

Claim No: QB-2022-001241 (“Shell Haven Proceedings”)
Claim No: QB-2022-001259 (“Shell Centre Tower Proceedings”)
Claim No: QB-2022-001420 (“Shell Petrol Stations Proceedings”)

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

B E T W E E N :

(1) SHELL U.K. LIMITED

Claimant: (QB-2022-001241)

(2) SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant (QB-2022-001259)

(3) SHELL U.K. OIL PRODUCTS LIMITED

Claimant (QB-2022-001420)

- and -

PERSONS UNKNOWN
[more fully described in the Relevant Claim Form]

Defendants

CLAIMANTS’ SKELETON ARGUMENT

(Hearing 25-26 APRIL 2023)

References to pages of the Core Hearing Bundle are in the form [x/y/zz] are to page zz behind numbered tab y behind lettered tab x

References to the Supplementary Bundle are in the form [SB/x/y/zz] are to page zz behind numbered tab y behind lettered tab x

References to the authorities bundle are in the form [AB/x/yy] are to authorities bundle, tab x behind page yy

Suggested Pre-Reading (Time Estimate: 3 hours)

1. *Shell U.K. Oil Products Ltd v PU* [2022] EWHC 1215 (QB) (“*SUKOP v PU*”) [AB/5/147-164]
2. Shell Petrol Stations Application Notice [A/5/23]¹
3. Shell Petrol Stations Draft Order [Appended to this skeleton]
4. First Witness Statement of Chris Prichard-Gamble (“Prichard-Gamble 1”) [E/4/185-209]
5. Overall Chronology [F/4.a/ 934 – 965]
6. First Witness Statement of Alison Judith Oldfield (“Oldfield 1”) [E/5/210-235]
7. Second Witness Statement of Alison Judith Oldfield (“Oldfield 2”) [SB/C/1/33-55]
8. First Witness Statement of Fay Lashbrook (“Lashbrook 1”) [E/1/140-150]
9. Third Witness Statement of Keith Garwood (“Garwood 3”) [E/2/151-165]
10. Third Witness Statement of Benjamin Austin (“Austin 3”) [E/3/166-184]
11. Third Party Disclosure Order (Shell Petrol Station Proceedings) Application Notice [SB/E/1/384-389]
12. Third Witness Statement of Alison Judith Oldfield (“Oldfield 3”) [SB/E/3/392-395]
13. Third Party Disclosure Order - Draft Order [SB/E/2/390-391]

Introduction

1. This skeleton argument is made in respect of the three claims identified above (“**the Claims**”)². This hearing is the review of three interim injunctions which were granted at the first hearing in respect of the Claims by the orders of Bennathan J dated 3 May 2022 (“**Shell Haven Injunction Order**”)³, Bennathan J dated 3 May 2022 (“**Shell Centre Tower Injunction Order**”)⁴ and Johnson J dated 17 May 2022 (as amended on 20 May 2022) (“**Shell Petrol Stations Injunction Order**”)⁵ (together “**Shell Orders**”). The review is sought pursuant to applications made in respect of each of the Shell Orders (“**Applications**”).

¹ The Application Notice in respect of the two other claims are materially the same save they do not contain any application to amend the claim form and particulars of claim.

² The Claims have been listed to be heard together pursuant to the Order of Fraser J dated 28 February 2023 [C/1/97-98].

³ This injunction is due to expire on 2 May 2023.

⁴ This injunction is due to expire on 2 May 2023.

⁵ This injunction is due to expire at 1600 on 12 May 2023.

2. As expressly stated in the recitals to each of the Shell Orders, the purpose of the relief is not to prohibit any lawful protests. Rather, it is necessary to continue the injunctive relief to prohibit the unlawful direct-action protest activities, which form the subject of the Shell Orders, in light of the ongoing risk of such activities being carried out and to prevent the potentially serious and irreparable harm that would be associated with such activities.
3. Between them:
 - a. C1 and C2 are the freehold or leasehold owners of the Shell Haven Oil Refinery (“**Shell Haven**”) and the Shell Centre Tower (“**Shell Centre Tower**”) which comprise a substantial fuel storage and distribution installation and an office building;
 - b. C3 markets and sells fuels to retail customers in England and Wales through a network of “Shell-branded” petrol stations (“**Shell Petrol Stations**”). The stations are operated, in part, by third party contractors, but the fuel is supplied by C3. In some cases, C3 has an interest in the land where the Shell petrol station is located.
4. By the Claims, Shell have sought interim and final injunctions to restrain unlawful protest activity at Shell Haven, Shell Centre Tower and the Shell Petrol Stations (**together “the Sites”**).
5. The threat which provoked the Claims and the applications for the interim injunctions, and which justifies its continuation, is disruptive protest under the banners of Just Stop Oil (“**JSO**”), Youth Climate Swarm Movement (“**YCS**”), Extinction Rebellion (“**XR**”) and Scientist Rebellion (“**SR**”). These entities are associated with, and have grown out of, other climate protest movements: Extinction Rebellion (“**XR**”) and Insulate Britain (“**IB**”) (altogether known as “**the Protest Groups**”). Johnson J described the groups as follows (*SUKOP v PU* at [9]) [**AB/5/149**]:

