MS STACEY: Yes, absolutely, generous of the wide language I accept. Bennathan J said [inaudible] but it comes back to what's the scope of the jurisdiction, so, it's that joinder.

C So, Bennathan and National Highways which is a hearing I was involved in, the submissions were very, very limited in scope, they were focused on the scope of the order-

MRS JUSTICE HILL: Well, that is why I have raised these points-

MS STACEY: Exactly.

MRS JUSTICE HILL: -at the outset.

MS STACEY: Exactly-

D MRS JUSTICE HILL: Because this is a very different set of facts.

MS STACEY: Exactly, so, we're going round in circles but I don't want to shut her out but it's the parameters of the jurisdiction you need to explore and if she is to be heard, as we said in our note, then guidance needs to be given as to what issues she's entitled to be heard on, all of them, some of them, none of them.

E MRS JUSTICE HILL: So your ask-

MS STACEY: So, we're back to Your Ladyship's suggestion and what we'd ask for would be for you to consider the review on the basis that there is – it's not *ex parte* but there's no opposition of you like but we are going to be mindful of our obligations to the Court and if you are with us to make an order which provides – which contains a direction which would allow Ms Branch to come back and make the application and be heard in due course.

**Pause.**

G MS STACEY: And back to time estimate, so, finally before I sit down, the time estimate was fashioned on the basis that these applications, regardless of whether anyone is here or not, take time. And you have to provide for pre-reading, you have to provide for judgment and you have to take the judge, such as Your Ladyship, through everything that's happened before. So, I am not asking you just to tick a box and say you've got an order and therefore it should stand. You have to consider how the order came about, what was considered,

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A whether there's been any change of circumstance or change of law or change in the evidence that would not justify the continuation of the order.

MRS JUSTICE HILL: And what do you say, Ms Stacey, to Mr Simblet's proposition that - I do not think this is quite his run away scenario but this is his scenario that he has provided a skeleton and then run away, effectively, because he raised the proposition that I am now appraised of this material-

MS STACEY: Yes.

MRS JUSTICE HILL: -whether he has formally admitted under 40.9 or not I have got it and therefore I cannot put it out of my mind, I think that was the scenario that you put forward was it not?

MR SIMBLET: Yes. I appreciate judges do have to decide to put things out of their mind-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -saying it ought to remain in your mind because you have read it and you would need to do this interrogative exercise which Ms Stacey accepts-

MRS JUSTICE HILL: I am responding conceptually with this-

MR SIMBLET: Yes.

MRS JUSTICE HILL: -this scenario which is that you have sort of lit blue touch paper and then run away it feels like because you have put your skeleton in but then you are saying you need to have it in your mind whatever the position on my 40.9 ruling, is that not-

MR SIMBLET: I did say that and - but I was put - I was putting that in terms of, well, we are told that there is opposition to Ms Branch being joined but then at the same time the claimant is saying they don't want to shut out what she's got to say and they're also saying that you as the Judge have to-

MRS JUSTICE HILL: But how does that work-

MR SIMBLET: -look at the legal and factual - well-

MRS JUSTICE HILL: -but how does that work for me, either I have your submissions and I take them into account or does it amount to no more than what I originally said that I am aware of the existence of significant opposition because I do not think you can have a sort of halfway house where I half take them into account but then - because then there is a risk for everybody then, is there not, of procedural uncertainty, either you have got a status or you do not, I think-

MR SIMBLET: Well-

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A MRS JUSTICE HILL: -sorry, I am talking across both of you-

MR SIMBLET: -yes-

MS STACEY: He's answering.

MRS JUSTICE HILL: Yes.

B MR SIMBLET: The question... the question for the Court, informed by - what Ms Stacey says is she doesn't want to shut Ms Branch out, she does accept that you as the Judge need to look at the legal and factual basis underlying the injunction, pause there, how is that different from looking at some of the points that we've raised about what's wrong with this injunction but – and - but is also saying that the Court shouldn't, as it were, simply just  
C allow Ms Branch to be before the Court whether under 40.9 or otherwise. And it's difficult to square or it's difficult to square all of those things. To answer My Lady's question directly, my submission would be, at the very least, we are in the position of where somebody has say written a letter to Court that they're not coming but they ask the Court to read their letter. It – at one level, the submissions in our skeleton serve that purpose and it  
D would – to answer My Lady's question, it would be wrong for My Lady to decide, deliberately, not to place any reliance on anything that has been said by Ms Branch.

MRS JUSTICE HILL: Well, unless I was of the view, Mr Simblet, that they may well be all entirely valid but that because of the late notice of them the proper way of case managing that is to put them in a little box and say that they come back, properly developed, another  
E day.

MR SIMBLET: Yes, but the problem – the trouble with that or the intellectual problem with doing that is that as you went through with the exercise that you and Ms Stacey both agree needs to be done which is for the Court to consider carefully what's being applied for and the  
F legal and factual basis for it, you might want to think, well, what about section 12(3) say. Those – about which you know some submissions have been made and which I hope you found-

MRS JUSTICE HILL: Yes.

G MR SIMBLET: -useful. It's – it would be an artificial exercise for, as it were, for you to simply - for you and Ms Stacey to pretend that these things haven't been said. It's very – or – and I... I don't for one moment say that any of this is easy but it is a foreseeable and, in this case, inevitable consequence of decisions where claimants seek this sort of far-reaching relief against persons unknown. And why she is directly affected is the chilling effect of the  
H

A injunction which also covers circumstances where, if you – you must not do it yourself or in any other way including through others acting on your behalf or with instructions or encouragement. So, things like it would be - wouldn't it be good if there was a demonstration outside that petrol station and then somebody complains that the petrol station was – the access was blocked, you might become liable under the injunction-

B MRS JUSTICE HILL: Well-

MR SIMBLET: -and the fact that you might be is what informs the legitimate interest in being heard whether under 40.9 or otherwise.

MRS JUSTICE HILL: I think we are going a little around in circles-

C MR SIMBLET: I am trying not to, but-

MRS JUSTICE HILL: -no, I know, I think perhaps all of us are a bit guilty of it including myself. Ms Stacey, is there anything else that you wanted to say?

MS STACEY: I think Your Ladyship asked me a question but I didn't answer but I have forgotten now what the question was-

D MRS JUSTICE HILL: My question was what you said-

[Crosstalk]

MRS JUSTICE HILL: -to the proposition-

MS STACEY: -yes, yes.

E MRS JUSTICE HILL: -that there is a sort of-

MS STACEY: Conceptual-

MRS JUSTICE HILL: -grey area that I can read submissions-

MS STACEY: Yes.

MRS JUSTICE HILL: -bear them in mind when considering your submissions-

F MS STACEY: Yes.

MRS JUSTICE HILL: -whether or not Mr Simblet is trying to join under 40.9 or otherwise-

MS STACEY: So there is no conceptual problem about that, there is authority I think to that effect that a judge can put out of his mind, look at something and-

G MRS JUSTICE HILL: No it is the reverse that he is asking for, I think-

[Crosstalk]

MRS JUSTICE HILL: -my understanding he – this is the, I am sorry to-

[Crosstalk]

H MRS JUSTICE HILL: -put it so crudely but the blue touch paper example which is I have put my

A submission in-  
MS STACEY: Right.  
MRS JUSTICE HILL: -whether or not you formally recognise me you have to have-  
[Crosstalk]  
B MRS JUSTICE HILL: -is that a fair way of putting it, you have to have it in your mind-  
MS STACEY: -I say that's wrong, and you have to put that out of your mind, you have to put it to  
one side because either we are having a proper hearing and a determination about these  
issues on the basis that you consider that there's time to do so, it's appropriate to do so  
given the way these things have developed notwithstanding[?] the late notice or not and the  
C or not, given the importance of these issues, we do think it's unfair to expect us to deal with  
it at this stage. And I would also remind Your Ladyship that within the order itself there is  
an express provision for any person to apply to vary or discharge, so, that is already  
embedded in the order.  
D MR SIMBLET: Yes.  
MRS JUSTICE HILL: In the existing injunction?  
MS STACEY: In the existing injunction-  
MR SIMBLET: Can I come back on that point? That's right but this isn't applying to vary or  
discharge the order, the claimants are asking for a new order [to be made?], it is a review.  
E MS STACEY: We are dancing on a pinhead I think, we are seeking an order [in materially?]  
identical terms.  
MRS JUSTICE HILL: Does the existing order, just take me to one example please.  
MS STACEY: So the order is in bundle page...  
**Discussion *sotto voce*.**  
F MS STACEY: Thank you, 2449.  
MRS JUSTICE HILL: Does it give a timetable?  
MS STACEY: No, there's no direction, it simply says at 2449 under the heading, "Variation [of  
it]". And the order is still [on foot?] I remind Your Ladyship, at this point in time, 24  
G hours' notice and then five, any person applying to vary must provide their full name plus  
also apply to be joined. And then we have liberty to apply to extend or vary.  
MRS JUSTICE HILL: Just pause there, so, paragraph five is comparable, is it not, to what  
Chamberlain J ordered that Bennathan J had felt-  
MS STACEY: Yes.

H

A MRS JUSTICE HILL: -able to depart from.  
MS STACEY: Yes.  
MRS JUSTICE HILL: This seems to anticipate anybody who wishes to vary or discharge having to become a defendant-

B MS STACEY: Yes.  
MRS JUSTICE HILL: -does it not, paragraph five?  
MS STACEY: Yes. And Bennathan J did depart from that albeit that the scope of the submissions in that case that he felt minded to allow were so much more limited than those in this case. And he said it wasn't intended to set down any inevitable[?] principle. That order appears

C in all of the various orders.  
MRS JUSTICE HILL: And he does only provide for a 24-hour notice-  
MS STACEY: It does-  
MRS JUSTICE HILL: -period.  
MS STACEY: -I accept that yes-

D MRS JUSTICE HILL: And while I cannot remember exactly when Mr Simblet's skeleton argument was received, it is probably not far off 24 hours-  
MS STACEY: No it's not.  
MR SIMBLET: Well, and in fairness to our position, notification of our likely involvement was

E provided on Friday and I sent an email to Ms Stacey in response to a question... a question that she had asked that she understood that submissions were going to be made by Mr Greenhall[?] and me and I told her in very short form the sorts of things-

MRS JUSTICE HILL: Right.  
MR SIMBLET: -that we were concerned about. So, Friday they knew that-

F MRS JUSTICE HILL: Understood-  
MR SIMBLET: -they knew of the-  
MRS JUSTICE HILL: -understood but equally there is a sort of we are where we are in terms of the scope of the points-

G MR SIMBLET: Yes.  
MRS JUSTICE HILL: -made. All right. I think given the time, what I am suggesting we do is that press on until the short adjournment, Ms Stacey, I hear from your further. Let us work on the basis that you are here to make your review submissions in the usual way. Mr Simblet and his client can stay, of course, they are welcome, but I am not making any decision at

H



A this point about the formal basis on which they do so. Are you content with that?  
MS STACEY: I am.  
MRS JUSTICE HILL: Just remind me, the one at 2449 is that the Haven one?  
MS STACEY: That's the Haven one, yes.

B MRS JUSTICE HILL: Yes.  
MS STACEY: Yes-  
MRS JUSTICE HILL: So, that is the – is Bennathan one is that?  
MS STACEY: So, the references are Bennathan, so, Haven is 244 – actually it's 2447 in mine-  
MRS JUSTICE HILL: Yes, but Johnson J was the petrol stations was he not?

C MS STACEY: Petrol stations-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -so then you've got Tower which is 2469.  
MRS JUSTICE HILL: And there is no reasoned judgment from Bennathan J on these two is that  
right?

D MS STACEY: No, there are two attendance notes but not judgment.  
MRS JUSTICE HILL: Yes.  
MS STACEY: It's given *ex tempore* and then you've got the stations-  
MRS JUSTICE HILL: But there is no transcript of what he said?

E MS STACEY: No transcript, no there is an attendance note.  
MRS JUSTICE HILL: And just remind me where that is?  
MS STACEY: Two, four, nine – the attendance note is... is at 2327 and then Mr – there are two  
other attendance notes that I can take Your Ladyship to-  
MRS JUSTICE HILL: Bear with me a second, so, just so I have got the orders-

F MS STACEY: Yes.  
MRS JUSTICE HILL: -to start with, so, 3 May Haven, that is 2447-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -Tower-

G MS STACEY: Tower, 2469.  
MRS JUSTICE HILL: That is again-  
MS STACEY: Same date-  
MRS JUSTICE HILL: -3 May-  
MS STACEY: -they were heard together, they have not, I should say, been consolidated, My Lady,

H

A these claims. They've just – they've been listed to be heard together. And then on 17 May, as amended on 20 May, 2490 you've got the stations.

MRS JUSTICE HILL: Let us have a look. So, they are both sealed the third and the petrol stations order then is?

B MS STACEY: Two, four, nine, zero.

MRS JUSTICE HILL: Yes.

**Pause.**

MS STACEY: And the first two orders are due to expire on 2 May and the stations order's due to expire on 12 May. And-

C MRS JUSTICE HILL: Just forgive me, just-

MS STACEY: Yes.

MRS JUSTICE HILL: -give me the attendance note-

MS STACEY: Yes.

MRS JUSTICE HILL: -references again please?

D MS STACEY: So, attendance note before – the return date of Bennathan J, 2327.

**Pause.**

MRS JUSTICE HILL: Yes and this is the – Bennathan J hearing yes?

MS STACEY: Yes and that's for both of them, so, you'll see - I'll take you through this in due course-

E MRS JUSTICE HILL: The appearance is on 28 April but he gave an *ex parte* judgment on 3 May is that right?

MS STACEY: He did.

MRS JUSTICE HILL: But you have not had that transcribed?

F MS STACEY: We haven't had it transcribed, no.

MRS JUSTICE HILL: Do you have an attendance note of that judgment?

MS STACEY: With – in fact we do, 2385, it actually wasn't given on a different occasion, sorry My Lady, it was given on the same occasion-

G MRS JUSTICE HILL: It is just the-

MS STACEY: -238-

MRS JUSTICE HILL: -on that date is it-

MS STACEY: -yes exactly-

MRS JUSTICE HILL: -the orders are just sealed-

H

A MS STACEY: -exactly, exactly, so, it's the end of the hearing, 2385.  
**Pause.**  
MRS JUSTICE HILL: No, that is the McGowan one-  
MS STACEY: Oh actually then that's McGowan, I've flipped forward, sorry-  
B MRS JUSTICE HILL: So that is the interim Court-  
MS STACEY: Hearing concluded.  
MRS JUSTICE HILL: And just remind me-  
MS STACEY: Yes, what happened, sorry, it's coming back to me because I was there. He  
C essentially said that he was going to grant the order but then there was a bit of backing and  
forth about – with the draft, so, if you look at 2341 for example, at paragraph 8.2.5(3),  
penultimate paragraph on that page.  
MRS JUSTICE HILL: Yes.  
MS STACEY: Just before tab 15, the judge asked to see the orders in draft and then decided how  
D to proceed. So, what Bennathan J has done and did in National Highways as well is he –  
there were – he gives – makes a decision and then asked to see the draft and then, if I can  
put it this way, but it's fiddled about with a little bit before he finally endorses it. So, I  
think that was the reason for the delay. So, there was no judgment as such.  
MRS JUSTICE HILL: It looks as if-  
E MS STACEY: Yes.  
MRS JUSTICE HILL: -from the note of the hearing that there is a sort of discussion with the  
judge-  
MS STACEY: Exactly-  
MRS JUSTICE HILL: -go, so a-  
F MS STACEY: -it would-  
MRS JUSTICE HILL: -8.2.3(4) for example-  
MS STACEY: Exactly and that's common, that was exactly what happened in the  
National Highways case before the orders came out, it's quite discursive[?]. But by the end  
G of it, it made it clear that he was prepared to grant the order in the form discussed. We went  
away and come up with an order which he then-  
MRS JUSTICE HILL: So, 8.2.3(9)-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -if one looks at that-  
H

A MS STACEY: Yes, prepared to make-  
MRS JUSTICE HILL: -and 8.2.4(1) he deals with the-  
MS STACEY: *Cuciurean*[?], the *Cuciurean* point.  
MRS JUSTICE HILL: Yes.

B MS STACEY: And then 8.2.4(2) suggested changes by the judge and applications for alternative  
service, so, it was discussed. Whereas... whereas-  
MRS JUSTICE HILL: What was the date, remind me, of the McGowan hearing?  
MS STACEY: The McGowan hearing was at-  
[Crosstalk]

C MS STACEY: -2374-  
MRS JUSTICE HILL: 11 May I have on my-  
MS STACEY: -and 11 May.  
MRS JUSTICE HILL: Is that right?  
MS STACEY: Yes. Although the attendance note isn't dated.

D MRS JUSTICE HILL: No but we can elicit it from Johnson J's judgment, 5 May, 148 of your  
authorities, paragraph two.  
MS STACEY: I'm grateful.  
MRS JUSTICE HILL: She dealt with it on the what is still but may not be for much longer, [called  
E core 37?] basis I think did she?  
MS STACEY: Yes - I wasn't there, I believe so.

**Discussion *sotto voce*.**

F MS STACEY: It was an urgent basis, yes, I think so, yes. And then you've got, just while we're in  
that section of the bundle, so, you've got the detailed attendance note from 2374 in relation  
to that first hearing-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -which, at 2385 includes the judgment-  
MRS JUSTICE HILL: And I can see she dealt with it in a more formal way.

G MS STACEY: Yes and then at 2392 you've got the skeleton argument just so you've got a note of  
where that is for the return date. There's also a skeleton argument for the original hearing  
which I will take you to at 2358 if you go back, 2358 is the skeleton for the first hearing.  
MRS JUSTICE HILL: But this is the petrol station one?  
MS STACEY: This is stations yes.

H

A MRS JUSTICE HILL: So, 2392 is the skeleton before-  
MS STACEY: Two, three, nine, two-  
MRS JUSTICE HILL: -Johnson J-  
MS STACEY: -is skeleton for return date-  
B MRS JUSTICE HILL: On the petrol stations.  
MS STACEY: On the petrol stations. And 2358 is the skeleton for the first hearing.  
**Pause.**  
MRS JUSTICE HILL: And these two then led to the-  
[Crosstalk]  
C MRS JUSTICE HILL: -the Johnson order-  
MS STACEY: Indeed.  
MRS JUSTICE HILL: -and McGowan order in reverse order, yes?  
MS STACEY: Yes, so, 2410 then led to the note that – is the note of the hearing before Johnson J  
D and you will see there a list of authorities referred to which includes [you can see  
*Cuciurean*], *Cuadrilla* on conspiracy, [*Racing Partnership*] on the tort, there is authority  
referred to by Mr Simblet and then at the end of that I think you have a judgment, yes, 2430  
but you’ve got the more detailed judgment given which is in the authorities bundle.  
MRS JUSTICE HILL: Yes, I have got the formal judgment for those-  
E MS STACEY: Formal judgment-  
MRS JUSTICE HILL: -just give me the other skeleton reference, I have got 2392.  
MS STACEY: Was that, 2392-  
MRS JUSTICE HILL: That is the return date, there was-  
MS STACEY: Ah, the previous skeleton is 2358-  
F MRS JUSTICE HILL: Two, three, five, eight, again, on the petrol stations one-  
MS STACEY: Again petrol stations.  
MRS JUSTICE HILL: And it may not matter but are there skeletons-  
MS STACEY: There were skeletons, they are not in the bundle, they can be provided if needs be.  
G **Pause.**  
MS STACEY: And then I’ve taken you to the orders, that’s all.  
MRS JUSTICE HILL: I think given the nature of the hearings before McGowan J and Bennathan J  
H it might help me to see the skeletons that were placed before them, it seems anonymous that  
I have got the ones for the Johnson hearing-

A MS STACEY: You've got the skeletons before McGowan J and Johnson-  
MRS JUSTICE HILL: Forgive me, the Bennathan hearing I do not have.  
MS STACEY: We can provide those, yes.  
MRS JUSTICE HILL: Especially where whatever the position about Ms Branch's role-

B MS STACEY: So-  
[Crosstalk]  
MRS JUSTICE HILL: -by the correct test-  
MS STACEY: -absolutely, so, that would be the skeletons before Sweeting J who is the – I should  
take you to that too actually, sorry, 2277 just to complete the picture slightly back to front-

C MRS JUSTICE HILL: Yes.  
MS STACEY: -2277.  
**Pause.**  
MS STACEY: Was – there are two remote hearings before Sweeting J, the first was on 14 April-  
MRS JUSTICE HILL: Yes.

D MS STACEY: -at 2277 and then the second ran over, that dealt with, you'll see before I leave that,  
on page 2278, the Shell Haven application. And you need to see the skeleton because it's  
referred to specifically, 2279 for example and so on. And then at 2288, the next – oh I'm  
sorry...

E **Discussion *sotto voce*.**  
MS STACEY: There's another, forgive me, there is another attendance note. There's another  
attendance note 15 April I think and I'm trying to find it. Yes, it's at 2323. So, on 15 April  
Mr Morshead[?] he's counsel for the claimant at that stage continues, do you see there's  
reference in there on the first page to Shell Haven, so, they are heard together in the same

F way. It's an out-of-hours application, we see that from 1.1.  
**Pause.**  
MRS JUSTICE HILL: So that goes before-  
MS STACEY: Yes, there are two-

G MRS JUSTICE HILL: Yes.  
MS STACEY: -there are two Bennathan attendance notes, there's one at 2327.  
MRS JUSTICE HILL: It is completely unclear, I am sorry-  
MS STACEY: Yes-

H MRS JUSTICE HILL: -right-

A MS STACEY: -I think I gave Your Ladyship 2288 as the Bennathan attendance note, is that the reference I gave you?

MRS JUSTICE HILL: No, you took me to 2327-

MS STACEY: Okay that's good-

B MRS JUSTICE HILL: -which is a duplicate.

MS STACEY: Yes, a duplicate, exactly, it's a duplicate but that's the right one because it comes after the two attendance notes of Sweeting J, so, that's correct in chronological order-

MRS JUSTICE HILL: Yes, so, the other - 15 April Sweeting one-

MS STACEY: Yes, is at 2323.

