

Benjamin Austin
Fourth Witness Statement
Party: Claimant
Date: 14 March 2024
Claim No: QB-2022-001420

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BETWEEN

SHELL U.K. OIL PRODUCTS LIMITED

Claimant

- and -

**PERSONS UNKNOWN DAMAGING, AND/OR BLOCKING THE USE OF OR
ACCESS TO ANY SHELL PETROL STATION IN ENGLAND AND WALES, OR
TO ANY EQUIPMENT OR INFRASTRUCTURE UPON IT, BY
EXPRESS OR IMPLIED AGREEMENT WITH OTHERS, IN CONNECTION WITH
PROTEST CAMPAIGNS WITH THE INTENTION OF
DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION**

Defendants

Fourth Witness Statement of Benjamin Austin

I, **Benjamin Austin** of Shell Centre, London SE1 7NA **WILL SAY AS FOLLOWS:**

1. INTRODUCTION

1.1 I am the Health, Safety and Security Manager for Shell U.K. Oil Products Limited ("**SUKOP**"), who is the Claimant in these proceedings.

1.2 Unless I state otherwise, the facts in this statement are within my knowledge and true. Where the facts are not within my knowledge, they are true to the best of my knowledge and belief, and I identify the source of my knowledge.

1.3 In these proceedings, I have previously given:

1.3.1 a witness statement dated 3 May 2022 ("**My First Witness Statement**");

1.3.2 a witness statement dated 10 May 2022 ("**My Second Witness Statement**");
and

1.3.3 a witness statement dated 30 March 2023 ("**My Third Witness Statement**").

My First Witness Statement, My Second Witness Statement and My Third Witness Statement together referred to as "**My Previous Witness Statements**".

- 1.4 These proceedings are injunction proceedings which concern all "Shell" branded filling stations in England and Wales ("**the Shell Petrol Stations**").
- 1.5 I make this witness statement in support of SUKOP's application for the continuation of the injunctive relief granted by order dated 23 May 2023 of Hill J ("**the Petrol Stations Injunction**") beyond 23:59 on 12 May 2024.
- 1.6 This witness statement is made in conjunction with the second witness statement of Christopher Gamble ("**Christopher Gamble's Second Witness Statement**") – which is made:
- 1.6.1 also in support of SUKOP's application in these proceedings for the continuation of injunctive relief; and
- 1.6.2 in support of separate applications made in related injunction proceedings involving the wider Shell group of companies in respect of Shell Haven Oil Refinery, the Manorway, Stanford Le-Hope ("**Shell Haven**") and Shell Centre Tower, Belvedere Road, London ("**Shell Centre Tower**").
- 1.7 I again wish to make clear that SUKOP (and the wider Shell group of companies) does not seek the continuation of injunctive relief to prevent protestors from undertaking peaceful lawful protests – whether any such protests arise near to or at any of the Shell Petrol Stations or otherwise.
- 1.8 However, for the reasons explained in My Previous Witness Statements and Christopher Gamble's Second Witness Statement, there is a very real, continuing and significant danger and threat to the health and safety of staff, contractors, the general public and other persons that visit the Shell Petrol Stations.
- 1.9 Therefore, and given the nature of the protestor activity experienced, SUKOP considers it necessary to apply for the continuation of the Petrol Stations Injunction. In doing so, SUKOP seeks to prevent potentially unlawful activities and to mitigate against a serious risk of irreparable harm to the health and safety of the Defendants themselves and other members of the public (including the employees and agents of SUKOP) (as explained in My Previous Witness Statements), who may be affected by the Defendants' activities.

2. **THE SHELL PETROL STATIONS**

2.1 As is more fully explained in My Previous Witness Statements:

2.1.1 SUKOP is the world's largest single branded retailer serving approximately 25 million customers per day (approximately 400 million litres of fuel) and provides fuels to a variety of markets.