“Insulate Britain, Just Stop Oil and Extinction Rebellion are environmental protest groups that seek to influence government policy in respect of the fossil fuel industry, so as to mitigate climate change. These groups say that they are not violent. I was not shown any evidence to suggest that they have resorted to physical violence against others. They are, however, committed to protesting in ways that are unlawful, short of physical violence to the person. Their public websites demonstrate this, with references to “civil disobedience”, “direct action”, and a willingness to risk “arrest” and “jail time” [emphasis added].
6. In April/May 2022, individuals connected with these groups undertook various activities with the apparent aim of causing maximum disruption to Cs’ lawful activities and thereby

generate publicity for their protest movement. A summary of the key incidents is set out at Prichard-Gamble 1 at §3.4 [E/4/189-192].

7. By the Applications, at this hearing Cs seek the following:
 - a. that the injunctions granted in the Shell Orders be continued in the form of the draft orders or alternatively, in such form as the Court thinks fit;
 - b. permission for alternative service of any order granted and ancillary documents pursuant to CPR rr.6.15 and 6.27;
 - c. permission to amend the description of the defendant in the claim form and Particulars of Claim in the Shell Petrol Stations Proceedings pursuant to CPR rr.19.4(1) and 17.1(3);
 - d. a third party disclosure order against the Commissioner of the Metropolitan Police in the Shell Petrol Stations Proceedings.
8. The relief sought by Cs in the extension to the injunction is, save for the determination on duration, materially identical to the relief obtained via the Shell Orders. The real issue before the Court is whether the evidence of events that have taken place since the grant of those orders provides any grounds for declining to continue the injunctions on materially identical terms.

Factual Background

9. The full factual background to the Shell Orders is set out at §§3.1-4.1 of Prichard-Gamble 1 [E/4/189-195] and is not repeated here.

Continuation of the Injunction

10. The relief sought by Cs in the extension to the injunctions is, save for the determination on duration, materially identical to the relief obtained in the Shell Orders. For ease of reference, this skeleton argument addresses the Applications together on the basis that the issues and legal principles applicable to each Shell Order are identical and the evidential foundation for the Applications is materially similar. Where there are specific issues relating to individual Shell Orders, those are identified below.

The Original Threat

11. The factual allegations and the basis on which the Shell Petrol Stations Injunction Order was sought, as they stood on 13 May 2022, are fully set out by Johnson J in his judgment in *SUKUP v PU* dated 20 May 2022 and are not repeated here: at [10] – [17].
12. In respect of the Shell Centre Tower Injunction Order and Shell Haven Injunction Order, the basis of Cs’ view that there was a real and imminent risk of unlawful activity directed at Cs and the wider Shell group of companies is fully set out in:
 - a. Brown 1 [I/2/2508 – 2523] and Brown 2 [I/4/2531 – 2537] made in respect of the Shell Haven Proceedings; and
 - b. Garwood 1 [I/8/2550 – 2558] and Garwood 2 [I/10/2563 – 2569] made in respect of the Shell Centre Tower Proceedings.
13. There is a well-documented background of past direct-action protest targeted at sites owned or operated by those involved in or connected with the oil industry and past statements of intention by protest campaign groups to engage in confrontational direct-action activities which led to the grant of a series of injunctions by the courts to Cs and other companies in the oil/gas industry.

Continued Threat

14. The issue before the Court is whether the evidence of events that have taken place since the granting of the Shell Orders provides grounds for declining to extend the injunction on materially identical terms.
15. The basis of Cs’ view that there continues to be a real and imminent risk of serious harm is set out in Prichard-Gamble 1 at §§6.1-6.10 [E/4/197-206], namely that since the grant of the Shell Orders, Cs, the wider Shell business and the wider oil and gas industry and operators have continued to be subject to unlawful direct action. A summary of the key specific incidents in respect of all three Cs is set out in Prichard-Gamble 1 at §§6.5-6.10 [E/4/198-206]. Cs wish to highlight some of the key specific incidents in respect of each of the Sites:

a. Petrol Station Sites⁶ [E/4/198]

- i. 24 August 2022 – protestors disrupted operations at three separate service stations on the M25: vandalising fuel pumps, supergluing themselves to the forecourt and blocking customers’ access to the forecourt and fuel pumps;
- ii. 26 August 2022 – 51 JSO protestors disrupted operations at seven petrol stations across London: vandalising fuel pumps and blocking customers’ access to the forecourt and fuel pumps.

b. Corporate Buildings⁷ [E/4/198]