C **Pause.**

MRS JUSTICE HILL: So on 14 April he heard the Haven application.

MS STACEY: Yes.

MRS JUSTICE HILL: Then on 15 April he heard the Shell Centre one is that right?

[Crosstalk]

D MS STACEY: -well, he had a further application, sorry, he heard a further...

**Pause.**

MS STACEY: On the 14<sup>th</sup> he heard the Haven application [that's...?]-

MRS JUSTICE HILL: That looks like-

E MS STACEY: -not the Tower, I've got a chronology, My Lady, but I need to take you to the right documents. Sorry, on the -yes, he heard them both on the same occasion but what I'm struggling with is trying to find you a reference to the Tower application on the first injunction.

F MRS JUSTICE HILL: Is it not 2323? This is the note of the hearing in relation to the Shell Centre Tower and it refers also to the Haven application-

MS STACEY: It does, it doesn't go into an awful lot of detail on Tower, yes, yes. And yes 1.4 on that page, thank you My Lady, is the reference with the Shell Centre Tower there was, unlike Shell Haven, no risk etc. so he's talking about Tower. And that runs through the whole of paragraph one and then the draft order's considered at two. So, yes, so, Haven first, Tower second.

G MRS JUSTICE HILL: And McGowan J, although the attendance note at 2374 in the heading does not specify, is petrol stations-

MS STACEY: It's petrol stations yes-

H

A MRS JUSTICE HILL: -because 1420 is the petrol stations number is it?  
MS STACEY: It is.  
MRS JUSTICE HILL: All right, so-  
MS STACEY: And the claimant Shell UK All Products Limited is the claim in relation to petrol  
B stations.  
MRS JUSTICE HILL: Yes, so, with no disrespect intended, if I put them in pairs, McGowan leads  
to Johnson, correct? And Sweating leads to Bennathan?  
MS STACEY: Indeed.  
MRS JUSTICE HILL: Thank you.  
C MS STACEY: In each of those orders, and we will return later, were granted for one year and as I  
said at the beginning this is a one – I think it’s one of the last, actually, in a round of similar  
extensions that have been granted to all companies including Exolum, Valero and Esso in  
January of this year. The issue for the Court...  
D MRS JUSTICE HILL: Yes?  
MS STACEY: On the review is firstly whether the relief should have continued, as I have said to  
Your Ladyship, we are seeking an order until trial or further order with a 12-month  
backstop, that’s the language of the draft order which we’ve appended to the skeleton and  
the reasons for that are given in *Dagenham* and uncertainties remaining regarding the status  
E of filing judgments against persons unknown. *Transport for London* and *HS2*,  
continuations were both granted for a year, so, we consider the backstop reflected that.  
MRS JUSTICE HILL: Sorry, say that again Ms Stacey, I lost you?  
MS STACEY: *Transport for London* and *HS2*, the judgment of Knowles J both granted 12 months.  
So, the backstop is, if you like, modelled on that time period but is only a backstop. So,  
F that’s the first issue, whether it should be continued.  
MRS JUSTICE HILL: Well, *HS2* was granted in September for a year?  
MS STACEY: Yes.  
MRS JUSTICE HILL: And was that on the basis of the uncertainty around *Barking*?  
G MS STACEY: I don’t know what the basis was.  
MRS JUSTICE HILL: Let me have a look. You have cited, I think...  
**Discussion sotto voce.**  
MRS JUSTICE HILL: I think just the fact of it being one year-  
MS STACEY: Indeed.  
H



A MRS JUSTICE HILL: -I am afraid it did not go into the detail of it-  
MS STACEY: No, I didn't talk-  
MRS JUSTICE HILL: -yearly reviews-  
MS STACEY: -yearly reviews are-

B MRS JUSTICE HILL: -did, paragraph 109.  
MS STACEY: Of HS2?  
MRS JUSTICE HILL: Yes, page 97 of your authorities.  
MS STACEY: Yes, sorry, I'm just going to turn it up.  
MRS JUSTICE HILL: Provides for a longstop dated of 31 May and so that was presumably on the

C basis of when the application was made because the hearing was in May-  
MS STACEY: Yes, it's – the 12 months have been, in my experience, I was involved in Valero  
have been – it's pretty part of the course-  
MRS JUSTICE HILL: But it is – well, forgive me, it is not 12 months from the date of judgment.  
MS STACEY: No, no-

D MRS JUSTICE HILL: It is from the date of the application-  
MS STACEY: -date of the application but we're not seeking a straight 12 months, that's the point  
that I wanted to stress-  
MRS JUSTICE HILL: Yes.

E MS STACEY: -we are seeking an order which factors in a duty to progress, albeit we haven't  
proposed specific directions and that reflects the language of *TFL v Lee* continuation which  
was in February of this year.  
MRS JUSTICE HILL: In what way sorry, tell me-  
MS STACEY: February of this year.

F MRS JUSTICE HILL: Sorry, how does it reflect-  
MS STACEY: *TFL v Lee*-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -which is in the authorities bundle at page 192.

G MRS JUSTICE HILL: Yes. That is the Freedman judgment is it?  
MS STACEY: That's the Cavanagh judgment-  
MRS JUSTICE HILL: The review, yes?  
MS STACEY: Yes. And the order in that case was granted for, if you look at paragraph 193 –  
sorry, page 193, paragraph 5(1), it was [sought that?] an extension of the injunction until

H

A trial or further order with a backstop. That's the language that we've effectively modelled our draft order on.

**Pause.**

MRS JUSTICE HILL: Yes.

B MS STACEY: So that's issue one if you like. Continuation for the... for the time period sought and then secondly the terms of the continued and the continued order and, My Lady, that includes continuation of the alternative service provisions that were granted-

MRS JUSTICE HILL: Yes.

C MS STACEY: -(a); (b) there's a discrete application to amend the description of "persons unknown" put simply "the stations" and that's by the removal of the word "environmental" and I should say at this stage that's not to expand definition, that's simply to update the Court given the evidence that is now before it and I will take you to that in due course. In-

MRS JUSTICE HILL: How does it not have the effect of expanding the definition-

D MS STACEY: Well, the intention isn't to expand, so, we're mindful-

MRS JUSTICE HILL: But it does that whether you intend it or not, it must do-

E MS STACEY: -but it does – no, indeed, I accept that but we're mindful of our obligation to keep orders under review and ensure that the description of persons unknown properly reflects the activities that – or the prohibited acts that we seek to prevent. And the evidence before the Court is, to that extent, slightly different to that which was before the Court when the order was first granted, so, there's – in other words there's evidence that [annual rebellion?] is now involved and there's a degree of overlap between [inaudible] so the word "environmental" is no longer necessarily entirely accurate.

MRS JUSTICE HILL: Understood but it must have the effect-

F MS STACEY: Yes.

MRS JUSTICE HILL: -of broadening the class-

MS STACEY: -I do, yes.

MRS JUSTICE HILL: Yes. Yes?

G MS STACEY: And thirdly, so, (c) there is also a discrete application for third party disclosure orders in relation to stations and in Acton, that was made very-

MRS JUSTICE HILL: It is past arrests on an April date is it not?

MS STACEY: Indeed-

MRS JUSTICE HILL: Yes.

H

A MS STACEY: -it is back in August of last year, in fact-  
MRS JUSTICE HILL: August sorry.

B MS STACEY: -August and that application actually isn't necessary – hadn't been listed to be heard at the same time, it was made only very recently in light of orders received in relation to Surrey stations. We wrote to the Court, My Lady, suggesting that that application was capable, at least, of being dealt with on paper but insofar as a hearing was necessary it could be dealt with at the same time as this review.

MRS JUSTICE HILL: And did the Court agree?

MS STACEY: We haven't heard back.

C MRS JUSTICE HILL: Well, I doubt that is difficult-  
MS STACEY: But it's a discrete application simply in relation to two dates back in August in relation to a particular station.

MRS JUSTICE HILL: And it does not raise the conceptual difficulty around future arrests-  
MS STACEY: It does-

D MRS JUSTICE HILL: -some of the other jurisdictional-  
MS STACEY: -it's back-  
MRS JUSTICE HILL: -cases-  
MS STACEY: -and the Met have agreed that we need an order from the Court.

E MRS JUSTICE HILL: Thank you.

MS STACEY: So those are the issues and I propose to address those issues in the following order, I'll start, My Lady and I might have done some of the work already but I will start by navigating the documents in the bundle because once I've done that and we've gone through to see where the documents are that would[?] assist My Lady in [smoothing the way to submissions on those various issues?]. So, firstly navigation; secondly I will deal with the issue of continuation and what I propose to do is address all three at the same time but where there's a particular evidential point to flag that is what I will do and that's how we've approached it in our skeleton. It seems to us, for the sake of efficiency and given the overlap in the evidence, that's appropriate. Thirdly, I'll address the terms of the order, including duration and alternative service. Fourthly the description and finally I'll address the application [inaudible] which I hope won't take terribly long.

F  
G  
H Before I – yes, so, I'll start then by navigating the bundles. I am working from hard copies. I see My Lady you're also working from hard copies-

A MRS JUSTICE HILL: They were provided-  
MS STACEY: Yes-  
MRS JUSTICE HILL: -which [inaudible].  
MS STACEY: So I have got nine bundles.

B MRS JUSTICE HILL: I have nine plus a supplementary plus [a ten?].  
MS STACEY: Yes, running from A to K I think?  
MRS JUSTICE HILL: I go to 3564 in the 10 volumes and then a supplementary bundle separately.  
MS STACEY: Yes, so, the main bundle runs from A to K.  
MRS JUSTICE HILL: Yes.

C MS STACEY: So, taking bundle one, I am just going to put this one away so we can see what's  
where. Bundle one runs from A through to E. So, in section A - do you have tabs as well,  
My Lady or are yours not tabbed?  
MRS JUSTICE HILL: I do.

D MS STACEY: You do, so, tab A deals with renewal application document, so, you have the  
application notices in respect of each of the respective claims, so, running from page one  
with the draft orders behind but the draft orders have been updated as we've discussed.  
MRS JUSTICE HILL: And I am working from the ones that came in your skeleton.

E MS STACEY: Indeed, yes. So, then we can skip, I think, to B which deals with the renewal  
proceedings and at page 34 of the other bundle you see the application for the proceedings  
to be heard together.  
MRS JUSTICE HILL: Yes.

F MS STACEY: At – there are various certificates of service and changes of representation which  
you can skip over. At 77 you'll see an application notice for an extension of the deadline  
for the review date to be heard in relation to stations, this is all just procedural.  
MRS JUSTICE HILL: Yes.

G MS STACEY: So as to bring it into line with the other two proceedings. And the order in relation  
to that, My Lady, for your note is at page 117.

**Pause.**

H MS STACEY: And then at 97 behind tab C you will find the order for all three on page 98, top of  
paragraph one, that, "All three review hearings (at which the Court will determine whether  
or not to continue the injunctive relief granted in each of the three proceedings) are to be  
listed and heard at – together at the same time" that's page 98 and the combined time

A estimate is set out at paragraph two. Do you have that?

MRS JUSTICE HILL: Yes.

MS STACEY: Yes. We've then got at – in – behind section, well, behind section – at the back of section C, at page 114, you have May J's order third party disclosure, just so you can see an

B example of an order that's been made in relation to Surrey and we're effectively modelling our third party disclosure application in relation to Acton on that language.

MRS JUSTICE HILL: Just give me the page again, is that one, one-

MS STACEY: One, one, four.

MRS JUSTICE HILL: Four, yes.

C MS STACEY: One, one, four, yes.

MRS JUSTICE HILL: And my understanding is that that also, in terms of the order made, was limited by people – to people who were arrested?

MS STACEY: Exactly, had been on those specific dates mentioned-

MRS JUSTICE HILL: Yes.

D MS STACEY: -so, it's - where it's by reference to dates, plainly those – that's already happened, it's past, it's backward-looking as opposed to forward-looking-

MRS JUSTICE HILL: But any application in relation to future arrest was not pursued on that date, is that right?

E MS STACEY: No, no [it was simply limited?] given the - a decision was made strategically as and when further incidents occurred we have to come back to court.

MRS JUSTICE HILL: And so just looking at the third party order made by May J, hold on, just bear with me a second. The draft third party order you seek I have at-

MS STACEY: Is in the supplemental bundle.

F MRS JUSTICE HILL: -390 V2[?] is that right?

**Pause.**

MRS JUSTICE HILL: Three, nine, zero supplementary is where I have it.

MS STACEY: Yes.

G **Discussion *sotto voce*.**

MS STACEY: Yes.

MRS JUSTICE HILL: And so comparing the two, it – there is a different date but it was – and a different Shell station I think?

MS STACEY: It's the – yes, the location's different-

H

A MRS JUSTICE HILL: Yes.  
MS STACEY: -the dates are different but the thrust of the order's the same. And the Met - a request was made to the Met which I'm going to take you-

B MRS JUSTICE HILL: So, just while we are dealing with this, so, it is Acton Park Station and Acton Vale Station which are different parts of W3-

MS STACEY: Yes.  
MRS JUSTICE HILL: -yes, in different locations?

**Discussion sotto voce.**

MS STACEY: Yes. It's a different police force, it's against the Met-

C MRS JUSTICE HILL: No, I understand that, it is just that the division within paragraph one- [Crosstalk]

MRS JUSTICE HILL: -are two separate petrol stations-

MS STACEY: Yes, they are on opposite sides of the road.

D MRS JUSTICE HILL: Okay, oh I see, okay. And then I think I have looked at, of your three that supports this parts of the application.

MS STACEY: Yes.  
MRS JUSTICE HILL: So it is one incident as described of your three-

MS STACEY: Three, nine, six.

E MRS JUSTICE HILL: -2.4-

MS STACEY: Yes.  
MRS JUSTICE HILL: -the Acton Vale incidents but they involve protests at both-

MS STACEY: At both stations on opposite sides of the road, yes.

**Pause.**

F MS STACEY: Yes, so, on one date, rather, yes, on 26 August at those two service stations which I understand are different locations albeit very close in proximity.

MRS JUSTICE HILL: And just help me with the broader picture.  
MS STACEY: Yes.

G MRS JUSTICE HILL: These have been selected for the third party application because they are the only arrests that have been made by the Met Police at Shell stations is that right?

MS STACEY: Yes.  
MRS JUSTICE HILL: And the reason why the application was made to May J was because Cobham and Clacket Lane are within Surrey's jurisdiction-

H

A MS STACEY: Exactly.  
MRS JUSTICE HILL: -and are separate third party applications-  
MS STACEY: Indeed.  
MRS JUSTICE HILL: -being made in relation to different police forces-

B MS STACEY: Exactly.  
MRS JUSTICE HILL: -it just happens, if you like, that the Met one is before me, is that-  
MS STACEY: Indeed-  
MRS JUSTICE HILL: -right?  
MS STACEY: -and the Met then – and the Surrey one was a – it was a broader application, I think

C that’s fair to say, we - it was brought on the basis that it was – it – a broader order was being sought, namely forward-looking. That application involved the station where there had been the most activity and that’s why it was selected to – for that first-  
MRS JUSTICE HILL: Well, 2.5-  
[Crosstalk]

D MRS JUSTICE HILL: -helps me understand that the Surrey application was originally adjourned by-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -May J for wider involvement and then Shell no doubt took a view.

E MS STACEY: Exactly, a view was taken and then having obtained clarity in relation to the position, they got on with the application and made a request to the Met in relation to Acton which I am about to take you to.  
MRS JUSTICE HILL: So while we are in it, let us perhaps just try and deal with the third party disclosure application. Is there any material difference between E2390 and C3114 which is

F the May order?  
MS STACEY: Sorry, can you give me the references again?  
MRS JUSTICE HILL: Yes, so, the draft order you seek-  
MS STACEY: Yes.

G MRS JUSTICE HILL: -for third party disclosure is at E2390, supplementary bundle-  
MS STACEY: Two, three, nine-  
MRS JUSTICE HILL: -it is May J’s order is at C3114 main bundle.  
MS STACEY: Yes.  
**Pause.**

H

A MS STACEY: Two, three, nine, zero, yes, got it, is there any material difference to the question-  
MRS JUSTICE HILL: I do not think-  
MS STACEY: -no.  
MRS JUSTICE HILL: -there is much-

B MS STACEY: The answer is no, it's been modelled, as I say, the current application has been  
modelled on the order that was previously granted by May J-  
MRS JUSTICE HILL: And so just that we are clear, in the interests of transparency as well, the  
order sought identifies the names and addresses of people arrested at those two petrol  
stations plus the documentary material underpinning that, the arrest notes-

C MS STACEY: Yes.  
MRS JUSTICE HILL: -body-worn camera, photos and so on, is that right?  
MS STACEY: Yes, that's right and the reason for that is names and addresses are necessary to  
enable the joinder and the service as-

D MRS JUSTICE HILL: Yes.  
MS STACEY: -per the judicial guidance and the underlying evidential material is necessary in  
order to ensure the enforcement or the enforceability, if you like, of the orders obtained.  
Because on the committal one has to take the view - well, actually it is relevant to both  
because actually before you join a party you have to give consideration as to the  
E circumstances of their arrest to make sure they're properly joined, that's per Freedman J in  
*TFL v Lee*.

MRS JUSTICE HILL: So, just row back a little bit, so, the names and addresses are needed-  
MS STACEY: Are needed for joinder.  
MRS JUSTICE HILL: To these proceedings as known persons-

F MS STACEY: As known persons.  
MRS JUSTICE HILL: Yes.  
MS STACEY: As is, in fact, the evidence too because you have to look at the evidence to consider  
whether you're joining properly.

G MRS JUSTICE HILL: Because the facts of arrest is not sufficient?  
MS STACEY: Because... because Freedman J in *TFL v Lee* and I can take you to that, considered  
the approach to joinder and said that that involves consideration of evidence. So, I suppose  
a party could take the view that the fact of arrest is sufficient but if you are adopting a belt  
and braces cautious approach you should look at the evidence.

H



A **Discussion *sotto voce*.**

MS STACEY: Yes. Because sometimes the police might arrest for different reasons you can't always necessarily-

MRS JUSTICE HILL: No.

B MS STACEY: -rely on what-  
[Crosstalk]

MRS JUSTICE HILL: -conceptual basis of it in my notes-

MS STACEY: So, that-

MRS JUSTICE HILL: -which paragraph of *TFL* was that? And that is the Freedman *TFL* not the-

C MS STACEY: It's the Freedman *TFL* my tab six-

MRS JUSTICE HILL: Yes.

MS STACEY: -and I think it's paragraph 71 is where – page 181 where he considered the application to add.

MRS JUSTICE HILL: Seventy-one yes.

D MS STACEY: Yes and then over the page at 72 you will see how it's considered the additional information that was provided by etc. on that basis, 73 says, "All matters that can be established are established".

**Pause.**

E MRS JUSTICE HILL: Yes, he indicates that in light of the lack of body-worn and so on, the Court had concerns about identifying or extending the injunction.

MS STACEY: Indeed. Yes and 79 is the key paragraph, over the page, second line, "In large parts it's been said to tally with the schedule, in my judgment, based on all of that the Court has sufficient information at this stage and wishes to make the same findings" yes. So, that's what I'm – so that's why we need names and addresses in evidence with joinder but we'd also need the evidence for the purposes of enforcement to give the teeth, if you like, to the order that's been granted.

F

**Pause.**

G MS STACEY: And so there's no material change of circumstance between the order granted by May J and the order we're seeking now.

Third party, insofar as it helps, I don't know if you've still got *TFL v Lee* open but third party disclosure was considered in that case and I think that we've actually – we effectively set out the approach in our skeleton but the relevant paragraph is at page 186-

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A MRS JUSTICE HILL: And just take me to the part of your skeleton dealing with it.  
MS STACEY: Yes.  
MRS JUSTICE HILL: So it is towards the-  
MS STACEY: Of our skeleton it's towards the end-

B MRS JUSTICE HILL: -paragraph 60 is-  
MS STACEY: Paragraph 60.  
MRS JUSTICE HILL: Yes, yes.  
MS STACEY: So I've got – [and you've got the reference is 1.2?], so, following the grant we can't  
C name anyone but we're taking steps to enable us to do so. We refer to the Act and they are  
cited at paragraph 60 and to Oldfield three; 61, the Met Police has indicated it has no  
objections and you see the references there which I can take Your Ladyship to if you want  
to see them now.  
MRS JUSTICE HILL: No, I have Ms Oldfield's statement here.

D MS STACEY: Thank you. And so we've made an application as per paragraph 62 and then at  
paragraph 63 we set out the threshold requirements which derive from the procedural rule,  
21.17.  
MRS JUSTICE HILL: Just bear with me a second sorry, just catching up.  
**Pause.**

E MRS JUSTICE HILL: So, according to Oldfield three, the position [inaudible] with the Met,  
paragraph 4.1.3 that they could not agree the order, required an order from the Court-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -it says at 4.1.4 that the Met then asked – it has not been possible to obtain  
F their comments on the draft order as at the date of Ms Oldfield's statement, 19 April-  
MS STACEY: Yes, but we've received that confirmation since.  
MRS JUSTICE HILL: So you are just simply telling me are you-  
MS STACEY: Yes, I-  
MRS JUSTICE HILL: -that since then-

G MS STACEY: Since then the Met has provided the relevant confirmation that they don't oppose  
the order but they require an order from-  
MRS JUSTICE HILL: No, I understand that part because that is referenced in the supplementary  
H bundle at 420, it is more whether there is anything that they have said about the wording of  
the order?

A MS STACEY: No, no, if anything they said you should ask for future documents but we have taken a view about that.

MRS JUSTICE HILL: I see. So they have seen the draft-

MS STACEY: They have seen the draft.

B MRS JUSTICE HILL: -and they agree the draft-

MS STACEY: Yes they do.

MRS JUSTICE HILL: -albeit-

MS STACEY: Absolutely, yes. And the reason they want future documents, they don't want to be, you know, bothered by multiple requests.