2.1.2 SUKOP markets and sells retail fuels through the Shell Petrol Stations which constitute a network of "Shell"-branded service stations. The retail network through which fuel is sold in the UK is divided into two main categories: (i) direct; and (ii) indirect. In summary:

2.1.2.1 The direct retail category ("**Shell Owned Sites**") involves a network of retail service stations where SUKOP owns or leases the land where the retail site is located and typically will own the structures and equipment at the site. SUKOP does not actually operate these sites. Day-to-day operations are sub-contracted to a third party retailer, who runs the premises and employs the staff. However, SUKOP has control over most of the operational aspects of the site including hours of operation, health and safety, payment and inventory and the type of goods offered.

2.1.2.2 The indirect retail category ("**Dealer Owned Sites**") involves a network of retail service stations where SUKOP neither owns nor leases nor operates the site. Rather, the retail site is owned/leased, and staffed and operated, by an independent, third party. However, SUKOP:

(a) supplies the dealer with "Shell"-branded retail fuels – typically, the dealer will purchase fuel from SUKOP in bulk, and SUKOP will arrange for delivery of the fuel direct to the storage tankers at the dealer-owned site; and

(b) permits the dealer to use the "Shell" brand and sell "Shell"-branded fuels to consumers at the relevant retail site. Typically, SUKOP will control only the branding on the petrol station forecourt (i.e., the area of the retail site where the fuel is pumped into customer vehicles and sold).

2.1.2.3 SUKOP has much more involvement in the day-to-day running of the Shell Owned Sites than it does over Dealer Owned Sites

(although SUKOP is still heavily involved in the general management and supervision of the Dealer Owned Sites).

2.1.2.4 There are currently 1,083 Shell Petrol Stations in England and Wales. Approximately 533 are Shell Owned Sites and 550 are Dealer Owned Sites. Typically, the Shell Petrol Stations consist of:

- (a) The forecourt – this is the area of the retail site which customers will use (via vehicles and on foot) where the fuel is delivered to vehicles from the fuel pumps, where drivers leave vehicles when visiting the retail store or dealing with issues such as car washing or putting air in tyres, and where fuel lorries offload their fuel;
- (b) the retail store – these are also located on the forecourt and vary in size. Usually, customers will use the stores to pay for their fuels and any other goods purchased from the stores as needed; and
- (c) fuel storage tanks which are usually located under the forecourt.

2.1.2.5 The tanks contain significant quantities of flammable fuel and the management of such fuel at Shell Petrol Stations is largely regulated by the Dangerous Substances and Explosives Atmosphere Regulations 2002 (“DSEAR”). As a result of DSEAR, the operations at Shell Petrol Stations are strictly controlled and involve taking steps to mitigate the risks from working with such dangerous substances. This includes reducing the risk of any unlawful and dangerous activity on or around those locations as such unlawful actions pose a significant health and safety concern, not just for those individuals who work at the stations, but for the individuals carrying out such unlawful and dangerous activities and for the members of the public who are using the services.

3. **BACKGROUND TO THE GRANT OF THE PETROL STATIONS INJUNCTION**

As I have more fully explained in My Previous Witness Statements, Christopher Gamble’s First Witness Statement and as is further explained in Christopher Gamble’s Second Witness Statement:

3.1.1 as well as other businesses operating within the oil and gas industry, the Shell group of companies has become the subject of an increasing number of protests in recent years by protest groups which go beyond peaceful protest;