- i. there have been no instances of unlawful activity at Shell Centre Tower since the Shell Centre Tower Injunction Order was granted, however it continues to be a prime location for protests as demonstrated by protests which have taken place in the vicinity of the building, as set out in the Shell Tower Chronology [F/2/521]. C2 submits that the injunction has had a deterrent effect and that the continued threat is clearly demonstrated by fact that there have been 30 protests against Shell and other corporate buildings associated with the oil and gas industry between 8 May 2022 and 25 March 2023 since the injunctive relief was granted and by the broader protests activities set out in the Overall Chronology [F/4a/934-965].
- ii. The lack of unlawful activity at Shell Centre Tower since the injunction was granted is testament to its deterrent effect. The fact that protests have continued, but not involved unlawful activity, demonstrates that the injunction is effective and necessary and the evidence that protests will take place at Shell Centre Tower unless restrained by injunctive relief is as strong now as it was before Bennathan J.

c. Oil Refinery Sites⁸ [E/4/199]

- i. August/September 2022 – protestors targeted operations of a number of oil refineries located in Kingsbury, Warwickshire. The main road used to access the

⁶ The incidents related to the Shell Petrol Stations Proceedings are described in more detail in Austin 3 [E/3/166-184].

⁷ The incidents related to the Shell Centre Tower Proceedings are described in more detail in Garwood 3 [E/2/151-165].

⁸ The incidents related to the Shell Haven Proceedings are described in more detail in Lashbrook 1 [E/1/140-150].

site was closed as a result of protestors tunnelling underneath it along with access road blocked by protestors forming a sit-down roadblock.

- ii. 28 August 2022 – eight protestors were arrested after blocking an oil tanker in vicinity of Gray’s Oil Terminal in West Thurrock – protestors climbed on top and deflated the tanker’s tyres;
- iii. 14 September 2022 – 50 protestors acted in breach of an injunction obtained by North Warwickshire Borough Council by protesting in an unlawful manner outside of Kingsbury Oil Terminal;
- iv. 14 February 2023 – activists associated with XR blocked access to a private jet terminal at Luton Airport.

16. In relation to broader incidents of direct-action protest against Cs, the wider Shell business and the wider oil and gas industry and operators within it, Cs are aware that:

- a. May 2022 – JSO issued a call in May 2022 for the seizure of Shell’s assets and to use them to cut energy bills and fund a fair transition to net zero including renewables, insulation and free public transport: Prichard-Gamble 1 at §6.6.1 [E/4/200];
- b. May 2022 – protestors targeted Shell’s annual shareholder meetings, disrupting the meeting and gluing themselves to chairs and parts of the building hosting the AGM and telling shareholders “*we will dismantle you*”: Prichard-Gamble 1 at §6.6.2 [E/4/200];
- c. 30 November 2022 – an article was published recording a JSO spokesman saying that JSO will “*continue to escalate unless the government meets our demand to stop future gas and oil projects*” and “*we’re going to do everything we can*”: Prichard-Gamble 1 at §8.3.1 [E/4/207];
- d. 31 January 2023 – six protestors representing Greenpeace boarded and occupied a floating production and storage facility owned by Shell while it was being transported on board a vessel to Norway as part of their “Stop Drilling Start Paying” Campaign. This was an inherently and exceptionally dangerous action taken by the protestors: Prichard-Gamble 1 at §6.6.22 [E/4/204];

- e. 14 February 2023 – JSO issued an “*ultimatum letter to 10 Downing Street*” which requested assurances that the UK government would “*immediately halt all future licensing and consents for the exploration, development and production of fossil fuels in the UK*” and threatening that the failure to provide the same by 10 April 2023 means they would be forced to “*escalate*” their campaign. The 10 April has now come and gone with (unsurprisingly) no such assurance from the UK government: Prichard-Gamble 1 at §8.3.4 [E/4/208];
 - f. JSO continues to engage in substantial and significant direct action against Shell and others involved in the fossil fuel industry. The Court is referred to the Overall Chronology and Prichard-Gamble 1 at §6.6.2-24 [E/4/200-205].
17. Given the target of their campaign, the continued statements and the past and ongoing activity, there is a real and imminent risk that companies involved in the oil and gas industry (including Cs) and their assets will continue to be the subject of one or more campaigns by direct-action protest groups during the course of the next year. The most recent update from police intelligence is that there continues to be an ongoing threat (Pritchard-Gamble 1 at §6.7 [E/4/205]). The evidence demonstrates that
- a. the protest campaign is far from over,
 - b. the Protest Groups will continue to attempt to put pressure on the government to halt new investment in fossil fuels; and
 - c. Shell and its assets will continue to be a target.
18. Further, three things are apparent:
- a. JSO has an ability to draw on a large cadre of protestors with a high level of crossover between individual protest groups;
 - b. those individuals are willing to be arrested in pursuance of their goals; and
 - c. they use a variety of tactics which attract high media and public interest and target locations across the UK.