C MRS JUSTICE HILL: But we all know what-

MS STACEY: Exactly.

MRS JUSTICE HILL: -is the position in relation to those applications for, if I have understood it, the conceptual difficulty about those applications is that 31.17 applies to data or information that exists-

D MS STACEY: Well, that's one construction of it-

MRS JUSTICE HILL: That is one argument-

MS STACEY: Exactly, that is an argument and no-one is taking it on and I expect that in due course maybe somebody might take it on-

E MRS JUSTICE HILL: I think it is imminent-

[Crosstalk]

MS STACEY: -to be taken.

MRS JUSTICE HILL: -I think it is being argued is it not-

F MS STACEY: Well, it has been argued by me but a very strong indication was given by the judge in that case by May J that she wasn't with me, a view was taken-

MRS JUSTICE HILL: I think there are other cases-

[Crosstalk]

MRS JUSTICE HILL: -which is coming up-

G MS STACEY: -I see.

MRS JUSTICE HILL: -other than those in front of May J but, in any event, you are not seeking future arrest information, you form a view for whatever reason but-

MS STACEY: Well, it may be that a different view's formed, for example, on National – on the roads, because there are so much... so much more activity and if you have to keep popping

H

A back to the Court each and every time, then that becomes cumbersome and unruly. But on the particular facts of our case, whilst the evidence is there to justify, we say, the protection continuing, we've taken a view.

MRS JUSTICE HILL: So, just looking at the legal test under 31.17-

B MS STACEY: Which we set out in paragraph 63-

MRS JUSTICE HILL: Yes.

C MS STACEY: -the threshold requirements are that the documents are relevant to an issue arising out of the claim and this is at – lifted from the procedural rule, they are likely to support the case for the applicant or adversely affect the case of another party and the disclosure is necessary to dispose of it fairly or to save costs. We make the point at 64 that such orders have been made throughout the history of these demonstrations which is true, materially the same as in *TFL v Lee* which is also true and the benefit of that is that there is a reasoned judgment there in relation to that order which we set out in paragraph 65.

**Pause.**

D MRS JUSTICE HILL: So 1.3 through to six, the Freedman J's reasoning and-  
[Crosstalk]

MRS JUSTICE HILL: -six is adopted in Hull by you-

MS STACEY: -in its entirety yes.

E MRS JUSTICE HILL: But collateral uses provided for in draft, is that right?

MS STACEY: It is yes.

MRS JUSTICE HILL: But paragraph eight of the draft does that.

MS STACEY: Yes.

MRS JUSTICE HILL: Is there anything else you want to say on the 31.17 application?

F MS STACEY: No.

MRS JUSTICE HILL: Right, no, just bear with me a second.

MS STACEY: So-

[Crosstalk]

G MRS JUSTICE HILL: -and as far as just we are trying to deal with any reasonable order-

MS STACEY: Yes.

MRS JUSTICE HILL: -but as far as Mr Simblet is concerned he has got no locus at all on the 31.17 application, have you, so there is nothing, even if I were to hear you that you want to say on that, am I right?

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A MR SIMBLET: Yes.  
MRS JUSTICE HILL: Because you have not yet been arrested-  
MR SIMBLET: No.  
MRS JUSTICE HILL: -and so there is no argument at all that you could have any role in that, and  
B I am serious, there is no locus here at all, is there?  
MR SIMBLET: Yes, when we were formulating what we wanted to say we were not concerned  
about the third party orders-  
MRS JUSTICE HILL: Yes.  
MR SIMBLET: -no.  
C MRS JUSTICE HILL: Okay. Yes. Bear with me a second.  
MS STACEY: So, going back to, if I may, the navigation of the documents, I have got to – at the  
end of bundle one which is E which is where you find the witness evidence-  
MRS JUSTICE HILL: If it helps you-  
MS STACEY: Yes.  
D MRS JUSTICE HILL: -it may not, I followed your reading guide-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -and took out of the big bundles what you had put on your essential reading  
list.  
E MS STACEY: That’s helpful, I should have done the same-  
MRS JUSTICE HILL: So it may not be-  
[Crosstalk]  
MRS JUSTICE HILL: -to navigate the bundle-  
MS STACEY: I might do the same-  
F MRS JUSTICE HILL: -to find they are not there.  
MS STACEY: -over the lunchtime adjournment-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -to help me after lunch.  
G MRS JUSTICE HILL: Yes.  
MS STACEY: So, you’ve got the witness statement, so, from E at page 140 you’ve got  
[Faye Lashbrook?] so she’s the person who gives evidence in relation to Haven.  
MRS JUSTICE HILL: Yes.  
MS STACEY: And then [Heath Garwood?] at 151  
H

A MRS JUSTICE HILL: I have got, yes, Lashbrook one, Garwood three.  
MS STACEY: Lashbrook one, Garwood three and then you've got Austin-  
MRS JUSTICE HILL: Three.  
MS STACEY: -three, at 166 and then you've got a composite statement, if I can call it that, from  
B Christopher Pritchard Gamble that relates to all three sites. That's  
Christopher Pritchard Gamble one.  
MRS JUSTICE HILL: At 185, yes-  
MS STACEY: At 185 and then you've got Oldfield one-  
MRS JUSTICE HILL: Hang on, just a second, sorry. Is that still at the back of file one then?  
C MS STACEY: Yes, file one, they're all at the back of file one.  
MRS JUSTICE HILL: Yes, okay.  
MS STACEY: Pritchard Gamble, is that what Your Ladyship is looking for?  
MRS JUSTICE HILL: Yes.  
MS STACEY: Yes.  
D MRS JUSTICE HILL: Just bear with me a second because...  
MS STACEY: At 185 behind tab four, E4.  
**Pause.**  
MRS JUSTICE HILL: Yes, I am still looking in file seven I think.  
E **Discussion *sotto voce*.**  
MRS JUSTICE HILL: Yes.  
MS STACEY: Yes. And then you've got – right at the back of E at page 210, Oldfield one and she  
deals with, specifically, identification and service.  
MRS JUSTICE HILL: Yes. She is at 210-  
F MS STACEY: Two-ten that is identification and service, so, all the other statements I just referred  
you to, Lashbrook, Garwood, Austin-  
MRS JUSTICE HILL: They are all on updated evidence-  
MS STACEY: They are all... they're all risk-  
G MRS JUSTICE HILL: Yes.  
MS STACEY: -and she – Oldfield has had indication and steps taken to progress and service. So I  
think I can-  
MRS JUSTICE HILL: -Ms Oldfield two deal with then which I have not been through in detail but  
that-

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A MS STACEY: Updating service.  
MRS JUSTICE HILL: So that is more of the-  
MS STACEY: -hearing more on service, yes-  
MRS JUSTICE HILL: Yes.

B MS STACEY: -service right up to date.  
MRS JUSTICE HILL: All right, just bear with me a second. And that is supplementary 33?  
MS STACEY: And that's supplementary... 33 yes.  
MRS JUSTICE HILL: Yes. No tabs in this one.  
MS STACEY: There are tabs in mine.

C MRS JUSTICE HILL: There are not in mine-  
MS STACEY: Oh I am sorry.  
MRS JUSTICE HILL: -lots of cardboard can be saved.  
MS STACEY: Thirty-three yes and she deals with service of [the seen?] further documents at page  
34.

D MRS JUSTICE HILL: Those all went through to 55.  
MS STACEY: Yes.  
MRS JUSTICE HILL: Yes.  
MS STACEY: And she also deals with statistics [an automatic replies?] having been received,

E bounced back such like. But it – also composite statement for service in respect of all three  
proceedings.  
Turning then to bundle two, just where we find the chronologies which are referred to in our  
skeleton argument and the various witness statements which we hope will be helpful, so, at  
page 245 – 244 you have the Haven chronology.

F **Pause.**  
MRS JUSTICE HILL: Yes.  
MS STACEY: So running from 18 May 2022 through to 14 February 2023-

G MRS JUSTICE HILL: How does this differ from the one in your reading list at 934-  
MS STACEY: We – 934 was a composite, so, there are-  
MRS JUSTICE HILL: I see.  
MS STACEY: -one – there's one chronology for each of the individual sites and a composite-  
MRS JUSTICE HILL: I see.  
MS STACEY: -and it's the composite that we included in our reading list-

H

A MRS JUSTICE HILL: And so-  
MS STACEY: -but there are specific – we didn't know how the Court wanted to deal with but we've – give – there's obviously an amount of overlap but there are some specific incidents if the Court wanted to go and interrogate particular sites that enables that to be done.

B MRS JUSTICE HILL: And so the one that I see here at 244-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -this is a generic chronology in relation to protests against oil refineries in general, not exclusively to do with Shell, is that right?  
MS STACEY: It's in general, yes, but it includes all of Shell, so, it's the target... the target being

C oil refineries and terminals and which forms the subject of a Haven application which started up in – back in May of last year and there were a number of injunctions obtained in relation to that by various oil companies including by North Warwickshire Council in relation to Kingsbury and that activity is set out in this... in this chronology, so, specific oil depots, if you like.

D MRS JUSTICE HILL: Yes.  
MS STACEY: And then there's a flicking forward sum, we have got the Tower chronology at 521 in the same bundle and I think I'm going to pull these out to-  
MRS JUSTICE HILL: Well that is-

E MS STACEY: Yes.  
MRS JUSTICE HILL: -corporate buildings including the Tower, is that right?  
MS STACEY: Yes, exactly, well, this is corporate buildings, exactly, including the Tower.  
MRS JUSTICE HILL: Yes.  
MS STACEY: Running from May 2022 to March 2023, so, March of this year.

F MRS JUSTICE HILL: So these are all post-  
MS STACEY: These are all post-injunction, yes-  
MRS JUSTICE HILL: -and Johnson and-  
MS STACEY: They are.

G MRS JUSTICE HILL: -yes.  
MS STACEY: But you'll see you have to – you can highlight specific incidents to do with Shell, so, for example, on the page – the second page at 522 you see on 15 October and I'll come back to this when I go through the evidence-

H MRS JUSTICE HILL: You have got them in your skeleton I think anyway-



A MS STACEY: Yes, exactly, so, there are some further specific incidents in relation to the Tower [in that - the other?] corporate building and then in bundle three behind tab F3 you find at page 624 the stations chronology.

MRS JUSTICE HILL: Yes.

B MS STACEY: And this consists of both unlawful protests which started up in the summer of last year and lawful protests but, you know, targeted at petrol stations, just so the purpose of including the lawful process was [to introduce?] - make the point that, you know, the demonstrations, the protest activity, the target, hasn't changed, there is – there remains a desire on behalf of these protesters to target Shell amongst other.

C MRS JUSTICE HILL: Yes.

MS STACEY: And, indeed, to demonstrate the fact that people can protest without engaging the prohibitions of the order.

MRS JUSTICE HILL: Are they all Shell stations?

MS STACEY: A lot of them are but not all I think...

D **Discussion *sotto voce*.**

MRS JUSTICE HILL: For example 26 August, Tower Garth Road, Hammersmith, I am not sure that is a Shell one, is it, it does not specify it as being such.

E MS STACEY: I think it's just Cobham and Acton are the Shell petrol stations hence the application for third party disclosure-

MRS JUSTICE HILL: Well, I am not sure Rusholme, entry five, 28 August, that is a Shell station is it not-

F MS STACEY: Shell labelled, stood outside though the sign saying so it's not clear that that was a protest which amounted to a breach and didn't result certainly in any arrests. So, there are some protests that are, if you like, if I can call them lawful protests, that target Shell but the two unlawful protests that target Shell are Cobham and Acton.

MRS JUSTICE HILL: So Cobham is 24 August?

MS STACEY: Yes.

G MRS JUSTICE HILL: And Acton is the 26<sup>th</sup>-

MS STACEY: Twenty-sixth.

**Pause.**

H MS STACEY: And then you've got, well, just while I'm in that bundle, behind tab – well, sorry at page, for example, 631 you see that's 24 August and so-

A MRS JUSTICE HILL: On 631 I have got some-

MS STACEY: It's a news clipping *Mail Online*-

MRS JUSTICE HILL: Oh yes okay.

B MS STACEY: Yes, 24 August is the date – over the page you see a photograph at 2632, 633 and then if you keep flicking you can see pumps that were smashed; 638 and 639 the police taking protestors away; 641 is also relevant, 642. And there are a number of photos in the exhibit I can – we can deal – I think one of few ways, I can flick – I can ask you to flick to all the relevant photographs or I can ask you just to bear in mind the exhibits there showing the evidence; 679 on 26 August, 679.

C MRS JUSTICE HILL: Yes.

MS STACEY: It says, “Rendered fuels pumps unusable”. I think there's a photograph with very small typing, 682 I think that is. And then finally on 11 January if you look to 691, that just a reference of conviction for blocking access as a result of the participation in previous protests.

D MRS JUSTICE HILL: That is Cobham is it?

E MS STACEY: Yes, that's Cobham and then 693 there is a photograph of a protest on Wilmslow Road which is one of the incidents referred to in the chronology. And there's reference at 695 to this has to be the beginning though and not the end, towards the bottom of that page. And 696 and 697 you see photographs of activists gathered outside a Shell garage in London Road, Apsley, that's on September the third. And that, you can see from 698 is a protest by fuel poverty action and other groups in protests at the cost of living crisis, so, it's straying somewhat outside the environmental protest that started. You see that reference at 698.

F MRS JUSTICE HILL: You rely on other groups but you rely on the fuel poverty action reference?

MS STACEY: I rely on, well, both but other groups is less – is more equivocal, fuel poverty action... fuel poverty action is... is broader, arguably, then environmental, it's austerity and that's what we rely on. And then examples of what I was characterising as lawful protest can be seen at 701.

G **Pause.**

MRS JUSTICE HILL: Sorry, 691?

MS STACEY: Seven, zero, one.

MRS JUSTICE HILL: Seven, zero, one?

H

A MS STACEY: Yes, so, people still protesting, putting boards up but not within the terms. I don't have a date for that. What – the bundle – at page 703 you see a guidance document on managing the risk of fire and explosion which was referred to, I will take you back to the attendance note but that's a factor that was considered by the judges when they granted the original injunction.

B **Pause.**

MS STACEY: And at page 823 you see reference to the ultimatum which we refer to in our skeleton on 14 February of this year by two supporters of Just Stop Oil. And the ultimatum is set out on page 824 and the quote at the bottom just before it ends.

C MRS JUSTICE HILL: "If you do not provide such assurances..." is that it?

MS STACEY: Yes, "... by 10 April we will be forced to escalate our campaign to prevent the ultimate crime". And it's clear from what comes before that from the quotes talking about accelerating the granting of North Sea oil and gas licences, act of genocide which [of course we?] hold you accountable, we say targeted at the oil industry and oil and fossil fuel industry. And they're asking for [the cessation?] of all new fossil fuel licences and consents. No such assurance has been provided by the government.

D **Pause.**

MS STACEY: Again, while you're in the bundle, I'm conscious I'm taking you to evidence before I was supposed to be navigating, but while we're in the bundle we may as well, page 828 you'll see notice of injunction, this is an example of a notice it was put up at or Shell [round all?] petrol stations per the alternative service provisions. And page 829 which runs through to the end of the bundle or nearly to the end of the bundle [or through to?] 928 is a schedule of all petrol stations on which, just to keep a running tally of which have the various notices displayed so as to ensure that the provisions [inaudible] service provisions are being complied with. And you will see the evidence in Ben Austin's statement as to what the statistics are in relation to that.

F **Pause.**

G MS STACEY: And then at three – sorry, at 929, just at the back of the bundle-

MRS JUSTICE HILL: Yes.

**Pause.**

MS STACEY: You've got the – a communication, an internal communication from Shell to all its Shell branded service station retailers and dealers dated 6 May 2022, so, after the injunction

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A was granted, telling them what the injunction did and telling them what they need to do to make sure that clear warning notices are affixed on the locations. Again, [that's the service documents?] and the purpose of that is obviously to ensure that the – that notice of the order is brought to the attention of potential people who are potentially falling within the description of persons unknown as per the *Canada Goose* guidance.

B MRS JUSTICE HILL: So 930, it is a section that begins, “We need every...”-

MS STACEY: Yes.

MRS JUSTICE HILL: -“... branded station to do X, Y, Z?

C MS STACEY: Exactly, so, the request has been made [as I?] - and the schedule is evidence of, effectively, that process that's being managed on an ongoing basis.

MRS JUSTICE HILL: Because the schedule is created based on-

MS STACEY: The schedule is created we're basically supervising, it's very, very small type but supervising who's done what where-

MRS JUSTICE HILL: Because-

D MS STACEY: -and whether they are compliant.

MRS JUSTICE HILL: -there is a list of those coloured in a darker text who have not done it-

MS STACEY: And Ben Austin deals with that and there's a percentage figure which I can't...

**Discussion *sotto voce*.**

E MS STACEY: So, when I take you to the alternative service provisions, the obligation that was endorsed by Johnson J was that the claimant needs reasonable endeavours to put up warning notices, the reason for that in relation to non-controlled service stations was that Shell couldn't necessarily, well, couldn't necessarily procure that those third parties would put the notices up, so, hence the reasonable endeavours obligation.

F MRS JUSTICE HILL: And Mr Austin explains the compliance of-

MS STACEY: And Mr Austin explains the compliance, yes.

[Crosstalk]

MS STACEY: -we can... we can go back to that now if that would be helpful-

G MRS JUSTICE HILL: No, just bear with me a second.

**Pause.**

MRS JUSTICE HILL: Right, in light of the time-

MS STACEY: Yes.

H MRS JUSTICE HILL: -I will rise for the short adjournment. What I will try and do over the

A adjournment is catch up on the reading that was on your list that I would otherwise have done-

MS STACEY: Thank you.

B MRS JUSTICE HILL: -so let me just see if I can find – help me with where 934 is, is that at the beginning of bundle three – end of - no, the beginning of bundle four-

[Crosstalk]

MRS JUSTICE HILL: -that is your generic chronology is it?

MS STACEY: It's a generic chronology-

MRS JUSTICE HILL: Is at 4.A 934.

C MS STACEY: Yes. Yes. Composite, yes, composite 934 exactly. And then can I also hand up a chronology that's not in the bundle, it's a procedural chronology since the action is taken setting out...

**Discussion *sotto voce*.**

D MRS JUSTICE HILL: So can we, effectively, in terms of your navigation exercise, go through volume one to three now?

MS STACEY: We've gone through volumes one to three and four because you've got the composite chronology which is in four and I don't think, well, I can probably – I can – yes, I probably need to refer you to some of the exhibits in... in bundle four A. So we will have gone through one to three.

E MRS JUSTICE HILL: Yes. So, exhibit CBG1, document that begins at 93, no, 934, for me, that-

MS STACEY: Nine, three, four-

MRS JUSTICE HILL: -runs to 965, yes, that is the generic chronology and then that is a procedural chronology-

F MS STACEY: And that's a procedural chronology.

MRS JUSTICE HILL: Yes, okay, so-

MS STACEY: Just to try and meet a point which we anticipate that we haven't been doing anything, just been sitting on our hands since proceedings started.

G MRS JUSTICE HILL: Yes, just bear with me a second.

**Pause.**

MRS JUSTICE HILL: Thank you Ms Stacey-

MR SIMBLET: My Lady-

MRS JUSTICE HILL: -Mr Simblet?

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A MR SIMBLET: -just before you rise, as a factual point which I hope informs where Ms Stacey may want to go with the directions which she may want for trial, the *Barking* case was argued in the Supreme Court on the eighth and 9 February of this year.

MRS JUSTICE HILL: Yes, I think that is in her skeleton but-

B MR SIMBLET: Oh sorry, that's okay, shouldn't have said, yes, sorry if I'm-

MRS JUSTICE HILL: I think we know that, I think what we do not know is when it is going to be-

MR SIMBLET: Absolutely we don't know the answer to that but-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -whether it is a year or not is another...

C MRS JUSTICE HILL: So what is the point you are making that February is a real – so, with the best will in the world one needs to think about whether one year is necessary-

MR SIMBLET: Yes-

MRS JUSTICE HILL: -is that your point?

MR SIMBLET: -that's all it is.

D MRS JUSTICE HILL: That is your subtle point-

MR SIMBLET: Yes.

MRS JUSTICE HILL: -[you might as well sit down?].

MS STACEY: The *Tate*[?] case took over a year-

E MRS JUSTICE HILL: Sorry?

MS STACEY: The *Tate* case it took over a year-

MRS JUSTICE HILL: Well, your point is that the one year is a backstop, that is what you are-

MS STACEY: It's a backstop-

MRS JUSTICE HILL: -saying, is it not?

F MS STACEY: -it's no more, no less, yes and there's provision, we are mindful of the obligation, we have been waiting to – so, my point in a nutshell is this, that yes it's only against persons unknown so far but third party disclosure application is in the pipeline, Surrey Police have just come back – oh that application's been made and we are waiting for the documents the names and addresses which will enable us to progress on that front; third party disclosure in relation to [acting there?] if you're minded to grant the order we will progress on that front. Once we have the information we have to consider it and then make the application to join if appropriate as per *Freedman* and *TFL v Lee* and that will not take time but it will take some time. Thereafter, depending on where we are with *Dagenham* we might have to wait

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A and see because frankly the - this is an application for a final injunction against persons  
unknown, even if people are joined, persons unknown will be D1 and therefore we need to  
understand what the status of the law is in relation to that. There are two options for us.  
We can proceed on the basis of the current law in anticipation of the Supreme Court finding  
B that there's no problem, conceptually, with the final injunction which is something they  
may well do. But equally if the judgment comes out we might have to pivot and it's for that  
reason – and we don't know when judgment is going to come out, so, we thought it was  
proper and appropriate to include a sensible period of time which reflects the two judgments  
I have referred Your Ladyship to as a backstop-

C MRS JUSTICE HILL: And also the steer might be different in any event once the defendants are  
named and joined-

MS STACEY: Exactly.

MRS JUSTICE HILL: -because [they not doubt put a?] defence in-

MS STACEY: Well, that's the other point-

D MRS JUSTICE HILL: Yes.