- 3.1.2 In relation to the Shell Petrol Stations specifically, matters initially escalated, on the morning of 28 April 2022, when a number of protestors targeted two petrol filling stations on the M25, namely at the Clacket Lane service station (which is operated by BP) and the Cobham service station (which is a Shell Petrol Station) in Surrey (the "**Clacket Lane Services**" and "**Cobham Services**" respectively). Those protests are referred to in the judgment of Hill J (by reference to the judgment of Johnson J) at paragraph 18 (a copy of which is exhibited at pages **1 - 42** of **Exhibit BA4**). There was also a reference to wider protests in April/early May 2022 at oil depots in Warwickshire and Glasgow. The protestors' clear aim was to disrupt the operation of the filling stations in various ways. As set out by Hill J at paragraph 19, Johnson J noted that they were "committed to protesting in ways that are unlawful, short of physical violence to the person". He observed that their websites demonstrate this, with references to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time".
- 3.1.3 Amongst other things, they:
- 3.1.3.1 smashed the display screens of fuel pumps with a hammer;
 - 3.1.3.2 covered display screens in spray paint;
 - 3.1.3.3 superglued themselves to the forecourt floor and fuel pumps;
 - 3.1.3.4 superglued themselves to the roof of a cab of a fuel tanker making a delivery of fuel to the Cobham Services; and
 - 3.1.3.5 blocked the entrances to the service station forecourts.
- 3.1.4 Across the Clacket Lane Services and Cobham Services, the media and Police reported that 55 pumps were damaged – out of a total of 71 pumps.
- 3.1.5 On 24 August 2022, protestors disrupted operations at three separate service stations situated on the M25 motorway in Surrey, namely the Cobham Services, Clacket Lane Services and the Thurrock services station ("**the Thurrock Services**") in Surrey– including, again, by vandalising fuel pumps and blocking access to the pumps and the forecourts.
- 3.1.6 Although not Shell Petrol Stations:
- 3.1.6.1 Clacket Lane Services was also targeted as part of the collective protestor action on 24 August 2022, suffering extensive damage on this occasion as the protestors:
 - (a) erected bollards and banners restricting public access to the forecourt; and

(b) damaged fuel pumps by hitting them with break glass hammers and applying spray paint to the smashed pump screens.

3.1.6.2 Thurrock Services also suffered significant damage as the protestors smashed the display screens of fuel pumps with a hammer and covered display screens in spray paint as part of the collective protestor action on 24 August 2022.

3.1.7 On 26 August 2022 Just Stop Oil supporters disrupted seven petrol stations across London (two of which were Shell Petrol Stations at Shell Acton Park Service Station, 213-217 The Vale, London W3 7QS ("**Acton Park**") and Acton Vale, 30 the Vale, W3 7RS London ("**Acton Vale**")), with activists at some petrol stations again causing damage to fuel pumps and blocking access to petrol stations by sitting on the road with banners. In relation to Acton Park specifically, all 8 pumps suffered substantial damage. In relation to Acton Vale (which is situated over the road from Acton Park) a further two pumps were significantly damaged necessitating, in each case, replacement parts.

3.1.8 There were also instances of protest actions taking outside of Shell petrol stations and in a lawful manner.

4. **TARGETING OF PETROL STATIONS SINCE THE GRANT OF THE PETROL STATIONS INJUNCTION**

4.1 The existence of the Petrol Stations Injunction has proved effective in deterring the types of incidents described above and ensuring protests that are carried out at Shell Petrol Stations are lawful.

4.2 I say this as, whilst protestors have continued to carry out a concerted ongoing campaign of protest activity to target the activities of the oil and gas industry more broadly, I am not aware of any like instances of unlawful protest at Shell Petrol Stations since the grant of the Petrol Stations Injunction in May last year.

5. **CONTINUING HEALTH & SAFETY CONCERNS**

5.1 There are self-evidently health and safety risks that arise from these types of protest, in addition to financial damage and physical damage to equipment.

5.2 The risks were summarised by Johnson J at paragraphs 18 and 19 (and referred to in Hill J's judgment at paragraph 20):

"18. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour

does not disperse easily and can travel long distances. There is therefore close regulation...

19. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason. The evidence shows that at the protests on 28 April 2022 protestors used mobile phones on the forecourts to photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations."

5.3 My Previous Witness Statement sets out the health and safety concerns arising from the unlawful activities experienced in detail. Those concerns have not changed and by way of summary remain the same. For the purposes of this statement, I would reiterate that:

5.3.1 The health and safety of SUKOP's staff, the staff of its contractors, and of the general public, is of paramount importance. Matters affecting health and safety are given the highest priority at SUKOP and also within the wider Shell group of companies more generally. This is reflected in what is referred to as the 'Goal Zero Ambition': that is, that nobody who works for or with SUKOP or within the wider Shell group of companies should be harmed. We strive to achieve this by upholding consistently high safety standards across all businesses and expect all employees and contractors to meet those standards.

5.3.2 The fuels sold at the Shell Petrol Stations are potentially very dangerous substances, not least because they are highly flammable liquids and are present in large volumes (both within the individual pumps and the underground storage tanks).