Harm

19. In addition to the gravity of the potential harm and some of the anticipated consequences of unlawful protest activity, the broader impact of such activity at the Sites is further addressed in *SUKOP v PU* at [18] – [19]. In summary:

- a. the Shell Haven and the Shell Petrol Stations store significant quantities of potentially flammable petroleum products. If protestors were to carry out a more elaborate activity (either in terms of the simple number of protestors attending or the actual actions undertaken) involving any of Cs’ sites, Cs have a legitimate concern that if the injunction were not in place, there is a real risk of a potentially very serious incident which would cause grave and irremediable harm to the protestors, Cs’ staff and/or the public which would be incapable of *ex post facto* remedy: Prichard-Gamble 1 at §6.10 [E/4/206];
- b. further unlawful activity at Shell Centre Tower presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and others: see also Prichard-Gamble 1 at §8.2 [E/4/207];
- c. Cs and others have suffered loss and damage by reason of the Protest Groups’ activities: see also Prichard-Gamble 1 at §7.1 [E/4/206].

20. It is clear from the evidence that unlawful protest at the Sites remains a continuing and real threat and that the consequences of such activity remain just as serious as before. The evidence of events that have taken place since the granting of the Shell Orders provides clear grounds for continuing the injunctions.

The Law

21. The relevant considerations that must be taken into account in a continuation application were recently set out by Cavanagh J in *TfL v Lee* [2023] EWHC 402 (KB) at [28]⁹ [AB/7/201-202]:

- a. Whether the named Defendants have been properly identified, on a proper evidential basis?

⁹ Following his review of the judgment of Freedman J in *TfL v Lee* [2022] EWHC 3102 [AB/6/165-191].

- b. Applying the well-known test in *American Cyanamid v Ethicon* [1975] AC 396, whether there is a serious issue to be tried?
- c. Whether damages are an adequate remedy?
- d. Whether injunctive relief should be refused because this is in the form of a precautionary injunction, or because an injunction would infringe the rights of the defendants under Article 10 and Article 11 of the European Convention on Human Rights?
- e. Whether the balance of convenience is in favour of continuing the relief?
- f. The effect of section 12 of the Human Rights Act 1998 (“HRA”).

Submissions

Whether the named Defendants have been properly identified, on a proper evidential basis

22. Unlike in *TfL v Lee*, no defendants have yet been joined as persons falling within the category of Persons Unknown. As set out in Oldfield 1, since the grant of the injunctions, Cs have taken steps in relation to the Claims to effect service (at §§5.1 – 5.3 [E/5/219-223]), to liaise with the relevant police forces in an effort to identify persons falling with the description of the persons unknown and to comply with the undertaking to join such persons as Named Defendants to the Shell Orders as soon as reasonably practicable following the provision of their names and addresses by the police: §§4.1 – 4.4 [E/5/215-219].
23. Since then, on 29 March 2023 Surrey Police provided the names and addresses of individuals arrested at Clacket Lane and Cobham motorway services on 28 April 2022 and 24 August 2023. However, despite their request Cs have not yet received any details of the arrests or sufficient information to enable them to consider whether those individuals have been identified as persons unknown on a proper evidential basis as to justify an application for their joinder, in accordance with the approach set out by Freedman J in *TfL v Lee* [2022] EWHC 3102 at [71-79] [AB/6/181-183] (and referred to by Cavanagh in *TfL v Lee* [2023] EWHC 402 at [28(i)] [AB/7/201]). Following a request by C3 for voluntary disclosure, the Metropolitan Police has confirmed that it requires an order from the court (as has been the consistent position of all police forces to date) and C3 therefore seeks a third party

disclosure order to enable it to obtain names and addresses of those who were arrested at Shell Acton Park Service Station and Shell Acton Vale Petrol Station on 26 August 2022, which is addressed below.

Whether there is a serious issue to be tried

24. In respect of the Shell Petrol Stations Proceedings, C3 relies on the reasons given by Johnson J in *SUKOP v PU* at [25] – [31] and submits there is a serious issue to be tried as to whether Ds are committing the tort of conspiracy to injure by unlawful means.
25. As to the Shell Haven and Shell Centre Tower Proceedings, Bennathan J has already fully considered this issue. C1 and C2 submit the injunctions sought in the proceedings only restrain acts which are, by their nature, tortious:
- a. Trespass to Cs' land;
 - b. Public nuisance, in the form of obstruction of the highway occasioning particular damage to Cs: *Ineos Upstream* [2017] EWHC 2945 (Ch), per Morgan J at [44]-[46];
 - c. Private nuisance, in the form of unlawful interference with Cs' right of access to its land via the highway: *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 at [13];
 - d. Private nuisance, in the form of substantial interference with the exercise by Cs of a private right of way: **Gale on Easements (21st ed)** at §13-01.
26. Given the nature of the threatened activity, the relevant conduct would also be likely to give rise to further causes of action entitling Cs to similar relief, such as conspiracy to cause injury to Cs' lawful activities at the Sites and the 'supply chain' to and from the Sites by committing unlawful acts (the torts already referred to above; obstruction of the highway contrary to s. 137 of the Highways Act 1980, and possibly causing danger to road-users contrary to s.22A of the Road Traffic Act 1988).
27. The remedy which Cs seek is an injunction. Clearly damages cannot be an adequate final remedy in the present case but, in any event, a person whose proprietary interests in land are being unlawfully interfered with is *prima facie* entitled to an injunction to restrain that continuing interference.