MS STACEY: -so the directions which I have drawn up [we have not?] shown Your Ladyship, are  
not simply join and then proceed to trial, we'd have to give a time – a period of time for any  
defendants to engage with the process.

E MRS JUSTICE HILL: But have I got those draft directions or do I need – are they before me?

MS STACEY: No, because they don't form – our order simply includes a paragraph allowing us  
to apply to the Court for directions-

MRS JUSTICE HILL: Once the third party, consequential on the information provided-

MS STACEY: Exactly-

F MRS JUSTICE HILL: Yes.

MS STACEY: -because otherwise it involves an element of crystal ball gazing and might require  
us having to come back to the court to tweak the directions and we thought-

MRS JUSTICE HILL: Understood-

G MS STACEY: Yes.

MRS JUSTICE HILL: -understood but that is notwithstanding Mr Simblet's sort of overarching  
point which is that on any view this is a renewal of an interim application-

MS STACEY: Yes.

H MRS JUSTICE HILL: -and you say there is good reason for that-

A MS STACEY: Yes, absolutely-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -and we are not, not getting on with it and we have not consciously only brought it  
against persons unknown, it started that way and it's going to develop accordingly.

B MRS JUSTICE HILL: All right. Just in terms of the most sensible use of time, I will now take the  
lunch adjournment. Have there been any discussions between you about the points of  
wording that Mr Simblet has raised-  
MS STACEY: No.  
MRS JUSTICE HILL: -other than your responsive submissions?

C MS STACEY: We haven't had any-  
MRS JUSTICE HILL: Of course-  
MS STACEY: -no-  
MRS JUSTICE HILL: -in light of-  
MS STACEY: -no-

D MRS JUSTICE HILL: -how things have gone I understand but your responsive submissions this  
morning take issue with some of his points of drafting I think do they not?  
MS STACEY: Yes, I mean they're – yes-  
MRS JUSTICE HILL: Twenty-nine and so on?

E MS STACEY: Well, the point that – the headline point as I think I call it is that all of this was  
considered with careful consideration of the terms as to whether or not they were  
appropriate based on the evidence before the judges and nothing, we say, has changed so as  
to justify a substantive alteration to those – so, for example, I won't take up much time  
because I know you want to rise but Tower and Haven couldn't be more restrictive because

F Bennathan J was concerned about public highway, so, at the outset there was the notion of, I  
think [in the first return hearing?] it was wider, he... he refined it, so, it was – so it was  
outside the access way as opposed to [everyone on?] the road. On the basis that would  
constitute an interference with any right of - private right of access, private law engaged and

G therefore Article 8 and 10 and 11 don't apply. So, those two points we say are already  
extremely limiting, there is no right for any protestor to protest and as per *Cuciurean* there's  
no freedom [inaudible]. So far as the stations are concerned, detailed consideration given,  
again, private land and-

H MRS JUSTICE HILL: I am just really just checking whether the provision of the submissions-



A MS STACEY: Yes-  
MRS JUSTICE HILL: -status-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -is worth reflecting on-

B MS STACEY: Yes, well-  
MRS JUSTICE HILL: -in any event.  
MS STACEY: -I will take instructions.  
MRS JUSTICE HILL: Yes.  
MS STACEY: Yes.

C MRS JUSTICE HILL: All right, thank you, two o'clock.  
**Court rises.**  
**Court resumes.**  
MS STACEY: My Lady we were in bundle four looking at the composite chronology-  
MRS JUSTICE HILL: Yes.

D MS STACEY: -and given that the witness statements refer to the various incidents relied upon,  
instead of taking you through [the next – leaping out?] individual pages in the way that I did  
with petrol stations, what I'm going to do is take the composite chronology and we can run  
down the dates and I will just highlight specific incidents which we place particular reliance  
on. So, we start at 934.

E MRS JUSTICE HILL: Yes.  
MS STACEY: And you see the date so it starts on 1 April 2022, again, this is an overall  
chronology which relates to all activities which we say are targeted at Shell, so, you see it  
starts with the various terminals protests running from April. So, over the page at 935 these  
are the activities-

F MRS JUSTICE HILL: These are more than just Shell though are they not because it includes-  
MS STACEY: They are more than just Shell-  
MRS JUSTICE HILL: -other oil companies.

G MS STACEY: -oil companies-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -quite right, yes. So, you've got [inaudible], Buncefield, Kingsbury, so, Kingsbury,  
when you see the reference there, I should say that that does include Shell because that – it's  
a large depot which encompasses a number of oil terminals, so, we have Valero there too

H

A and Esso and Shell, so, Kingsbury Beach is on a number of occasions, 936, for example and then – so, all the way through, 937 we’ve still got the terminals incidents and at the end of 938 we’ve got a march in Trafalgar Square which is a march that I understand although you don’t see it from that to do with anti-oil and gas protests, that’s at 140 of the bundle – can I just have a quick look at that to see whether I need to take you to that?

B **Pause.**

MS STACEY: Yes, “End fossil fuel now, we will not banished[?]” so that’s at 141 of the exhibit.  
And then-

MRS JUSTICE HILL: Sorry, with 141 is of what?

C MS STACEY: One forty-one of the exhibits, the bundle sorry, it’s the bottom – the large number at the bottom, 141 you’ll see what’s being referred to-

MRS JUSTICE HILL: You mean 1-41, no?

MS STACEY: CPG1-141, so, the big number on the bottom right-hand corner of the page, the internal PDF number, so-

D MRS JUSTICE HILL: Sorry, I took the chronology out, so-

MS STACEY: Ah.

MRS JUSTICE HILL: -CPG-

MS STACEY: I see-

E MRS JUSTICE HILL: Yes.

MS STACEY: Yes, so, what I am referring to in relation to each of the incidents you see in the right-hand column you see the CPG1-

MRS JUSTICE HILL: Yes.

MS STACEY: -page number, that’s a reference to the internal PDF number on the bottom right-hand side. So, where there is a reference to an incident you get more colour-

F MRS JUSTICE HILL: Yes, so, I have got the picture at 141-

MS STACEY: You’ve got – just-

[Crosstalk]

G MS STACEY: -to see, yes, it gives you a bit more flavour as to what is being talked about there.

MRS JUSTICE HILL: Yes, I think I remember it.

MS STACEY: Okay, so, back to the chronology it carries on with protesters coming out slowly, that’s in relation to terminals all the way through to 942. Top of 942 there’s a reference to Shell Centre which included gluing onto reception desk and live-streaming a request that

H

A the board member listen to their demands, see that at the top and there's the page reference in the right-hand column. And then on 16 April, over the page, 943, My Lady, on 16 April, see the reference to Bayswater Road, you see the reference to three activists climbing on top of a Shell tanker and dropping a banner and then we see the photograph at 188. But I needn't take you to that unless you want to see it at this stage?

B MRS JUSTICE HILL: Olympians as in candidates in the – or competitors in the Olympics?

MS STACEY: Yes, good question.

MRS JUSTICE HILL: Therefore-

MS STACEY: I would have thought-

C MRS JUSTICE HILL: -illustrating their ability to climb, is that what I am being told?

MS STACEY: I – can I just take instructions in relation to that?

**Discussion *sotto voce*.**

MS STACEY: Let's have a look at 188 to see whether we can...

**Discussion *sotto voce*.**

D MS STACEY: Three people, oh, including Olympian Etienne Scott, that's at 188 in the-

MRS JUSTICE HILL: One, eight, nine has-

MS STACEY: And 189-

[Crosstalk]

E MS STACEY: -yes. And Laura Baldwin, so, there were some Olympians in the true sense of the word.

MRS JUSTICE HILL: Or maybe it is about the publicity that they bring, I do not know, but that-

MS STACEY: I think it's the – it's a protest that included those notable participants is what makes

F it more newsworthy perhaps. So, that's all still back in April, so, moving forward in the chronology you see in – you'll recall in July 2022, 944, there's a protest in the National Gallery. Further up on the page, the same page, you've got further references to Kingsbury oil terminal in May and then there's a reference right at the top to Shell Tower

G also in May and then over the page at 945 on 26 July 2022 there's 20 – there's protests, second item down in relation – opposite Shell Tower although that's – and we don't say that's an unlawful protest but it's opposite Shell Tower and the same two days later on 28 July, again, opposite Shell Tower and Jubilee Garden. And then over the page at 946, My Lady, references to further protests by climate activists and including [inaudible] 1 August in Scotland, a group of activists planned[?] - demonstrates outside the gates of

H

A Shell's North Sea headquarters in Aberdeen-

MRS JUSTICE HILL: Forgive me Ms Stacey is it not, with all due respect, more helpful for you to point out to me where you say there are examples of unlawful protests on here. What is the purpose of you taking me to what you say are lawful protests?

B MS STACEY: Because, well, it's the... it's the composite nature of the evidence is that there is clearly a great deal of disquiet, if I can put it that way, by protesters which is specifically targeted at Shell and there's a mix here of lawful and unlawful. So, for example, the-

MRS JUSTICE HILL: No, I understand that but is not your case for an injunction better based on unlawful activity?

C MS STACEY: Yes, and the case for the injunctions was based on unlawful but the point of taking you through this evidence is the evidence of continued threat, if you like, which consists both of the past activities which I will take you to in a moment when we consider the basis on which the injunction was originally granted but also the fact that the campaign has not ended. So, there's been a degree of deterrent effect, so, there has, nevertheless, regardless of the injunctions in place there has been some unlawful activity but the injunctions, if I can put it this way, [have held the line?] to a certain extent but there has still been protests targeted at the gas industry. So, it's not gone away. That's the reason I'm taking you to all of this because the demands that are being made by the various protestors in relation to the oil and gas industry, notably Shell, are still being... are still being made loudly and clearly.

D In this chronology there are some incidents of unlawful protests amongst lawful-

E MRS JUSTICE HILL: I am just not entirely clear, I am sorry if it is just me, on why you are picking out certain ones and then telling me that they are examples of lawful protests-

F MS STACEY: Well, I am picking out the ones on the basis they're to do with the specific buildings that form the subject of the proceedings, so, those – that's the basis on which I'm picking it out but one could take a step back and say, well, all of this actually-

MRS JUSTICE HILL: But Bayswater Road is not that, is it? That was the Olympian's one, so – I mean I have got this huge chronology here-

G MS STACEY: So, you're right-

MRS JUSTICE HILL: -and I have got lots and lots of evidence-

MS STACEY: -you're right-

MRS JUSTICE HILL: -I am just not following why you are picking out-

H MS STACEY: -no, no, no, Bayswater Road is – it was a bad example then on that basis, what I am

A seeking to do is to pack out those that are specifically to do with the buildings that form the  
subject of proceedings. So, for example, a better example might be 19 August,  
Kingsbury Oil Terminal, 20 arrests had been made after environmental protestor  
demonstrations there, digging tunnels under the roads and that's an example that's referred  
B to in the witness evidence. And then again, over the page at 947, in August to  
September 2022, there are further activities in Kingsbury.

MRS JUSTICE HILL: But that is covered by a different injunction is it not?

MS STACEY: But Kingsbury's very close to the Shell order though.

MRS JUSTICE HILL: Yes.

C MS STACEY: So it's in the area. And then on 24 August you've got the petrol station reference  
which I have already taken you to-

MRS JUSTICE HILL: To the Shell Haven you mean?

MS STACEY: Yes, Shell Haven, exactly.

**Pause.**

D MS STACEY: And you will recall when reading the witness statement, so, for example, there is  
reference in the witness evidence to, for example, Shell Tower has continued to be targeted,  
we don't say that the – on each and every occasion where Shell Tower has been targeted,  
those incidents amount to unlawful protest activity and we say, well, that's not surprising  
E because the injunction is in place. But the point that we are seeking to make is were it not  
for the injunction we can anticipate that there's a real[?] risk that the activity would escalate  
beyond that which we recently experienced. So, you can draw, in other words, an inference  
from the fact that there remains, despite the injunctions being in place, activity, protest  
activity, in the vicinity of, for example, Shell Tower-

F MRS JUSTICE HILL: Yes.

MS STACEY: -which makes good two points. One, the campaign hasn't gone away, they remain  
very much determined to maximise publicity so as to draw attention to their demands and  
two, in relation these specific buildings.

G MRS JUSTICE HILL: And overall, globally, am I right that the arrests have been limited to the  
petrol station sites?

MS STACEY: Yes.

MRS JUSTICE HILL: And so in relation to both Haven and Tower your evidence is that there has  
been an effect of the injunction that has restrained activity, broadly-

H

A MS STACEY: There has been – they have been affected, not wholly because there was an attempt-  
MRS JUSTICE HILL: Yes.

MS STACEY: -let me take you to more recently, so-

MRS JUSTICE HILL: But in terms of arrests, there is some indication, not a total one, of unlawful  
activity-

B MS STACEY: Yes, so, let's take them in stages. Haven, the fact that  
North Warwickshire County Council, district council, obtained an injunction, involved  
multiple arrests, swept up some of the protestors [to do?] because of the proximity with the  
C Shell Haven terminal and that Kingsbury terminal, so, it's – it was the same geographical  
area – there was an overlap in relation to exposed properties, so, we... we took a step back,  
if you like, because there was protection that was afforded to us by virtue of that local  
authority injunction which contained a power of arrest. So, we haven't had any arrests  
specifically to do with our injunction, that's not to say that there weren't arrests to do with  
activities which were materially identical.

D **Pause.**

MS STACEY: Sorry, I'm just taking...

**Pause.**

E MS STACEY: Yes, you are absolutely right, so, I got that mixed up, sorry, to correct the Court  
record. The original injunction application in relation to terminals, yes, was brought in  
relation to Shell Haven and Kingsbury. Kingsbury and Shell Haven, both Shell and –  
Kingsbury was dropped by Shell on the basis that an injunction was obtained by  
North Warwickshire Council in relation to, materially, the same area of land, so, it's not  
F right, sorry, to say that Shell Haven is the same as Kingsbury, it's a different area of land.  
So, we proceeded on the basis originally of those two terminals but ultimately only secured  
an injunction from the Court in relation to Shell Haven. And the reason for that decision,  
My Lady, was because we were mindful of the fact that there was already a local authority  
injunction which had been obtained in relation to Kingsbury which provided appropriate  
G protection. And taboo[?] that contained the power of arrest which I've just made reference.

MRS JUSTICE HILL: Thank you.

MS STACEY: And...

**Discussion sotto voce.**

H MS STACEY: And I was about to refer Your Ladyship to specific activities in relation to Tower

A which were not entirely lawful but it – so that, and I’ll start at page 954. No, sorry, I think the best way to do it, My Lady, is to take you to our skeleton because I think that summarises the specific activities, paragraphs 15 and 16 of our skeleton. So, 15(a) pulls out the unlawful activities in relation to Shell petrol sites.

B MRS JUSTICE HILL: Yes.

C MS STACEY: Containing the reference. Corporate buildings we say in (b) there have been no incidents of unlawful activity of Shell Tower since it was granted but this is the point I was just seeking to make. It continues to be a prime location for protests, that’s demonstrated by the protests that have taken place in the vicinity. So, My Lady, we say that the fact that those protests are not unlawful isn’t entirely irrelevant as set out in the chronology but is indicative of the deterrent affect the injunctions have had.

And then in relation to there have been incidents I think of individuals seeking to access the Tower more recently.

D **Pause.**

MS STACEY: Page 964 of the chronology and on 20 February and 21 February, for example.

**Pause.**

E MS STACEY: And then back to the... back to the skeleton in relation to the oil refinery sites, you see what’s said at paragraph 15(c) where protestors targeted operations in relation to refineries in Kingsbury, blocked the oil tanker in August 2022, West Thurrock and acted in breach of the injunction obtained by North Warwickshire.

F My Lady, in relation to the oil refineries, it’s pure happenstance as to which ones they target. They’re essentially the same target, we say, they haven’t expressed any particular desire to target only one particular terminal as opposed to another or oil refinery as opposed to another and once refineries are in their sights which we say they plainly are, it’s appropriate for the protection to be in place, particularly in view of the gravity of harm that would be caused given the flammable nature of the substances being stored there.

G And at paragraph 16 of the skeleton argument we refer to broader incidents of protests against the claimants and the wider Shell business and the wider oil and gas industry. So, you see what the reference is to a call in May in 2022 for the seizure of Shell’s assets, that’s in the chronology on page 944 or at least it’s referred to by Pritchard Gamble on page 200 of the bundle.

H MRS JUSTICE HILL: What am I looking at on 944 sorry Ms Stacey-

A [Crosstalk]

MS STACEY: Sorry, 200 of the bundle, let me just turn to that.

MRS JUSTICE HILL: I do not see that on 944.

MS STACEY: No, you don't see that at 944 but it's at 200 and there's a reference to a link, 661 on the top of 200-

B MRS JUSTICE HILL: CBG1 200?

MS STACEY: E4 200, bundle one.

**Pause.**

MRS JUSTICE HILL: That must be in his statement is it?

C MS STACEY: I think you might have pulled them out, yes, in his statement-

MRS JUSTICE HILL: It is in his statement.

MS STACEY: Yes.

**Pause.**

MRS JUSTICE HILL: The – this is the issue of the call paragraph is it-

D MS STACEY: The issue of the call, exactly. I mean these are simply examples – you will – what we do is invite you to read Lashbrook, Garwood, Austin in relation to the three and Mr Pritchard Gamble is the composite statement but it supports and supplements the composite chronology that I was taking you to. But – so, paragraph – the skeleton argument, paragraph 15(c)(1) is a reference to – sorry, paragraph 16(a), the call, the seizure of assets-

E MRS JUSTICE HILL: Yes.

MS STACEY: -is referred to in that witness statement. Then you have a further reference at 6.6(2) of the same witness statement, targeted at Shell again, in May 2022. Then the reference on 30 November which is a reference to Pritchard Gamble, paragraph 8.3.1 which is at page 207, My Lady, 8.3.1, article published on Sky News, spokesman for Just Stop Oil saying that they will continue to escalate until – “Unless the government meets our demands to stop future oil and gas projects. If things need to escalate, we are going to take inspiration from past successful movements and we're going to do everything we can. If that's unfortunately what it needs to come to then that's unfortunately what it needs to come to”. So, that's a reference back to past activities and then there's a reference in Pritchard Gamble in the same – in the skeleton argument to protestors on 31 January, Greenpeace protestors, bottom of paragraph 16, boarding a storage facility owned by Shell. And that's referred to

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A at Pritchard Gamble at 6.6(22) on page 204.

MRS JUSTICE HILL: Yes.

B MS STACEY: And that could have been extremely dangerous boarding and occupying a moving, floating production and storage facilities, it took place at sea. That demonstrates, we say, the length that they're prepared to go to in order to advance the aims in furtherance of their campaign. And then back to the skeleton argument, My Lady, that was in January. Then in February there's the ultimatum letter that I've referred Your Ladyship to which refers to an escalation of the campaign thereafter. And the summary point made in 16(f) is that JFO continues to engage in substantial and significant direct action against Shell and others. So, the campaign, in other words, hasn't stopped and the overall chronology and Pritchard Gamble, we say, makes that good. That's where we are at this point in time.

C I'm conscious I'm taking it slightly back to front because I'm referring to the current state of play without having taken you to the past state of play which I'm going to do now. Bundle six which is bundle G contains the previous pleadings, applications and attendance notes and skeletons which were considered by the previous judges.

D **Pause.**

MS STACEY: So, G1 – G, tab one, through to tab eight is all to do with Shell Haven.

MRS JUSTICE HILL: That is bundle seven I believe.

E **Pause.**

MRS JUSTICE HILL: Two, two, zero, six at bundle seven.

F MS STACEY: Two, two, zero, six, exactly. So, you've got the claim form there as amended in relation to Shell Haven and it's related – it's a claim founded on trespass and nuisance in relation to those particular sites – to that particular site and particulars of claim start at 2208. Paragraph two explains what Shell Haven is and what its function is. Three explains what the first claimant's title is to that... to that land and explains what the boundaries consists of and there's a plan [by this entitlement?] to possession of all of that land within the boundaries identified. You can skip over at 2209 because that's to do with Kingsbury. And then 2210 is where we take it back up, My Lady, because that sets out the case in relation to the action of threat and trespass and nuisance which forms the subject of the injunction which started in April of last year. I am not going to read out paragraph 11 but you see how it's put. And then paragraph 12 sets out the fact that there has been past activity, so, these injunctions weren't purely precautionary, they were based on past

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A activities which had already taken place, including at 12.2 in relation to Shell Haven where  
B protestors blocked the main entrance, police attended. At 12.2 a tanker was blocked in and  
C they were removed after approximately six hours. And similar activities in relation to  
D Kingsbury which is essentially an identical target site. And then 13 refers to protestors  
E disrupting surrounding roads in the vicinity and it sets out the activities from 13.1 through  
to 13.3. Claims by JFO, just before 14, that over 400 people had joined, purported[?] operation for up to 24 hours at a time. And then 14 is the real and imminent risk threat test, reasonable apprehension on the part of the claimant that unless restrained will in future again trespass, that's the trespass claim regarding entry to the private land and then again seek to block the entry and exit of the vehicles. And then 15 is to do with the effect and harm or impact of what the operation of the sites consist of and the health and safety considerations associated with that. And then 16, My Lady, is the claim to the various orders which are sought in the claim. And at that point in time it was an order preventing the entry on to Shell Haven site damaging any part of protected areas which are defined earlier in the proceedings, at 16.1, so, that's the land owned by the claimant. The fixing themselves to any part of that land, erecting any structure, placing any object in front of the entrances or on the land and blocking any entrances to vehicular or pedestrian traffic and an injunction was claimed – final injunction claimed in paragraph [one there?]. So, that's how it's put, My Lady. And then you've got the evidence of title behind tab three.

**Pause.**

MS STACEY: And then behind tab four from page 2269 we have the application notice for an interim injunction, it's dated 14 April receiving case management directions in relation to substituted service on the basis that at that - well, on the basis that they were persons unknown.