5.3.3 The way in which fuel, and petrol filling stations, are managed and operated is tightly regulated. In the UK, for example, petrol filling stations fall within the scope of the DSEAR which relates to the risks from fire, explosions and similar events arising from dangerous substances in the workplace. DSEAR imposes various requirements on petrol filling station operators to identify and take steps to mitigate those risks.

5.3.4 The industry guidance "*Petrol Filling Stations – Guidance on Managing the Risks of Fire and Explosion*" dated October 2018 (which is referred to as "The Red Guide" – a copy of which is exhibited at **pages 43 - 151 of Exhibit BA4**). This sets out industry best practice on the management of these risks at petrol filling stations. It includes a section (at paragraph 7.2 - see **page 68** of

Exhibit BA4) regarding the requirements of DSEAR which apply to petrol filling stations, and the industry best practice as regards the controls that should be adopted to protect areas where explosive atmospheres may occur from sources of ignition. The pumps are in a zoned area that has the potential to have a level of fuel vapour in the air that could be ignited by uncontrolled activities when strict fire risk management controls are not in place and adhered to. Consequently, very careful steps must be taken at petrol filling stations to ensure that areas of particular risk are identified and that significant steps are taken to ensure that those areas are isolated so far as possible from ignition risks.

5.3.5 By way of further example, the Health and Safety Executive ('HSE') guidance on: (i) '*Storing petrol safely*' (a copy of which is exhibited at **pages 152 - 155** of **Exhibit BA4**); and (ii) '*Dispensing petrol as a fuel: health and safety guidance for employees*' (a copy of which is exhibited at **pages 156 - 160** of **Exhibit BA4**) explains in plain terms the risks which are posed by petrol to health and safety when it is not handled and stored properly. In particular, I refer to the following passages:

5.3.5.1 '*Storing petrol safely*' - on the risks posed by petrol generally when it is not stored correctly: "*[petrol] can easily be set on fire and when not handled safely has the potential to cause a serious fire and/or explosion. This means there is always a risk of a fire and/or an explosion if there is a source of ignition nearby, for example a naked flame, an electrical spark or similar. Because of these risks storing petrol safely is covered by legislation; and this applies to you if you store petrol*"; and

5.3.5.2 '*Dispensing petrol as a fuel: health and safety guidance for employees*' - in respect of the specific dangers posed by sites dispensing petrol, such as a petrol station:

"Petrol - the dangers

- *Petrol is a highly flammable liquid which can give off flammable vapour, even at very low temperatures. This means there is always a risk of fire or explosion if a source of ignition is present;*
- *It floats on the surface of water and may travel long distances, eventually causing danger away from the place where it escaped;*

- *Petrol vapour does not disperse easily and may also travel long distances. It tends to sink to the lowest possible level and may collect in tanks, cavities, drains, pits, or other enclosed areas, where there is little air movement;*
- *Flammable atmospheres may be present in empty tanks and petrol cans. There is also a danger if petrol is spilled on clothing, rags etc;*
- *Petrol vapour can be harmful if inhaled. Petrol should not be swallowed and contact with the skin should be avoided”.*

5.3.6 Any work or activity in the area of the pumps must be strictly controlled and managed. I refer in this regard to the Highway Code (updated 17 September 2023) which states (at Annex 6) that in respect of “*Petrol stations/ fuel tank/ fuel leaks [...] Never smoke, or use a mobile phone, on the forecourt of petrol stations as these are major fire risks and could cause an explosion*” (a copy of these pages is exhibited at **pages 161 - 166** of **Exhibit BA4**).

5.3.7 SUKOP continues to be very concerned that acts of sabotage to equipment on the forecourt of a Shell Petrol Station are potentially extremely dangerous – for example if protestors were to inflict damage to fuel pumps which results in fuel leakage of any nature or any volume (including fuel vapours), clearly it would not be possible to comply with the best practice petrol storage management guidance. More concerning however, the possibility of a fire or an explosion occurring would be significantly increased (with potentially catastrophic and fatal consequences).