28. Accordingly (but subject to the further issue of potential interference with Ds' Convention¹⁰ rights, addressed below in relation to the balance of convenience), there can be no doubt that there is a serious question to be tried in this action.

Whether damages are an adequate remedy

29. In respect of the Shell Petrol Stations Proceedings, C3 relies on the reasons given by Johnson J in *SUKOP v PU* at [33] – [36] and submits damages are not an adequate remedy.

30. As to the Shell Haven and Shell Centre Tower Proceedings, Bennathan J has already fully considered this issue. C1 and C2 submit:

- a. damages would not prevent any further unlawful protests;
- b. any loss would in any case be impossible to quantify; and
- c. *“there is...no evidence that the defendants have the financial means to satisfy an award of damages. It is very possible that any award of damages would not, practically, be enforceable. Further, the defendants' conduct gives rise to potential health and safety risks. If such risks materialise then they could not adequately be remedied by way of an award of damages to the claimant”*: Johnson J in *SUKOP v PU* at [34] [AB/5/156-7].

31. Finally, Cs have offered a cross-undertaking in damages, in the highly unlikely event that it might be necessary to rely upon it: Oldfield 1 at §§7.1 - 7.2 [E/5/235].

Whether injunctive relief should be refused because this is in the form of precautionary injunction, or because an injunction would infringe the rights of the defendants under Article 10 and Article 11 of the European Convention on Human Rights

32. The fact that the injunctions sought are precautionary is not a reason to refuse a continuation. First, interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify precautionary relief. The injunctions arise out of conduct having taken place and the tests for precautionary relief are

¹⁰ European Convention on Human Rights.

satisfied. In respect of the Shell Petrol Stations Proceedings, C3 relies on the reasons given by Johnson J in *SUKOP v PU* at [40] – [42] [AB/5/157] and further submits:

- a. there is already evidence of harm (see paragraph 19 above);
- b. there continues to be a “real” and “imminent”¹¹ risk of an infringement of Cs’ rights;
- c. if such an infringement occurred, harm might eventuate which was sufficiently “grave and irreparable” that damages would not be an adequate remedy: see Marcus J Smith *Vastint Leeds BV v. Persons Unknown* [2018] EWHC 2456 (Ch)¹² at [31] [AB/1/3-16]. Cs may not have a further opportunity to seek injunctions before a further unlawful protest causes actionable harm.

33. Second, as to the balancing exercise required by the impact of the injunctive relief upon Ds rights under Article 10 and Article 11 of the Convention, Cs rely on the reasoning of Johnson J in *SUKOP v PU* at [37] [AB/5/157]:

“The injunction interferes with rights of expression and assembly, but it does not impact on the core of those rights. It does not prevent the defendants from congregating and expressing their opposition to the claimant’s conduct (including in a loud or disruptive fashion, in a location close to [the Sites]), so long as it is not done in a way which involves the unlawful conduct prohibited by paragraphs 2 and 3 of the injunction. To the extent that there is an interference with rights of assembly and expression then (if a court subsequently finds that to be unjustified) that can be met by the cross-undertaking: interferences with such rights to assembly and expression can be remedied by an award of damages, even where the loss is not monetary in nature (see section 8 of the Human Rights Act 1998).”

See also Johnson J at [55 – [62] [AB/5/160-162], the guidance of the Supreme Court in *DPP v Ziegler* [2022] AC 408 (per Lord Sales JSC at [125]) and the observations made by Lord Neuberger in *Samede* [2012] PTSR 1624 [at 41]. Cs submit this analysis applies to all three Shell Orders.

34. Further, in relation to the Shell Haven Injunction and the Shell Tower Injunction Orders, they prohibit trespass onto private property, which would breach private law rights. The case law has all but confirmed that Articles 10 and 11 provide no protection to those protesting on privately owned land (see for example, *DPP v Cuciurean* [2022] 3 WLR 446

¹¹ The language of “Imminence” means only that the remedy is not being sought prematurely: *Vastint Leeds BV v. Persons Unknown* per Marcus Smith J at [31(4)(d)] [AB/1/12].