**Pause.**

MS STACEY: And I'll come back to the Bennathan judgment which we find - or judgment – attendance note which you'll find at 2277. So far as the Shell Centre Tower is concerned at 2308 you have the particulars of claim.

MRS JUSTICE HILL: Sorry, 2277 is Sweeting J it is not Bennathan J.

MS STACEY: I'll come back to both of them because I want to show you the pleadings first and then we will-

MRS JUSTICE HILL: Okay, so, where is the claim form for the Tower?

A MS STACEY: So, the particulars of claim for Tower is 2308. The claim form isn't in the bundle I don't think, we've only got the particulars. Ah, no, I'm wrong, it's behind tab nine, unnumbered but behind tab nine, dated 14 April, do you have that-

MRS JUSTICE HILL: Let us call it 2307(a) and (b).

B MS STACEY: Two, three, zero, seven (a) and (b).

MRS JUSTICE HILL: And that-

MS STACEY: You have got the claim form for trespass and then the particulars of claim are behind – at 2308.

**Pause.**

C MRS JUSTICE HILL: Yes.

MS STACEY: Two, three, zero, eight, so, paragraphs one to three set out the claimant's interest in the Tower. Paragraph four onwards sets out the acts or threatened acts, "acts" it should say, not "access" and trespass and nuisance.

MRS JUSTICE HILL: So, the claim form itself-

D MS STACEY: Yes.

MRS JUSTICE HILL: -only refers to trespass but the particulars refer to trespass and nuisance, is that right? The claim form at 2307A-

MS STACEY: The claim form itself, yes, the claim form refers to trespass-

E MRS JUSTICE HILL: But then the particulars refer to trespass and nuisance.

MS STACEY: Yes, that's right.

**Pause.**

MS STACEY: Yes. And paragraph four there's reference to past activity in 2019 where the Tower was subject to trespasses and damage.

F **Pause.**

MS STACEY: That's in 2019, so, past activity and when I take you to the evidence that was before the judges or before Bennathan, that's expanded upon.

**Pause.**

G MRS JUSTICE HILL: Yes.

MS STACEY: Yes. And then – so, 2019 and paragraph four and then we skip forward to 2022, again the subject of trespass and damage deliberately caused it's said protestors using the name Scientist Rebellion poured black oily substance over the walls of the Tower and then at paragraph six, 13 April, again, subject to protests and then in 6.1 through 6.3 all the way

H

A down to 6.13 you see the various incidents listed out. And then at paragraph seven, My  
Lady, it's said that the protests on 13 April, "Are part of the current and continuing  
B campaign of disruptive protests brought against oil companies and/or their property by  
persons variously using groups name – group names". Youth – yes, Just Stop Oil,  
Extinction Rebellion and Youth Climate Swarm and then reasonable apprehension is  
pleaded at paragraph eight that someone who again trespassed upon the Tower and/or seek  
to cause damage to it or block its entrances. And then reference is made to the concerns,  
associated [we are now to paragraph nine, the orders sought?]-

C MRS JUSTICE HILL: Is the latter part of nine said to represent your case on nuisance? Because  
the way it is framed is there are lots of examples given and then it is pleaded as this – at  
eight-

MS STACEY: Sorry, Your – My Ladyship, I can't catch-

D MRS JUSTICE HILL: Sorry, forgive me, so, your examples are a threatened access of trespass and  
nuisance-

MS STACEY: Yes.

MRS JUSTICE HILL: -four through to seven are historic examples of various [things that were?]  
historic at the time of the initial application.

MS STACEY: Four, three, two, seven, sorry, you're looking at 6.1, which paragraph-

E MRS JUSTICE HILL: No, I am looking at the whole of this particulars-

MS STACEY: Yes.

MRS JUSTICE HILL: -paragraph four-

MS STACEY: Yes.

MRS JUSTICE HILL: -through to the end of paragraph six-

F MS STACEY: Yes.

MRS JUSTICE HILL: -and including paragraph seven-

MS STACEY: Yes.

MRS JUSTICE HILL: -deal with the pleaded allegations that were placed before the judge before-

G MS STACEY: Yes.

MRS JUSTICE HILL: -then the way the claim is put is this, paragraph eight, "The claimant  
reasonably apprehends that unless restrained, the defendants will again trespass and/or seek  
to cause damage to it or block its entrances"-

H MS STACEY: Yes, block its entrances, that's the nuisance part because there's a right – where

A there's a private right or way in and out of a building, the blocking of an entrance it would amount to an [actionable nuisance we think?].

MRS JUSTICE HILL: Well, my question was actually about nine-

MS STACEY: Okay.

B MRS JUSTICE HILL: -what is the relevance of the health and safety issues, is that said to be a different kind of nuisance?

MS STACEY: No, that's context.

MRS JUSTICE HILL: I see, so, the nuisance is made out, you say-

C MS STACEY: It's the blocking of the access, it's the interference with the right of way, it's not the banging of the drums or causing noise, nuisance or anything like that, it's simply the preventing of staff from existing and entering-

MRS JUSTICE HILL: So, simply blocking entrances, not seeking to cause damage to the Tower-

MS STACEY: Well, damage to the Tower would be a trespass but would also be a nuisance, yes, that would also be nuisance-

D MRS JUSTICE HILL: Well, I am just trying to understand your pleaded claim.

MS STACEY: Yes, but that would also be a nuisance, you're causing damage, depending on what one's doing but-

MRS JUSTICE HILL: Well-

E MS STACEY: -pouring an oily substance on a building such-

MRS JUSTICE HILL: Just bear with me a second.

**Pause.**

MRS JUSTICE HILL: So looking at the way in which the Tower claim was dealt with by Bennathan J that begins at 2332...

F MS STACEY: Yes.

**Pause.**

MRS JUSTICE HILL: Yes and then at 5.5, "Upsetting staff and banging drums were not in the judge's view sufficient to grant an injunction, that was said to be context only..."-

G MS STACEY: Yes.

MRS JUSTICE HILL: -"... this was predominantly a trespass claim, with elements of private nuisance"-

MS STACEY: Yes, yes. The nuisance was associated with the trespass [because my client going in?] effectively there were blockages. We have dealt with this as well in our skeleton at

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A paragraph 25-  
MRS JUSTICE HILL: I see.  
MS STACEY: -where we set out the basis of the claim. And specifically at 25(c) of our skeleton we say private nuisance in the form of unlawful interference with the claimant’s right of access to its land and the highway, that’s 25 in the skeleton.

B **Pause.**  
MRS JUSTICE HILL: So you rely on (c) and (d) in relation to the Tower, do you, 25(c) and (d), “Private nuisance in the form of interference with the right of access to its land...”-

MS STACEY: Yes.  
C MRS JUSTICE HILL: -“... and interference with the exercise of a private right of way”-  
MS STACEY: Yes but they’re essentially the same thing it’s just a reference to two different authorities.

MRS JUSTICE HILL: Yes.  
D MS STACEY: Yes, it’s private nuisance, it’s just extrapolated out in two different paragraphs.  
MRS JUSTICE HILL: Yes.

MS STACEY: And the public nuisance is there because there’s an element of public highway but Bennathan essentially nibbled away at the order such that that didn’t really – and – no longer applies on the basis of the existing order that we’re asking for the continuation of because he didn’t extend the injunctions to private land – to public land.

E MRS JUSTICE HILL: In relation to the Haven Tower?  
MS STACEY: In relation to... in relation to both Haven and Tower, yes.  
MRS JUSTICE HILL: So, forgive me, why do I have public nuisance at 25(b) then?

F MS STACEY: Because that was the basis on which they were sought, so, the Court is aware, that was that original basis and then Bennathan you have seen the – in the attendance note there was a discussion as to the scope of the order so far as blocking entrances and exits and roads was concerned. Let me...

**Pause.**  
G MS STACEY: Yes and so, for example, at 2333 which is what we were just looking at there was a discussion about the limits of the order in terms of instruction, so, 5.11 there’s a reference in the second line to the order does not [direct the protests?] but they may still protest on the highway-

H MRS JUSTICE HILL: So this was a-

A MS STACEY: -discussion-  
MRS JUSTICE HILL: -on this application-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -a named defendant was involved?

B MS STACEY: Yes.  
MRS JUSTICE HILL: Mr Smith?  
MS STACEY: Mr Smith was involved and he was subsequently removed on his application-  
MRS JUSTICE HILL: But he was represented – the RS represents his counsel?  
MS STACEY: The RS was Mr Smith.

C MRS JUSTICE HILL: No, I think it is Mr Stern of counsel-  
MS STACEY: Mr Stern, Robert Stern, you are absolutely right, so, Mr Smith – Andrew Smith is  
the name who was joined as the defendant-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -and he was represented by his counsel, Robert Stern, who put in a skeleton

D argument making brief submissions on behalf of his client.  
**Pause.**  
MS STACEY: I think that was just – that was simply in relation to Tower.  
**Pause.**

E MS STACEY: But as a result of the discussion that we see, three – 2333, the order was restricted  
to remove, so far as possible, references to public land and limited to the entrances to the  
building itself and that was on the basis of concerns expressed by Bennathan J as to it  
potentially being lawful to protest on public land even if you cause an element of disruption  
per *Zeedla*.

F MRS JUSTICE HILL: So the references in the particulars of claim-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -to nuisance are intended to be read as both public and private?  
MS STACEY: In the particulars, yes, but ultimately the order that we ended up with [preserved

G only?] if you like the private nuisance claim.  
MRS JUSTICE HILL: I see. And so paragraph 25 of your skeleton then needs to be moderated  
because 25(b) is telling me that you seek injunctions on the basis of acts which are, by their  
nature, tortious but you do not in relation to public nuisance-

H MS STACEY: Which were, it should – if the word are[?] was replaced with were-

A MRS JUSTICE HILL: Yes but it is under the heading is there a serious issue-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -to be tried today-  
MS STACEY: Yes.

B MRS JUSTICE HILL: -and that is not a submission you make?  
MS STACEY: No, well, we don't rely on public nuisance. We are seeking the continuation of the  
existing order, we're not seeking to expand it and as it currently stands the order does not  
extend to the public highway, it simply prevents the blocking of the entrances to the Tower.  
We can take – I can take you to the order, so, yes, Your Ladyship's right in a sense that it  
C insofar as that-  
JUDGE HILL There is no issue to be tried-  
MS STACEY: No.  
MRS JUSTICE HILL: -for today's purposes about public nuisance?

D **Discussion *sotto voce*.**  
MRS JUSTICE HILL: Is that not right?  
MS STACEY: Yes, that is right.  
MRS JUSTICE HILL: Is that the same in relation to the petrol stations claim?

E **Discussion *sotto voce*.**  
MS STACEY: The petrol station-  
[Crosstalk]  
MRS JUSTICE HILL: -from a different-  
MS STACEY: -the petrol station doesn't rely on – it's not a – it's not the same, it's founded on  
conspiracy-

F MRS JUSTICE HILL: And that is Mr Simblet's point-  
[Crosstalk]  
MRS JUSTICE HILL: -it is a tort-  
MS STACEY: Yes.

G MRS JUSTICE HILL: -yes, okay.  
MS STACEY: So that point doesn't arise on petrol stations. It's not about them coming – going  
in, it's about what you're doing there. And – but it does arise in relation to Haven, yes, if  
you look at 2449 which is the Haven order, again, Bennathan J nibbled away at the original  
order granted at the first hearing, paragraph 2.2. at page 2249.

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A MRS JUSTICE HILL: Yes.

MS STACEY: Block access to any of the gateways, so, the word “gateways” – well, we will see when we go back to the attendance note, to Shell Haven, the locations of which are marked, that was specifically selected on the basis that it was considered to be appropriately circumscribed and didn’t go too far, whereas originally the injunction that had been sought was further down the road on the basis of evidence, frankly, that, you know, the concern on behalf of my clients was that protestors could sit halfway down the road and have the same effect but Bennathan was only prepared to grant an order in the terms that you see before you.

B  
C **Pause.**

MS STACEY: Yes and if you look at the recital at 2248 you see a recital – so the penultimate recital before definitions, “This order is not intended to prohibit any lawful protests outside [inaudible] insofar as any such protest does not obstruct any of the pedestrian, vehicular entrances or exits to Shell Haven.

D **Pause.**

MR SIMBLET: My Lady I’m a bit confused, I don’t know if you – I thought we were being told that public nuisance [is being sought?] in Shell Haven-

MRS JUSTICE HILL: Well, that is how I read 25-

E MR SIMBLET: -but then the... but then the order that we’ve just been referred to says it’s not, I thought there was a distinction being drawn in the submissions [because the?] - between Tower and Haven when it comes to public nuisance.

MRS JUSTICE HILL: Well, that is how I read 25(b), I have just struck 25(b) through.

MR SIMBLET: For both of them?

F MS STACEY: For both of them-

MRS JUSTICE HILL: Yes.

MS STACEY: -it applies to both, no, there’s no distinction-

MR SIMBLET: Fine, fine-

G MS STACEY: -yes, there’s no distinction, I’m telling Her Ladyship that Bennathan dealt with both Tower and Haven and he dealt with both Tower and Haven in the same way, namely that the order in relation to blockage of access should be limited so as to prevent blockages in relation to private land. So, public nuisance falls away in relation to both of those two-

MRS JUSTICE HILL: Which is why I have struck it through.

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A MS STACEY: Yes, exactly, so, yes.  
MRS JUSTICE HILL: Yes. But then the recital-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -at 2248, “It is not intended to prohibit any lawful protest outside Shell  
B Haven...”-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -“... insofar as any protest does not obstruct any of the entrances or exits to  
Shell Haven” what does that mean? I am sorry if I am-  
MS STACEY: Well, it means that the gateways that you see referred to at paragraph 2.2 are  
C gateways through which vehicles can pass as well as people. So, you can, in other words, if  
you... if you wanted to stand by the gateway and – with a placard, not obstructing a vehicle  
or a person-  
MRS JUSTICE HILL: Oh I see-  
MS STACEY: -and you’re not blocking the barriers-  
D MRS JUSTICE HILL: -so, if you marry up that recital with the gateways-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -you understand as a member of the public that you cannot block access to  
the gateways-  
E MS STACEY: Yes.  
MRS JUSTICE HILL: -but you can do something lawful-  
MS STACEY: You can still protest.  
MRS JUSTICE HILL: -outside Shell-  
MS STACEY: Yes.  
F MRS JUSTICE HILL: -Haven as long as you do not obstruct the entrances-  
MS STACEY: Exactly.  
MRS JUSTICE HILL: -or exits.  
MS STACEY: And that’s per *Cuciurean* which says that protest activity - the aim of disrupting is  
G not at the core of Articles 10 and 11, if you’re aiming to disrupt, if you like, then that’s not  
at the core. So, that’s what Bennathan was prepared to grant-  
MRS JUSTICE HILL: But presumably on the – for the purposes of any final injunction insofar as  
you get to a trial of these issues, you maintain your case on public nuisance on both, do you  
or you might-  
H

A MS STACEY: We may well, we may well, it depends on the evidence-  
MRS JUSTICE HILL: But for now I need not be troubled by it?  
MS STACEY: But for now you are faced with orders which we say are narrow and confined to the  
various phones[?].

B MRS JUSTICE HILL: Yes. So the only tort that is in issue for Haven and Tower are trespass and  
private nuisance?  
MS STACEY: Yes and at page 2457, just so we complete the picture, 2457, you see the gateways  
that we are referring to in relation to Haven, although my photocopied version isn't  
coloured whereas my junior just showed me a very helpful coloured version which clearly  
C identifies the red line, does Your Ladyship have that?  
MRS JUSTICE HILL: Which page number is that sorry?  
MS STACEY: Two, four, five, seven.  
MRS JUSTICE HILL: That is the plan appended to the order is it?  
MS STACEY: Yes, it's the plan but mine's not coloured-

D MRS JUSTICE HILL: Mine is not either.  
MS STACEY: No, well, it clearly shows the red – do you have a copy of the...? It might be  
helpful for both you and your – to see how it looks because the gateways are identified on  
that plan. Do you have it-

E MR SIMBLET: -I was offering mine up-  
**Discussion *sotto voce*.**  
MRS JUSTICE HILL: Thank you. So the gates are the blue bits are they?  
MS STACEY: The gates are the blue bits, boundaries the red bit. And the highway is what falls  
outside the red line, do you see? So – and that's not covered by the order.

F **Pause.**  
MRS JUSTICE HILL: So there is a sort of perimeter road if you can call it that-  
MS STACEY: Yes-  
MRS JUSTICE HILL: -is that right? Oh sorry, I have destroyed all your work – no I have not, I  
G have done something with your computer but I do not think it is anything significant, sorry.  
It has just moved a bit.  
MR SEMAKULA: That's okay.  
MRS JUSTICE HILL: Thank you.  
MS STACEY: If it would be helpful and it may be helpful if it occurs to me, it might – we can

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A obtain a copy of Sweeting J's first hearing order and then Bennathan J which enables you to see what was taken out because it was... it was refined quite considerably.

MRS JUSTICE HILL: That might assist.

MS STACEY: Yes. We will add that to the list of things we need to provide with you – to you overnight which includes the skeleton arguments.

B **Pause.**

MS STACEY: So back, I think I was at page – in the particulars of claim at 2309 in relation to Tower. And then you see what was at least asked for in the particulars at 10.1 through to 10.6. And the point arose from the somewhat – well, the ambiguous wording I suppose at 10.2 because blocking access to any entrance it begs the question as to where the entrance starts if you like. It might – if it's not a gateway it might be said that it's a – any access point, so, if you access a normal road, where does that entrance start? And that was the debate that was had with Bennathan J.

C **Pause.**

D MRS JUSTICE HILL: Do you want to show me the particulars for the police-  
[Crosstalk]

MRS JUSTICE HILL: -I am determined to say that-

MS STACEY: Yes.

E MRS JUSTICE HILL: -petrol stations claim?

MS STACEY: Yes. So, petrol stations then, claim form 2342.

MRS JUSTICE HILL: Yes.

MS STACEY: "To restrain from obstructing access to or damaging petrol station using its brand by unlawful means in the combination with others". And then the particulars of claim are at 2351. So, description of the claimant at paragraph one, description of the business at paragraph 1.2.

F MRS JUSTICE HILL: Just pausing there, looking at the claim form at 2342-

MS STACEY: Yes.

G MRS JUSTICE HILL: -brief details of the claim, "To restrain the defendants from obstructing access to or damaging petrol stations by unlawful means and in combination with others".

MS STACEY: Yes.

MRS JUSTICE HILL: And then-

MS STACEY: But that's consistent, My Lady, with the description of persons unknown where it

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A           refers to damaging and/or blocking use of or access to-

MRS JUSTICE HILL: Yes-

[Crosstalk]

MRS JUSTICE HILL: -just shown me in the particulars how the tort is defined.

B           MS STACEY: Yes, yes, so, I will, paragraph-

MRS JUSTICE HILL: Because with all due respect, I am not entirely sure that the brief details of  
              the claim on two, three-

MS STACEY: No.

MRS JUSTICE HILL: -four, two, identify a tort other than inferentially.

C           MS STACEY: No, I am not necessarily – I wouldn't push against that but the particulars of claim  
              do, so-

MRS JUSTICE HILL: Well, these things do matter, do they not, is not your particulars of claim, I-

MS STACEY: Yes.

MRS JUSTICE HILL: -appreciate is served this following day but just first principles, brief details

D           of the claim, it does need to identify a tort-

MS STACEY: No, I – yes.

MRS JUSTICE HILL: -and I am not sure that the brief details of the claim, what you have at 2342  
              do that.

E           MS STACEY: Well, it – by unlawful means and in combination with others, those are the  
              elements of conspiracy-

MRS JUSTICE HILL: Yes.

MS STACEY: -to restrain, using its brand, we can infer from that the elements but it could be

F           clearer, I accept that, My Lady. So taking the particulars of claim then, paragraph... yes,  
              1.4, sets out, "The reasonable apprehension on the part of the claimant that unless restrained  
              will carry out unlawful acts upon the Shell petrol stations by agreement with others with the  
              intention to injure by reason of which will suffer injury". And in due course I will take you  
              to what was said about the elements of the tort of conspiracy in *Cuadrilla* and that's

G           paragraph of 18 of *Cuadrilla* is probably the best reference point for that. And, in fact, do  
              you want – let's look at it now. *Cuadrilla*, paragraph-

MRS JUSTICE HILL: I think it is in Mr Simblet's bundle is it not?

MS STACEY: Yes, it's... it's at tab 11 of Mr Simblet's bundle-

MRS JUSTICE HILL: Page 341.

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A MS STACEY: Page 347 is the paragraph.  
MRS JUSTICE HILL: Yes.  
[Crosstalk]  
MS STACEY: And this was a claim against persons unknown, so – and this confirms, we say,  
B there’s no conceptual problem. It starts actually at 346.  
MRS JUSTICE HILL: Let us just...  
**Pause.**  
MRS JUSTICE HILL: Yes.  
MS STACEY: Three, four, six, paragraph 16, “The third type of wrong which the injunction was  
C designed to prevent was unlawful interference with the *Cuadrilla* supply chain, subject to  
paragraph seven committing any of the following offences”. And then the test – the tort  
rather is referred to in paragraph 18 on the last sentence, My Lady, in the form of the tort it  
sets out what the claimant must prove to establish liability.  
**Pause.**  
D MS STACEY: And I’ll ask you - to remind Your Ladyship that this is a claim for a precautionary  
injunction, so, there must be a real and imminent risk that the acts will be committed in the  
future-  
MRS JUSTICE HILL: Just pausing there. So, JSC, which you provided, paragraph seven, helps  
E me further on the concept of this tort, forgive me, I think Mr Simblet provided me with this-  
MS STACEY: Yes and that was-  
MRS JUSTICE HILL: -in JSC I have to say I did not read it, I was not entirely sure what was –  
which was the key passage but paragraph seven of that helps me understand the way in  
which this tort is framed, is that right?  
F MS STACEY: Yes and Johnson J – both Johnson J and McGowan J were taken to it.  
MRS JUSTICE HILL: Right, all right.  
MS STACEY: It’s actually in the other – it’s in the supplementary in Mr Simblet’s authorities  
bundle at tab seven.  
G MRS JUSTICE HILL: And so where at the end of *Cuadrilla* 18-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -we get this multi-limb definition of conspiracy? Does paragraph seven of  
JSC tell me how the unlawful act is defined?  
MS STACEY: Paragraph seven of JSC?