5.3.8 By way of further explanation (and whilst specific fuel pump structures may vary) the pumps will inevitably contain some residual elements of fuel within them (for example in the drip tray or in the nozzles themselves). Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The risk is further heightened by protestors gluing themselves to parts of the forecourts which could hinder their escape in the event of a fire or similar.

5.3.9 Tragically the lives of several service station employees in Pakistan were lost in 2021, for example, when vapour clouds were ignited during routine operations. This reinforces SUKOP’s very real concerns regarding the escalation of risk caused by the protestor activities experienced to date, and which I anticipate will continue.

6. **RISK OF FURTHER ACTION**

- 6.1 The Petrol Stations Injunction appears to have had a deterrent effect.
- 6.2 Taken together with the wider context of protest activities and the fact that anti-fossil fuel and environmental protest campaigns are ongoing (as outlined in Christopher Gamble's Second Witness Statement), I consider that there is a continued and ongoing health and safety risk presented by protesters who engage in unlawful and dangerous activities at petrol station sites.
- 6.3 It is of paramount importance to SUKOP to protect the health and safety of its employees, the members of the public and the protesters. SUKOP remains extremely concerned that future unlawful protest will occur at Shell Petrol Stations, potentially endangering life and limb, if the Shell Petrol Stations do not remain adequately and appropriately protected with the assistance of the Court. There are hazardous substances involved with most, if not all, of the activities described in this statement.
- 6.4 I would reiterate again that SUKOP does not seek the continuation of injunctive relief to prevent protestors from undertaking peaceful lawful protests – whether any such protests arise near to or at any of the Shell Petrol Stations or otherwise. However, the actions of some protestors engaging in unlawful and dangerous activities, as outlined in detail in My Previous Witness Statements, do, I believe, go beyond what can be reasonably or safely tolerated – warranting the continuation of the Petrol Stations Injunction. This is especially so in the light of the very serious (potentially fatal) consequences if there were to be an incident of fire or explosion at a Shell Petrol Station as a result of onsite unlawful and dangerous activity. SUKOP simply feels compelled to take whatever steps it can to protect its employees and members of the public.

7. **THE WARNING NOTICES**

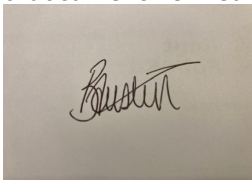
- 7.1 I can confirm that Warning Notices were affixed to the Shell Petrol Stations in accordance with the terms of the Petrol Stations Injunction.
- 7.2 Since the Warning Notices were originally put up, SUKOP has, in respect of Shell Owned Sites and Dealer Owned Sites, instigated a maintenance regime to ensure that the Warning Notices remain in situ. This consists of two teams attending petrol stations to ensure that the Warning Notices are displayed. There are the:
- 7.2.1 Commercial Territory Managers ("CTMs") who liaise and manage the sites within their specific region. CTMs liaise with the relevant operational representatives to ensure the wider commercial objectives of SUKOP are reached and achieved at an operational level; and
- 7.2.2 Food Service Centre ("FSC") – who have a number of responsibilities, one of which is to audit the standards across the network of Shell Petrol Stations against

a prescribed set of Key Performance Indicators (as to which the maintenance of Warning Notices is one).

- 7.3 Where it is identified that a Shell Owned Site is not compliant, steps are taken to ensure that Warning Notices are printed off and rectified.
- 7.4 In respect of the Dealer Owned Sites, as explained above, the dealers have more autonomy over the day-to-day running of the sites. As such, from a logistical perspective it is challenging to continually monitor compliance.
- 7.5 That being said, SUKOP is nonetheless involved in the general supervision and management of the Dealer Owned Sites and has issued and continues to issue clear instructions and expectations to each operator setting out precisely where the Warning Notices should be placed.
- 7.6 In addition, SUKOP (via the CTM's that carry out at least quarterly visits at the Dealer Owned Sites), checks Warning Notices are displayed as part of site visits. If there are Dealer Owned Sites that do not have the Warning Notices displayed, new signage is ordered and instructions re-issued to the relevant dealer.
- 7.7 SUKOP has, therefore, made (and continues to make) every effort it reasonably can to ensure the Warning Notices continue to be affixed at the Shell Petrol Stations.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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Benjamin Austin

Dated: 14 March 2024