¹² Endorsed by the Court of Appeal in *Barking & Dagenham* [2022] EWCA Civ 13 at [83] [AB/3/62-3].

(DC) at [46]) and, in respect of this, C1 and C2 are protected by their Article 1 Protocol 1 rights.

35. Cs thus submit that balancing the relevant considerations, continuation of the injunctions strikes a fair balance between the rights of individual protestors and the general interest of the community, including the rights of others. In this regard, it is highly relevant that the relief sought by Cs in the extension to the injunction is, save for the final determination on duration, materially identical to the relief obtained via the Shell Orders.

Whether the balance of convenience is in favour of continuing the relief

36. Cs submit the fact that damages are not an adequate remedy but the cross-undertaking is adequate protection for Ds means it is not necessary separately to consider the balance of convenience: *SUKOP v PU* at [38] [AB/5/157].

37. In respect of the Shell Petrol Stations Proceedings, Cs rely again on the reasoning of Johnson J in *SUKOP v PU* at [39] [AB/5/157]:

“the balance of convenience favours the grant of injunctive relief. If an injunction is not granted, then there is a risk of substantial damage to the claimant’s legal rights which might not be capable of remedy. Conversely, it is open to the defendants (or anybody else that is affected by the injunction) at any point to apply to vary or set aside the order. Further, although the injunction has a wide effect, there are both temporal and geographical restrictions.”

38. Cs submit this analysis, save for the final sentence, applies equally to the Shell Haven and Shell Centre Tower Proceedings, and even more strongly since those orders do not have such wide effect.

39. Cs further submit that “*the protesters either give no warning of their protests, or rarely give sufficient details about their nature/location for the claimant to react effectively. Protests also frequently change and move on the day itself, partly in response to policing and other crowd management*”: see Cavanagh J in *TfL v Lee* at [28(v)].

40. As such, the balance of convenience is in favour of continuing the relief.

Section 12 of the HRA

41. Section 12 of the HRA was the subject of careful consideration by Bennathan J and Johnson J and is reflected in the grant of Shell Orders.

42. In any event, Cs rely on the reasoning of Johnson J in *SUKOP v PU* at [63] – [76] and make the following points in respect of the applications to continue before the Court today:
- a. Section 12(2) of the HRA requires Cs to take all practical steps to notify Ds of the applications, or else that there are compelling reasons not to notify the defendants. This matter is dealt with in Oldfield 2 [SB/C/1/33-55]. Cs have complied with this requirement.
 - b. In respect of s.12(3) of the HRA, Cs rely on the finding of Johnson J that it does not apply (at least in respect of the Shell Petrol Stations Proceedings), and in any event, Cs are likely to succeed at a final trial: at [66] – [76].

Persons Unknown

43. Cs submit it remains appropriate to include persons unknown amongst the category of defendants. The descriptions of the persons unknown accords with the procedural guidelines set out by the Court of Appeal in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 at [82] [AB/2/37-38] and are sufficiently precise to identify the relevant defendants as the descriptions target their conduct. If further direct-action protests are to take place, it is not possible to identify such persons in advance.
44. As stated above, C also relies on the evidence of Oldfield 1 (see paragraph 22 above) as establishing that:
- a. effective service has taken place on persons unknown pursuant to the alternative service provisions in the Shell Orders: Oldfield 1 at §6.24 [E/5/233]; Oldfield 2 at §2.14 [SB/C/1/41]; Oldfield 2 at §3.13 [SB/C/1/46]; Oldfield 2 at §4.12.5 [SB/C/1/51]; 3; and Oldfield 2 at §5.13 [SB/C/1/55].
 - b. Cs are taking steps to identify persons falling within the description of the persons unknown and to comply with the undertaking to join such persons as Named Defendants.

Shell Petrol Stations Proceedings

45. Compliance with the *Canada Goose* test was considered by Johnson J in the Shell Petrol Stations Proceedings in *SUKOP v PU* at [50] – [54] [AB/5/159-160] and C3 relies again

on that reasoning, save for its application for permission to amend the description of the persons unknown in the claim form and particulars of claim, as establishing that it is appropriate for relief in these proceedings to continue to extend to persons unknown.

46. C3 submits that the Court should grant permission for the description of persons unknown to be amended to remove the word “*environmental*” from “*environmental protest campaigns*.” The amendment is set out in the second schedule to the proposed draft order [A/6/31]. The proposed draft order also grants permission for the amendment.
47. The evidence in support of this application is set out at Pritchard-Gamble 1 at §6.6.24 [E/4/205], namely that this particular site has been affected by protests from groups other than just environmental protest groups. The purpose of this amendment is to ensure that the description of the persons unknown is as clear and accurate as possible and properly reflects the most recent evidence which suggests that there is movement between groups and protest campaigns which are not necessarily limited to environmental protests.