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A MRS JUSTICE HILL: Yes, because just looking at *Cuadrilla* at 18 it is defining, “A series of unlawful act done with the intention of injuring the claimant pursuant to an agreement...”-

MS STACEY: Yes.

B MRS JUSTICE HILL: -“... with one or more persons which actually does injury the claimant”. Maybe it is just that the JSC paragraph seven gives a bit of narrative about how this tort develops-

MS STACEY: Indeed, it’s an anomalous tort because it may take actionable acts which would be lawful apart from the element of combination.

C MRS JUSTICE HILL: “As a device for imposing civil liability on those who organise strikes and other industrial action. It is an anomalous tort because it may make actionable acts which would be lawful apart from the element of combination...”-

D MS STACEY: “... combination and the ostensible rationale acts in combination are inherently more coercive rather than acts by a single actor. It’s not always been persuasive, much [to be said you?] expressed, yes, so, it gives you the narrative that led to the development of the tort. And last line, “Nonetheless the tort conspiracy has an established place in the law of tort and its essential elements have been clarified by a series of important decisions”.

E MRS JUSTICE HILL: But where the authorities land is not, in fact, as per line five of this paragraph that lawful acts can combine together to perform the function of generating the tort because *Cuadrilla* 18 says it is an unlawful act by the defendant, is that right?

MS STACEY: *Cuadrilla* does say that yes. But it’s the element of combination that makes them unlawful, paragraph seven of JST, so it says would they – would be-

F MRS JUSTICE HILL: Well, why then is, forgive me, *Cuadrilla* 18 talking about an unlawful act by the defendant? That is what the claimant must prove.

**Pause.**

G MS STACEY: Well, it – for present purposes it doesn’t matter to us because we are asserting that there are – they are unlawful acts because paragraph 1.4 of the particulars of claim asserts that the apprehension or the reasonable apprehension which the claimant has at this point in time is that persons unknown will carry out unlawful acts upon the Shell petrol stations. We are not relying on anything else. By agreement with others, so, as per paragraph 18 of *Cuadrilla* with the intention of injuring by reason of which the claimant will suffer injury, so, all four elements in *Cuadrilla* paragraph 18 are there-

H MRS JUSTICE HILL: Well, I will read it-

A [Crosstalk]  
MRS JUSTICE HILL: -but it looks like there is a historical narrative of how the tort developed in JSC.

B MS STACEY: Your Ladyship's right, there seems to be a disconnect between how does one get from reference to-

B MRS JUSTICE HILL: Well, I am not sure, I mean it talks about how that might have been the genesis, the potential lawful act combined with those of another but then if one goes through, I have not read it in full, but one can see lots about the unlawful means relied upon in this case and two varieties of intention. I will try and reconcile, but-

C MS STACEY: Yes.

MRS JUSTICE HILL: -in any event-

MS STACEY: Well-

MRS JUSTICE HILL: -you say it matters not because you pin your colours to the unlawful act mast.

D MS STACEY: We do pin our colours to the unlawful act – here we go, paragraph 11 might help, JSC at paragraph 11 on page 217 where it refers to, “Conspiracies being a tort of primary liability, question of what constitutes unlawful means” so, there is a reference there to it being unlawful, “The real test is whether there is just cause or excuse for combining to use unlawful means”. So, it seems at least there that that's consistent with *Cuadrilla* and then it goes on to say it depends on the nature of the unlawfulness etc.

E MRS JUSTICE HILL: Yes, I mean it seems to move away from-

MS STACEY: Yes.

MRS JUSTICE HILL: -genesis-

F MS STACEY: Indeed.

MRS JUSTICE HILL: All right.

MS STACEY: But as you say – as you said, My Lady, it matters not because we are saying the acts [inaudible] take place without this injunction [it would be doubtless?].

G MRS JUSTICE HILL: So the elements are set out at *Cuadrilla* 18?

MS STACEY: Yes, the elements at *Cuadrilla* 18 replicated at 1.4 of the particulars of claim. And then you see, for a bit of colour and context in the particulars of claim, 2.2, there's a reference to the type of activities which we are saying we are reasonably apprehending need to be prevented by the injunction, so, 2.2. the actions on 28 April.

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A MRS JUSTICE HILL: Just pause there.  
**Pause.**  
MRS JUSTICE HILL: So-  
MS STACEY: Two point two of-  
B MRS JUSTICE HILL: Yes.  
MS STACEY: -the particulars of claim, there's a list of acts which are then defined at 2.3 as unlawful acts.  
**Pause.**  
MRS JUSTICE HILL: Because they are unlawful in a tortious sense of being some kind of  
C trespass to property?  
MS STACEY: Yes.  
MRS JUSTICE HILL: Is that the unlawful element-  
MS STACEY: Yes, basically-  
MRS JUSTICE HILL: -I am asking you-  
D MS STACEY: -yes, yes, because, well, that's – smashing the screens of petrol pumps I would have thought speaks for itself.  
MRS JUSTICE HILL: Yes.  
MS STACEY: Spraying graffiti, likewise, blocking access to incoming and outgoing cars, well,  
E that's a breach of private rights of way. You are entitled to go on to the petrol station for particular purposes pursuant to a licence to the general public, but you're not entitled to go there to block access to the general public, so, that's nuisance. Gluing themselves to pumps or parts of the forecourt, likewise, that's beyond the scope of your licence to be there. And climbing on to a tanker and gluing themselves to its cab, equally, so, those are unlawful  
F acts, we say, each and every one of them-  
MRS JUSTICE HILL: So, either acts of nuisance, you say-  
MS STACEY: Nuisance and trespass.  
MRS JUSTICE HILL: Private trespass.  
G MS STACEY: Yes and I think when you go back to the attendance note Mr Watkin's[?] referred to criminal damage and a statutory cause of action-  
MRS JUSTICE HILL: So the unlawful element for *Cuadrilla*18 purposes can be criminal as well as civil, is that right?  
MS STACEY: Yes.

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A MRS JUSTICE HILL: Is that right?  
MS STACEY: Well, criminal damage certainly.  
MRS JUSTICE HILL: Well, that is a criminal concept. Tortious damage is trespass is it not?  
Trespass to property?

B MS STACEY: It is, it is-  
MRS JUSTICE HILL: I am just asking you the question-  
MS STACEY: Yes-  
MRS JUSTICE HILL: -tort-  
MS STACEY: -I know the reason I was – yes. I don't know the answer to that directly, it's a tort-

C MRS JUSTICE HILL: Neither do I obviously-  
MS STACEY: It's a tort-  
MRS JUSTICE HILL: -so I should-  
MS STACEY: -the act – it's quite – the fact that the act, if they were to give rise to criminal  
damage, I think adds the context and the colour-

D MRS JUSTICE HILL: Yes.  
MS STACEY: -to the unlawful nature in tort that we rely on. In other words if they are criminal  
they are self-evidently, we say, tortious.

**Pause.**

E MS STACEY: And you will see I have taken – when I take you to the attendance note it's very  
much put on the basis of a conspiracy to cause economic - it's an economic tort.

**Pause.**

F MS STACEY: So that's how its put at 2.2 and 2.3 and then there are further particulars given at  
2.3.1 coordinated action by a group of persons carried out as part of a wider movement.  
And then 2.3.2 refers to the intention, self-evident aim for those engaging [in the supply of  
fuel?] harming the claimant, The Shell Group. And then 2.4 refers to impact. Now,  
pausing here, My Lady, we say this is a precautionary injunction and for the purposes of  
obtaining a precautionary injunction it is not incumbent on us to prove that there is actual  
G damage caused because it's, by definition, forward-looking. In due course if we were to  
seek to commit any named person on the basis of this tort conspiracy we would, no doubt,  
have to prove each and every element of the tort and show that there have been, in fact, [the  
Court – had been a cause of?] action but for the purposes of obtaining a precautionary  
H injunction we don't need to go that far.

A MRS JUSTICE HILL: It is just the test around risk of harm and so on that applies-  
MS STACEY: -that, is there an identifiable cause of action and is there a sufficient risk to justify a  
precautionary injunction on that basis.  
MRS JUSTICE HILL: Yes.

B MS STACEY: And for interim injunction purposes is there a serious issue to be tried-  
MRS JUSTICE HILL: Yes.

C MS STACEY: -in relation to that. So, we don't have to show a complete cause of action. The  
reason I am making that point at this stage is the [old one in?] Mr Simblet's contentions in  
the skeleton where it's actually the insertion of actual harm is in fact caused, implement –  
it's the effect provision which he seeks to insert in the order. I see – we say that goes too  
far because this is a precautionary injunction.

D MRS JUSTICE HILL: And do you refer again in the particulars to the evidence of intention.  
MS STACEY: And we refer to the evidence exactly of intention in the particulars, paragraph three,  
“Reasonable anticipation of further unlawful acts” and then we see in the particulars listed  
out there. And then there is reference to a press release at 3.1.3 on page 2354. And then we  
say at 3.2 that the – “Any further conspiracy is very likely to cause further harm” so, we –  
that's what we need to aim at, is there a real and imminent risk of further harm being caused  
as a result of the activities and that's dealt with at 3.2. And we say because 3.2.1, the  
activities are positively designed to prevent [the sale?].

E MRS JUSTICE HILL: And there is obviously a reason why Shell have chosen to proceed under  
this tort-  
MS STACEY: Yes, the reason-  
MRS JUSTICE HILL: -for these petrol stations?

F MS STACEY: -the reason is because of the complicated land ownership structure. So, ordinarily  
you – for the purposes of obtaining an interim injunction – an injunction with immediate  
cause of action, as Your Ladyship will well know-  
MRS JUSTICE HILL: Yes.

G MS STACEY: -it's obviously much more straightforward if you can go on the basis of trespass  
and prove title but in relation – where there are licences granted to third parties in respect –  
relation to some petrol stations and that's the complicated line-  
[Crosstalk]

H MS STACEY: -structure, it's more problematic-

A MRS JUSTICE HILL: And does that ownership structure preclude a claim in nuisance? It may not matter-

MS STACEY: Well, it doesn't matter-

MRS JUSTICE HILL: -but it does not preclude a claim in trespass?

B MS STACEY: Yes and we haven't gone for either, we have gone for conspiracy to cause economic harm. So, that's well – it's considered all through. And *Cuadrilla* confirms, contrary to a suggestion made in Mr Simblet's skeleton – Ms Branch's skeleton argument, that there is no conceptual problem with founding a claim for an injunction against persons unknown on this basis. It may well be the Court of Appeal in *Ineos* discharged the injunction but that's nothing to the point here. *Ineos* is a very different case where there had been no acts carried out [even though?] there have been past activities.

C **Pause.**

MRS JUSTICE HILL: But is that not the same for the petrol stations because you are putting this on a – well-

D MS STACEY: Well, *Ineos* was different for a number of reasons but, yes, so, the general point, My Lady, is that *Cuadrilla* confirms that there is a tort of conspiracy, it sets out the component parts, it was a case where there were persons unknown and the claim was founded on that basis amongst others. There's no special rule. If it's an identifiable, E recognised cause of action then it's one which we can rely on for the purposes of bringing a claim for an injunction. No more, no less. Now obviously that means – that doesn't mean that we don't have to prove that there's a real and imminent risk and a serious issue to be tried for the rest of it but as we will see in due course that's been dealt with.

F MRS JUSTICE HILL: But how does the precautionary only element of the injunction you seek for the petrol stations sit with the third party disclosure order? Because was that not based on evidence of activities in August of 2022?

G MS STACEY: Yes but yes but the point there is, is there a – so, the petrol stations order is sought against persons unknown or defined by reference to the acts which are alleged to be unlawful. *Canada Goose* says that if you identify any persons who fall within that description and they are identifiable, they need to be joined. So, those are persons who we say represent the risk because they have committed past acts which fall within that description and there's authority to the effect that where there's been past acts it gives rise to an inference that there is a risk in relation to them. Now-

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A MRS JUSTICE HILL: So, forgive me, do you not in fact rely on past acts with the petrol stations claim?

MS STACEY: Well, we rely – it’s not purely precautionary-

MRS JUSTICE HILL: Yes.

B MS STACEY: -it’s founded on past acts, but the protection we’re seeking is [forward-looking?].  
**Discussion *sotto voce*.**

MS STACEY: Yes and in relation to two of the stations there are past activities-

MRS JUSTICE HILL: Well, there were in August 2022 but there were not at the time of the Johnson J review.

C MS STACEY: But in relation to two of the – yes, yes, that’s right, that’s right.

MRS JUSTICE HILL: I am just trying to understand-

MS STACEY: Yes, no-

MRS JUSTICE HILL: -how you are putting this-

D MS STACEY: -yes, so-

MRS JUSTICE HILL: -because you have told me that the claim in relation to the petrol stations was put solely on a precautionary basis, it is forward-looking, I do not need to prove the damage has been caused. Now, that may well have been the position in front of Johnson J and at the time of the pleaded claim but you do seek to rely on the August 2022 incidents?

E MS STACEY: It – sorry, My Lady, the forward-looking nature is the continuation of the order-

MRS JUSTICE HILL: Any injunction is forward-looking is it not by definition-

MS STACEY: -yes, exactly, exactly, that’s all I meant, it’s forward-looking. If I’m asking you to continue an order on a forward-looking basis, so, based on-

MRS JUSTICE HILL: Because it relies on past events-

F MS STACEY: But it relies, exactly, so, it’s not-

MRS JUSTICE HILL: But do they not all?

MS STACEY: Not always, not always-

MRS JUSTICE HILL: No-

G [Crosstalk]

MRS JUSTICE HILL: -but do not these three? So why is there a difference that you sought to draw out about this injunction, why do you try and suggest to me that the police [sic] stations one is conceptually different because I am not sure it is now-

MS STACEY: The petrol stations one?

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A MRS JUSTICE HILL: Yes.  
MS STACEY: Conceptually different to Ineos.  
MRS JUSTICE HILL: No, your submissions that I have written down here are claim re Haven, not purely precautionary based on activity that has taken place-

B MS STACEY: Yes.  
MRS JUSTICE HILL: -claim re Tower was summarised, claim re petrol stations is precautionary, do not need to prove damage caused because it is forward-looking but then reliance is clearly placed on-

C MS STACEY: Yes, no, sorry, I am not – there is no distinction in the sense that all the injunctions were based on activities, there was evidence at the time of obtaining the injunctions of past activities which formed the basis of the injunctions and provided part of the evidential picture to justify them. That’s in relation to Tower, Haven and petrol stations, albeit in some of the petrol stations there had only been activities in relation to some of the petrol stations, not all of the petrol stations which form the subject of the order, yes. The point I was making in relation to not having to prove harm was that because the nature of the protection is a – it’s precautionary, it’s forward-looking, the question for the Court is in – the question on continuing the injunction today, the question for you, My Lady, is, is there, are you satisfied there continues to be a real and imminent risk that absent the injunction the – there – the persons unknown will commit the acts that are identified in the description of persons unknown and that, the fact that it’s forward-looking, not seeking damages for actual harm, backward-looking means that we don’t have to prove, for the purposes of obtaining the continued injunction, that actual harm has been committed. That was simply the point I was seeking to make but in due course if we were trying to enforce the injunction against one of those people who have been named, obviously we would have to prove that what they had done amounted to the economic tort relied on.

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G MRS JUSTICE HILL: But none of these injunctions then, you say, were granted entirely on the basis of what might happen, they were all granted based on things that had happened from which you can infer more things will happen in the future-

MS STACEY: Indeed.

MRS JUSTICE HILL: -and the position remains the same today across all three of your applications?

H MS STACEY: -indeed, exactly, that’s absolutely right, so, apologies for the confusion, yes, you

A are absolutely right.

MRS JUSTICE HILL: All right, so, you have taken me to all three claims and particulars for which thank you-

B MS STACEY: Particulars of claim, you then have the skeleton argument at page 2358 for the stations which referred at 2359 to the relevant test to be applied, I'll skip over this quite quickly if you just mark-up - if you could side-mark the reference-

MRS JUSTICE HILL: This is the McGowan J hearing?

C MS STACEY: Indeed. So, you'll see at paragraph six, five layers of control are relevant although they are – overlap. You've got the American Cyanamid test, is there a serious issue to be tried. Top of the next page, would damages be adequate, if not where does the balance of convenience lie, so, that's the American Cyanamid test. Second layer of control is the *Canada Goose* guidance, that's at paragraph two. Thirdly articles 10 and 11 need to be considered. Fourthly you need to satisfy section 12(2) of the Human Rights Act which is that the Court where there are unrepresented parties you need to satisfy the Court that all practicable steps have been taken to notify them. And fourthly – sorry, fifthly, section 12(3), "Where it applies..." it says, there is a qualification there, "... that displaces the serious issues to be tried test with a higher threshold of likelihood of success at trial" and the claimant's position is set out in that paragraph that it doesn't apply. "But even if it does apply..." it's said, "... it's nevertheless the evidence that the claimant is likely, in a relevant sense, to obtain relief". So, it's put on these - both bases.

D And then each of those matters are dealt with in the skeleton argument in turn. And the unlawful act, My Lady, is expanded upon at paragraph 10 of the skeleton, "Only restrains acts which, by their nature, are unlawful". The point at paragraph 11 makes the point that I was seeking to make that many of them would also constitute criminal offences but we rely on the acts that are actually within tort. And explains why the claim has been brought on that basis, not in legal[?] possession of all the Shell petrol stations.

E MRS JUSTICE HILL: Which is why, according to the footnote, it is placed on the basis of nuisance?

F MS STACEY: In the case of nuisance would be actionable upon proof of damage, yes. That would be the acts of damage to the property it would be capable of constituting nuisances, yes, as well as trespass-

G MRS JUSTICE HILL: I see, and in fact the answer to my question is met at paragraph 12 of your

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A skeleton or your learned colleague's. "In a claim for unlawful means conspiracy within lawful means employed are criminal but not themselves separately actionable by the claimant. It can still be actionable where the [inaudible] were directed at the claimant".

MS STACEY: Yes.

B MRS JUSTICE HILL: So that suggests that criminal-only acts could be sufficient although that does not apply here because you say they are acts of nuisance in any event.

MS STACEY: Yes and we place reliance on the acts – for the purposes of this application we place reliance on the fact that they would all be actionable in tort.

C MRS JUSTICE HILL: So, the skeleton is put on the basis of, as we said earlier, private nuisance, trespass to goods and land, that is at paragraph 10, that is how this police stations claims was put-

MS STACEY: Yes.

MRS JUSTICE HILL: -conspiracy in relation to those underlying torts-

D MS STACEY: Which arise, it's said, from the activities that are listed in the particulars of claim.

MRS JUSTICE HILL: Yes.

MS STACEY: And there's reference to [the factual?] position explained in Mr Austin's statement which will be in the bundle-

MRS JUSTICE HILL: Oh yes-

E MS STACEY: -take you to in due course. And then reference is made at paragraph 12 to Revenue and Customs and Total[?] which is the third party torts points.

F MRS JUSTICE HILL: Just pause there. Do I see in the particulars of claim what is written at paragraph 10 of the skeleton, do I actually see in the particulars of claim or indeed on the claim form that the unlawful acts relied on are trespass to land, trespass to goods and private nuisance? They are defined as unlawful acts at paragraph 2.2 and it is simply asserted that they are unlawful. It may be that it is thought that this is so obvious is does not need to be said-

MS STACEY: Yes.

G MRS JUSTICE HILL: -but when these are being read by members of the public and when the tort itself is not plainly identified, I am just highlighting this issue-

MS STACEY: No-

MRS JUSTICE HILL: -I mean we are where we are.

H MS STACEY: -I understand why you are highlighting it, I am just trying to answer the question to



A see whether [there is anywhere?] in the particulars of claim it says-

MRS JUSTICE HILL: I think-

MS STACEY: -but I don't think so.

MRS JUSTICE HILL: My reading is that you just assert that these were all unlawful and therefore

B that is sufficient for the conspiracy.

MS STACEY: Well, the acts have been specifically defined, so-

MRS JUSTICE HILL: Three point three.

MS STACEY: -so it's not as though we're simply saying unlawful acts, you know, swinging in the

C breeze-

MRS JUSTICE HILL: No, I agree but how they are rendered unlawful and which tort it is said

applies to create the underlying conspiracy or indeed reliance on criminal damage in the

skeleton-

MS STACEY: Yes.

MRS JUSTICE HILL: -does not feature in the particulars-

D MS STACEY: It doesn't but the people reading this particulars of claim would know that they

couldn't do anything – well, it was being alleged that anything in 2.2.1 through 2.2.5 was

considered to be an unlawful act and tortious as per the pleading. But the specific nature of

the-

E MRS JUSTICE HILL: Oh I suppose it could be said, in fairness, that 1.4 makes clear it is being

put as a conspiracy.

MS STACEY: One point four does make it clear, and reflects paragraph 18 of *Cuadrilla* but the

words – specific torts are not listed out but I suggest they wouldn't need to be.

MRS JUSTICE HILL: They do not need to be you say?

F MS STACEY: I suggest it's clear enough.

**Pause.**

MS STACEY: And *Cuadrilla* at paragraph 18 of *Cuadrilla* doesn't say that one has to specify

G what the unlawful act is. So, if one's taking *Cuadrilla* 18 as a check-list, that check-list has

been complied with to the letter. Now it's for the claimant to prove, in due course, My

Lady, that the acts are unlawful and on an application for an interim injunction to show that

there's a serious issue to be tried. So, for example, if my colleague had listed out a number

of acts which were plainly not unlawful then the serious issue to be tried test wouldn't have

H been met.

A MRS JUSTICE HILL: I understand, I just think when your clients are pleading claims that are largely going to be read by persons who have an interest in this who may well not be legally represented and in any event that, from what I remember anyway, claim forms are meant to specify the nature of the tort pretty clearly-

B MS STACEY: Yes, against that, My Lady, it's made clear in, I think it's *Cuadrilla*, that using legal language isn't necessarily helpful when the layman is reading something-

MRS JUSTICE HILL: I agree, I agree-

MS STACEY: -so, actually it's better to characterise what it is precisely you're talking about in practical terms as opposed to using the words, such as-

C MRS JUSTICE HILL: That may be right, that may be right-

MS STACEY: -but that – it's that, it's the clarity so it's reasonably comprehensible to the person – the general public, it's either in your – I think it might be in your - *Cuadrilla* to avoid legal verbiage.

D MRS JUSTICE HILL: Yes, I think it might be in *Canada Goose* as well, I agree, I mean certainly when making injunctions noting things of that nature but I mean we are where we are but claims form, I think, are something slightly different.

MS STACEY: You don't want somebody to have to go to a legal advisor to explain to them what precisely it means by trespass to land, trespass to goods-

E MRS JUSTICE HILL: No, I was not suggesting that the legal name is used instead of what you have done and what your client has done but anyway let us move on. So, you are taking me through the skeleton-

MS STACEY: To the skeleton, yes-

MRS JUSTICE HILL: -McGowan J.

F MS STACEY: -so we are at skeleton – we're at 2361 which sets out the claim. You've got a reference to JST at paragraph 13 and to Racing Partnership. The reason I'm taking you to this and I'd ask you to note that these are the points that's raised by my learned friend in his skeleton but these are – these were authorities - were specifically referred to in the skeleton and placed before both judges. And it's said at paragraph 14, My Lady, that it's proper to draw the Court's attention to the fact that the unlawful act under consideration in the Racing Partnership which is not directly actionable by the claimant but only by a third party, was a breach of contract, so, that's the point of distinction that's been drawn, not as here a tort. So, it's a point that was raised, quite promptly, by Mr Watkin which might be

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A operated against the claimant, “As far as counsel has been identified there’s no subsequent decision considering an unlawful means of conspiracy where the unlawful mean relied on has been a tort which was only actionable by a third party” yes, i.e. by the licensee, if you like, but it’s the submission made at the end of paragraph 14, so, there’s no principle basis for confining the reasoning [in Racing?] only to breach of the contract.

B MRS JUSTICE HILL: Mr Simblet, how much of this extensive bundle has your client had sight of? Has this been a situation where certain documents have been published along the lines of applications and skeleton arguments-

MS STACEY: Everything-

C MRS JUSTICE HILL: -and things like that?

MS STACEY: -everything has been put-

MRS JUSTICE HILL: I am familiar in other cases about what tends to happen.

MS STACEY: Everything has been put on the website which lends some weight to the point about why was none of this raised earlier because it’s not as though we’ve been doing it secretly.

D MR SIMBLET: Well, there is a website that the claimants have produced, not everything has gone on it instantaneously. I do not know exactly what she has seen and when. The hearing bundle that you have was served on us on Thursday or Friday, in fact, I think after close of business on Thursday, so, if the answer to the Court’s question is how much of this 3,500 pages of material that you have is easily and publically available in a form that you have it then it’s been since that – those dates. But, however, some of the material had been sent sort of-

MRS JUSTICE HILL: Well, I may need to just revisit how-

F MR SIMBLET: -partly as a favour to my solicitors in different form and different numberings on – earlier than that.

MS STACEY: My Lady, the skeleton arguments were all put up on the website immediately after the hearings, Alison Oldfield’s-

MRS JUSTICE HILL: I was going to say I will have to revisit the service evidence about this but-

G MS STACEY: Nothing was given as a favour it was all put on the website-

MRS JUSTICE HILL: Yes, well-

MS STACEY: -in accordance with-

MR SIMBLET: Well-

MS STACEY: -alternative service provisions in the-

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A MR SIMBLET: Oh, I was answering the Court's question as to how much of the material that the Judge has, my client has seen, that's how I understood the question and it's accurate.

B MS STACEY: So, the Racing Partnership, My Lady, in the skeleton, that's the point and so paragraph 15 wraps it up by saying that the claimant's submissions for the present state of the law is that the tort of unlawful means conspiracy can be based on unlawful means consisting of tortious acts by the defendants which are only actionable by a third party, not the claimant. And, in any event, it's said in the last line, there's certainly a serious issue to be tried in relation to that. So that deals with, to some extent, one of the points-

MRS JUSTICE HILL: So that is the key submission at the end of 14-

C MS STACEY: That, yes, that's one of the points raised in – by Mr Simblet. And then the next component part of the tort, "Done with the intention of injuring" is dealt with at 16 and you will see what's said there, pursuant to an agreement, again, the order is framed so as to catch that. And which actually injures, it's the points made at 18, if the aim of the protests is to disrupt, it is self-evident the activity it would disrupt and then 19 it's clear that if the actions were to eventuate, so, that's the forward-looking bit, would have a good cause of action in due course. And then it's clear that there's a serious issue to be tried in relation to that and then adequacy of damages is dealt with at paragraph 21 and you will see what's said there. Reference is made to there being no reason to be confident that anyone would be able to compensate financially and then [the seriousness?] to health and safety risks. Balance of convenience at paragraph 26, that's the first limb. Then you've got the *Canada Goose* guidelines dealt with in paragraph 27 onwards. And this specifically deals with the point about persons unknown, so, it's – the claimant is well aware that its seeking relief against persons unknown and therefore the Court has to operate cautiously as per the *Canada Goose* requirements and each of those are dealt with in the skeleton argument.

MRS JUSTICE HILL: I am sorry to cut across you, Ms Stacey, I am just a little conscious of time-

MS STACEY: Yes.

G MRS JUSTICE HILL: -this is all helpful but the skeleton argument placed before McGowan J is superseded, is it not-

MS STACEY: It is-

MRS JUSTICE HILL: -by the one before Johnson J-

MS STACEY: -yes, so-

H MRS JUSTICE HILL: -which seems to-

A MS STACEY: -so... so I – if I can ask you to read this skeleton argument because it all forms part of the evidential picture-

MRS JUSTICE HILL: Yes.

MS STACEY: -and then it's superseded by the skeleton argument at 2392 where largely it's a repetition and if I can take you up – take it back up at page 2398-

B MRS JUSTICE HILL: Well, even to the point of making the Racing Partnership point in terms of-

MS STACEY: Exactly, it's repeated-

MRS JUSTICE HILL: -so, it might be that I can focus more on this one-

[Crosstalk]

C MS STACEY: -yes. So *Canada Goose* guidance is 2398.

MRS JUSTICE HILL: And did you tell me, remind me have I misremembered this, that Johnson J did not grant the interim injunction in quite the same terms as McGowan J? Or have I misremembered that?

MS STACEY: He changed the alternative service provisions-

D MRS JUSTICE HILL: But other than that-

MS STACEY: But other than that-

MRS JUSTICE HILL: -the injunction was the same?

MS STACEY: -other than that, can I just double check that point-

E MRS JUSTICE HILL: It was – forgive me, it was the Bennathan J-

MS STACEY: Yes.

MRS JUSTICE HILL: -Sweeting hearing-

MS STACEY: Yes.

MRS JUSTICE HILL: -that was narrowed.

F MS STACEY: So, Bennathan narrowed to deal with public highway-

MRS JUSTICE HILL: Yes.

MS STACEY: -but Johnson continued, I think, subject to instructions, but for the alternative service provisions.

G **Discussion *sotto voce*.**

MS STACEY: Yes, what we'll do overnight, [shopping list?] to give you both orders and we can deal with compare and contrast but I am certain that that's the position.

So, *Canada Goose* is dealt with from paragraph 30 down through to 35, including, My Lady, procedural subparagraph three, real and imminent risk of the tort being

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A committed so as to justify precautionary relief, that's at paragraph 34 and you'll see how it was put there. And then the fourth requirement, forgive me if I'm going too fast-

MRS JUSTICE HILL: No.

MS STACEY: -fourth requirement, individually named if known, if not described as persons unknown in a way that they're capable of being identified-

B MRS JUSTICE HILL: Yes.

MS STACEY: -and served. So, paragraph 36 deals with past service. And this is where we deal with the changes. So, there was a posting of notices [an email?] in paragraph 37 of the order to the list of various email addresses; 38 deals with the difficulties experienced with regards posting warning notices quickly and correctly on all of the [more than a thousand?] Shell petrol stations. And the submission is made that the Court can be satisfied that the existence could nevertheless reasonably be expected to come to the attention if 50% of the Shell petrol stations were subject to requisite notice. And that's the tweak to the alternative service provision-

C MRS JUSTICE HILL: So which option did Johnson J go for?

MS STACEY: 50%, he changed it down and included a reasonable endeavours obligation, so, if you look at the order at-

D MRS JUSTICE HILL: Yes.

MS STACEY: -at page two-

E MRS JUSTICE HILL: Four, nine, zero.

MS STACEY: Yes.

**Pause.**

F MS STACEY: Nine point one, "The claimant shall use all reasonable endeavours to arrange to affix and retain warning notices" and there's reference to signs.

**Pause.**

MS STACEY: To each petrol station, so, it's the reasonable endeavours. So, in relation to each petrol station there's an obligation to use reasonable endeavours to do it without there being a specific proportion prescribed.

G **Pause.**

MRS JUSTICE HILL: Yes.

MS STACEY: Yes? So, back to 2400, 39 it makes the point that, "For the avoidance of doubt the order specifies that no individual is deemed to be served, the normal rule that a contempt of

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A Court is committed only with actual knowledge” so, that is the point that is accepted and  
acknowledge, so, in due course it would be for the claimant to prove that any person who  
was sought to be – the order was sought to be enforced against had not suffered prejudice  
B because on the basis that they had no actual notice. And then 40 deals with the facts. And  
then future service is dealt with at 42 and 43 makes the point given the complexities notice  
provisions that for the future there was a proposal to put an alternative to a form of notice,  
larger and only at the entrances. And then, My Lady, the fifth *Canada Goose* requirement  
is that the acts must correspond to the tort and you see what’s said there, 45. The sixth  
C requirement is that the terms must be sufficiently clear and precise. They may be defined  
by the defendant’s intention if that’s strictly necessary, that’s the *Cuadrilla* tweak, [see  
too?] Ineos which was endorsed by *Canada Goose* and you will see what’s said at  
paragraphs 46 through to 49. And then the final requirement, geographical and temporal  
D limits, identify the protected premises by reference to their physical nature as petrol-filling  
stations with Shell branding and it’s submitted that that, given the nature of the acts, which  
don’t simply say you can’t go on, it’s not simply where you go it’s what you’re doing, is  
appropriately clear for the purpose of the injunction. And that was, we’ll see in due course,  
accepted by Johnson J in his judgment and there’s this proposal that it should continue for a  
E year. And then Articles 10 to 11 were considered at paragraph 52. Reference made to  
*Cuciurean* at the bottom of that page. No freedom of forum at paragraph 53. Fairly a point  
is made at 54 that it’s possible to imagine, in theory, a scenario in which the inability to  
trespass had the effect of preventing any exercise of freedom of expression, so, a point  
again being taken against the claimant in order to comply with duties to the Court. So, as to  
F destroy the essence of the right. But he says at the end of paragraph 54, “This is plainly not  
such a case” and refers to paragraph 46 of *Cuciurean*, “Legitimate protests can take many  
other forms” and he says at 55 that, “The only acts within the terms of the order which  
might, at least, potentially occur without a trespass on a blocking [or impeding?] of access,  
and he says that such activity would still constitute a private nuisance, see *Cuadrilla* at 13  
G which we may want to refer to, where it’s said in *Cuadrilla* at 13, My Lady, it’s said that,  
“An owner of land adjoining a public highway has a right of access to the highway and a  
person who interferes with this right commits the tort of private nuisance”.

**Pause.**

MS STACEY: And then *Zeedla* is dealt with at 56 and submissions are made in relation to the

A balancing exercise, My Lady, at 57 through 58 with reference to National Highways at 59.  
And the point at 60, please tell me if I am going too fast.

MRS JUSTICE HILL: No.

MS STACEY: Is, “On this application the claimant must only show a serious issue to be tried”.

B We are talking about an interim injunction here, not a final injunction. And reference is made to Lavender J in National Highways in relation to that and the four questions posed by him in relation to the proportionality test and Mr Watkins sets out the answers to those.

**Pause.**

C MRS JUSTICE HILL: Yes. I have read what is said about section 12(3) in brief but I will read it more closely-

D MS STACEY: Yes, 12(2) is dealt with, we can probably skip over because that’s not a point that’s being challenged, I don’t think, but that’s simply for notification, reasonable or practical steps being taken; 12(3) is at 2407 and this is dealt with in great detail over, well, over two and a half pages, so, the statutory provision is set out at the top of the page, at paragraph 68, summary of the claimant’s position at 69, the rules become confused, even adopting the highest thresholds those thresholds are still met, so, it’s made clear there, My Lady, that even if section 12(3) applies, it was the claimant’s case that threshold was nevertheless met but as to the application of 12(3) and actually before I go to the application and Johnson J in his judgment made a finding in relation to if 12(3) does apply it is nevertheless, it is still likely that relief would be granted. So, but as to the application of 12(3), in any event, there’s reference to Ineos when Morgan J said it applied without explanation and it may, My Lady, it may be that you want to go through these judgments to see what’s said to give the relevant context rather than just taking it from the skeleton. I’m in Your Ladyship’s hands as to that but you will see what is said here.

**Pause.**

MRS JUSTICE HILL: I can read the submissions, I think, that are made about it-

MS STACEY: Yes.

G MRS JUSTICE HILL: -and I will look at them.

MS STACEY: Yes, yes.

MRS JUSTICE HILL: I can read the authorities as well-

MS STACEY: I will let you – if you can – but if I can ask you to read 70 through to 76.

**Pause.**

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A MRS JUSTICE HILL: So essentially Johnson J accepted the proposition, this is 76, 133.

MS STACEY: Yes he did. And insofar as it's – and he – his view was that Ineos proceeded on the basis of an assumption that section 12(3) applied without there having been arguments on the point and this is the first reasoned judgment in relation to 12(3) and we say that Johnson J took a clear view about it having heard arguments, considered competing authorities, B made a determination in relation to that and there's nothing that's changed since, no change of law or circumstance which should [inaudible] determination. He was right for the reasons he gave.

MR SIMBLET: My Lady, I am only rising, I hope, to be helpful with this point. Of course the C injunction that we are looking at here includes a prohibition on writing. It's not entirely clear how that-

MRS JUSTICE HILL: Is not-

MR SIMBLET: -inclusion-

MRS JUSTICE HILL: -you would say-

D MR SIMBLET: -fits with the submissions made in the skeleton argument, the reasoning of Johnson J of the submissions being given to you now by Ms Stacey. How can it be that an injunction that prohibits writing on a – in a public place on a wall of a petrol station, say, is not a publication, that's not – that wasn't addressed, [in a sense?], section 12(3) may be E being looked at in a vacuum here rather than actually the injunction that His Lordship went on to make and that you're being asked to continue.

MS STACEY: My Lady so far as that's concerned, that's a good point and one which I accept, it wasn't expressly addressed and that might alter the application of 12(3) in relation to that particular element of the injunction, I accept that, but the backup position is that Johnson J F in any event made a determination in relation where 12(3) applies it's likely that they would be granted the relief at trial in any event, so, that's why we characterise this in our note as a none point.

**Pause.**

G MS STACEY: And I'd have to take instructions, well, I say it's a good point, it needs to be given thought because Mr Watkin at 72 does say that 72, last line, these behaviours, unlike printing and distributing leaflets would not amount to publications, the question of what publication amounts to, whether that extends to writing on a forecourt in chalk or such like, H is a publication but I fully accept that it wasn't something that was expressly considered by

A Johnson J. And I will take instructions as to whether that affects anything so far as the scope of our injunction is concerned but my view is that it shouldn't because you've got the backup determination which Johnson J made.

MRS JUSTICE HILL: That the likely threshold is met anyway?

B MS STACEY: Yes.

MRS JUSTICE HILL: All right. Just pause there for a minute.

**Pause.**

MRS JUSTICE HILL: Right, so, that is the helpful skeleton that was placed before Johnson J which I will read in full, I think. I think in terms of case management it is now 10 to four-

C MS STACEY: Yes.

MRS JUSTICE HILL: -Ms Stacey, so, we can just take a short break and resume if you wish but help me with broadly how you are doing in your submissions?

MS STACEY: Yes, I am conscious I am taking time but the reason I am doing so I am hoping is because you need to see everything, particularly in light of the points that have been made-

D MRS JUSTICE HILL: No, I am just asking the question-

MS STACEY: Yes, no and so where I'm going to go to next is I will ask you to read, which it might be quicker, the attendance notes so you can see how the argument then developed, you have got the skeleton – you have seen the pleading, you've seen the skeleton arguments, you now need to read the attendance notes and I'll ask you to look at both the attendance note of Sweeting J going back to Tower and Haven, Bennathan J, McGowan J, Johnson J-

MRS JUSTICE HILL: So there are four in the bundle?

MS STACEY: -there are four-

F MRS JUSTICE HILL: Yes.

MS STACEY: -there are four-

MRS JUSTICE HILL: Yes.

MS STACEY: -and you've got the references, I think My Lady, but I can give them to you again-

G MRS JUSTICE HILL: Let me just make sure I think I have got them here, I have got 2327 Bennathan J, 2374 McGowan J, 2377 Sweeting J-

MS STACEY: Yes.

MRS JUSTICE HILL: -and then Johnson J 2410.

MS STACEY: You've got two Sweeting J's-

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A MRS JUSTICE HILL: Yes, I have, correct, I have got that... three up-  
MS STACEY: Two, three, two, three and 2322-  
MRS JUSTICE HILL: I have got two Sweeting J's, so, I have got those-  
MS STACEY: Yes.

B MRS JUSTICE HILL: -attendance notes.  
MS STACEY: Okay.  
MRS JUSTICE HILL: All right, well, what is the best way then of proceeding, so-  
MS STACEY: So, I think possibly-  
MRS JUSTICE HILL: -in terms of your sort of future structured-

C MS STACEY: Yes.  
MRS JUSTICE HILL: -submissions from there-  
MS STACEY: So once – [this isn't part of?] navigating the bundles but once we've done that, so,  
let me tell you what I wanted you to read or take you to, so, those and then Johnson J's  
judgment-

D MRS JUSTICE HILL: Which I have read carefully already.  
MS STACEY: -which you have read carefully-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -I'm grateful. Then I thought it appropriate to take you to the underlying witness

E evidence which they have – which is in bundle I which is the evidence of Brown,  
Ms Pinkerton[?] Brown one in relation to Haven, Brown two in relation to Haven-  
MRS JUSTICE HILL: So these are the underlying witness statement-  
MS STACEY: This is the-  
[Crosstalk]

F MRS JUSTICE HILL: -judges, yes.  
MS STACEY: -exactly, exactly-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -so that's the past, because I've taken you slightly back to front but I took you

G earlier to the current risk-  
MRS JUSTICE HILL: Yes, yes.  
MS STACEY: -so, in I you have the witness statements in relation to what was there before the  
judges at the time. And that's it and then, My Lady, I was proposing to take you, well, to  
the orders. I mean I've actually done a lot of work because we've not [I think told you?]

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A told you where the documents are, we have gone through then to some extent, so, if you  
read the attendance notes, I think I can take it relatively quickly thereafter and remind you  
of the broader principles on review which is the – I don't think there's much, maybe there is  
something between us but the test, we say, is real and imminent risk and HS2, Knowles J  
B sets out the various tests in that judgment. You've seen *TFL v Lee* which sets out the  
Cavanagh approach to a continuation of an injunction which we recite in our skeleton.

MRS JUSTICE HILL: Yes, I mean that was in the context of a entirely uncontested position and I  
think... but I-

MS STACEY: That approach is, sorry My Lady, but he just sets out considerations, it's not as  
C though he does a cursory review, he sets out-

MRS JUSTICE HILL: No, but he repeatedly says in his judgment, "I agree"-

MS STACEY: Yes.

MRS JUSTICE HILL: -with Freedman J and if he disagreed-

MS STACEY: Yes he would say so-

D MRS JUSTICE HILL: -I think he would say so would he not?

MS STACEY: Yes, yes, but that's why I've taken Your Ladyship to everything that the judges did  
and saw, including the evidence below because-

MRS JUSTICE HILL: But I do not think, is it your case that if on a review hearing of this kind the  
E judge disagreed with the legal analysis that was made before, it would be open to the judge  
to refuse to renew the injunction? That is what I am a little unclear about-

MS STACEY: Yes.

MRS JUSTICE HILL: -because you, I think, are focusing on the review jurisdiction, is how you  
frame it, you draw support from what Cavanagh J said in the *TFL* case for the proposition  
F that the review jurisdiction is limited to looking at the updated evidence-

MS STACEY: Yes, no, I – so it's contextual, what you can't do is ignore everything that's gone  
before, so, that I – that would be madness, it's not *de novo*, there needs to be sufficient  
basis, if there is to be a departure, I don't say that they – you can never depart on a review,  
that would be... that would be going too far because it – but there must be some meaning to  
G be given to the fact that it's a review, not a re-hearing and therefore you review it in-

MRS JUSTICE HILL: Is it a review, just pausing there, is it properly characterised as a review?  
You are asking the Court to make a new injunction, so, is it-

MS STACEY: Well, the order-

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A MRS JUSTICE HILL: -the injunction made by my learned colleagues is about to expire in two places-

MS STACEY: Indeed.

MRS JUSTICE HILL: -next week and then I think the following week, so, those injunctions are about to expire. I am just testing the proposition-

B MS STACEY: Yes.

MRS JUSTICE HILL: -is it right to frame it as simply a renewal which therefore means that there is some lower level of scrutiny by the Court-

MS STACEY: Yes.