Shell Haven / Shell Centre Tower Proceedings

48. Again, the description of persons unknown complies with the *Canada Goose* guidance, was the subject of careful consideration by Bennathan J and is reflected in the two orders made on 5 May 2022. In any event, Cs rely again on the reasoning of Johnson J in *SUKOP v PU* at [50] – [54] [AB/5/159-160], namely that:
- a. the persons unknown are unidentified but could, in principle, be identified;
 - b. effective service on persons unknown can continue to take place in a manner that can reasonably be expected to bring the proceedings to their attention;
 - c. the persons unknown are described in the relevant claim form and in the injunction, The description is in clear and simple language and relates to their conduct. Such descriptions are based on objective rather than subjective intention: at [54].
49. Cs submit it remains appropriate for relief in all sets of proceedings to continue to extend to persons unknown.

Duration

50. As to the proposed duration, Cs propose a continuation of the injunctions until trial or further order or with a backstop at 23:59 on the relevant 12-month anniversary of the date of this Order. As the Master of the Rolls pointed out in *Barking & Dagenham* “*there is no rule that an interim injunction can only be granted for any particular period of time. It is good practice to provide for a periodic review, even when a final order is made*”: at [108]¹³ [AB/3/68].
51. The Court of Appeal’s decision in *Barking & Dagenham* has been the subject of an appeal to the Supreme Court and the outcome of that appeal will clarify the critical question of whether final injunctions are capable of being obtained against persons unknown, or whether they can only be obtained against named individuals. Given the uncertainty associated with that central point, Cs consider that it would be sensible to await the outcome of the appeal before seeking a final hearing, bearing in mind that both interim and final orders have to be kept under review and the notion that there is a fundamental difference between what can be justified by an interim order, and what can be justified by a final order, was dispelled by the Court of Appeal in *Barking & Dagenham*.
52. That said, Cs are mindful of the obligation to progress this litigation and intend to do so by seeking directions to bring the matter to a final hearing as soon as practical once judgment in *Barking & Dagenham* is available. This may include joining named defendants following consideration of whether there is a proper evidential basis for seeking to join them to any continued injunction application (as per the approach endorsed by Freedman J in *TfL v Lee* (first hearing) at [71]-[79] [AB/6/181-183] and if named individuals are joined, giving them an opportunity to file a defence.
53. In terms of the proposed “backstop” period of one year, whilst only intended to be a backstop, that period is nevertheless thought to strike the appropriate balance between the need to keep orders under review and the express indications by JSO and other groups that their campaigns are escalating rather than being brought to an end in the near term (see, for example, paragraph 16.c) above). See also *HS2 v Persons Unknown* [2022] EWHC 2360 at [109] [AB/4/97] where Knowles J granted an interim injunction on the basis of yearly review periods to determine whether there was a continued threat which justified the

¹³ “*For as long as the court is concerned with the enforcement of an order, the action is not at end*” [98].

continuation of the order, together with the usual provisions allowing for persons affected to vary or discharge it [AB/4/97-8].

Alternative Service

54. The procedural position is that in order to dispense with personal service and to make an order for service by alternative method, the Court requires “*a good reason*”: CPR r.6.15(1). As the defendants consist of persons unknown, it is not possible to serve them personally and the alternative methods of service that have been endorsed in the existing Shell Orders are thus necessary for the relief to be effective.
55. Alternative service has been said to be appropriate in respect of both named and unknown defendants in similar proceedings concerning injunctions prohibiting similar activities arising from coordinated campaigns by protest groups. In *TfL v Lee*, in respect of the TfL injunctions which were secured against a backdrop of JSO protests of TfL roads in central London, Cavanagh J said at [32] [AB/7/203]:

“Alternative service is necessary for the relief to be effective. Moreover... the Defendants already have a great deal of constructive knowledge that the [injunctions] may well be extended: the extent and disruptive nature of the JSO protests since March 2022 (and the Insulate Britain protests which began in September 2021); the multiple civil and committal proceedings brought in response to those protests by National Highways Limited, TfL, local authorities and energy companies and the frequent service of documents on defendants within those proceedings including multiple interim injunctions; the extensive media and social media coverage of the protests, their impact, and of the legal proceedings brought in response; the large extent to which, in order to organise protests and support each other, JSO protesters are in communication with each other both horizontally between members and vertically by JSO through statements, videos etc. shared through its website and social media. These are not activities that single individuals undertake of their own volition. In my judgment, in the perhaps unusual circumstances of this case, it is very unlikely, perhaps vanishingly unlikely, that anyone who is minded to take part in the JSO protests...is unaware that injunctive relief has been granted by the courts.”