C MRS JUSTICE HILL: -so, so far as the petrol stations claim is concerned, the order specifically refers to a review hearing and the – I took you earlier today to – I’ll take you – let’s take it in stages, so, the – at page 2493, there is specific provision in the original order headed, “Review hearing” which says, “The claimant may apply to extend this order...” this order, “... so that it continues”. And the last line of that paragraph says, “The continued operation of the order will then be reviewed at the hearing of that application” so, that’s the provision that there is in relation to-

D MRS JUSTICE HILL: And HS2 talks about review-

MS STACEY: Yes.

E MRS JUSTICE HILL: Yes.

MS STACEY: And there is an order – the order that I took you to earlier today which consolidates, not consolidates, sorry, which... which orders that these hearings be heard – these claims be heard together refers, you will recall, to a review hearing and there’s a bit in brackets that set out which time it will be considered whether the continued, I’m paraphrasing, but there’s a – there’s some language in there that it’s consistent with my submission that the intention is not to start again but to review whether or not the order, as it stands, should be continued or not, page... yes, at which the Court will determine whether or not to continue the injunction relief granted in each of the three proceedings. So, we say that that’s entirely right and consistent with the fact that there have already been considerations by previous High Court judges. If an error had been made at any point then that would be - the appropriate course would be to appeal if an error of law, for example, was made and so, for example, with Bennathan J, the National Highways order who recently went to the Court of Appeal on the basis that he made an error of law in his approach to the injunction and the

H

A Court of Appeal found that we were right about that. The appropriate – in the normal way, the appropriate course if there’s an error of law is to appeal. My Lady, that’s not to say that there are no circumstances in which you would not be able to vary the order-

MRS JUSTICE HILL: But I do not want to cut across you because-

B MS STACEY: Yes.

MRS JUSTICE HILL: -I would quite like to take a very short break, I want to resume some thought on this issue I will sit a little bit later given what we are dealing with, happily as well it is only five to four, is that five to five, no, that is my-

MR SIMBLET: It’s five to four.

C [Crosstalk]

MRS JUSTICE HILL: -I will sit a little bit longer but I just want to make a plan. I am going to need to hear, I think, a little more about this because at the moment the only authority for the proposition that this is not a – that this is, if you like, a lighter touch approach that you have taken me to is what Cavanagh J has said-

D MS STACEY: Yes.

MRS JUSTICE HILL: -now, you are asserting to me that plenty of other judges have assumed that this is a review function and so on but I am going to-

MS STACEY: Yes of course-

E MRS JUSTICE HILL: -need to hear a little bit more about that-

MS STACEY: Yes.

MRS JUSTICE HILL: -not right now-

MS STACEY: No.

MRS JUSTICE HILL: -let us just take a very short break-

F MS STACEY: Just before you do, I just want to make clear that my light-touch approach, not trying to dodge anything because that’s why I took you to – we say there’s no reason, there’s been no change in circumstances, everything is right-

MRS JUSTICE HILL: Yes.

G MS STACEY: -I’m not trying to suggest to the Court that errors were made and we can sweep them under the carpet.

MRS JUSTICE HILL: No, but I think some – I think the position that this is appropriately dealt with by way of an appeal is rendered more complicated by the persons unknown element because if somebody is not aware of what has happened-

H

A MS STACEY: Well-

MRS JUSTICE HILL: -then it is rather difficult to say that they should have appealed at that time.

MS STACEY: Yes but then you've got the alternative – then if you've complied with  
B *Canada Goose* and the alternative service provisions the Court has said that these are  
appropriate methods for alternative service which are reasonably likely to be brought to the  
attention of persons unknown, you have to tick that box and let's just assume for present  
C purposes no error of law in relation to that, and that's not a point being made – a number of  
other points being raised by Mr Simblet but not in relation to alternative service. So, you've  
got the evidence on service, the persons unknown are therefore - have had notice in that  
sense because the various documents have been put up on websites and emails and various  
addresses and you've got the evidence in relation to that, so, it's not a case of nobody  
having had the opportunity to see what was going on. Plus you've got the evidence of Ms  
Friels having been there in relation to at least one of these-

D MRS JUSTICE HILL: Oh so the deemed service in relation, for example, the petrol station order is  
at some point a date at some point in May of last year, deemed service date-

MS STACEY: Yes.

MRS JUSTICE HILL: -because I am looking at 221 of Oldfield one-

MS STACEY: Yes but there's a reason that those provisions are in there, because whilst, you  
E know, no-one can be subject to the Court's jurisdiction without having had notice, the state  
of the law at the moment is you can bring injunctions against persons unknown. The proper  
procedure is as set out in *Canada Goose*, that's been complied with. You have got  
alternative service provisions here which have been complied with. In those circumstances  
F what else is the claimant to do? Other than, as I discussed, to name the persons and to join  
them to the proceedings which is what we are proposing to do in due course. But yes,  
My Lady, I understand that you wish to hear more-

MRS JUSTICE HILL: I will-

MS STACEY: -and it may be that there's no authority on the point as to what the proper  
G jurisdictional approach is on a review of protest injunctions against persons unknown-

MRS JUSTICE HILL: Well, it may be that momentum builds up and orders are made and  
paragraphs of judgments are referred to but maybe the principle underlying it is not fully  
developed-

MS STACEY: Yes.

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A MRS JUSTICE HILL: -I will take a short break and I will just come back in a few minutes and then we will perhaps discuss where we go from here.

**Court rises.**

**Court resumes.**

B MRS JUSTICE HILL: All right, Ms Stacey, so, what do you want to do from now-

MS STACEY: Yes.

MRS JUSTICE HILL: -I mean I can sit until about 20 past four, so, what do you want to do-

MS STACEY: I'm grateful-

MRS JUSTICE HILL: -with the remaining time?

C MS STACEY: -okay, so, I'm in your hands to a certain extent but what I was planning on doing is taking you to the end of the documents, so, that would mean just showing you where the witness statements are, perhaps I won't waste time going through them but perhaps you could read them yourself and once I've done that, that will probably take me another, well, the attendance notes need to be read so I can go through them with you and emphasise the bits that I say are particularly relevant and then take you to the witness statements. Or, My Lady, you may prefer to just read those at your leisure without me having to tell you what I say about them because they speak for themselves to a large extent, so, the latter may be preferable to Your Ladyship, yes? If I don't take you to the documents now, then I'm nearly there, I would be taking you to – I would be reminding you of the test which is that – whether there's a real and imminent risk but that's-

D  
E MRS JUSTICE HILL: But just pausing there, so, I mean on the remainder of the lever-arch files, you were going through them-

MS STACEY: Yes.

F MRS JUSTICE HILL: -in order-

MS STACEY: Yes.

MRS JUSTICE HILL: -and we are now in volume, well, I am now in volume seven but at the moment I have only extracted the material on the reading list.

G MS STACEY: We were in the pleadings bundle. Let's continue that process-

MRS JUSTICE HILL: Well, what is the position in relation to-

MS STACEY: Yes.

MRS JUSTICE HILL: -any remaining documents that you wish to highlight in five, six, seven, eight, nine, 10 and supplemental bundle?

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A MS STACEY: So, H – sorry, I have got them by reference to letters, so, I can't remember what number, that bundle 6H is the bundle where you see the – I've taken you to it anyway but at the back of H behind, yes, the back of bundle six behind H are the injunction orders, we've looked at those already. And-

B MRS JUSTICE HILL: They are at the back of my bundle seven I believe.

MS STACEY: Okay, so, I don't need to take you to that and then bundle seven is the underlying witness evidence which is behind tab I, so it's the last - this is the last of the core bundles before one gets to the supplemental bundle-

C MRS JUSTICE HILL: No it is not because mine goes up to 10. I have up to page 3564, I am just trying to get a management on these-

MS STACEY: Three, five, six, four?

MRS JUSTICE HILL: Yes. So, mine goes up to page 3564 in bundles plus the supplementary bundle, I am just trying to get-

D MS STACEY: Yes, that's because of the exhibits, it goes all the way to K, yes, sorry, it's the penultimate ones. So, if you take out bundle I which starts at page 2501, tab I, that's where you find the witness evidence that was previously before the judges-

MRS JUSTICE HILL: [Forgive me, let me just?] do this in a different way, looking at the index then-

E MS STACEY: Yes, yes.

MRS JUSTICE HILL: -I have already-

MS STACEY: So I have taken you to A, B, if you look at the top?

MRS JUSTICE HILL: Yes.

MS STACEY: Yes? B is the renewal pleadings, C is the renewal order – this is all in bundle one-

F MRS JUSTICE HILL: Yes.

MS STACEY: -D correspondence to the police and E all of that, My Lady, is in bundle one.

MRS JUSTICE HILL: Yes-

G MS STACEY: And then we've got the exhibits in F which it consists of two bundles, F, A and – actually more than two, a number of bundles-

MRS JUSTICE HILL: Yes, so, just looking at the overall structured bundles, I have got the witness statements first-

MS STACEY: Yes.

H MRS JUSTICE HILL: -which I have taken out-

A MS STACEY: Which you have taken out.  
MRS JUSTICE HILL: -and then the exhibits-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -are extracted in part because I looked at the chronologies-

B MS STACEY: Yes.  
MRS JUSTICE HILL: -but the exhibits run, I am just seeing it now in index form the exhibits take  
up 236 through to 2205.  
MS STACEY: Yes.  
MRS JUSTICE HILL: According to your index, so, that is because, for example, you have taken

C me to bits of CPG1-  
MS STACEY: Yes, which is the composite chronology-  
MRS JUSTICE HILL: Yes, so, these are the very long exhibits that are-  
MS STACEY: They are.  
MRS JUSTICE HILL: -appended to-

D MS STACEY: Exactly.  
MRS JUSTICE HILL: -was it Lockwood and-  
MS STACEY: It's-  
MRS JUSTICE HILL: -Lashbrook sorry.

E MS STACEY: -Faye Lashbrook and to Mr Garwood-  
MRS JUSTICE HILL: Garwood, Austin-  
MS STACEY: -and also Austin. So, you see there in the index, one exhibit FL1 is at Haven-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -Ms Lashbrook; two is Mr Garwood in relation to Tower-

F MRS JUSTICE HILL: Yes.  
MS STACEY: -three is Ben Austin in relation to stations.  
MRS JUSTICE HILL: Yes.  
MS STACEY: And then combined you've got Mr Chris Pritchard Gamble in relation to all. So,

G those are the exhibits.  
MRS JUSTICE HILL: Yes, I can see it now, so, what you have done is then a similar structure in  
relation to the material placed before the previous judges-  
MS STACEY: Exactly-

H MRS JUSTICE HILL: -you have got the witness orders – sorry, the witness evidence-

A MS STACEY: Pleadings in G yes-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -and H previous orders.  
MRS JUSTICE HILL: But you have got the witness evidence, the statements-

B MS STACEY: And then the witness evidence, exactly, which is what I wanted to take you to and  
then you've got the exhibits in J.  
MRS JUSTICE HILL: Are these – I mean just looking at the list here, Ms Pinkerton has given  
two statements dated 14 April are they separate ones for Haven and for Tower?  
MS STACEY: They are, so, they are, I mean some of those might be to do with service and not so  
C much risk, but I want – I'll be focusing on the risk statements which are-  
MRS JUSTICE HILL: And then-  
MS STACEY: -Brown one-  
MRS JUSTICE HILL: -2609 through to 3563 is the remaining exhibits for the historic – well, they  
D are material placed before the previous judges.  
MS STACEY: Exactly and then you've got the skeleton and then you get to the supplemental  
bundle which contains the additional material in relation to third party disclosure.  
MRS JUSTICE HILL: Yes.  
MS STACEY: The index-

E MRS JUSTICE HILL: So, looking at the supplemental index...  
MS STACEY: So you have got the amended orders which Your Ladyship has already because we  
appended them to the skeleton-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -in the first three tabs. Section B amended pleadings now all that does is if you're  
F with us on taking out extinction, that reflects that-  
MRS JUSTICE HILL: So, they are draft amended pleadings?  
MS STACEY: Yes.  
MRS JUSTICE HILL: And then Alison Oldfield, second statement, I think I have taken out  
G already-  
MS STACEY: Is... is, yes, service-  
MRS JUSTICE HILL: -and then there is the exhibits-  
MS STACEY: -and then you've got the exhibits-  
MRS JUSTICE HILL: Yes.

H

A MS STACEY: -and then you've got the third party disclosure application which we've considered.  
So-

MRS JUSTICE HILL: So, really the key material in the bundles that you still need me to look at  
are the attendance notes of the hearing-

B MS STACEY: Attendance note and the witness evidence.

MRS JUSTICE HILL: And then-

MS STACEY: And the witness evidence is specifically Brown one and two in relation to Haven, if  
you look under-

MRS JUSTICE HILL: Yes.

C MS STACEY: -I, Garwood one and two in relation to Tower.

MRS JUSTICE HILL: Yes.

MS STACEY: Austin one and two in relation to stations. So that would, I think, complete  
Your Ladyship's reading list and then it brings it back to our skeleton argument which is  
where we-

D MRS JUSTICE HILL: All right, well-

MS STACEY: -it threads together in terms of what we say-

MRS JUSTICE HILL: -is it a better use of time that I read the attendance notes, read those witness  
statements-

E MS STACEY: Yes.

MRS JUSTICE HILL: -and then we resume in the morning on that-

MS STACEY: Yes-

MRS JUSTICE HILL: -basis?

F MS STACEY: -and then I need – well, and I've done a lot of the legwork then because our  
position in a nutshell, My Lady, is subject to the point that you were asking about, well,  
what is the proper approach-

MRS JUSTICE HILL: Yes.

G MS STACEY: -but is the – there was – there remains a risk if you apply the serious – or I'll be  
adopting the approach set out in our skeleton argument which is they are – the protection is-  
[Crosstalk]

MS STACEY: -below-

[Crosstalk]

H MS STACEY: -prepared to scrutinise that-

A MRS JUSTICE HILL: Before, not below-  
MS STACEY: Before, rather-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -and there remains compelling evidence of a continued threat which justifies the  
B continuation of the injunctions on materially identical terms. We are not asking for a new  
order here, fundamentally different order, we're simply asking for a continuation of what  
has already been granted. I appreciate that my learned friend might have something to say  
about that but that's our position.  
MR SIMBLET: Yes, but in the – well, you're not - that's not true because in relation to protestors  
C there is a change being made.  
MS STACEY: On materially identical terms, subject to that one point [of amendment?] which I'll  
address you on tomorrow morning.  
MRS JUSTICE HILL: All right, so, in terms of just putting Mr Simblet's position to one side for  
D now, the remainder of your application, if I read that remaining material you will then need  
some time to make further submissions in the morning and you are going to locate various  
documents overnight to provide me with, I think-  
MS STACEY: Which I think consists of, My Lady, sorry to cut across you just to make sure the  
E list is accurate, we've got skeleton arguments before Bennathan and Sweeting; the two  
orders to show you what's been refined in terms of Bennathan's order-  
MRS JUSTICE HILL: Yes.  
MS STACEY: -as compared with Sweeting. And, I think - was there anything else? No. And  
anything I can find overnight to help Your Ladyship about the proper approach which-  
MRS JUSTICE HILL: I mean if there is any other judgment-  
F MS STACEY: Yes.  
MRS JUSTICE HILL: -along the lines of Cavanagh J judgment-  
MS STACEY: Yes.  
MRS JUSTICE HILL: -that talks about the test applied on a review-  
G MS STACEY: Yes.  
MRS JUSTICE HILL: -hearing as you describe it, that would be helpful.  
MS STACEY: Okay. But, yes, well, I shouldn't be overly long in the morning, I think I've done a  
lot of the – once you've read all of that you will see, and our skeleton, you will see what we  
say. And then I suppose I can – should address the terms of the order.  
H

A **Pause.**

MRS JUSTICE HILL: All right. So, I have not reached a final view yet on the position in relation to Ms Branch, you have been contentedly sitting here with Mr Simblet. I do not know in light of how tomorrow morning will play out what that will mean for your position-

B MR SIMBLET: Yes, well-

MRS JUSTICE HILL: I assume you will be here?

MR SIMBLET: I – oh definitely My Lady-

MRS JUSTICE HILL: Yes.

C MR SIMBLET: -and before My Lady rises, in a way that - as the application has unfolded there are a couple of things which have become, in which the way – the issues have narrowed-

MRS JUSTICE HILL: I think-

D MR SIMBLET: -so, for instance, the fact that injunctions are no longer sought in public nuisance means that a lot of the submissions about the highway and so on need – may not need either consideration at all or can have much more restricted consideration and that was one of her concerns. And the other matter and it comes back to where we were this morning in relation to whether the Court ought to be making a – whether there ought to be an application under 40.9 and whether the Court ought to be giving a judgment about it, as My Lady is aware from *Barking* there are several references to 40.9 in *Barking*-

E MRS JUSTICE HILL: Yes.

F MR SIMBLET: -as being one of the safety mechanisms and – in relation to injunctions against persons unknown and if, as it were, there's an element of *Waiting for Godot* in terms of the claimant's approach as to whether they push on for a trial or how they would do that and so on, it may affect whether My Lady considers it useful or efficient for there to be such a ruling because, of course, it is possible after *Barking* that the 40 point – that that focus on 40.9 falls away because of something else that is said by the Supreme Court in their judgments and I see Ms Stacey nodding. So, I am conscious of the fact that it, as a matter of principle and assistance to litigants may be something that My Lady would want to rule upon or assistance upon but such assistance is likely to be time-limited because the – because of the pending decision in *Barking*. But I do have submissions on the point and in my submission there is little difference in Ms Branch's approach here from that which was – from the method by which Richie J acceded to applications to hear – to allow people to make representations under 40.9 in the *Transport for London* case – not the

H

A            *Transport for London* case, no, the more recent one, I don't - the *Esso* case, the *Esso v Breen* case-

MRS JUSTICE HILL: *Breen*, well-

B            MR SIMBLET: -where it was on 20 – he - essentially the order said 24 hours' notice, people turned up at a return date on 24 hours' notice and he decided to do various things, including I think [because adverted to?] by My Lady this morning about putting things off and coming back to the issue of allowing them to make representations. But the – it was on – it was, as it were, a case of somebody turning up-

MRS JUSTICE HILL: Yes.

C            MR SIMBLET: -having given 24 hours' notice on an injunction that said you could turn up on 24 hours' notice. That's all I wanted to say at this point because I know My Lady wants to rise.

D            MRS JUSTICE HILL: Is the, in light of the likely direction of travel tomorrow, and I will have to hear further submissions from your learned friend, would it, in principle, depending on what your learned friend's position is on it, would you be able, Mr Simblet, to address me on how the Richie factors specifically apply or do not to your client? I see your solicitor nodding but that is something that it is not dealt with, I think, by reference to the Richie judgment in your client's witness statement but is that material that you would be able to address me on?

E            MR SIMBLET: Well, that is my – I would hope so but I am not sure to what extent we can get definite and concrete information on all of those points overnight, I will-

MRS JUSTICE HILL: Well, I-

MR SIMBLET: -hope that we-

MRS JUSTICE HILL: -issue that invitation for you to think about that-

F            MR SIMBLET: Of course, yes-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -and it might, yes, I – we will – we are alive to the points that Richie J has said are considerations-

G            MRS JUSTICE HILL: And I think, I mean, assuming that you will be here tomorrow anyway-

MR SIMBLET: Yes.

MRS JUSTICE HILL: -your learned friend has clearly taken a point about delay, your learned friend has made a point that your client has had notice of the issues at least or I do not-

MR SIMBLET: Yes.

H

A MRS JUSTICE HILL: -I mean you have seen the way-

MR SIMBLET: Yes.

B MRS JUSTICE HILL: -in which the point has developed. Now, you might be somewhere in a scenario where deemed service is on a certain date and then there is a 24-hour service provision to bring you back before a return date. But I think I need to have something from you to respond to the point your learned friend has taken if you can.

C MR SIMBLET: Yes, I will think about that overnight, My Lady, of course part of the point is that there is a distinction between service as in the Court being prepared to grant an injunction with all the consequences of an injunction such that somebody goes to prison for breach of an order-

MRS JUSTICE HILL: Yes.

MR SIMBLET: -and the ability of somebody who has not been specifically and directly served to oppose that order before they are brought within its terms for committal-

D MRS JUSTICE HILL: I appreciate that-

E MR SIMBLET: -and that is a distinction that hasn't so far been addressed by my learned friend and is one that, in my submission, provide – is an important matter to bear in mind when one considers the difference between the ability of somebody to say, "I am affected by this" from somebody who isn't specifically brought before the Court by the claimant where obviously-

MRS JUSTICE HILL: No-

MR SIMBLET: -in the latter case different considerations of promptness and you had your opportunity and you didn't show up with all the obviously well-

F MRS JUSTICE HILL: And I have to say I have not reached any final view on Ms Branch's position and how it is most fair to deal with her submissions but I think I might be helped a little further by some points along those lines tomorrow.

MR SIMBLET: Yes.

G MS STACEY: My Lady, just for completeness I am told just so that I don't ambush Mr Simblet tomorrow, on the delay point, a skeleton argument was put in by Ms Branch and, as I understand it, in relation to the Haven injunction and we are going to produce that overnight and it seems to us to be at least relevant to-

MRS JUSTICE HILL: To?

H MS STACEY: -the delay point.



A MRS JUSTICE HILL: At which point in the Haven hearing?

MS STACEY: The return date.

MRS JUSTICE HILL: Well, these are further matters that you perhaps need to discuss amongst yourselves as well-

B MS STACEY: Yes, I just didn't want to bring it to court without having raised it, so-

MRS JUSTICE HILL: But I mean are you both content to proceed on the basis, as far as tomorrow is concerned, that I have not yet been able to reach a view on Ms Branch's role, it may be that ultimately I decide that it simply cannot be fairly dealt with but we will have some further submissions tomorrow about that issue as well as your substantive points-

C MS STACEY: It's evolving, My Lady, we accept that, that's-

MRS JUSTICE HILL: It is what sorry?

MS STACEY: It's evolving – it's an evolving – these things have a-  
[Crosstalk]

D MS STACEY: -tendency to evolve in this way with – I am content with that.

MRS JUSTICE HILL: Thank you. I am grateful, thank you, 10.30.

**Court rises.**

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