56. The issue as to how such service should take place in this case has already been the subject of careful consideration by Johnson J and Bennathan J and is reflected in the Shell Orders (see attendance notes [G/22/2423] (Johnson J); [G/8/2301, §8.2.43] (Bennathan J). Cs submit that the position in respect of the continuation orders is the same now: there has been no change of circumstances which would justify a variation to those alternative service provisions and that they should accordingly be continued under CPR rr.6.15 and 6.27 in respect of all further documents in the Claims, including the sealed interim injunction orders as extended, thereby also dispensing with personal service for the purposes of CPR r81.4(2)(c)-(d).

57. The Court is referred to the evidence in Oldfield 1 (at §§6.25 – 6.29 [E/5/233-5] which sets out why the methods of service remain an appropriate means by which the documents may be brought to the attention of potential defendants. Cs accordingly submit that the proposed alternative service provisions in the draft orders are appropriate and sufficient to bring the continued injunctions to the notice of persons unknown likely to become a defendant.
58. Moreover, even if alternative service were granted by the Court, it would remain open to any defendant on committal to argue that the alternative service provisions operated unfairly against them: *Secretary of State for Transport v Cuciurean* [2020] EWHC 2614 (Ch) at [63(9)].

Application to Amend the Shell Petrol Stations Claim Form and Particulars of Claim

59. This is dealt with at paragraphs 45 to 47 above.

Third Party Disclosure Order

60. Following the grant of the Shell Petrol Stations Injunction Order, C3 remains unable to name any individual as a defendant to the proceedings. On 26 August 2022, a number of people (some falling within the category of Persons Unknown as defined in the Shell Petrol Stations Proceedings) were involved in protests at the Shell Acton Park Service station and the Shell Acton Vale Petrol Station (“the Acton Vale Sites”): Oldfield 3 at §2.4 [SB/E/3/393]. Both of these sites are covered by the Shell Petrol Stations Injunction Order.
61. The Metropolitan Police has indicated that it has no objections to giving disclosure of the names and addresses of any person who has been arrested in connection with unlawful protests but cannot provide it voluntarily and requires an order from the Court: [SB/E/5/420-426]; Oldfield 3 at §4.1.3 [SB/E/3/395].
62. An application has therefore been made pursuant to CPR 31.17. The grounds upon which the order is sought are set out in Oldfield 3 [SB/E/3/392-395].
63. The threshold requirements for the exercise of the Court’s discretion to make a non-party disclosure order are:
- a. that the documents are relevant to an issue arising out of the claim.

- b. that the documents are likely to support the case of the applicant (or adversely affect the case of one of the other parties); and
- c. that disclosure is necessary to dispose fairly of the claim or to save costs.

64. Such orders have been made against police forces throughout the history of these demonstrations and the present application is materially the same as that which was considered and granted by Freedman J in *TfL v Lee* (first hearing) at [94]-[96] [AB/6/186-7].

65. C3 adopts the following reasoning of Freedman J at [96] in support of its contention that the pre-conditions for the grant of disclosure also exist in this case:

“(1) The name and address of the people concerned are likely to support the case of the claimant or adversely affect the case of one of the other parties to the proceedings. Being able to identify who the people are who have been acting in the way complained of is a central facet of the interim relief that the court has already granted. Evidence of breach will go to upholding the [...] injunction.

(2) Disclosure is necessary in order to dispose fairly of the claim or to save costs, because (a) without the names and addresses the claimant cannot enforce the [...] injunction without significant impediments; and (b) the claimant needs the names and addresses in order to make good an undertaking it has given to the court to add defendants as named defendants wherever possible.

(3) Identifying the protesters will allow them to defend their position in the proceedings and it increases the fairness of the proceedings to have named defendants as far as possible.

(4) The Metropolitan Police have stated to the claimant that it will only disclose the requested information pursuant to a court order and they do not oppose the grant of the making of that order.

(5) The disruption to the public and the risks involved mean that it is proportionate to order third party disclosure.

(6) It is much more desirable for the evidence gathering to be undertaken by the police, rather than for third parties such as inquiry agents to interfere during the demonstrations in order to obtain such evidence.”

66. The collateral use of any documents disclosed is automatically restricted by CPR 31.22¹⁴ and the Court may give directions for the redaction of personal information from any document which is served beyond the named parties to the proceedings. The proposed draft order provides for that.

Conclusion

67. For the reasons set out above, Cs respectfully ask the Court to:

- a. continue the injunctions granted in the Shell Orders in the form of the draft orders appended to this skeleton or alternatively, as the Court thinks fit;
- b. extend the existing alternative service provisions to cover any such continuation order and ancillary documents pursuant to CPR rr.6.15 and 6.27;
- c. grant permission to amend the description of persons unknown in the claim form and Particulars of Claim in the Shell Petrol Stations Proceedings;
- d. grant the third party disclosure order against the Commissioner of the Metropolitan Police pursuant to CPR 31.17 in respect of the Shell Petrol Station Proceedings.

MYRIAM STACEY KC

JOEL SEMAKULA

Landmark Chambers

20 April 2023

¹⁴ Unless the Court orders otherwise.